

SECTION 0335 - TOWER ORDINANCE

335.01 PURPOSE AND INTENT.

The natural and scenic landscape of Wabasha is among its most valuable assets, and greatly benefits the residents and a significant number of visitors to the area each year. The degradation of this asset would potentially risk undermining the very characteristics responsible for our economic vitality and future potential. The City understands and accepts the increasing demand and need for wireless communication and environmentally responsible energy technologies as well as other such potential activities that would require the use of tower facilities. The purpose of this ordinance is to protect and preserve the City's natural, cultural, and scenic assets in accordance with goals and policies of the Wabasha Comprehensive Plan.

This Ordinance is designed and intended to balance the interests of the residents of the City of Wabasha, telecommunication, other service providers, and customers in the siting of towers (including wireless communication services facilities and small wind energy conversion systems) within the city. These standards are also intended:

- A. To avoid or minimize any adverse impact of such facilities on: visual; environmental; historically significant areas; health and safety; and property values;
- B. To require the use of alternative structures for the purposes of co-location of carriers and minimize the total number of towers located within the city;
- C. To allow the construction of new towers only where all other opportunities have been exhausted;
- D. To require the users of communication towers and antenna structures to configure them in a way that minimizes the need for additional towers in the City of Wabasha;
- E. To provide for the removal of towers and associated development which are no longer being used for their original purposes;
- F. These regulations are not intended to place any restrictions on privately operated and licensed amateur radio operators, satellite dishes, or radio and television broadcast facilities as allowed under federal regulations and exempt from local controls.

335.02 APPLICABILITY, FEDERAL AND STATE REQUIREMENTS

- A. The Telecommunication Act of 1996 affirms Local Government's right to control the siting, construction, and modification of cellular and other wireless telecommunication facilities. The permitting process in this Ordinance does not discriminate among providers of functionally-equivalent services and does not prohibit the provision of personal wireless services.

- B. Towers erected for the use of federally licensed amateur radio operators may be erected at heights and dimensions sufficient to accommodate amateur service communications as required and allowed by the Telecommunication Act of 1996 or as amended.
- C. Minnesota Statue Chapter 216F governs the permitting and location of Wind Energy Conversion Systems and allows local jurisdictions to establish requirements for the siting and construction of SWECS. Nothing in this Ordinance is intended to govern LWECS which are governed by the Public Utilities Commission under Chapter 216F or as amended.

335.03 ZONING DISTRICTS/PERFORMANCE STANDARDS/DIMENSIONAL REQUIREMENTS.

Subd. 1. All Towers

- A. New towers shall be allowed in zoning districts as provided for in the City of Wabasha's Zoning Ordinance with the issuance of a conditional use permit.
- B. Aesthetics, Landscaping, and Buffers.
 - 1. Towers and antennas shall have a neutral finish or be painted an approved neutral color to reduce visual impact.
 - 2. Towers shall not be artificially lighted except as required by FCC, FAA or other state or federal laws.
 - 3. Road access to towers shall be the minimum size necessary to allow safe access for the proposed specific use and maintenance needs in a non linear manner so as not to provide a direct view corridor to the support structures.
 - 4. All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, tower, building, or other structure associated with the tower shall be prohibited.
 - 5. All towers shall maintain the required setbacks as undisturbed vegetated buffers, except for the access road. The size and quantity of plantings shall be subject to Planning Commission/Planning Department approval to enhance the quality and effectiveness of the buffer area to serve as a visual screen.
 - 6. The base of a tower may not be located in wetland, floodplain, or shoreland overlay zones.
- C. Access & Security.
 - 1. A security fence, to be approved by the Planning Commission/Planning Department, of not fewer than eight feet in height from the finished grade shall be provided around the tower. Fence shall be painted an approved neutral color to minimize visual impacts. Access to the tower shall be through a gate that can be secured.
 - 2. All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access. The tower shall be designed

and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.

3. All electrical wires shall be located underground where possible.
 4. All towers shall comply with all applicable state construction and electrical codes, and the National Electrical Code.
 5. All tower facilities shall be maintained in a safe and clean condition. The tower facility owner shall be responsible for maintaining a graffiti, debris, and litter free site. The landscape plan shall be maintained for the life of the tower facility. If the facility is not maintained, the City may bring legal action. The City's remedies may include, after 60 days notice to the owner or operators, an order allowing the City to complete the maintenance at the cost of the owners or operators of the tower facility.
- D. Structures.
1. The design of any buildings and related structures shall, to the extent possible, use materials, colors, textures, screenings and landscaping that will blend the facilities with the natural setting and built environment.
 2. All buildings and accessory structures must meet setbacks and other requirements of the zoning ordinance.
- E. Height. Towers including antennas, wind blades, or other attachments shall not exceed a height of one hundred fifty (150) feet except for those towers expressly satisfying all co-location requirements for four or more communication carriers which may be constructed to a maximum height of one hundred ninety-nine (199) feet.
- F. Setbacks. Towers shall be set back a distance equal to at least one hundred twenty-five percent (125%) of the tower height from the lot lines, any public road right of way, unless written permission is granted by the governmental entity with jurisdiction over the road, and any overhead utility lines, unless written permission is granted by the affected utility. Lesser setbacks will be considered by the Planning Commission when the applicant provides documentation that an easement from adjacent properties has been secured which would equal a 125% of the tower height setback;
- G. Performance Guarantees
1. No permits will be issued until the applicant has filed a performance bond or bank letter of credit approved by the city attorney equal to one hundred twenty-five (125%) percent of the cost of completing the following improvements:
 - a. The construction of any drainage systems involving piping, culverts, or retention or detention facilities
 - b. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this section;
 - c. Other site improvements required by the Planning Commission/Planning Department to meet the standards of this section.

2. Removal of Abandoned/Unused Facilities.

- a. The owner of a tower shall be required to remove the tower and associated facilities should it not be used for the use or uses approved for a period of ninety (90) consecutive days. This period may be extended by the Planning Commission/Planning Department if there are extenuating circumstances beyond the control of the applicant. For a permit under this section an applicant shall post a performance bond or bank letter of credit approved by the city attorney with the city prior to obtaining a permit that is equal to one hundred twenty-five percent (125%) of the cost of removing the structure. The performance guarantee must be in effect for the life of the tower.
 - b. The performance guarantee covering such removal shall be reviewed for renewal at a maximum term of five years, to account for cost adjustments. It must contain a mechanism, satisfactory to the city, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.
3. To ensure compliance with the prescribed ordinances, all approvals will be subject to an annual permit renewal conducted by the Planning Department. The Planning Department, at a minimum, shall review the continued use of the facility; maintenance of the facility and site improvements; availability for co-location of new service; and review of bonding documents. The documents and permit renewal fee shall be submitted to the Planning Department no later than October 1st of each year following the original approval.

Subd. 2. Additional Standards for Wind Energy Conversion Systems (WECS) Towers

- A. Utility notification and interconnection. Small wind energy systems that connect to the electric utility shall comply with State of Minnesota utility laws or rules.
- B. Meteorological towers shall be permitted under the same standards, permit requirements, restoration requirements, and permit procedures as a small wind energy system.
- C. Noise. Any sound emanations or noise produced by the proposed WECS and it's impact on neighboring properties shall be considered by the Planning Department or Planning Commission during the review process of the application.

Subd. 3. Additional Standards for Communication Antenna Towers

- A. Shared use of "pre-existing towers" and "alternative tower structures" in a manner that camouflages or conceals the presence of antennas or towers, also referred by the industry as "stealth" in all zones is permitted with Planning Department's approval provided the tower or structure height is not increased. The Planning Department may request planning commission review of any proposed citing of a tower or co-located antenna.

- B. Aesthetics, Landscaping, Buffers and Fencing.
 - 1. Any buildings and related structures shall be planned in a manner to accept equipment of co-locators. Underground utilities shall be used to serve the communication towers
- C. Investigation of Existing Alternative Towers, Sites, and Structures. Applicants shall identify all existing and proposed towers, and their heights, located in the City and within two miles beyond city boundaries. Applicants must provide evidence of the lack of antenna space on all such towers, and shall identify alternative tower structures and sites, which have been investigated as an alternative to constructing a new tower. Applicant shall address the pros and cons of utilizing co-location and other alternative tower structures with respect to their application and shall demonstrate that they cannot provide adequate communication service utilizing such existing towers or structures.
- D. Environment Analysis. It is the responsibility of each applicant to investigate all potential environmental effects, and disclose any significant effects on the environment to the City prior to constructing a tower. The applicant shall determine if its proposal will affect any of the listed categories following that may significantly affect the environment as required under Sections 1.1301-1.1319 of the Telecommunication Act of 1996 (or as amended). If it does, the applicant must provide an Environmental Assessment as required by federal law prior to proceeding with the tower construction.
 - 1. Wilderness Area
 - 2. Wildlife Preserve
 - 3. Endangered Species
 - 4. Historical Site
 - 5. Indian Religious Site
 - 6. Flood Plain
 - 7. Wetlands
 - 8. High Intensity White Lights in Residential Neighborhoods
 - 9. Excessive Radiofrequency Radiation Exposure
- E. Co-Location.
 - 1. The applicant and owner shall allow for future wireless service carriers that use functionally equivalent personal wireless technology to co-locate antennas, equipment and facilities on a telecommunications tower and site, including public agencies (including but not limited to police, fire, ambulance, communications and highway), unless satisfactory evidence is presented and the Planning Commission/Planning Department concurs that technical constraints prohibit co-location. All towers must be constructed to allow for the location of at least 3 antenna.
 - 2. Applicants shall provide a mechanism for the construction and maintenance of shared facilities and infrastructure and shall provide for reasonable sharing of cost in accordance with industry standards. (A

reasonable charge for shared use is based on generally accepted accounting principles. This charge may include, but not be limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return of equity, depreciation and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference, all being pertinent to this area.)

3. To ensure co-location, the Planning Commission/Planning Department may require co-location on a tower so as to prevent the need for new carriers to build new towers, may deny an application for a telecommunications facility because of inadequate provisions and/or arrangements for co-location and may require an existing tower to be extended in height (provided that a structural analysis indicates that such extension is structurally feasible and safe) in order to provide for co-location.

Subd. 4. Variances.

Applications for variances shall be submitted as required in the Wabasha Zoning Ordinance, Section 305.04, Subdivision 5 (or as amended) and criteria from that section shall be used as standards for considering the variance request. The Board of Adjustment may consider energy efficiency in determining hardship standards for WECS locations and functionality in determining hardship standards for communication tower locations and heights.

335.04 APPLICATION & REVIEW PROCESS

Subd. 1. CUP application for towers shall follow the same procedure as outlined in the Wabasha Zoning Ordinance. Along with items listed in the Zoning Ordinance, the following shall be provided as part of the CUP application:

- A. A narrative outlining the type of tower, life expectancy of the tower, proposed structures, noise, radio frequency or other types of anticipated emissions and other pertinent information to explain the request in detail
- B. Documentation that the proposed tower complies with regulations of FCC and FAA including a copy of the National Environmental Protection Act study required by the Federal Communication Commission. No antenna shall be installed on any tower facility until a Federal Communication license is issued for that antenna.
- C. Existing conditions map drawn to a scale that shows all pertinent information including:
 1. Contour lines at 10 foot intervals
 2. Existing vegetation
 3. Existing drainage and permanent water features
 4. Existing structures
 5. Existing access
 6. All above existing conditions within 350 feet of the property line

- D. Proposed map/Site plan drawn to scale that shows all pertinent information including:
 - 1. Location of tower, structures, lighting, landscaping, signage and other elements to be constructed
 - 2. Location of fence and gate
 - 3. Location of proposed driveway and parking areas
 - 4. Any proposed changes to land forms including topography vegetation and drainage
 - E. Documentation of search area providing evidence of the lack of antenna space on existing towers and alternative tower structures, and the location of those facilities which were considered, demonstrating that they cannot provide adequate communication service utilizing such existing towers or structures.
 - F. Proposed structure report and/or design plans from a registered engineer licensed by the State of Minnesota including:
 - 1. A description of the towers capacity including the number and type of antennas that it could accommodate or the nameplate capacity in kilowatts for a WECS
 - 2. A description of the proposed tower height and design including an illustration of cross section and elevation
 - 3. Documentation of the proposed height above grade for the tower structure, proposed antenna or WECS blade heights and locations, and (for communication towers) the potential mounting positions for co-located antennas with the minimum separation distances between antennas
 - 4. Documentation that the proposed tower complies with structural and electrical standards.
 - 5. Documentation as to the steps to be taken to avoid interference with established public safety communication systems.
 - 6. Engineer's stamp and registration number.
 - 7. Other information required by the Planning Department to evaluate the request.
 - G. For communication towers, a letter of intent from the tower owner committing the tower owner and it's successors to allow the shared use of the tower to meet collocation requirements.
 - H. With approval of the Planning Department, flexibility on required map submittals may be granted for scale and existing feature requirements on lots that are deemed of a size or configuration where the above guidelines do not provide the information required for adequate review.
- Subd. 2. All new towers and/or accessory buildings or structures require a building permit as required in State Building Code or City Zoning Ordinance

Subd. 3. Any antenna co-locations, or modifications or additions to existing towers shall be required to submit documentation that has been prepared and certified by a registered engineer licensed by the State of Minnesota which must be reviewed and approved by the City Engineer and/or Building Official.

Subd. 4. The City may choose to consult with outside agencies and/or consultants to determine if the application meets the requirements of this ordinance, state and federal laws. Any charges of fees resulting from such consultation will be the responsibility of the applicant for payment.

335.05 ENFORCEMENT

Any violation for any of the terms of this Ordinance is a Misdemeanor punishable by a fine not to exceed \$1,000.00 or jail sentence not to exceed 90 days. Each day a violation exists or continues, shall constitute a separate offense. The City reserves the right to obtain civil remedies in the form of injunctions if the City deems it appropriate.

335.06 DEFINITIONS

Subd. 1.	Alternative tower structures	Existing structures which provide height for communication antennas in a manner that camouflages or conceals the presence of antennas or towers, also referred by the industry as “stealth”, including steeples, mills, light poles, water towers, etc.
Subd. 2.	Antenna	Any structure or device used for the purpose of collecting or radiating electromagnetic waves including but not limited to directional antennas such as panels, microwave dishes, satellite dishes, and omni-directional antennas such as whip antennas.
Subd. 3.	Co-Location	The placement of wireless telecommunication antenna by two or more service providers on a tower, building or structure.
Subd. 4.	Commercial mobile services	Defined in Section 332 of the Communications Act and the FCC's rules, and include cellular telephone services regulated under Part 22 of the FCC's rules, SMR services regulated under Part 90 of the FCC's rules, and PCS regulated under Part 24 of the FCC's rules. 47 C.F.R. §20.9.

Subd. 5.	Commercial Wind Energy Conversion System	Any WECS designed and operated at a capacity greater than incidental excess of the amount needed for basic residential use, and/or the purpose of such energy generation is intended for commercial sale.
Subd. 6.	Commercial Wireless Telecommunication Services	Licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), paging, and similar services that are marketed to the general public
Subd. 7.	Communication towers (Communication antenna towers)	Any tower structure used for the purpose of providing transmission of cell phone, radio, or other personal wireless facilities
Subd. 8.	Department	Wabasha Planning Department which includes the City Planner, Zoning Administrator and other staff which are assigned to the department and which is overseen by the City Administrator
Subd. 9.	Experimental and Homebuilt WECS	Wind machines that are one of a kind, first attempt machines built by a wind power company or individual.
Subd. 10.	Guyed Tower	A tower that is supported, in whole or in part, by wires and ground anchors.
Subd. 11.	Large wind energy conversion system or LWECS	Any combination of WECS with a combined nameplate capacity of 5,000 kilowatts or more which require state permitting only (not local) under Public Utilities Commission under MN State Statute Chapter 216F, unless amended to allow local control.
Subd. 12.	Lattice tower	A freestanding tower with more than one leg connected to the ground with sides interconnected by lattice braces.
Subd. 13.	Lowest Extension of WECS Blades	The lowest point of the arc created by the rotation of the WECS rotor.

Subd. 14.	Meteorological tower (met tower)	includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location.
Subd. 15.	Monopole	A type of tower mount that is self supporting through a single shaft usually constructed of wood, metal or concrete.
Subd. 16.	Owner	Mean the individual or entity that intends to own and operate the tower system in accordance with this ordinance.
Subd. 17.	Personal wireless facilities	Transmitters, antenna structures and other types of installations used for the provision of personal wireless services. This includes commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services (1996 Telecom Act, or as amended)
Subd. 18.	Production Phase WECS	Professionally designed wind machines that are built in significant numbers on a continuing basis after testing. Wind machines made from professionally designed kits will be considered production phase WECS.

Subd. 19.	Public Utility	Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or land line telephone service to the general public. For the purpose of this ordinance, commercial wireless telecommunication service facilities shall not be considered public utility uses, and are defined separately.
Subd. 20.	Rotor diameter	The cross sectional dimension of the circle swept by the rotating blades.
Subd. 21.	Search Ring	An area in which a wireless provider is able to locate an antenna of a defined height which will provide the wireless service providers desired coverage.
Subd. 22.	Small wind energy conversion system or SWECS	any combination of WECS with a combined nameplate capacity of less than 5,000 kilowatts
Subd. 23.	Total Height	The distance between the ground level at the base of a structure and its tallest vertical extension including any attachment thereon (to the tip of a wind generator blade when the tip is at its highest point).
Subd. 24.	Tower	Any pole, wire, structure or combination thereof of 30 feet or higher, including support lines, cables, wires, braces and masts intended primarily for the purpose of mounting antenna or to serve as an antenna, or for the placement of a wind energy conversion system. This includes communication antenna towers

Subd. 25.	Tower Facility(ies)	A tower and its appurtenant devices including, but not limited to antennae, buildings, fences, gates and related equipment.
Subd. 26.	Unlicensed wireless services	Defined as the offering of telecommunications services using duly authorized devices which do not require individual licenses; direct-to-home satellite services are excluded from this definition.
Subd. 27.	Wind Energy Conversion System (WECS)	Any device such as a wind charger, windmill or wind turbine, which converts wind energy to a form of usable energy.
Subd. 28.	Wind energy system	Means equipment that converts and then stores or transfers energy from the wind into usable forms of any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries or other component used in the system.
Subd. 29.	Wind generator	Means blades and associated mechanical and electrical conversion components mounted on top of the tower.