

Zoning Ordinance XX-19 – Small Wireless Facility Aesthetics

An ordinance to create Chapter 114, Article VII, Division 13. – Small Wireless Facility Aesthetics, of the Municipal Code of the City of Racine, Wisconsin.

WHEREAS, in the exercise of its police powers, the City of Racine has priority over all uses of the right-of-way; and

WHEREAS, the City of Racine has enacted a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the City of Racine’s obligation to promote the public health, safety, and welfare, to manage the right-of-way, and to ensure that the public’s use is not obstructed or inconvenienced by the use of the right-of-way for the placement of wireless telecommunications facilities; and

WHEREAS, the City of Racine recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the City; and

WHEREAS, the City of Racine understand that, with respect to small wireless facilities, it may enforce aesthetic, undergrounding and spacing standards that are reasonable, no more burdensome than those applied to other similar types of infrastructure deployments, and objective and published in advance; and

WHEREAS, the City of Racine also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Wisconsin Statute section § 196.58, and other applicable federal and state law, and this Chapter shall be interpreted consistent with those provisions;

NOW THEREFORE, the Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Chapter 114, Article VII, Division 13. – Small Wireless Facility Aesthetics, of the Zoning Code of the City of Racine, Wisconsin, is hereby created as follows:

Sec. 114-830. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Antenna* means an apparatus designed for the purpose of emitting radiofrequency radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna

does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15.

*Antenna equipment* means equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an antenna, located at the same fixed location as the antenna, and, when collocated on a structure, is mounted or installed at the same time as such antenna.

*Antenna facility* means an antenna and associated antenna equipment.

*Collocation* means mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

*Facility or personal wireless service facility* means an antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

*Permit* means any permit granted pursuant to Sec. 82-93.

*Permittee or permit holder* means any person or entity granted a permit pursuant to Sec. 82-93.

*Right-of-way* means the surface of, and the space above and below the entire width of, an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the City of Racine exercises any rights of management and control or in which the City of Racine has an interest.

*Small wireless facility*, consistent with 47 C.F.R 1.60002(1), means a facility that meets each of the following conditions:

- (1) The structure on which antenna facilities are mounted—
  - (i) Is 50 feet or less in height, or
  - (ii) Is no more than ten percent taller than other adjacent structures, or
  - (iii) Is not extended to a height of more than ten percent above its preexisting height as a result of the collocation of new antenna facilities; and
- (2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
- (3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and
- (4) The facility does not require antenna structure registration under 47 CFR Part 17;
- (5) The facility is not located on Tribal lands, as defined under 36 CFR § 800.16(x); and
- (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b)

*Structure* means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service, whether on its own or comingled with other types of services.

*Utility pole* means a structure in the right-of-way designed to support electric, telephone, and similar utility distribution lines and associated equipment. A tower is not a utility pole.

Sec. 114-831. - Facilities exempt from regulation.

The provisions of this article shall not be applicable to the following:

- A. Installation of a small wireless facility on the strand between two utility poles, provided that the cumulative volume of all wireless facilities on the strand shall not exceed one cubic foot, and provided further that the installation does not require replacement of the strand, or excavation, modification, or replacement of either of the utility poles.
- B. Installation of a mobile cell facility (commonly referred to as “cell on wheels” or “cell on truck”) for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
- C. Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the City.
- D. Placement or modification of a wireless telecommunications facility by City staff or any person performing work under contract with the City.
- E. Modification of an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity does not disrupt or impede traffic in the traveled portion of a street, and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

Sec. 114-832. - Small wireless facilities outside the right-of-way.

- A. Freestanding small wireless facilities outside the right-of-way shall be permitted as telephone transmission equipment buildings and microwave relay towers, requiring a conditional use permit.
- B. Building mounted facilities that comply with all the requirements of this Article also shall be subject to administrative review and permitting procedures as outlined in the municipal code.
  1. Antennas shall be imperceptible from street level and concealed with a parapet wall, concealed within a building or structure, or located within a chimney or other architectural element on the building.

Sec. 114-833. - Small wireless facilities within the right-of-way.

- A. Antenna Design
  1. Wireless antennas on exterior of utility poles or structures shall be sized and designed in a manner that accomplishes the following:
    - a. Antennas shall be blended into surrounding environment through observation and incorporation of the following design elements:

- i. Style, architecture, and/or design of buildings, monuments, and natural features in the area.
      - ii. Colors, textures, and finishes of the surrounding built and natural environment.
    - b. All conduit and wiring shall be completely enclosed within the utility pole or structure, totally concealing the wiring from view when possible.
      - i. If conduit cannot be enclosed by the pole, all wiring shall be encased in weatherproof sleeve, encasing the pole and matching the color of the utility pole.
  - 2. Wireless antennas concealed within utility poles or structures shall be sized and designed in a manner that accomplishes the following:
    - a. All conduit and wiring shall be completely enclosed within the utility pole or structure.
    - b. Poles with concealed antennas shall be no wider than 150% of any then-currently existing pole in the right-of-way within a 200 foot radius of the proposed location.
    - c. Notwithstanding any other provision contained herein, the maximum width of a pole shall be four feet.
- B. Appearance of utility poles/structures
- 1. All newly erected utility poles or structures shall be designed to accommodate a municipal street light, including interior wiring, and shall contain antenna space for at least one additional carrier.
  - 2. Materials and Design
    - a. Materials utilized on a utility pole or structure shall have the same appearance as utility poles or structures on the same block on which they will be installed. In the event multiple styles of poles are on the same block, the Director of City Development, or designee, shall determine what style of pole is installed unless subject to review by the Landmarks Preservation Commission, Business Improvement District, or other applicable Design Review Committee.
  - 3. Antenna location on utility pole/structure adjacent to street
    - a. Shall be at least 10 feet above grade of sidewalk or curb and located as determined by the type of pole the equipment is affixed to.
      - i. Steel, silver-colored style pole
        - a. Placement may occur:
          - i. Inside the pole
          - ii. Top of the pole
          - iii. Mounted from the pole
      - ii. Wood pole
        - a. Placement may occur:
          - i. Inside the pole
          - ii. Top of pole
          - iii. Mounted from the pole
      - iii. Metal pole, non-silver-color style pole
        - a. Placement may occur:

- i. Inside the pole
    - ii. Top of pole
  - iv. Concrete, cobblestone pole
    - a. Placement is not allowed on this type of pole
  - v. Globe style, where light is at top of pole
    - a. Placement may occur
      - i. Inside the pole
  - vi. Metal pole with dual lanterns
    - a. Placement may occur:
      - i. Inside the pole
      - ii. Top of pole
- 4. Antenna location on utility pole/structure within alleyway
  - a. Shall be located at least 15 feet above grade of ground.

C. Location

- 1. Placement to be reviewed for approval by the Director of City Development, or designee, who shall consider the following:
  - a. If the installation of a small wireless facility would pose a risk to vehicular, pedestrian and other traffic on the area.
  - b. If the installation of a small wireless facility would pose a risk to the consistent and predictable development of an area.
  - c. If alternatives to construction of a new utility pole or structure have been considered and reviewed by the applicant.
  - d. If the placement of the small wireless facility would create adverse impacts on the aesthetic, architectural and cultural value of area.
  - e. If the design and style of the small wireless facility is consistent with any adopted design guidelines or plan goals/objectives for the area.
  - f. That there are no other utility and street infrastructure poles or facilities within a 40-foot radius of the proposed location.

D. Relocation. Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way whenever the City requests such removal and relocation. The City may make such a request:

- 1. To prevent the facility from interfering with a present or future City use of the right-of-way;
- 2. To prevent the facility from interfering a public improvement undertaken by the City;
- 2. To prevent the facility from interfering with an economic development project in which the City has an interest or investment;
- 4. When the public health, safety, or welfare require it; or
- 5. When necessary to prevent interference with the safety and convenience of ordinary travel over the right-of-way.

Notwithstanding the foregoing, a permit holder shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or relocation to the permit holder.

Sec. 114-834. - All small wireless facility installations.

A. Design Review

1. Small cell facilities located within the bounds of a Local or National Historic District or Landmark shall apply for a Certificate of Appropriateness which shall be reviewed by the Landmarks Preservation Commission to determine the following:
  - i. If the proposed style and design of the small wireless facility will create adverse impacts on the aesthetic, architectural and cultural value of the historic district or landmark. The Secretary of the Interior Standards for the treatment of historic properties may be consulted when making a decision.
2. Small cell facilities located within the bounds of a Access Corridor or Design Review Area as required by Sec. 114 of the Municipal Code shall apply for design review through the Department of City Development who will request review by the BID or applicable Design Review Committee to determine the following:
  - i. If the proposed style and design of the small wireless facility will create adverse impacts on the aesthetic, architectural and cultural value of area.
  - ii. If the overall design is consistent with the goals and/or objectives of the Access Corridor or Area plan documents.

B. Collocation. Small wireless facilities collocating on existing wireless facilities or other telecommunications facilities shall be subject to administrative review in accordance with this chapter.

C. Subordinate and accessory equipment. All subordinate and/or accessory equipment to the antenna, including conduit and cabling, shall be located in one of the following manners, ranked in order of preference:

1. Completely within the confines of a building, concealed from view of passersby.
2. Buried completely underground in an equipment vault or equivalent device accomplishing substantially the same purpose.
3. On the roof top of a primary building which is not within a local or national historic district or landmark, or on a single unit, two unit, three unit, or four unit residential dwelling. Installations on rooftops shall meet the following standards:
  - i. Application shall be accompanied by a statement from a structural engineer Licensed in the State of Wisconsin, certifying the rooftop can support the weight of the small cell facility and associated equipment.
  - ii. Shall not exceed the highest point of the building mounted to by more than ten feet. The ten- foot extension above the building may exceed the maximum height limitation of the zone district where the small wireless facility is located.
  - iii. Shall be designed to be minimally obtrusive and constructed with the same materials or textures and colors as the building on which located. Equipment shall be located no less than ten feet from building walls or parapets to help minimalize visual obtrusion.
4. On the ground in an equipment cabinet which is completely concealed by evergreen landscaping, with plans for plantings approved by the Department of City Development.
5. May be mounted on the lower 1/3 portion of the pole, but only with technical reasons as to why the equipment cannot be located as described in 1-4 of this

section. This method shall require approval of a landscaping plan to conceal the equipment and a review by the City Plan Commission.

- D. Signage and stickers. No signage or stickers shall be allowed on small wireless facilities, other than safety or warning signs as required by law.
  - 1. Signage and stickers required by law shall be placed near or on the transmitting antenna, not subordinate equipment.
  - 2. Signage and stickers shall face the street, away from buildings and sidewalks or be mounted on the underside of the equipment, visible only from underneath.
  - 3. No logos or brand names on pole/structure, equipment, or lids for vaults.
- E. Vegetation. All existing vegetation, including trees and shrubs, shall be preserved to the maximum extent possible.
- F. Noise. All small wireless facilities shall comply with the following decibel requirements.
  - 1. Generate no more than 45 decibels within three feet of any residential dwelling or City park boundary.
  - 2. All other locations shall generate no more than 55 decibels.
- G. Adverse effects on adjacent properties. The permit holder shall undertake all reasonable efforts to avoid undue effects upon adjacent properties and/or property uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.
- H. Maintenance.
  - 1. The facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions.
  - 2. All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification to the permit holder from the City.
- I. Record retention. The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the City cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.
- J. Abandonment.
  - 1. The permit holder shall promptly notify the City whenever a facility has been abandoned, has been removed from use, or has not been in use for a continuous period of 60 days or longer.
  - 2. All facilities, including utility poles and/or utility structures that have been used by a small wireless facility provider and are not being used by the municipality or other utility, shall be removed entirely within 90 days after they have been abandoned or removed from service.
  - 3. Notwithstanding any other provision herein, facilities of a permit holder that, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the City may, at its option:
    - a. Abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;
    - b. Take possession of the facilities; and/or
    - c. Require removal of the facilities by the permit holder or the permit holder's successor in interest.

4. Upon removal or relocation of a facility, the permit holder shall restore the right-of-way to its prior condition in accordance with City of Racine specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations herein required, the City at its option may do such work. In that event, the permit holder shall pay to City, within 30 days of billing therefor, the cost of restoring the right-of-way.

Part 2: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City Common Council and publication or posting as required by law.