

MARTIN COUNTY
WIRELESS COMMUNICATION
FACILITIES

Section 1. PURPOSE

The purpose of the regulations and requirements of this Ordinance are to:

Subpart 1. Accommodate the communication needs of the residents and businesses while protecting the public health, safety and general welfare;

Subpart 2. Facilitate the provision of wireless communication facilities through careful siting and design standards;

Subpart 3. Avoid potential damage to adjacent properties from the construction and operation of wireless communication facilities through structural standards and setback requirements.

Subpart 4. Maximize the use of existing and approved tower, buildings or structures to accommodate new wireless communication antennas to reduce the number of towers needed to serve the industry.

Section 2. DEFINITIONS

- (1) **ANS/TIA/EIA.** American National Standard/Telecommunication Industry Association/Electronic Industrial Association.
- (2) **Antenna.** Any device or equipment used for the transmission or reception of Electro-magnetic waves, which may include Omni-directional antenna (rod), directional antenna (panel) or parabolic antenna (disc).
- (3) **Applicant.** Any person, provider, firm partnership or company who files an application for any permit required by this code for the construction, replacement, or alternation of wireless communication facility or any component thereof.
- (4) **Co-location.** The location of more than one antenna or set of antennas of more than one government or commercial wireless communication service provider on the same tower structure.
- (5) **FAA.** Federal Aviation Administration.
- (6) **FCC.** Federal Communications Commission.
- (7) **Height.** The distance measured from ground level to the highest point on a tower or structure, including any antenna.
- (8) **High Power Transmission Line.** A 68 kV or greater electric transmission line with towers at least 75 feet in height.
- (9) **Tower.** Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including guy towers, mono-pole towers and self supporting lattice towers, including any support thereto.
- (10) **Tower Accessory Structure.** Any structure located at the base of a tower for housing base receiving or transmitting equipment.
- (11) **Wireless Communications.** Any personal wireless services as defined in the Federal Communications Act of 1996, including FCC licensed commercial wireless telecommunications services such as cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile

radio (ESMR), global system of mobile communication (GSM), paging and similar services that currently exist or may be developed.

Section 3. APPLICABILITY

Subpart 1. Pre-existing Towers and Antennas. Any tower antenna for which a permit has been issued prior to the effective date of this chapter shall not be required to meet the requirements of this chapter, other than the requirements of Section 4, Sub. 1, 2 and 6. Any addition or change to a pre-existing tower or antenna shall comply with all applicable requirements of this chapter.

Subpart 2. District Height Limitation. The requirements set forth in this chapter shall govern the design and siting of towers and antennas that exceed the height limitations specified for each zoning district.

Subpart 3. Amateur Radio; Receive-Only Antennas. This chapter shall not govern the installation of any tower or antenna that is owned or operated by a federally licensed amateur radio operator or is used exclusively for receive-only antennas. Commercial antennas attached to such a tower or any tower modification made for the purpose of accommodating such an antenna shall comply with all applicable requirements of this chapter.

Section 4. GENERAL REQUIREMENTS

Subpart 1. All towers and antennas shall comply with all FCC and FAA rules and regulations.

Subpart 2. Design and installation of all towers and antennas shall comply with the manufacturer's specifications and with ANS/TIA/EIA standards. Plans shall be approved and stamped by a professional engineer in the State of Minnesota.

Subpart 3. Installation of all towers and antennas shall comply with all applicable state and local building and electrical codes.

Subpart 4. For leased sites, written authorization for siting the wireless communication facilities from the property owner must be provided as set forth in Section 8, Sub.3, C.

Subpart 5. All wireless communication facilities must be adequately insured for injury and property damage. Proof of insurance with the county named, as an additional insured shall be provided.

Subpart 6. All unused towers and antennas must be removed within 12 months of cessation of operation or use, unless the Martin County Zoning Administrator provides a written exemption. After the facilities are removed, the site shall be restored to its original condition or as close as possible, and anchoring elements shall be removed from the ground to within 4 feet of ground level. If removal and/or restoration is not

completed with 90 days of the expiration of the 12 month period specified herein, the County is authorized to complete the removal and site restoration and the cost shall be assessed against the property as a special assessment.

Subpart 7. Proposals to erect new towers and antennas shall accompanied by any required federal, state or local agency licenses or applications for such licenses.

Subpart 8. Only one tower is permitted on a parcel of land. Additional towers may be permitted with a conditional use permit if the additional tower is located within 200 feet of the existing tower and all other requirements of this chapter are met.

Subpart 9. The self-support structure design is the preferred tower structure. Use of guy towers must be justified on the basis of co-location opportunities or specific structural requirements.

Section 5. PROHIBITIONS

Subpart 1. No tower shall be over 400 feet in height.

Subpart 2. No advertising message or sign shall be affixed to any tower or antenna.

Subpart 3. Towers and antennas shall not be artificially illuminated unless required by FCC or FAA regulations.

Subpart 4. No part of any tower or antenna shall extend across or over any right-of-way, public street, highway, sidewalk or property without permission of the controlling authority.

Subpart 5. No part of any tower or antenna, except for guy wires and anchors shall extend beyond the fenced enclosure required under Section 8, Sub 5, A.

Subpart 6. No temporary mobile communication sites are permitted except in the case of equipment failure, equipment testing, equipment replacement, or in the case of an emergency situation authorized by the Martin County Zoning Administrator.

Subpart 7. No wireless communications service shall be permitted that causes any interference with commercial or private use and enjoyment of other legally operating telecommunications devices including, but limited to, radios, televisions, personal computers, telephones, personal communications devices, garage door openers, security systems, and other electronic equipment and devices. An applicant must furnish a state registered engineer's certification that no such interference will occur, or identify what interference may occur and how the applicant will mitigate any potential interference that may occur.

Section 6. PERFORMANCE STANDARDS

Subpart 1. General. Except as provided in this chapter, all wireless communications facilities shall meet the dimensional standards of the zoning district in which they are located. Where the facilities are the principal use on a separate parcel, the parcel shall meet the minimum lot size requirements of the respective zoning district. On a parcel of land that already has a principal use, the facilities shall be considered as an accessory use and a smaller area of land may be leased provided that all requirements of this Ordinance and the Martin County Zoning Ordinance are met.

Section 7. DISTRICT REQUIREMENTS

Subpart 1. Business (HB) and Industry (I) Districts.

- A. The following is permitted with a zoning permit from the Martin County Zoning Administrator issued under this Ordinance:
 - 1. Antennas attached to an existing tower or structure to a maximum 400 feet.
- B. The following is permitted subject to a conditional use permit issued under this Ordinance and Chapter 6 of the Martin County Zoning Ordinance.
 - 1. Any new tower to a maximum of 400 feet.

Subpart 2. Agricultural (A) District

- A. The following is permitted subject to a zoning permit from the Martin County Zoning Administrator issued under this Ordinance:
 - 1. Antennas attached to an existing tower or structure to a maximum of 400 feet.
- B. The following is permitted subject to a conditional use permit issued under this Ordinance and Chapter 6 of the Martin County Zoning Ordinance.
 - 1. Any new tower to a maximum of 400 feet.

Subpart 3. Single Family Residential (R-1) District

- A. The following are permitted subject to a conditional use permit issued under this Ordinance and Chapter 6 of the Martin County Zoning Ordinance.
 - 1. Antennas attached to an existing tower or structure and not extending more than 20 feet above the highest point of the tower or structure.
 - 2. Any new tower to a maximum height of 400 feet.

Subpart 4. Shoreland (SL-1, SL-2, SL-B, SL-C) Districts

- A. No tower shall be permitted in the Shoreland Overlay District.

Section 8. PERFORMANCE STANDARDS

Subpart 1. General.

Except as provided in this chapter, all wireless communications facilities shall meet the dimensional standards of the zoning district in which they are located. Where the facilities are the principal use on a separate parcel, the parcel shall meet the minimum lot size requirements of the respective zoning district. On a parcel of land that already has a principal use, the facilities shall be considered as an accessory use and a smaller area of land may be leased provided that all requirements of this chapter can be met.

Subpart 2. Setback and Separation.

- A. Generally, tower structures shall be set back from the nearest property line a distance equal to the height of the tower. This setback may be reduced to one-half the height of the tower if the applicant submits a report stamped by a professional engineer registered in the State of Minnesota that certifies that the tower is designed and engineered to collapse upon failure within the distance from the tower to the property line. Other setback reductions, to the minimum required by the applicable zoning district, may be had by obtaining the written agreement of the adjacent property owner.
- B. When located on contiguous lands also containing the residence of the owner of the property, the setback from any single family residence on adjacent property shall be not less than that from the residence of the owner of the property on which the tower is to be located, unless it can be shown that this section would preclude any tower meeting the applicant's needs from being located on said lands. For the purpose of this Ordinance, contiguous lands shall include adjacent parcels separated by a public highway, whether dedicated or by easement.

Subpart 3. Co-location/Sharing of Facilities.

- A. No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the governing authority that no existing tower or structure can accommodate the applicant's proposed antenna. Supporting evidence may consist of any the following conditions:
 - 1. No existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements.
 - 2. Existing towers or structures are not sufficient height to meet the applicant's engineering requirements.
 - 3. Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.

4. The applicant's proposed system would cause electromagnetic interference with the system on the existing tower or structure, or the system on the existing tower or structure would cause interference with the applicant's proposed system.
 5. The fees, costs, or contractual provisions required by the owner to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs are considered reasonable if they conform to contractual terms standard in the industry or do not exceed the cost of new tower development.
 6. The applicant demonstrates that there are other limiting factors that render existing towers or structures unsuitable.
- B. New towers with a minimum height of 125 feet shall be designed to accommodate at least two (2) other users. New towers with a minimum height of 99 feet shall be designed to accommodate one (1) additional user. Towers must also be designed to allow for future rearrangement of antennas on the tower and accept antennas mounted at different heights.
- C. The holder of a permit for a tower shall allow co-location for additional users as may be accommodated based on the tower design and shall not make access to the tower and tower site for the additional users economically unfeasible. If additional user(s) demonstrate (through an independent arbitrator other pertinent means, with the cost to be shared by the holder of the permit and the proposed additional user) that the holder of a tower permit has made access to such tower and tower site economically unfeasible, then the permit shall become null and void.

Subpart 4. Screening and Landscaping.

The tower location shall provide for the maximum amount of screening of the facilities. The site shall be landscaped and maintained with a buffer of plant materials that effectively screens the view of all tower accessory structures, equipment and improvements at ground level from adjacent properties. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived by the governing authority. Existing mature vegetation and natural landforms on the site shall be preserved to the maximum extent possible or replaced with vegetative screening meeting the intent of this subdivision.

Subpart 5. Security Fencing, Lighting and Signs.

- A. All towers shall be reasonably protected against unauthorized access. The bottom of the tower from ground level to 12 feet above ground shall be designed to preclude unauthorized climbing and shall be enclosed with a minimum of a 6 foot high chain link fence with locked gate.
- B. Security lighting for on-ground facilities and equipment is permitted, as long as it is down shielded to keep light within the boundaries of the site.

- C. Signs shall be mounted on the fenced enclosure, on or adjacent to the gate prohibiting entry without authorization, warning of the danger from electrical equipment and/or unauthorized climbing of the tower, and identifying the owner of the tower and telephone number for contact in case of emergency. No permitted sign shall exceed three square feet in area.

Subpart 6. Color and Materials.

- A. All towers, antennas and accessory structures shall use building materials, colors, textures, screening and landscaping that blend the facilities with the surrounding natural features and built environment to the greatest extent possible. The tower shall be a color that minimizes visibility unless otherwise required by FAA or FCC regulations.
- B. All metal towers shall be constructed or treated with corrosion resistant metal.

Subpart 7. Parking and Access.

Adequate parking spaces shall be provided on each site so that parking on public road right of way will not be necessary. Access must be provided by an all-weather gravel or paved driveway.

Section 9. PERMIT REQUIREMENTS.

Subpart 1. The construction or installation of any wireless communication facilities requires a zoning permit or conditional use permit under this Ordinance and Martin County Zoning Ordinance.

Subpart 2. Zoning Permits. Use and facilities permitted under this Ordinance may be authorized by the Zoning Administrator upon the submittal and approval of a properly completed application for a zoning permit under this Ordinance and the Martin County Zoning Ordinance.

Subpart 3. Conditional Use Permits. Uses and facilities requiring a conditional use permit under this Ordinance shall be considered by the County Planning Commission and County Board of Commissioners upon submittal and approval of a properly completed application for a conditional use permit under this Ordinance and the Martin County Zoning Ordinance.

Subpart 4. Applications. In addition to the application requirements identified in this Ordinance, all applications for zoning permits or conditional use permits for new wireless communication facilities shall include the following information:

- A. A report stamped by professional engineer registered in the State of Minnesota and other professionals which:

1. Certifies that a detailed engineering soils report has been completed and that the design of the tower foundation is based on that report.
 2. Describes the tower height and design, including a cross-section, elevation and foundation design.
 3. Certifies the facility's compliance with structural and electrical standards.
 4. Describes the tower's capacity, including the potential number and type of antennas that it can accommodate.
 5. Identifies the location of all sites that were considered as possible alternatives to the site being applied for.
 6. Describes the lighting and/or painting to be placed on the tower if required by the FCC or FAA.
 7. Certifies that the applicant or tenant has a valid license from the FCC to operate the proposed facilities, and identifies both the class of the license and the license holder.
 8. Describes how the requirements and standards of this Ordinance will be met by the proposed facilities.
- B. Each application shall include a facility plan. The County will maintain an inventory of all existing and proposed wireless communication site installations and all providers shall provide the following information in each plan. The plan must be updated with each submittal as necessary.
1. Written description of the type of consumer services each provider will provide to its customers (cellular, PCS, SMR, ESMR, and paging or other anticipated wireless communications services).
 2. Provide a list of all existing wireless communication facility sites within the County for the services to be provided by the provider.
- C. Landowner acknowledgment. Written acknowledgment by the landowner of a leased site that he/she will abide by all applicable terms and conditions of the zoning permit or conditional use permit, including the restoration and reclamation requirements of Section 4 of this Ordinance. Such acknowledgment shall be made applicable to all successors, heirs and assignees.

D. Additional Information and Analysis.

1. The Zoning Administrator may at his/her discretion, require visual impact demonstrations including mock-ups and/or photo montages, screening and painting plans, network maps, alternative site analysis, lists of other nearby wireless communication facilities, or facility design alternatives for the proposed facilities.
 2. The Zoning Administrator may employ, on behalf of the County, an independent technical expert to review technical materials submitted by the applicant or to prepare any technical materials required but not submitted by the applicant. The applicant shall pay the reasonable costs of such review and/or independent analysis.
- E. As part of the a permit review process the applicant may be asked to provide plans and technical data regarding the proposed tower to the County's Office of Emergency Management in order to explore opportunities to co-locate County communication antennas, on a proposed tower.
- F. Existing Tower/New Antenna. Applications for a zoning permit to add a new antenna to an existing tower or structure shall be subject to the requirements of Subd. 4, B, 2 of this section.

Section 10. TRANSFERABILITY

All permits issued under this article shall be made transferable, and all subsequent holders of such permits shall be subject to all applicable requirements of this Ordinance and the Martin County Zoning Ordinance as a whole and any permit conditions that may exist. Written notice shall be made to the Zoning Administrator within 30 days of such transfer.

Section 11. REPEAL AND ADOPTION

It is not intended by this Ordinance to repeal any Ordinance. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other Ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

**Section 12. PUBLIC HEARING AND PLANNING COMMISSION
RECOMMENDATIONS**

The Martin County Planning Commission, after proper notice and publication, held a public hearing on the adoption of this Ordinance and as amended on the 27th day of July 2004, at the Martin County Courthouse. After hearing public testimony and with due deliberation, the Planning Commission voted to recommend adoption of this Ordinance to the Martin County Board of Commissioners.

Section 13. ADOPTION

The Martin County Board of Commissioners, after proper notice and publication, held a public hearing on the adoption of this Ordinance on the 17th day of August, 2004, at the Martin County Courthouse. After hearing public testimony and with due deliberation, the Martin County Board of Commissioners voted to adopt this Ordinance.

Adopted this 17th day of August, 2004.

Jack Potter
Chairperson, Martin County Board of Commissioners

Attest:

Scott Higgins
Martin County Coordinator