

# **City of Marine on St. Croix**

## **WIRELESS COMMUNICATION TOWER ORDINANCE**



**Adopted on the 14<sup>th</sup> day of  
October, 2021**

Amended May 12, 2022

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**ORDINANCE NO. 159**

**CITY OF MARINE ON ST. CROIX, WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE TO REPEAL AND REPLACE SECTION 408 OF THE CODE OF ORDINANCES TO ADMINISTER AND REGULATE THE INSTANCE OF TELECOMMUNICATIONS TOWER FACILITIES IN THE PUBLIC INTEREST, AND TO PROVIDE FOR THE ISSUANCE AND REGULATION OF SUCH PERMITS.**

**SECTION 1: INTENT AND PURPOSE**

The natural setting and historic context of the City of Marine on St. Croix (“the City”) are among its most valuable assets. The City is located on the St. Croix National Scenic Riverway, a unit of the National Park System, established by the Wild and Scenic Rivers Act in 1968. It is also home to William O’Brien State Park. Compromising these assets risks undermining the very characteristics responsible for our economic vitality and future potential. Protecting these assets will require that location and design of tower facilities be sensitive to, and in scale and harmony with, the aesthetics and community of the City. This Ordinance will provide standards for the proper placement and design of tower facilities in order to ensure their compatibility with surrounding aesthetics and development.

The purpose of this Ordinance shall be to establish predictable and balanced regulations that protect the public, health, safety, and general welfare of the City. These regulations are intended to:

- A. Facilitate the provision of telecommunications services and facilities including commercial wireless telecommunication services in the City
- B. Minimize adverse visual effects of towers through careful design and siting standards;
- C. Avoid potential damage to adjacent properties from tower or antenna failure and weather-related occurrences through structural standards, careful siting, and setback requirements;
- D. Encourage the use of existing towers and buildings to accommodate commercial wireless telecommunication service antennas in order to minimize the number of towers needed to adequately serve the community.

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.

Leasing of public buildings, publicly-owned structures, public lands, and/or rights- of-way for the purposes of locating wireless telecommunication services facilities and/or equipment is encouraged. In cases where a facility is proposed on City property, specific locations and compensation to the City may be negotiated in lease agreements between the City and the provider on a case- by-case basis, and shall be subject to all the requirements contained in this Ordinance. Such agreements would not provide exclusive arrangements that could prohibit access by other providers to the negotiated

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site(s) or limit competition, and encourage the opportunity to “co-locate” (sharing of facilities) with other providers.

**SECTION 2:           APPLICABILITY**

It shall be unlawful for any person to erect, construct, or place any new Tower Facility without first receiving appropriate permits from the City. Tower Facilities must comply with all local, state and federal regulations. It shall be unlawful to structurally alter, modify, transform, add to, or change in any way, an existing tower structure without first receiving permits from the City. Addition or modification of antennas and transmission lines on existing towers shall not require a permit.

Amateur Radio – The provisions contained herein shall not govern any privately owned tower, or the installation of any antenna that is under seventy (70) feet in height or operated by a federally licensed amateur radio station operator, or is used exclusively as a receive-only antenna.

**All rules and regulations of the FCC and FAA must be met and complied with.**

**SECTION 3:           DEFINITIONS**

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.

Co-Location: The placement of wireless telecommunication antenna by two or more service providers on a tower, building or structure.

Guyed Tower: A tower that is supported, in whole or in part, by wires and ground anchors.

Monopole: A type of tower mount that is self-supporting through a single shaft usually constructed of wood, metal or concrete.

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.

Tower: Any pole, wire, structure or combination thereof, including support lines, cables, wires, braces and masts intended primarily for the purpose of mounting antenna or to serve as an antenna.

Tower Facility(ies): A tower and its appurtenant devices including, but not limited to antennae, buildings, fences, gates and related equipment.

Total Height: The distance between the ground level at the base of a structure and its tallest vertical extension including any attachment thereon.

**SECTION 4:           LAND USE**

Telecommunication towers and antennas may be allowed with a conditional use permit within all zoning districts, subject to the restrictions in 408 Wireless Communication

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Towers and any other applicable requirements of this code. All towers, not excluded in Section 2, require the granting of a conditional use permit by the City Planning Commission after completion of the application requirements of this Ordinance. If a conditional use permit is granted, a general building permit is required for the tower and supporting facilities.

**THE FOLLOWING SECTIONS APPLY TO TOWERS THAT ARE NOT EXCLUDED IN SECTION 2:**

**All rules and regulations of applicable state and federal laws and agencies shall be met and complied with, to include all state and federal RF safety standards.**

**SECTION 5: TOWER DESIGN**

Proposed or modified towers and antennas shall meet the following design requirements:

- A. Towers and their antennas shall be certified by a qualified and licensed professional engineer to conform to applicable state and national structural building standards.
- B. Towers shall be monopoles, self-supporting or guyed towers.

Tower Painting – Towers shall comply with FAA requirements.

Tower Lighting – No tower shall be lighted unless FAA rules require lighting. All towers shall use only red incandescent lights. No strobe lights, red or white, will be allowed.

**SECTION 6: TOWER SETBACKS**

Towers and all accessory structures or buildings shall conform to the following minimum setback requirements, unless an exception may be applied under SECTION 14(a) of this Ordinance at the discretion of the Planning Commission:

- A. Towers shall be setback from all property lines an amount equal to the height of the structure;
- B. Guy wires for towers shall meet the structure setback of the underlying zoning district.

**SECTION 7: CO-LOCATION REQUIREMENTS**

All commercial wireless telecommunication towers erected, constructed, or located within the City shall comply with the following requirements:

- A. Documentation of the area to be served including a search ring for the antenna location. A narrative describing a search ring for the request, with not less than a two (2) mile radius clearly explaining why the site was selected, what existing structures were available and why they are not suitable as locations or co-locations. RF propagation and coverage maps further showing the proposed service area may also be requested by City

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staff.

- B. Documentation that the communications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within the search ring of the service area due to one or more of the following reasons:
  - 1. The planned equipment would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified and licensed professional engineer, and the existing or approved tower cannot reasonably be reinforced, modified, or replaced to accommodate planned equipment at a reasonable cost;
  - 2. The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower or building as documented by a qualified and licensed professional engineer or qualified radio frequency engineer and the interference cannot be prevented at a reasonable cost;
  - 3. Existing or approved towers and buildings within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed professional engineer; or
  - 4. Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
- C. Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and at a minimum one other array of antennas for co-location.
- D. An agreement stating that the applicant and tower owner commit to co-location at reasonable market prices within 90 days. Any prohibition or unreasonable obstruction of additional users on a tower shall be considered a violation of the permit and this Ordinance.
- E. The agreement shall also include a statement that any unused or abandoned tower shall be removed by the tower owner and/or applicant within 12 months of the tower being vacated. Said agreement shall be signed by the applicant and the property owner and shall be attached to and become a part of the permit.

**SECTION 8: TOWER, AREA FENCING AND LANDSCAPING REQUIREMENTS**

Tower base, equipment and buildings accessory to a tower shall:

- A. Be architecturally designed to blend in with the surrounding environment and shall meet the height and setback limitations as established within the respective zoning district unless otherwise excepted.

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- B. Tower base, equipment and buildings shall be fenced in by a 6 foot security fence. Tower base, equipment and buildings shall be screened from view by suitable fencing-slats or vegetation which will be at least 6 feet in height within 4 years of tower construction except where a design of other, non- vegetative screening better reflects and complements the architectural character of the surrounding neighborhood. Screening plan shall also comply with the City's Zoning Ordinance (Section 404). Screening tower plan shall be approved by the City Planning Commission.

The anchor point for the guy wires shall be fenced. The fence shall extend at least 10 feet around the anchor point or guy base to ensure public safety.

**SECTION 9: ABANDONED OR UNUSED TOWERS**

Abandoned or unused towers and associated facilities shall be removed within 12 months of the cessation of operations at the site unless a time extension is approved by the City Council. In the event that a tower is not removed within the 12 months of the cessation of operations at a site, the revocation of permit applies under Sec. 18 of this Ordinance, and tower and associated facilities may be removed by the City and the costs of removal assessed against the permittee and tower owner in accordance with that section.

The City may require the owner or operator of any tower to post adequate security, in form acceptable to the City, toward the costs of removal of any tower and site restoration.

**SECTION 10: SIGNS AND ADVERTISING**

The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

**SECTION 11: NOISE**

The noise levels associated with any tower facility shall conform to the Minnesota Pollution Control Agency noise level requirements as listed in MN Rules Chapter 7030.

**SECTION 12: APPLICATION REQUIREMENTS**

The City Planning Commission and City Council may contract with an independent technical expert to review applicant materials and/or to determine if additional information is necessary. The tower facility applicant shall pay the cost of such review and/or independent analysis. In addition to the general requirements for conditional use permit applications in Section 308 of the City Zoning Ordinance; all applications for new towers must also include the following:

- a. Site plan(s) drawn to a scale, specifying the location of the tower facility, support structures, transmission buildings and/or other accessory structures & uses, accesses, parking areas, fences, signs, lighting, landscaped areas and all adjacent land uses within 350 feet of the tower facility, including all support structures and security fencing.
- b. Map showing the search radius for the antenna location and the proposed

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broadcast coverage obtained by the tower facility, including a narrative describing a search radius of not less than two (2) miles for the requested site, clearly explaining why the site was selected, locating all existing tower facilities, and identifying all other structures that may be potential co-location sites.

- c. Screening plan in accordance with Sec. 8 of this Ordinance and the city Zoning Ordinance.
- d. Series of photo-simulated pictures of the proposed-to-be-constructed tower in a digital format. The pictures shall include a picture of the tower from nearest road, picture of base of tower only showing the bottom 20 feet, picture of the compound area, and picture of each of the guy points, if a guy tower is proposed. The pictures shall also include photo-simulations of any view-shed points from which the tower will impede.
- e. A signed lease on behalf of a carrier that once the tower is constructed the carrier will be leasing the tower within one (1) year after completion.
- f. A copy of a pre-FAA determination or a document that the proposed tower facility has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or that no compliance with Part 77 is required, and the reasons therefore.
- g. Documentation shall be provided prior to the issuance of a land use permit demonstrating that the approved tower has been designed in compliance with a qualified engineer licensed by the State of Minnesota.

**SECTION 13: FACTORS CONSIDERED IN GRANTING CONDITIONAL USE PERMITS**

The City Planning Commission shall consider the following factors in addition to any normally prescribed conditional use factors listed in the City Zoning Ordinance, in determining whether to issue a conditional use permit. The Planning Commission may evaluate each of these criteria on a site-by-site basis with varying levels of preference in determining how the goals of this Ordinance are best served:

- a. Height of the proposed tower facility.
- b. Capacity of the tower structure for additional antenna equipment to accommodate expansion, or to allow for co-location of other provider's equipment.
- c. Proximity of the tower to residential structures.
- d. Nature of uses on adjacent and nearby properties and integration with those.
- e. Surrounding topography.
- f. Present and surrounding tree coverage and foliage.



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- g. Design and siting of the tower, with particular reference to design characteristics and location that have the effect of reducing or eliminating visual obtrusiveness.
- h. Proposed ingress and egress.
- i. Availability of suitable existing towers and other structures as discussed in other sections of this Ordinance.
- j. Level of adherence to the provisions set forth in Section 1 of this Ordinance and any current or later adopted tower policy statement or design guidelines.
- k. Criteria for granting conditional use permits in the City's Zoning Ordinance (Section 308.2 (1 - 8)).

**SECTION 14: RESTRICTIONS**

The following restrictions apply, unless approval is granted at the discretion of the City Council:

- a. Towers shall be setback from all property lines an amount equal to the height of the structure unless a letter is provided by a licensed engineer that states the engineered fall-zone of the tower. If a sufficient letter is provided, the setback distance may be reduced by an amount sufficient to maintain the stated fall-zone of the tower.
- b. No tower shall be over a total of 199 feet in height or within one mile of another tower regardless of municipal boundaries.
- c. A proposal for a new wireless service tower shall not be approved unless it can be shown by the applicant that the telecommunication equipment planned for the proposed tower cannot be accommodated: 1. On an existing tower or structure; or 2. On a tower that has been permitted by the City (even though it may not yet be constructed); or 3. On a tower whose application for a conditional use permit is currently pending before the City.
- d. No tower over 35 feet in height shall be located within 500 feet of any residential dwelling other than the dwelling on the parcel on which the tower is to be located.
- e. No tower over 35 feet in height shall be located closer than one-quarter (1/4) mile to the outside boundary of an existing or proposed municipal or county park.
- f. No tower over 35 feet shall be erected in an area one-half (1/2) mile west of the centerline of State Highway 95 to one (1) mile east of the centerline of State Highway 95 or one-quarter (1/4) mile from any boundary of a State Park or DNR or NPS designated or protected area, unless it can be demonstrated through visual impact demonstration that the tower will be stealth designed and visually inconspicuous as viewed from the road or area boundary on a year-round basis.
- g. Temporary mobile cell sites may be permitted at the discretion of the City

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Council in limited circumstances where a mobile cell site is necessary to provide service while a permanent tower is under construction. The use of temporary mobile cell sites in this scenario is limited to 30 days. They are also permitted in the case of equipment failure, equipment testing, or in the case of an emergency situation as authorized by the County Sheriff. Use of temporary mobile cell sites for testing purposes shall be limited to twenty-four (24) hours; use of temporary mobile cell sites for equipment failure or in the case of emergency situations shall be limited to a term of thirty (30) days. These limits can be extended by the City Council..

- h. Permanent platforms or structures, exclusive of antennas, other than those necessary for safety purposes or for tower maintenance are prohibited.
- i. No antenna or tower shall have lights, reflectors, flashers, daytime strobes, steady night time red lights or other illuminating devices affixed or attached to it unless required by the FAA or FCC.
- j. No advertising or identification signs shall be placed on towers or antennas.

**SECTION 15: TIME LIMIT ON TOWER CONSTRUCTION**

Construction of an approved tower including all accessory structures, including footings and foundations, must be completed within one (1) year following the date of the permit, extendable for another year by the City Council. All landscaping must be installed within the first growing season immediately following construction.

**SECTION 16: EFFECT OF THE ORDINANCE ON EXISTING TOWER FACILITIES**

Tower facilities and antennas in all zoning districts and in existence as of the date of this adoption that do not conform to or comply with this Ordinance are subject to the following provisions:

- a. Towers may continue in use for the purpose now used and as now existing, but may not be replaced or structurally altered without complying in all respects with the provisions contained herein.
- b. If a nonconforming tower is hereafter damaged or destroyed due to any reason or cause whatsoever, the tower may be repaired and restored to its former use, location, and physical dimensions upon obtaining a land use permit if the cost of repairing the tower to its former use, location, and physical dimensions would be less than fifty (50) percent of the cost to build a new conforming tower.

**SECTION 17: TERM OF PERMIT**

A conditional use permit will remain in effect so long as the conditions contained within the permit are met.

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**SECTION 18: REVOCATION OF PERMIT**

The grounds for revocation of a conditional use permit shall be based on a finding that:

- a. The permittee has failed to comply with the conditions of approval imposed;
- b. The facility has not been properly maintained, or
- c. The facility is no longer in use providing wireless communication services to City residents and businesses and has not been in use for the previous 12 months.

In the event of revocation of a permit, the tower and all accessory structures must be removed and the site restored to its original condition within 120 days. Failure to do so will result in the City completing the removal and site restoration and the City's cost shall, where the City is not the property owner, be assessed against the property and collected as a real estate tax. Where the City is the owner of the property on which the tower stands, the costs will be assessed against the permittee and tower owner.

**SECTION 19: ENFORCEMENT**

- A. This Ordinance is adopted by reference pursuant to the provisions of Minnesota Statutes Section 394. It is declared unlawful for any person to violate any of the terms or conditions of this Ordinance. Violation thereof shall be a misdemeanor.
- B. In the event of a violation or a threatened violation of this Ordinance, the City, in addition to other remedies, may institute appropriate actions or proceedings to prevent, restrain, or abate such violations or threatened violations. The City may and is empowered to issue cease and desist orders to halt the progress of any on-going violation. When the work has been stopped by the City for any valid reason whatsoever, it shall not again be resumed until the reason for the work stoppage has been completely satisfied and the cease and desist order lifted.
- C. Any person with proper standing, may institute mandamus proceedings in the District Court to compel specific performance by the proper official or officials of any duty required by this Ordinance.

**SECTION 20: INTERPRETATION**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the governing body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.

**SECTION 21: SEVERABILITY**

If any section, clause, provision, or portion of this Ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall not be

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affected thereby.

**SECTION 22: ABROGATION AND GREATER RESTRICTIONS**

It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail. All other ordinances inconsistent with this Ordinance are hereby repealed to the extent of the inconsistency only.

**SECTION 23: ADOPTION OF ORDINANCE**

The City of Marine on St. Croix Wireless Communication Tower Ordinance is hereby adopted by the City of Marine on St. Croix City Council on the 14<sup>th</sup> day of October, 2021.

\_\_\_\_\_  
**Mayor  
City of Marine on St. Croix City Council**

Attest:

\_\_\_\_\_

\_\_\_\_\_  
**City Official Approved**

as to Form:

\_\_\_\_\_

\_\_\_\_\_  
**City Attorney**