

ORDINANCE

Ordinance regulating the location of “telecommunication carriers” in accordance with
Public Act 90-522.

WHEREAS, Counties can regulate and restrict the location and use of structures
in accordance with Illinois Compiled Statutes, 55ILCS 5/5-12001; and

WHEREAS, the Counties Code has been amended by Public Act 90-522 as it
relates to telecommunications carriers as defined in 55ILCS 5/5-12001.1; and

WHEREAS, the amendments contained within Public Act 90-522 have been
reviewed by the Planning and Development Committee of the McHenry County Board;
and

WHEREAS, the Planning and Development Committee recommends the
adoption of an ordinance which institutes the procedures to regulate
“telecommunications carriers” in accordance with the powers set forth in Public Act 90-
522, effective January 1, 1998.

NOW, THEREFORE, BE IT ORDAINED that the following enacts the procedure
to be followed in the review and approval of “telecommunications carriers” in the
unincorporated areas of McHenry County.

Article I - Purpose and Intent

The provisions of this ordinance are to regulate and control the location and construction of towers as they relate to telecommunications carriers, as defined in 55ILCS 5/5-12001.1, in accordance with the provisions and authority granted to counties under Public Act 90-522.

Article II - Definitions

The following words and phrases shall be defined as follows:

1. **ANTENNA** - means an antenna device by which radio signals are transmitted, received, or both.
2. **COUNTY BOARD** means the county board or board of county commissioners of any county.
3. **COUNTY JURISDICTION AREA** means those portions of a county that lie outside the corporate limits of cities, villages, and incorporated towns that have municipal zoning ordinances in effect.
4. **EQUIPMENT HOUSING** means a combination of one or more equipment buildings or enclosures housing equipment that operates in conjunction with the antennas of a facility, and the equipment itself.
5. **FAA** means that Federal Aviation Administration of the United States Department of Transportation.
6. **FCC** means the Federal Communications Commission.
7. **FACILITY** means that part of the signal distribution system used or operated by a telecommunications carrier, under a license from the FCC, consisting of a combination of improvements and equipment including: (i) one or more antennas, (ii) a supporting structure and the hardware by which antennas are attached; (iii) equipment housing; and (iv) ancillary equipment such as signal transmission cables and miscellaneous hardware.
8. **FACILITY LOT** means the zoning lot on which a facility is or will be located.
9. **HEIGHT** of a facility means the total height of the facility's supporting structure and any antennas that will extend above the top of the supporting structure. However, if the supporting structure's foundation extends more than 3 feet above the uppermost ground level along the perimeter of the foundation, then

each full foot in excess of 3 feet shall be counted as an additional foot of facility height. The height of a facility's supporting structure is to be measured from the highest point of the supporting structure's foundation.

10. **HORIZONTAL SEPARATION DISTANCE** means the distance measured from the center of the base of the facility's supporting structure to the point where the ground meets a vertical wall of a principal residential building.
11. **LOT LINE SET BACK DISTANCE** means the distance measured from the center of the base of the facility's supporting structure to the nearest point on the common lot line between the facility lot and the nearest residentially zoned lot. If there is no common lot line, the measurement shall be made to the nearest point on the lot line of the nearest residentially zoned lot without deducting the width of any intervening right of way.
12. **NON-RESIDENTIAL ZONING DISTRICT** means the county jurisdiction area of a county, except for those portions within a residential zoning district.
13. **NON-RESIDENTIALLY ZONED LOT** means a zoning lot in a non-residential zoning district. Pursuant to the McHenry County Zoning Ordinance a non-residentially zoned lot is zoned "A-1", "A-2", O, "B-1", "B-2", "B-3", "I-1", or "I-2".
14. **PRINCIPAL RESIDENTIAL BUILDING** has its common meaning but shall not include any building under the same ownership as the land of the facility lot. "Principal residential building" shall not include any structure that is not designed for human habitation.
15. **QUALIFYING STRUCTURE** means a supporting structure that is: (i) an existing structure, if the height of the facility, including the structure, is not more than 15 feet higher than the structure just before the facility is installed; or (ii) a substantially similar, substantially same-location replacement of an existing structure, if the height of the facility, including the replacement structure is not more than 15 feet higher than the height of the existing structure just before the facility is installed.
16. **RESIDENTIAL ZONING DISTRICT** means a zoning district that is designated under a county zoning ordinance and is zoned predominately for residential uses.
17. **RESIDENTIALLY ZONED LOT** means a zoning lot in a residential zoning district. Pursuant to the McHenry County Zoning Ordinance a residentially zoned lot is zoned "R-1", "R-2", "R-3", "E-1", "E-2", "E-3", or "E-5".

18. **SUPPORTING STRUCTURE** means a structure, whether an antenna tower or another type of structure, that supports one or more antennas as part of a facility.
19. **TELECOMMUNICATIONS CARRIER** means a telecommunications carrier as defined in the Public Utilities Act as of January 1, 1997.

Article III - Location Regulations

- A. In choosing a location for a facility, a telecommunications carrier shall consider the following:
 1. A non-residentially zoned lot is the most desirable location.
 2. A residentially zoned lot that is not used for residential purposes is the second most desirable location.
 3. A residentially zoned lot that is 2 acres or more in size and is used for residential purposes is the third most desirable location.
 4. A residentially zoned lot that is less than 2 acres in size and is used for residential purposes is the least desirable location. The size of a lot shall be the lot's gross area in square feet without deduction of any unbuildable or unusable land, any roadway, or any other easement.
- B. In designing a facility, a telecommunications carrier shall consider the following:
 1. No building or tower that is part of a facility should encroach onto any recorded easement prohibiting the encroachment unless the grantees of the easement have given their approval.
 2. Lighting should be installed for security and safety purposes only. Except with respect to lighting required by the FCC or FAA, all lighting should be shielded so that no glare extends substantially beyond the boundaries of a facility.
 3. No facility should encroach onto an existing septic field.
 4. Any facility located in a special flood hazard area or wetland should meet the legal requirements for those lands.
 5. Existing trees more than 3 inches in diameter should be preserved if reasonably feasible during construction. If any tree more than 3 inches in

diameter is removed during construction a tree 3 inches or more in diameter of the same or a similar species shall be planted as a replacement if reasonably feasible. Tree diameter shall be measured at a point 3 feet above ground level.

6. If any elevation of a facility faces an existing, adjoining residential use within a residential zoning district, low maintenance landscaping should be provided on or near the facility lot to provide at least partial screening of the facility. The quantity and type of that landscaping should be in accordance with any county landscaping regulations of general applicability, except that paragraph (5) of this section shall have control over any tree-related regulations imposing a greater burden.
7. Fencing should be installed around a facility. The height and materials of the fencing should be in accordance with any county fence regulations of general applicability.
8. Any building that is part of a facility located adjacent to a residentially zoned lot should be designed with exterior materials and colors that are reasonably compatible with the residential character of the area.

Article IV - General Regulations

- A. The following provisions shall apply to all facilities established after the effective date of this ordinance:
 1. Except as provided in this section, no yard or set back regulations shall apply to or be required for a facility.
 2. A facility may be located on the same zoning lot as one or more other structures or uses without violating any ordinance or regulation that prohibits or limits multiple structures, buildings, or uses on a zoning lot.
 3. No minimum lot area, width, or depth shall be required for a facility, and unless the facility is to be manned on a regular daily basis, no off-street parking spaces shall be required for a facility. If the facility is to be manned on a regular daily basis, one off-street parking space shall be provided for each employee regularly at the facility. No loading facilities are required.
 4. No portion of a facility's supporting structure or equipment housing shall be less than 15 feet from the front lot line of the facility lot or less than 10 feet from any other lot line.

5. No bulk regulations or lot coverage, building coverage, or floor area ratio limitations shall be applied to a facility or to any existing use or structure coincident with the establishment of a facility. Except as provided in this section, no height limits or restrictions shall apply to a facility.
 6. A county's review of a building permit application for a facility shall be completed within 30 days. If a decision of the McHenry County Board is required to permit the establishment of a facility, the county's review of the application shall be simultaneous with the process leading to the McHenry County Board's decision.
 7. The improvements and equipment comprising the facility may be wholly or partly freestanding or wholly or partly attached to, enclosed in, or installed in or on a structure or structures.
 8. Any public hearing authorized under this section shall be conducted in a manner determined by the McHenry County Board. Notice of any such public hearing shall be published at least 15 days before the hearing in a newspaper of general circulation published in the county by the applicant in conformance with the requirements of Article VIII of this ordinance.
 9. Any decision regarding a facility by the McHenry County Board or a county agency or official shall be supported by written findings of fact. The circuit court shall have jurisdiction to review the reasonableness of any adverse decision and the plaintiff shall bear the burden of proof, but there shall be no presumption of the validity of the decision.
- B. The following additional provisions shall apply to all facilities established after the effective date of this ordinance.
1. A facility is permitted in any zoning district subject to the following:
 - a. A facility shall not be located on a residentially zoned lot that is less than 2 acres in size and is used for residential purposes, unless a variation is granted by the McHenry County Board;
 - b. Unless a height variation is granted by the McHenry County Board, the height of the facility shall not exceed 75 feet if the facility will be located in a residential zoning district or 200 feet if the facility will be located in a non-residential zoning district. However, the height of a facility may exceed the height limit in this paragraph, and no

height variation shall be required, if the supporting structure is a qualifying structure.

3. The improvements and equipment of the facility shall be placed to comply with the requirements of this paragraph at the time a building permit application for the facility is submitted. If the supporting structure is an antenna tower other than a qualifying structure then: (i) if the facility will be located in a residential zoning district, the lot line set back distance to the nearest residentially zoned lot shall be at least 50% of the height of the facility's supporting structure; or (ii) if the facility will be located in a non-residential zoning district, the horizontal separation distance to the nearest principal residential building shall be at least equal to the height of the facility's supporting structure.
4. The County Board may grant variations for any of the regulations, conditions, and restrictions of this section after one public hearing on the proposed variations, by a favorable vote of a majority of the members present at a meeting held no later than 75 days after submission of an application by the telecommunications carrier. If the County Board fails to act on the application within 75 days after submission, the application shall be deemed to have been approved.

Article V - Variations

In considering an application for a variation, the appointed hearing officer and McHenry County Board shall consider the following, and no other matters:

1. Whether, but for the granting of a variation, the service that the telecommunications carrier seeks to enhance or provide with the proposed facility will be less available, impaired, or diminished in quality, quantity, or scope of coverage.
2. Whether the conditions upon which the application for variations is based are unique in some respect or, if not, whether the strict application of the regulations would result in a hardship on the telecommunications carrier.
3. Whether a substantial adverse effect on public safety will result from some aspect of the facility's design or proposed construction, but only if that aspect of design or construction is modifiable by the applicant.
4. Whether there are benefits to be derived by the users of the services to be provided or enhanced by the facility and whether public safety and emergency response capabilities would benefit by the establishment of the facility.
5. The extent to which the design of the proposed facility reflects compliance with Subsection (B) of Article III.

Article VI - Application for Variation

Application for a variation shall be filed with the Hearing Officer appointed by the McHenry County Board, using forms available from that officer. A hearing date for a variation will be set by the Hearing Officer when all of the filing requirements of this Ordinance have been met. The Hearing Officer will not consider the sufficiency of the application and evidence until after a public hearing has been held and all parties have been given an opportunity to address such application, evidence and documents. After said hearing, the Hearing Officer shall make a finding as to the sufficiency of the application, evidence, documents and testimony and shall report this finding in his recommendation to the McHenry County Board.

Applications will contain at a minimum, the nature of the request, a legal description, permanent parcel number and common description of the property, a statement of the present zoning of the subject property and surrounding properties, the current address of the petitioners, and a verification by the owners or their authorized agent attesting to the truth and correctness of all facts, statements and information presented. In addition, applications for variations shall contain a survey of the property by a surveyor registered in the State of Illinois. The legal description in the survey must coincide with the legal description on the petition, legal notices and ordinance, when presented.

All Petitions shall be brought in the name of the record title owner, or the owner or owners of the beneficial interest, through their attorneys or authorized agents. If a contract purchaser or tenant shall be involved, either with or without a contingent right, the contract purchaser or tenant shall be revealed and become a second party to the Petition, but such contract purchaser or tenant may not file without owner.

If application is made by the trustee or beneficiary of any land trust for a variation, the application and notice shall identify each beneficiary of such land trust by name and address and define his interest therein. All such applications shall be verified by the applicant in the applicant's capacity as trustee or by the beneficiary(s) as beneficial owner(s) of an interest in such land trust.

Article VII - Notice of Hearing

Notice of public hearing shall be published at least fifteen (15) days prior to the hearing in a newspaper of general circulation published in the County by the applicant.

Published Notice of Public Hearing - Contents Required

The notice shall contain:

- A. The particular location of the real estate for which the variation is requested by legal description and street address and if not street address then by locating such real estate with reference to any well-

known landmark, highway, road, thoroughfare or intersection; permanent property index number; and township name.

- B. Whether or not the petitioner or applicant is acting for himself or in the capacity of agent, alter ego, or representative of a principal and stating the name and address of the actual and true principal.
- C. Whether petitioner or applicant is a corporation, and if a corporation, the correct names and addresses of all officers and directors, and of all stockholders and shareholders owning any interest in excess of twenty percent (20%) of all outstanding stock of such corporation.
- D. Whether the petitioner or applicant or his principal, if other than applicant, is a business or entity doing business under any assumed name, and if so the name and residence of all true and actual owners of such business or entity.
- E. Whether the petitioner or applicant is a partnership, joint venture, syndicate or an unincorporated voluntary association, and if so, the names and addresses of all partners, joint venturers, syndicate members or members of the unincorporated voluntary association.
- F. A statement of the present zoning on the parcel in question.
- G. A brief statement of the proposed variation.
- H. The time, date and location of the hearing.

Article VIII - Hearing Process

A hearing shall be held on any proposed variation in the County Courthouse.

1. No more than one public hearing shall be held or required.
2. Filing fees for variation hearings shall be in accordance with the fee schedule adopted by the McHenry County Board and shall cover costs.
3. The public hearing shall be conducted by a hearing officer appointed by the McHenry County Board in the manner established by the hearing officer.
4. A detailed record of the proceedings shall be taken by a court reporter present at the hearing to transcribe the testimony.

5. The recommendation of the hearing officer to the McHenry County Board shall be supported by written finding's of fact upon each of the authorized matters for consideration.
6. Variations may be granted by the County Board upon receipt of a report and recommendation from the hearing officer, by a favorable vote of a majority of the members present at a meeting held no later than 75 days after submission of an application.
7. Failure of the McHenry County Board to act on the application within 75 days after submission will deem the application approved.

Article IX - Court Review

The circuit court shall have jurisdiction to review the reasonableness of any adverse decision by the county board. The reasonableness will be decided in light of the evidence presented and the well-reasoned recommendations of the hearing officer that conducted the public hearing.

NOW, THEREFORE, BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately upon passage.

DATED, at Woodstock, McHenry County, Illinois on this 21 day of April, 1998.

ATTEST:

COUNTY OF MCHENRY, ILLINOIS

by: _____
County Clerk

by: _____
Chairman, McHenry County Board