

CITY OF MADISON, WISCONSIN

AN ORDINANCE _____

PRESENTED
REFERRED

October 1, 2013
Plan Commission; Public
Hearings: PC 11/4/13
CC 11/19/13

Repealing and recreating Sec. 28.143, amending Secs. 28.032, 28.061, 28.072, 28.082, 28.091 28.098(6), 28.134(2) & (3), 28.183(8) & (10)(a), 28.206, 28.211, 17.08(2), 17.12(2)(b)5. and (2)(d) and creating Secs. 28.148 and 28.074(4)(d) of the Madison General Ordinances to comply with new Wis. Stat. §§ 66.0404 and 66.0406.

Drafted by: Maureen O'Brien

Date: September 24, 2013

SPONSOR: Aids. King, Resnick & Zellers

DRAFTER'S ANALYSIS: In 2013 Wisconsin Act 20, the state legislature limited the City's authority to regulate the placement of cell towers (defined as "Mobile Service Support Structures") and radio towers. ("Radio Broadcast Service Facilities") Among other things, the Act prohibits the City from denying an application for a cell tower based solely upon aesthetic concerns, and prohibits the City from denying an application for a radio tower based on anything other than a reasonable and well defined public health or safety concern.

The Common Council of the City of Madison do hereby ordain as follows:

1. Section 28.143 entitled "Telecommunication Facilities and Antennas" of the Madison General Ordinances is repealed and recreated to read as follows:

"28.143 MOBILE TOWER SITING REGULATIONS.

- (1) Statement of Purpose.
The purpose and intent of this section is to strike a balance between the state and federal interest concerning the construction, modification and siting of mobile service facilities and mobile service support structures for use in providing personal wireless services, and the interest of the City in regulating local zoning. The goals of this section are to:
 - (a) Protect residential areas and land uses from the potential adverse impacts of towers and antennas.
 - (b) Minimize the total number of towers throughout the community.
 - (c) Encourage the joint use of new and existing tower sites as a primary siting option rather than construction of additional single-use towers.
 - (d) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.
- (2) New Construction and Substantial Modification of Facilities and Support Structures.
 - (a) An application for a permit to engage in the siting or construction of a new mobile service support structure and facilities or to engage in a Class 1 collocation shall be submitted in writing to the Building Inspection Division and shall contain the following:

Approved as to form:

1. The name and business address of, and the contact individual for, the applicant.
 2. The location of the proposed or affected support structure.
 3. The location of the proposed mobile service facility.
 4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- (b) The Building Inspection Division Director or his or her designee shall inform the applicant within ten (10) days of receipt of the application if the application is not complete. Notification shall be in writing and shall specify in detail the information that was incomplete.
- (c) Within ninety (90) days of receipt of a completed application, the Building Inspection Division Director or designee shall issue a written decision to approve or deny the application. However, the Director or designee and the applicant may agree in writing to an extension of the ninety-(90) day period.
- (d) Decisions to deny an application shall be supported by substantial evidence. Such evidence shall be included in the written decision.
- (e) If an applicant provides an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Building Inspection Division Director or designee provides the applicant with substantial evidence showing that the engineering certification is flawed.
- (f) The decision of the Building Inspection Division Director or designee is a final decision appealable to circuit court.
- (3) Abandonment.
If a mobile service support structure shall cease to be used for a period exceeding one year and a day, the owner or operator of said structure shall remove the structure upon the written request of the City Building Inspection Division Director at no cost to the City within ninety (90) days of said request. Prior to the issuance of any building or zoning permits, a performance bond shall be provided to guarantee that a support structure that has ceased being used for mobile service facilities purposes is removed. The bond amount shall be the lesser of twenty thousand dollars (\$20,000) or an amount based on a written estimate of a person qualified to remove such structures.
- (4) Structural Requirements.
Every mobile service support structure and mobile service facility shall be designed and constructed so as to comply with the requirements of Chapter 17, MGO, and International Building Code (IBC) 3108, as amended from time to time. If, upon inspection, the Building Inspection Division Director concludes that a structure or facility fails to comply with such codes in effect at the time of construction, and constitutes a danger to persons or property, then upon notice being provided to the owner of the structure or facility, the owner shall have thirty (30) days or such time as determined by the Building Inspection Division Director to bring such tower into compliance with said codes.

Failure to bring such structure or facility into compliance within said thirty (30) days or such time as determined by the Building Inspection Division Director shall constitute grounds for the removal of the structure or facility at owner's expense.

(5) Basic Tower and Building Design.

All new mobile service support structures and facilities, except exempt facilities as defined in subsection (8), below, shall be designed as follows:

- (a) Mobile service facilities and mobile service support structures shall be constructed out of metal or other nonflammable material.
- (b) Mobile service facilities and mobile service support structures shall insure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
- (c) Emergency back-up generators shall be completely enclosed on all sides. Other efforts to mitigate noise from such generators may be required.

(6) Location.

A good faith effort in achieving co-location shall be required of the requestor and host entity, subject to existing co-location contracts, and all of the following measures shall be implemented for new mobile service support structures and Class 1 Collocations:

- (a) No mobile service support structure shall be installed closer than one-quarter (1/4) mile from another mobile service support structure, measured from the base of the existing structure to the base of the proposed structure, unless the applicant provides a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring:
 - 1. Would not result in the same mobile service functionality, coverage, and capacity;
 - 2. Is technically infeasible, or
 - 3. Is economically burdensome to the mobile service provider.

For the purposes of this requirement, exempt mobile service facilities unavailable for co-location shall not be included in the one-quarter (1/4) mile computation.

- (b) No mobile service support structure shall be located on a lot in a residence district, unless said lot is greater than two (2) acres in area and the principal use is other than residential.
- (c) Mobile service support structures towers, guy wires, appurtenant equipment and buildings shall comply with the yard and set back requirements of the zoning district in which they are located.

(7) Co-located and Multiple-User Facilities.

(a) An application for a permit to engage in Class 2 Collocation shall be submitted in writing to the Building Inspection Division and shall contain the following:

- 1. The name and business address of, and the contact individual for, the applicant.
- 2. The location of the proposed or affected support structure.
- 3. The location of the proposed mobile service facility.

(b) The Building Inspection Division shall inform the applicant within five (5) days of receiving the application if the application is not complete. Notification shall be in writing and shall specify in detail the information that was incomplete.

(c) Within forty-five (45) days of receipt of a completed application, the Building Inspection Division Director or designee shall issue a written decision to approve or deny the application, except that the Building Inspection Division Director or designee and the applicant may agree in writing to an extension.

(d) Decisions to deny an application shall be supported by substantial evidence. Such evidence shall be included in the written decision.

(e) The decision of the Building Inspection Division Director or designee is a final decision appealable to circuit court.

(f) Design for Co-Location. All new mobile service support structures shall be structurally and electrically designed to accommodate at least three (3) separate antenna arrays, unless credible evidence is presented that said construction is economically and technologically unfeasible.

Multi-user mobile service support structures shall be designed to allow for future rearrangement of antennas and to accept antennas mounted at varying heights. Parking areas, access roads, and utility easements shall be shared by site users.

(8) Exempt Facilities.

- (a) Amateur radio towers installed, erected, maintained and/or operated in any residential zoning district, by a federally-licensed amateur radio operator, complying with the provisions contained in Chapter 17, MGO, so long as all the following conditions are met:
 - 1. The antenna use involved is accessory to the primary use of the property which is not a telecommunication facility.
 - 2. In a residential zone, no more than one support structure for licensed amateur radio operator is allowed on the parcel.
 - 3. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
- (b) Publicly owned and operated telecommunications facilities required in the public interest to provide for and maintain a radio frequency telecommunication system, including digital, analog, wireless or electromagnetic waves, for police, fire and other municipal services.”

2. Table 28C-1 of Subsection (1) of Section 28.032 entitled “Residential District Uses” of the Madison General Ordinances is amended by amending therein the following:

“Residential Districts																
	SR-C1	SR-C2	SR-C3	SR-V1	SR-V2	TR-C1	TR-C2	TR-C3	TR-C4	TR-V1	TR-V2	TR-U1	TR-U2	TR-R	TR-P	Supplemental Regulations
Utility Uses																
Class 2 Collocations	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Radio Broadcast Service Facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Telecommunications towers, <u>Class 1 Collocations</u> , and transmission equipment buildings	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

3. Table 28D-2 of Section 28.061 entitled “Mixed-Use and Commercial Districts Uses” of the Madison General Ordinances is amended by amending and creating therein the following:

“Mixed-Use and Commercial Districts							
	LMX	NMX	TSS	MXC	CC-T	CC	Supplemental Regulations
Public Utility and Public Service Uses							
Class 2 Collocations	P	P	P	P	P	P	
Radio Broadcast Service Facility	P	P	P	P	P	P	
Telecommunications towers, antennas <u>Class 1 Collocations</u> , and transmission equipment buildings	P	P	P	P	P	P”	

4. Table 28E-2 of Subsection (1) of Section 28.072 entitled “Downtown District Uses” of the Madison General Ordinances is amended by amending therein the following:

“Downtown and Urban Districts						
	DC	UOR	UMX	DR1	DR2	Supplemental Regulations
Public Utility and Public Service Uses						
<u>Class 2 Collocations</u>	P	P	P	P	P	
<u>Radio Broadcast Service Facility</u>	P	P	P	P	P	
Telecommunications towers, antennas <u>Class 1 Collocations</u> , and transmission equipment buildings	P	P	P	P	P”	

5. Subdivision (d) of Subsection (4) entitled “Design Review” of Section 28.074 entitled “Downtown Core District” of the Madison General Ordinances is created to read as follows:

“(d) Class 2 Collocations and Radio Broadcast Service Facilities are permitted uses and are not subject to design review. They are subject to review as provided in Sections 28.143 and 28.148. See Wis. Stat. §§ 66.0404(3)(a)1 and (4)(gm) and 66.0406 (2013)”

6. Subdivision (d) of Subsection (4) entitled “Design Review” of Section 28.076 entitled “Urban Mixed-Use (UMX) District” of the Madison General Ordinances is created to read as follows:

“(d) Class 2 Collocations and Radio Broadcast Service Facilities are permitted uses and are not subject to design review. They are subject to review as provided in Sections 28.143 and 28.148. See Wis. Stat. §§ 66.0404(3)(a)1 and (4)(gm) and 66.0406 (2013)”

7. Table 28F-1 of Subsection (1) of Section 28.082 entitled “Employment District Uses” of the Madison General Ordinances is amended by amending therein the following:

“Employment Districts							
	TE	SE	SEC	EC	IL	IG	Supplemental Regulations
Public Utility and Public Service Uses							
<u>Class 2 Collocations</u>	P	P	P	P	P	P	
<u>Radio Broadcast Service Facility</u>	P	P	P	P	P	P	
Telecommunications towers, antennas <u>Class 1 Collocations</u> , and transmission equipment buildings	P	P	P	P	P	P”	

8. Table 28G-1 of Subsection (1) of Section 28.091 entitled “Special District Uses” of the Madison General Ordinances is amended by amending therein the following:

	A	UA	CN	PR	AP	Supplemental Regulations
Public Utility and Public Service Uses						
<u>Class 2 Collocations</u>	P	P	P	P	P	
<u>Radio Broadcast Service Facility</u>	P	P	P	P	P	
Telecommunications towers, <u>Class 1 Collocations</u> , and transmission equipment buildings	P	P	P	P	P	

9. Subsection (6) entitled “Changes to a Planned Development” of Section 28.098 entitled “Planned Development District” of the Madison General Ordinances is amended to read as follows:

“(6) Changes to a Planned Development.
 No alteration of a Planned Development District shall be permitted unless approved by the City Plan Commission, provided however, the Zoning Administrator may issue permits for minor alterations that are approved by the Director of Planning and Community and Economic Development and are consistent with the concept approved by the Common Council. If the change or addition constitutes a substantial alteration of the original plan, the procedure in Sec. 28.097(5) shall be required. Telecommunications towers, Class 1 Collocations, Class 2 Collocations and Radio Broadcast Service Facilities shall be considered minor alterations under this section. Criteria for review are provided in Sections 28.143 and 28.148. See Wis. Stat §§ 66.0404(3)(a)1 and (4)(gm) and 66.0406 (2013)”

10. Subsection (2) entitled “Height Limit Exceptions” of Section 28.134 entitled “Height and Bulk Regulations” of the Madison General Ordinances is amended to read as follows:

“(2) Height Limit Exceptions.
 The following structures are permitted to exceed the maximum height regulations within any district where the use is allowed: church spires, belfries, cupolas and domes, water towers, flagpoles, chimneys, communication towers and elevator penthouses. ~~Communication towers within residential districts shall not exceed a maximum height of seventy-five (75) feet above grade.~~ All structures shall comply with the provisions of sub. (3) below.”

11. Subsection (3) entitled “Capitol View Preservation” of Section 28.134 entitled “Height and Bulk Regulations” of the Madison General Ordinances is amended to read as follows:

“(3) Capitol View Preservation.
 No portion of any building or structure located within one (1) mile of the center of the State Capitol Building shall exceed the elevation of the base of the columns of said Capitol Building or one hundred eighty-seven and two-tenths (187.2) feet, City datum. Provided, however, this prohibition shall not apply to any church spires, flagpoles, communication towers ~~(except communication towers in residential districts, which shall comply with the requirements of Section (1) above),~~ elevator penthouses, screened air conditioning equipment on existing buildings and chimneys exceeding such elevation, when approved as conditional uses. For the purpose of this subsection, City datum zero (0.00) feet shall be established as eight hundred forty-five and six-tenths (845.6) feet above sea level as established by the United States Coast and Geodetic Survey.”

12. Section 28.148 entitled “Radio Broadcast Service Facility Regulations” of the Madison General Ordinances is created to read as follows:

“28.148 RADIO BROADCAST SERVICE FACILITY REGULATIONS.

(1) Statement of Purpose.
 The purpose and intent of this section is to strike a balance between the state interest concerning the construction, modification and siting of Radio Broadcast Service Facilities,

and the interest of the City in public health and safety. The regulations in this section, and elsewhere in these ordinances as they relate to Radio Broadcast Service Facilities, are determined to be the minimum necessary to protect public health and safety. The goals of this section are to

- (a) Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.
- (b) Avoid potential harm or injury caused by the ability to trespass or climb on a tower.
- (c) Avoid potential harm or injury caused by ice or other debris falling from towers.

(2) Application.

An application for the placement, construction or modification of a radio broadcast service facility shall be made to the Building Inspection Division.

- (a) A Placement Plan shall be submitted at the time of application for a zoning certificate. The Plan shall show the proposed location of the Radio Broadcast Service Facility on the lot, the design of facility, the location of improvements on adjoining lots, as well as landscaping on the lot and adjoining lots that impacts the location of the Radio Broadcast Service Facility. Additional materials may be required.
- (b) The Placement Plan shall be approved by the Director of the Department of Planning and Community and Economic Development prior to installation of the facility
- (c) Any denial shall be in writing, and shall provide the applicant with substantial evidence which supports the reasons for the denial.

(3) Structural Requirements.

Every Radio Broadcast Service Facility shall be designed and constructed so as to comply with the requirements of Chapter 17, MGO, and International Building Code (IBC) 3108, as amended from time to time. If, upon inspection, the Building Inspection Division Director concludes that a tower fails to comply with such codes in effect at the time of construction, and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days or such time as determined by the Building Inspection Division Director to bring such tower into compliance with said codes.

Failure to bring such tower into compliance within said thirty (30) days or such time as determined by the Building Inspection Division Director shall constitute grounds for the removal of the tower or antenna at owner's expense.

(4) Basic Tower and Building Design.

All new Radio Broadcast Service Facilities, except exempt facilities as defined in subsection (7), below, shall be designed as follows:

- (a) Radio Broadcast Service Facilities shall be constructed out of metal or other nonflammable material.
- (b) Radio Broadcast Service facilities shall insure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.

(5) Location.

Radio Broadcast Service Facilities, towers, guy wires, appurtenant equipment and buildings shall comply with the yard and set back requirements of the zoning district in which they are located and, in addition thereto, all towers shall be set back at least one hundred (100) feet from any property devoted to residential use or two hundred (200) feet from any residential building, whichever is less.

(6) Abandonment.

If a Radio Broadcast Service Facility shall cease to be used for a period exceeding one year and a day, the owner or operator of said facility shall remove the facility upon the written request of the City Building Inspection Division Director at no cost to the City within ninety (90) days of said request. Prior to the issuance of any building or zoning permits, a performance bond shall be provided to guarantee that a facility that has ceased being used for telecommunication purposes is removed. The bond amount shall be the lesser of twenty thousand dollars (\$20,000) or an amount based on a written estimate of a person qualified to remove such structures.

(7) Exempt Facilities.

- (a) Amateur radio towers installed, erected, maintained and/or operated in any residential zoning district, by a federally-licensed amateur radio operator, complying with the provisions contained in Chapter 17, MGO, so long as all the following conditions are met:

1. The antenna use involved is accessory to the primary use of the property which is not a telecommunication facility.
 2. In a residential zone, no more than one support structure for licensed amateur radio operator is allowed on the parcel.
 3. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
- (b) Publicly owned and operated telecommunications facilities required in the public interest to provide for and maintain a radio frequency telecommunication system, including digital, analog, wireless or electromagnetic waves, for police, fire and other municipal services.”

13. Subsection (8) entitled “Alterations” of Section 28.183 entitled “Conditional Uses” of the Madison General Ordinances is amended to read as follows:

“(8) Alterations. No alteration of a conditional use shall be permitted unless approved by the Plan Commission provided, however, the Zoning Administrator following consideration by the alderperson of the district, may approve minor alterations or additions which are approved by the Director of Planning and Community and Economic Development and are compatible with the concept approved by the Plan Commission and the standards in subsection (6), above. Telecommunications towers, Class 1 Collocations, Class 2 Collocations and Radio Broadcast Service Facilities shall be considered minor alterations under this section. Criteria for review are provided in Sections 28.143 and 28.148. See Wis. Stat §§ 66.0404(3)(a)1 and (4)(gm) and 66.0406 (2013)”

14. Subdivision (a) of Subsection (10) entitled “Changes in Use” of Section 28.183 entitled “Conditional Uses” of the Madison General Ordinances is amended to read as follows:

“(a) On any zoning lot where a conditional use is established, any alteration, expansion or establishment of any other use(s), including permitted uses, except structures and buildings serving as synagogues, mosques, temples, churches, parish houses, rectories, and other places of worship, telecommunications towers, Class 1 Collocations, Class 2 Collocations and Radio Broadcast Service Facilities, shall be subject to conditional use approval.”

15. The table of Section 28.206 entitled “Fees” of the Madison General Ordinances is amended by amending therein the following:

Type of Action	Fee
Conditional use application for telecommunication facilities and antennas under Sec. 28.143	\$1,750 in addition to the Conditional Use Application Fee”

16. Section 28.211 entitled “Definitions” of the Madison General Ordinances is amended by creating herein the following:

“Class 1 Collocation. The placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.

Class 2 Collocation. The placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support for the facility or engage in substantial modification.

Equipment Compound. An area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

Existing Structure. For the purposes of mobile service facilities, existing structure means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a political subdivision.

Fall Zone. The area over which a mobile support structure is designed to collapse.

Mobile Service.

A radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes

- (a) Both one-way and two-way radio communication services,
- (b) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation, and
- (c) Any service for which a license is required in a personal communications service established pursuant to the proceeding entitled "Amendment to the Commission's Rules to Establish New Personal Communications Services" (GEN Docket No. 90-314; ET Docket No. 92-100), or any successor proceeding.

Mobile Service Facility. The set of equipment and network components, including antennas, transmitters receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

Mobile Service Provider. A person who provides mobile service.

Mobile Service Support Structure. A freestanding structure that is designed to support a mobile service facility. See also, "Telecommunications Tower"

Public Utility. See Wis. Stat. § 196.01 (5).

Radio Broadcast Services. The regular provision of a commercial or non-commercial service involving the transmission, emission or reception of radio waves for the transmission of sound or images in which the transmissions are meant for direct reception by the general public.

Radio Broadcast Service Facilities. Commercial or non-commercial facilities intended for the provision of radio broadcast services.

Search Ring. A shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

Substantial Modification of a Mobile Service Support Structure. The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following, except that an activity is not a substantial alteration if a greater height is necessary to avoid interference with an existing antenna, or if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable:

- (a) For structures with an overall height of two hundred (200) feet or less, increases the overall height of the structure by more than twenty (20) feet.
- (b) For structures with an overall height of more than two hundred (200) feet, increases the overall height of the structure by ten (10) percent or more.
- (c) Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by twenty (20) feet or more, unless a larger area is necessary for collocation.
- (d) Increases the square footage of an existing equipment compound to a total area of more than two thousand five hundred (2,500) square feet.

Support Structure. For the purposes of mobile service facilities, an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

Utility Pole. A structure owned or operated by an alternative telecommunications utility, as defined in s. 196.01 (1d); public utility, as defined in s. 196.01 (5); telecommunications utility, as defined in s. 196.01 (10); political subdivision; or cooperative association organized under ch. 185; and that is designed

specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in s. 182.017 (1g) (cq); video service, as defined in s. 66.0420 (2) (y); for electricity; or to provide light.”

17. Section 28.211 entitled “Definitions” of the Madison General Ordinances is amended by amending herein the following:

“Telecommunications Tower, Communication Tower.” A mast, pole, monopole, guyed tower, lattice tower, free-standing tower, or other structure designed and primarily used to support antennas. A ground or building mounted mast greater than fifteen (15) feet tall and six (6) inches in diameter supporting one or more antennas, dishes, or arrays shall be considered a telecommunications tower. This definition specifically includes Mobile Service Support Structures.”

18. Subsection (2) entitled “Antennas and Antenna Systems. (Structural - Based on the Cost of Construction) of Section 17.08 entitled Permit Fees” of the Madison General Ordinances is amended to read as follows:

“(2) Antennas and Antenna Systems. (Structural - Based on the Cost of Construction)
Five dollars (\$5) per \$1,000 of cost\$20.00 minimum,
..... for Mobile Service Support Structures: \$3,000 maximum”

19. Paragraph 5. of Subdivision (b) entitled “Antenna Systems” of Subsection (2) entitled “Specific Construction Requirements” of Section 17.12 entitled “Regulations and Construction Requirements” of the Madison General Ordinances is amended to read as follows:

“5. All antenna systems, except for mobile service facilities and support structures and radio broadcast service facilities, shall be so installed that no part of the system will be nearer to a street, sidewalk or other public area, electric power or communication line than the height of the tower. Wires, cables, or guy wires shall not extend over any street or other public area. Where the height of the antenna is over thirty (30) feet, a detailed sketch thereof, showing the location of the antenna with respect to property lines, existing electric or communication lines, shall accompany the application for a permit, and such sketch shall show compliance with all the requirements of this ordinance. The maximum height shall be seventy-five feet (75’) in residential districts without obtaining a variance from the Zoning Board of Appeals.”

20. Subdivision (d) entitled “Height Limit Not to Apply” of Subsection (2) entitled “Specific Construction Requirements” of Section 17.12 entitled “Regulations and Construction Requirements” of the Madison General Ordinances is amended to read as follows:

“(d) Height Limit Not to Apply. Height limit as described in Paragraph (2)(b)5. above shall not apply to commercial or educational systems where the construction of the tower is approved by the Federal Communications Commission, or to mobile service support structures and radio broadcast service facilities, as defined in Sec. 28.211.”

EDITOR’S NOTE:

Section 28.143 currently reads:

“28.143 TELECOMMUNICATIONS FACILITIES AND ANTENNAS.

(1) Statement of Purpose.

The purpose and intent of this section is to strike a balance between the federal interest concerning the construction, modification and siting of telecommunication towers and antennas for use in providing personal wireless services, and the interest of the City in regulating local zoning. These regulations are designed to protect and promote the public health, safety and welfare of the community and the aesthetic quality of the City. The goals of this section are to:

- (a) Protect residential areas and land uses from the potential adverse impacts of towers and antennas.
- (b) Minimize the total number of towers throughout the community.

- (c) Encourage the joint use of new and existing tower sites as a primary siting option rather than construction of additional single-use towers.
- (d) Minimize the visual impact of towers and antennas; and avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

It is also the intent of this section to provide a public forum to insure a balance between public concerns and private interests in establishing commercial telecommunication and related facilities.

(2) Registration of Telecommunications Carriers and Providers.

- (a) Registration and Application Requirements. All personal wireless service carriers and providers that offer or provide any telecommunications services for a fee directly to the public, either within the City or outside the corporate limits from telecommunications facilities within the City, and all Telecommunications tower owners, shall register and provide to the City, pursuant to this ordinance, on forms to be provided by the Building Inspection Division Director and shall provide with each conditional use application the following information:
 - 1. The identity and legal status of the registrant, including any affiliates.
 - 2. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.
 - 3. A narrative and map description of registrant's existing telecommunications facilities within the City, adjacent cities, villages and townships.
 - 4. Such other information as the Building Inspection Division Director may reasonably require.
- (b) Purpose of Registration. The purpose of registration under this ordinance is to:
 - 1. Provide the City with accurate and current information concerning personal wireless services carriers and providers and telecommunications tower owners, who offer or provide services within the City, or that own or operate telecommunication facilities within the City.
 - 2. Assist the City in enforcement of this Section.
 - 3. Assist the City in monitoring compliance with local, state and federal laws.
- (c) Enforcement. Any personal wireless services carrier or provider who offers or provides services within the City, or any telecommunications tower owner who owns or operates telecommunications facilities within the City, must register and provide the information required in subdivision (a) above within thirty (30) days of such a request by the City.
- (d) Conditional Use Application Requirements. In addition to the requirements contained in subdivision (2)(a) above, the conditional use application shall address the following:
 - 1. The requirements contained in subdivisions (4), (5), (6), (7) and (8) below, including a narrative and map description of the applicant's system-wide plan describing existing and applied for facilities to serve the community.
 - 2. A visual analysis, which may include photo montage, field mockup, or other techniques shall be prepared by or on behalf of the applicant which identifies the potential visual impacts and the design capacity of the proposed facility to the satisfaction of the Plan Commission.
Consideration shall be given to views from public areas as well as from private residences. The analysis shall assess the impacts of the proposed facility and other existing telecommunication facilities in the area, and shall identify and include all feasible mitigation measures consistent with the technological requirements of the proposed personal wireless services. All costs for the visual analysis, and applicable administrative costs, shall be borne by the applicant.
As part of the Plan Commissions continuing jurisdiction over conditional uses, each registrant shall inform the City, within sixty (60) days, of any change in the information set forth in subdivision (2)(a).
- (e) Minor Alterations. Antennas affixed to an existing telecommunications tower or structure, together with the related support facilities and equipment buildings, or the replacement of a previously approved telecommunications tower and related antennas, support facilities and equipment buildings, may be authorized by issuance

of a permit as a minor alteration to an existing conditional use or an existing permitted use when approved by the Director of Planning and Community and Economic Development, which are compatible with the concept approved by the City Plan Commission and/or the standards in Sec. 28.183 of this ordinance. If the minor alteration is not approved, the applicant shall apply to the Plan Commission for approval in accordance with the conditional use standards of this ordinance.

- (f) Inventory and Tracking System. The Zoning Administrator shall compile a list of existing telecommunications facilities within the City's jurisdiction based upon information provided by personal wireless services providers and telecommunications tower owners. The Zoning Administrator shall maintain and update said list on a regular basis. The list shall also include the location of public facilities that may be available for co-location.
- (g) A professional engineering consultant shall review each conditional use application for compliance with the requirements set out in subsections (6) and (7) below.

(3) Abandonment.

If a telecommunication facility shall cease to be used for a period exceeding one year and a day, the owner or operator of said facility shall remove the facility upon the written request of the City Building Inspection Division Director at no cost to the City within ninety (90) days of said request. Prior to the issuance of any building or zoning permits, a performance bond shall be provided to guarantee that a facility that has ceased being used for telecommunication purposes is removed. The bond amount shall be the lesser of twenty thousand dollars (\$20,000) or an amount based on a written estimate of a person qualified to remove such structures.

(4) Structural Requirements.

Every telecommunication facility shall be designed and constructed so as to comply with the requirements of International Building Code (IBC) 3108, as amended from time to time. If, upon inspection, the Building Inspection Division Director concludes that a tower fails to comply with such codes, in effect at the time of construction, and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days or such time as determined by the Building Inspection Division Director to bring such tower into compliance with said codes.

Failure to bring such tower into compliance within said thirty (30) days or such time as determined by the Building Inspection Division Director shall constitute grounds for the removal of the tower or antenna at owner's expense.

(5) Basic Tower and Building Design.

All new telecommunication facilities, except exempt facilities as defined in subsection (8), below, shall be designed to blend into the surrounding environment to the greatest extent feasible. To this end all the following measures shall be implemented.

- (a) Telecommunications towers shall be constructed out of metal or other nonflammable material, unless specifically permitted by the City to be otherwise.
- (b) Telecommunication support facilities (i.e., equipment rooms, utilities, and equipment enclosures) shall be constructed out of nonreflective materials (visible exterior surfaces only) to all extent possible and, where possible, shall be sited below the ridge line or designed to minimize their impact.
- (c) Telecommunication equipment buildings, shelters and cabinets shall be treated to look like a building or facility typically found in the area.
- (d) The City shall have the authority to require reasonable special design (materials, architectural features and color) of the telecommunication facilities where findings of particular sensitivity are made (e.g. proximity to historic or aesthetically significant structures, views and/or community features).
- (e) Telecommunication facilities shall insure that sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
- (f) Equipment buildings and outdoor equipment shall be located, designed and screened to reduce visual impacts to the extent feasible considering the technological requirements of the proposed personal wireless services and the need to be compatible with neighboring residences and the character of the community.
- (g) Emergency back-up generators shall be screened by a solid fence or wall. Other efforts to mitigate noise from such generators may be required.

- (h) Antennas shall be designed to blend with its supporting structure. The color selected shall be one that in the opinion of the Plan Commission will minimize the visibility of the antennas to the greatest extent feasible.

(6) Location.

All new telecommunication facilities shall be located so as to minimize their visibility and the number of tower sites. To this end, a good faith effort in achieving co-location shall be required of the requestor and host entity, subject to existing co-location contracts; and all of the following measures shall be implemented for telecommunication facilities in addition to meeting the conditional use standards in Sec. 28.183 of these ordinances:

- (a) No telecommunications tower shall be installed closer than one-quarter (1/4) mile from another telecommunications tower, measured from the base of the existing tower to the base of the proposed tower, unless credible evidence to a reasonable degree of certainty acceptable to the Plan Commission is submitted showing a clear need for said new tower and the infeasibility of co-locating it on an existing site. Such evidence may include but is not limited to the following:
 1. A demonstration that no tower in the area that the applicant's equipment must be located is of sufficient height to meet applicant's requirements and the deficiency in height cannot be remedied at a reasonable cost.
 2. A demonstration that the existing tower is not of sufficient strength to support applicant's equipment and the deficiency in structural strength cannot be remedied at a reasonable cost.
 3. A demonstration that the applicant's equipment would cause electromagnetic interference with equipment on the existing telecommunications tower(s) within the area in which the applicant's equipment must be located, or the equipment on the existing telecommunications tower(s) would cause interference with the applicant's equipment and the interference, from whatever source, cannot be eliminated at a reasonable cost.
 4. A demonstration that the fees, costs or contractual provisions required by the owner in order to co-locate on an existing communication tower are unreasonable relative to industry norms.
 5. A demonstration that there are other factors that render existing communication towers unsuitable or unavailable and establishes that the public interest is best served by the placement or construction of a new telecommunications tower.

For the purposes of this requirement, exempt telecommunications facilities unavailable for co-location shall not be included in the one-quarter (1/4) mile computation.

- (b) No telecommunication tower shall be located on a lot in a residence district, unless said lot is greater than two (2) acres in area and the principal use is other than residential.
- (c) Telecommunications towers, guy wires, appurtenant equipment and buildings shall comply with the yard and set back requirements of the zoning district in which they are located and, in addition thereto, all telecommunications towers shall be set back at least one hundred (100) feet from any property devoted to residential use or two hundred (200) feet from any residential building, whichever is less.

(7) Co-located and Multiple-User Facilities.

- (a) Analysis. Unless an applicant is submitting an application to locate or co-locate upon an existing tower or structure, an analysis shall be prepared by or on behalf of the applicant, subject to the approval of the Plan Commission, which identifies all reasonable, technically feasible, alternative locations and/or facilities which would be useable for the proposed personal wireless services.

The intention of the alternatives analysis is to present alternative strategies which would minimize the number, size and adverse environmental impacts, including aesthetics, of facilities necessary to provide the needed services to the City and surrounding rural and urban areas. The analysis shall address the potential for co-location at an existing or a new site and the potential to locate facilities as close as possible to the intended service area. It shall also explain the rationale for selection of the proposed site in view of the relative merits of any of the feasible alternatives. Approval of the project is subject to the Plan Commission making a finding that the proposed site results in fewer or less severe environmental impacts, including

aesthetics, than any feasible alternative site. The City may require independent verification of this analysis by a qualified engineer at the applicant's expense.

Facilities which are not proposed to be co-located with another telecommunication facility shall provide a written explanation why the subject facility is not a candidate for co-location.

- (b) Design for Co-Location. All new telecommunications towers shall be structurally and electrically designed to accommodate at least three (3) separate antenna arrays, unless credible evidence is presented that said construction is economically and technologically unfeasible or the Plan Commission determines that for reasons of aesthetics or to comply with the standards of Sec. 28.183, a telecommunications tower of such height to accommodate three (3) antenna arrays is unwarranted. Multi-user telecommunications towers shall be designed to allow for future rearrangement of antennas and to accept antennas mounted at varying heights. Parking areas, access roads, and utility easements shall be shared by site users, at fair market rates as determined by customary industry standards, when in the determination of the Plan Commission this will minimize overall visual impact to the community.

(8) Exempt Facilities.

- (a) Amateur radio towers installed, erected, maintained and/or operated in any residential zoning district, by a federally-licensed amateur radio operator, complying with the provisions contained in Chapter 17, MGO, so long as all the following conditions are met:
 - 1. The antenna use involved is accessory to the primary use of the property which is not a telecommunication facility.
 - 2. In a residential zone, no more than one support structure for licensed amateur radio operator is allowed on the parcel.
 - 3. Sufficient anti-climbing measures have been incorporated into the facility, as needed, to reduce potential for trespass and injury.
- (b) Publicly owned and operated telecommunications facilities required in the public interest to provide for and maintain a radio frequency telecommunication system, including digital, analog, wireless or electromagnetic waves, for police, fire and other municipal services.”