

Section 25. Wetlands Conservation Act Permanent Program

Subd. 1. Intent

Wetlands provide a valuable service by improving water quality, providing for floodwater retention, reducing runoff, reducing stream sedimentation, and preserving wildlife habitat. For these reasons it is the intent of this article to establish a program that will protect, enhance, and conserve our wetlands by implementing a policy calling for the replacement of all wetlands lost due to any draining, burning, or filling.

Subd. 2. Purpose

The ordinance is adopted to implement the Wetland Conservation Act of 1991, (Minnesota Law 1991, Chapter 354, as amended), and the accompanying rules of the Minnesota Board of Water and Soil Resources (Minnesota Rules, Chapter 8420, as amended).

Subd. 3. Incorporation by Reference

This Ordinance incorporates by reference the Act and the Rules. Terms used in this Ordinance which are defined in the Act or Rules have the meanings given there.

Subd. 4. Scope

This Ordinance regulates the draining and filling of wetlands and parts of wetlands within the City of Detroit Lakes. It is part of the official controls of the City of Detroit Lakes. Conflicts with other official controls must be resolved in favor of providing the most wetland protection.

Subd. 5. Procedures

A. Exemption and no-loss determinations. Exemptions and no-loss determination under Minnesota Rule, parts 8420.0210 and .0220 shall be made by the Zoning Administrator. The Administrator should seek the advice of the technical evaluation panel on questions of wetland delineation and type. The Administrator's decision is final unless appealed to the board of Adjustment within thirty (30) days.

B. Sequencing and Replacement Plan Decisions. Sequencing and replacement plan decisions under Minnesota Rule, parts 8420.0520-.0550 shall be made following the same procedures as for conditional use permits plus the additional notice and time requirements of part 8420.0230. If the amount of wetland to be drained or filled is less than one-tenth of an acre, the sequencing determination under Minnesota Rule, part 8420.0520 shall be made by the Zoning Administrator.

C. Monitoring. The Zoning Administrator shall assure that the replacement plan monitoring and enforcement requirements of Minnesota Rule, parts 8420.0600-.0630 are fulfilled.

D. Wetland Banking. Wetlands may be restored or created within the City of Detroit Lakes for purposes of deposit in the wetland bank in accordance with Minnesota Rules, parts 8420.0700-.0760. The Zoning Administrator is responsible for approving bank plans, certifying deposits, and monitoring of banked wetlands and enforcement under the rule.

E. Appeals. Decisions made under this Ordinance may be appealed to the board of Water and Soil Resources under Minnesota Rules, part 8420.0250, After administrative appeal rights under the official controls have been exhausted.

F. Variances. The Board of Adjustment may issue variances from the official controls of the City of Detroit Lakes so long as the variances do not vary requirements of the Act or the rules.

G. Technical Evaluation Panel. The City Council of the City of Detroit Lakes shall appoint a person to serve on the technical evaluation panel. The person must be a technical professional with expertise in water resources management.

Decisions under this Ordinance must not be made until after receiving the determination of the technical evaluation panel regarding wetland public values, location, size, and/or type if the decision-maker, the landowner, or a member of the technical panel asks for such a determinations. This requirement does not apply to wetlands for which such data is included in an approved comprehensive wetland management plan per part 8420.0240.

The planning commission may seek and shall consider recommendations, if any, made by the technical evaluation panel in making replacement plan decisions.

Subd. 6. High Priority Areas.

Decisions regarding sequencing, replacement plans, and banking shall particularly favor preservation, restoration, and creation of wetlands in high priority areas as identified in water management plans pursuant to Minnesota Rule, part 8420.0350

Subd. 7. Delegation.

The City of Detroit Lakes intends to administer the Wetland Conservation Ordinance. However, the City Council may, By Joint Powers Agreement, delegate to the Soil and Water Conservation District under Minnesota Statutes, Section 471.59 and 103C.331, Subdivision 19, the authority to administer all or any part of this Ordinance.

AMENDED 1-4-94 ORD. #103

(Pages 513-516 Reserved for Changes)

Section 26. Regulating & Controlling Towers

Subd. 1. Purpose. In order to accommodate the tower needs of residents and business while protecting the public health, safety, and general welfare of the community, the Council finds that these regulations are necessary in order to:

- a) facilitate the provision of telecommunication and other services to the residents and businesses of the City;
- b) minimize adverse visual effects of towers through careful design and siting standards;
- c) avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and,
- d) maximize the use of existing and approved towers and buildings in order to reduce the number of towers needed to serve the community.

Subd. 2. Definitions. The following words and terms when used in this Section shall have the following meanings unless the context clearly states otherwise:

Antenna – Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.

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.

Public Utility – Persons, corporations, or governments supplying gas, electric, transportation, water, sewer, or landline 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.

Tower - Any ground or roof mounted pole, spire, structure, or combination thereof taller than 15 feet, including supporting lines, cables, wires, braces, and masts.

Tower, Multi-User – A tower to which is attached the antennas or devices of more than one user or entity.

Tower, Single – Use – A tower to which is attached only the antennas or devices of single user, although the tower may be designed to accommodate the antennas and devices for multiple users as required in this Code.

Subd. 3. Towers In Residential Zoning Districts. All towers erected, constructed, or located within the City shall comply with the following requirements:

- a) Towers supporting amateur radio antennas and conforming to all applicable provisions of this Code shall be allowed only in the rear yard of residentially zoned parcels provided they are not more than 20 feet above the roofline.

- b) Towers supporting commercial antennas and devices and conforming to all applicable provisions of this Code shall be allowed only in the following residentially zoned locations:
 - 1) Church sites, when camouflaged as steeples or bell towers;
 - 2) Park sites, when compatible with the nature of the park; and,
 - 3) Government, school, utility, and institutional sites.

Subd. 4. Co-Location Requirements. All commercial towers erected, constructed, or located within the City shall comply with the following requirements:

- a) A proposal for a new commercial telecommunication service tower shall not be approved unless the City Council finds that the telecommunications equipment planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a one mile search radius (one half mile search radius for towers under 120 feet in height, one quarter mile search radius for towers under 80 feet in height) of the proposed tower 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 licenses profession engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent 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 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.
 - 4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower or building.
 - 5) Any proposed commercial wireless telecommunication service tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.

Subd. 5. Tower Construction Requirements. All towers erected, constructed, or located within the City, and all wiring therefore, shall comply with the following requirements:

a.) Permits

- (1) It shall be unlawful for any person, firm, or corporation to erect, construct in place, place or re-erect, replace, or repair any tower without first making application to the Building Officials Office and securing permit therefore as hereinafter provided.

- (2) The application shall provide at the time of application sufficient information to indicate that construction installation, and maintenance of the antenna and tower will not create a safety hazard or damage to the property of other persons.
- (3) Permits are not required for:
- a) Adjustment or replacement of the elements of an antenna array affixed to a tower or antenna, provided that replacement does not reduce the safety factor.
 - b) Antennas and/or towers erected temporarily for test purposes, for emergency communication, or for broadcast remote pick-up operations, provided that all requirements of Subdivision 5.D. are met. Temporary antennas shall be removed within 72 hours following installation.
- b) **Fee.** The fee to be paid is that prescribed under Building Permit Fees
- c) **Construction Requirements.** All antennas devices and towers erected, constructed, or within the City, and all wiring therefore, shall comply with the following requirements:
- (1) All applicable provisions of this Code
 - (2) Towers shall be certified by a qualified and licensed professional engineer to conform to the latest structural standards and wind loading requirements of the Uniform Building Code and the Electronics Industry Association.
 - (3) With the exception of necessary electric and telephone service and connection lines approved by the Issuing Authority, no part of any antenna or tower nor any lines, cable, equipment or wires or braces in connection with either shall at any time extend across or over any part of the right-of-way, public street, highway, sidewalk, or property line.
 - (4) Towers and associated antennas and devices shall be designed to conform with accepted electrical engineering methods and practices and to comply with the provisions of the National Electrical Code.
 - (5) All signal and remote control conductors of low energy extending substantially horizontally above the ground between a tower or antenna and a structure, or between towers, shall be at least eight feet above the ground at all points, unless buried underground.
 - (6) Every tower affixed to the ground shall be protected to discourage climbing of the tower by a security fence of not less than 6 feet in height.
 - (7) All towers shall be constructed to conform with the requirements of the Occupational Safety and Health Administration.
 - (8) All towers erected within the city must conform to the applicable performance standards of this Code.

d.) **Existing Antennas and Towers.** Antennas and towers in existence as of August 7, 2001, which do not conform to or comply with this Section are subject to the following provisions:

(1) 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 this Section.

(2) If such towers are 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 building permit therefore, but without otherwise complying with this Section, provided, however, that if the cost of repairing the tower to the former use, physical dimensions, and location would be ten percent or more of the cost of a new tower of like kind and quality, then the tower may not be repaired or restored except in full compliance with this Section unless they receive a special exemption from the City Council.

e.) **Lights and Other Attachments.** No antenna or tower on any residential parcel shall have affixed or attached to it in any way except during time of repair or installation any lights, reflectors, flashers, or other illuminating device, except as required by the Federal Aviation Agency or the Federal Communications Commission, nor shall any tower have constructed thereon, or attached thereto, in any way, any platform, catwalk, crow's nest, or like structure, except during periods of construction or repair.

f.) **Inspections.** All towers may be inspected at least once each year by an official of the Building Inspector's Office to determine compliance with original construction standards. Deviation from original construction for which a permit is obtained constitutes a violation of this Section.

g.) **Notices.** Notice of violations will be sent by registered mail to the owner and he will have 30 days from the date the notification is issued to make repairs. The owner will notify the Building Inspector's Office that the repairs have been made, and as soon as possible thereafter, another inspection will be made and the owner will be notified of the results.

h.) **Interpretation.** It is not the intent of this Section to interfere with, abrogate, or annul any covenant or other agreement between parties, provided, however, where this Section imposes or required by other ordinances, rules, regulations, or permits, or by covenants or agreements, the provision of this Section shall govern.

Subd. 6. Tower & Antenna Design Requirements. Proposed or modified towers and antennas shall meet the following design requirements.

a). Towers and antennas and devices shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.

b). Commercial wireless telecommunication service towers shall be of self-supporting design.

Subd. 7. Tower Setbacks. Towers shall conform with each of the following minimum setback requirements:

- a). Towers shall meet the setbacks of the underlying zoning district with the exception of industrial zoning districts, where towers may encroach into the rear setback area, provided that the rear property line abuts another industrially zoned property and the tower does not encroach upon any easements.
- b). Towers shall be set back from existing public rights of way and from the planned public rights of way, as shown on the most recently adopted Master Street Plan of the City, by a minimum distance equal to the height of the tower including all antennas and attachments.
- c). Towers shall not be located between a principal structure and public street, except that in industrial zoning districts, towers may be placed within a side yard abutting an internal industrial street provided they meet the required setback from the right of way.
- d). A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the City Council, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, power line support device or similar structure.

Subd. 8. Tower Height. All proposed towers shall meet the height restrictions set forth in Subdivision 16 of this chapter.

Subd. 9. Tower Lighting. Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

Subd. 10. Signs and Advertising. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

Subd. 11. Accessory Utility Buildings. All utility buildings and structures accessory to a tower shall be architecturally designed to blend in with the surrounding environment and shall meet the minimum setback requirements of the underlying zoning district. Ground mounted towers and equipment shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better reflects and complements the architectural character of the surrounding neighborhood.

Subd. 12. Abandoned or Unused Towers or Portions of Towers. Abandoned or unused towers or portions of towers shall be removed as follows:

- a). All 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 Building Official. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application. In the event that a tower is not removed within 12 months of the cessation of operations at a site, the tower and

associated facilities may be removed by the City and the costs of removal assessed against the property.

- b). Unused portions of towers above a manufactured connection shall be removed within six months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new building permit.

Subd. 13. Antennas Mounted On Roofs, Walls, and Existing Towers. The placement of telecommunication antennas and other devices on roofs, walls, and existing towers may be approved by the Building Official, provided the antennas meet the requirements of this Code, after submittal of 1) A final site and building plan as specified by this subdivision, 2) A report prepared by a qualified and licensed professional engineer indicating the existing structure or tower's suitability to accept the antenna, 3) The proposed method of affixing the antenna and other devices to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.

Subd. 14. Interference with Public Safety Telecommunications. No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the City at least ten calendar days in advance of such changes and allow the City to monitor interference levels during the testing process.

Subd. 15. Additional Submittal Requirements. In addition to the information required elsewhere in this Code, development applications for towers shall include the following supplemental information:

- a) A report from a qualified and licensed professional engineer which
 - 1) describes the tower height and design including a cross section and elevation;
 - 2) documents the height above grade for all potential mounting positions for co-located antennas and the minimum separation distances between antennas;
 - 3) describes the tower's capacity, including the number and type of antennas that it can accommodate;
 - 4) documents what steps the applicant will take to avoid interference with established public safety telecommunications;
 - 5) includes an engineer's stamp and registration number; and
 - 6) includes other information necessary to evaluate the request.
- b) For all commercial wireless telecommunication service towers, a letter of intent committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
- c) Before the issuance of a building permit, the following supplemental information shall be submitted:
 - 1) proof that the proposed tower complies with regulations administered by Federal Aviation Administration; and.

- 2) a report from a qualified and licensed professional engineer which demonstrates the tower's compliance with the aforementioned structural and electrical standards.

Subd. 16. Height Limitations.

a) **Structure Height** The height of towers shall be determined by measuring the vertical distance from the lowest point of contact with the ground to the highest point of the tower, including all antennas or other devices or attachments. When towers are mounted on roofs or other structures, the combined height of the structure and tower must meet the height restrictions of this section.

b) **Height Limitations.**

1) **Residential Districts:** The maximum height of towers in residential districts, permitted by Subdivision 3 of this section, shall not exceed 1 foot for each 2 feet the tower is set back from the property line up to a maximum height of 100 feet.

2) **Non-Residential Districts**

a) Towers on all non-residential property within 600 feet of a residential district including all antennas and attachments shall not exceed 1 foot for each 2 feet the tower is set back from the property line up to a maximum of 150 feet.

b) Towers on non-residential property greater than 600 feet from any residential district shall not exceed one foot for each foot it is set back from the property line less ten feet, up to a maximum height of 180 feet.

c) Conditional use permit. Towers exceeding the height requirements can be permitted by conditional use if the applicant can demonstrate a significant need for the additional height. Such permits will require the off-site view of the tower to be minimized with screening.

3) **Exceptions.** The height limits established herein shall not apply to the following:

- a) belfries
- b) church spires, steeples and bell towers
- c) flag poles
- d) monuments
- e) public utility structures including but not limited to water towers, antennas, lights, signals, power poles, and poles supporting emergency warning devices.

4) **Additional Restrictions.**

a) no tower shall exceed a height equal to the distance from the base of the antenna and tower to the nearest overhead electrical power line which serves more than one business or dwelling less 10 feet.

- b) Airport Zoning – much of the City is affected by the Airport Zoning Requirements which have height limitations in addition to those required by this section.

Subd. 17. Violations. Any person who violates any of the provisions of this section shall be guilty of a misdemeanor.

Replaced: 6/1/04, Ord. No. 255