

COMMUNICATION TOWERS ORDINANCE No. 31

ARTICLE 1: AUTHORITY AND JURISDICTION

Authority

Pursuant to the authority granted by 1967 SDCL 11-2 as amended; the following regulations are hereby adopted by the County Governing Board of Commissioners of Meade County, South Dakota.

Section 1: Purpose and Intent.

The purpose of this Ordinance is to establish guidelines for the placing of all wireless towers (including internet), microwave towers, common carrier towers, cellular, television and radio towers, telecommunications towers and towers in general. This ordinance is intended to encourage the development of a competitive wireless communications marketplace and other special use towers while protecting the health and safety of the public and of the community. The regulations and requirements set forth herein are adopted for the following purposes:

1. To provide for the location of communication towers and communication antennas in Meade County;
2. To accommodate the growing need for communication towers and antennas in areas conducive for this type of land development and use, not densely populated;
3. To promote and encourage shared use/co-location of existing and new communication towers as a primary option rather than construction of additional single-use towers or tower-lots;
4. To consider public health and safety;
 - a. Measures shall be taken to ensure that the proposed use is in compliance with this ordinance and other applicable County ordinances.
5. To review development trends of residential subdivisions and the possible impacts of telecommunications and other types of towers, antenna support structures, and wireless communications facilities may have on future development.
6. To avoid potential damage to property caused by telecommunications and other types of towers, antenna support structures, and wireless communications facilities by ensuring that such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or when determined to be structurally unsound;

7. To ensure that telecommunications and other types of towers, antenna support structures, and wireless communications facilities are compatible with surrounding land uses;
8. To facilitate the provision of wireless communications services to residents and businesses in an orderly fashion;
9. To promote the location of telecommunications towers in nonresidential or low density areas.
10. Towers in this ordinance are defined as a monopole or lattice type structure used to support a type of antenna.

Article 2: PROCEDURE

Section 1: Definitions

Abandonment: Any intent to abandon use of a communications tower. In the event the use of any communication tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed to have been abandoned.

Approved Plat: a plat that meets Meade County Ordinance No. 20 and is approved as "Final" by the Governing Board of Commissioners.

Board of Commissioners; governing board of Meade County consisting of elected commissioners; known in this ordinance as the "Commission".

"Carrier on Wheels" or "Cell on Wheels" ("COW") -- A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure and its use is only temporary.

Communication tower setbacks: shall be measured from the base of the tower/antenna or protruding building structure at the base of the tower, whichever is closest to the property line measured to the property line of the parcel on which it is located.

Complete Package: Includes the application, statements with scientific data and all other required information stated in this Ordinance along with any preliminary or final plat(s).

Expected Development Trend: That there is high probability for a high, modified high or medium density residential subdivision development.

Geotechnical Report: Engineered soils report that indicates that the native soils will support the proposed structure.

Fall Zone: An area around the tower in which a tower could collapse and fall, calculated as the total height of the tower measured from the base of the tower times 1.2.

Public use structure: A building occupied by the public anytime from 8:00 am until 10:00

pm.

Towers: defined as a monopole or lattice type structure used to support a type of antenna greater than forty (40) feet in height.

Tower-lot: An approved platted lot of one (1) acre or greater which is required for the placement of all wireless (including internet), microwave towers, common carrier towers, cellular, television and radio telecommunications towers and other use towers.

Section 2: Applicability

1. All types of new towers in Meade County shall be subject to these regulations and all other applicable regulations. For purposes of measurement, communication tower setbacks and separation distances as set forth in this section shall be calculated and applied irrespective of County and municipal jurisdictional boundaries.
2. All communication towers legally existing at the effective date of this ordinance shall be considered legal non-conforming uses and will be allowed to continue their usage as they presently exist: provided however, any structural modifications (adding to the height of an existing tower of more than fifty (50) feet), shall comply with the requirements of this Ordinance and other applicable County Ordinances.
3. The performance and construction standards provided for in this Section shall apply to all types of towers including new communication and wireless tower construction.
4. This Ordinance shall not govern the installation of any antenna including the antenna support structure that is forty (40) feet or less in height, placed for private use only by the landowner or a support structure placed on agricultural property of 160 acres or more which may not exceed (120) feet in total height, measured from the ground surface at the nearest road centerline. Small wireless internet support structures and antennas less than forty (40) feet in height are also exempt.

Section 3: General Requirements

1. A tower is considered a principal use if located on any lot or parcel of land as the sole or primary structure, and is considered an accessory use if located on a lot or parcel shared with a different existing primary use or existing structure. An existing use or structure on the same lot or parcel shall not preclude the installation of an antenna or tower. For purposes of determining set-back, buffer, fall zone and other requirements, the dimensions of an entire lot or parcel shall control, even though the antenna or tower may be located on a leased area within a platted tower lot that is constructed and that is installed on 40 acres or more, with a minimum dimension of 660' (feet) on any side are in accordance with the provisions of this ordinance and shall not be deemed to alter the primary tax status. Accessory structures to the tower are for that of the facility only.

2. Compliance with all applicable county adopted building codes, Federal Aviation Administration Regulations, Federal Communications Commission, South Dakota State Law and all applicable Meade County Ordinances.

Section 4: Application Requirements

APPLICATION REQUIREMENTS: Applications for the construction of cellular antenna towers for cellular telecommunications services, internet services or personal communications services shall include the following:

1. The full name and address and telephone number of the applicant.
2. The full name and address and telephone number of the property owner.
3. The lease or sale agreement, (copy) for the property on which the tower is proposed to be located, and if applicable, the portion of the agreement that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.
4. Tower-lot: An approved lot is required for the placement of all wireless (including internet), microwave towers, common carrier towers, cellular, television and radio telecommunications towers and other use towers, unless any tower will be installed on a 40 or more acre parcel of property with a minimum dimension of 660' (feet) on any side. The Tower-lot will be considered as a commercial classed property being a platted lot of one (1) acre or greater in size and have a depth of greater than two hundred (200) linear feet and a width greater than two hundred (200) linear feet, depending on the size of the tower and the fall zone thereof. The lot configuration is to be as such as to create a tower lot that is a minimum of 43,560 square feet (1 acre) or greater in size so the fall zone of the proposed tower is within the platted Tower-lot. The Tower-lot must be platted in accordance with the procedures for platting found in Meade County Ordinance No. 20. The platted lot must be fenced.
5. Clear directions from the City of Sturgis (i.e., the county seat) to the proposed site or a map, including highway numbers and road or street names-
6. A (site) plan that shows the proposed location of the tower and all easements and existing structures within two hundred and fifty (250') feet of the proposed site on the property on which the tower will be located including the access drive and the intersection with the public street or county road system.
7. A map drawn to a scale or a colored aerial photograph to scale no less than one (1) inch equals two hundred 200 feet that identifies every structure and every owner of real estate within fifteen hundred (1,500) foot radius of the proposed tower.
8. Provide proof that every land owner was contacted by mail, according to the records confirmed by Meade County Equalization & Planning Department, within fifteen hundred (1,500) feet of the proposed tower location.

9. The above referenced land owners must be:
 - a. Notified by mail at least 14 calendar days in advance of the Meade County Planning Board if a plat is part of the cell tower application package or in advance of the regularly scheduled Commission Meeting (if no plat is proposed). Envelopes with the notification letter must be first delivered to the Equalization Planning Department for verification. Notification letters must be correctly addressed and must have the correct postage, before they are delivered. Meade County will verify the addresses/parties which are to be notified and will mail the notification letters after verification. The notification letter shall include a map of the location of the proposed construction and also:
 - i.) Given the telephone number and address of the developer; and
 - ii) Informed of his or her right to participate in the Meade County Planning Board or Commission's proceedings, (whatever is applicable). or the Meade County Governing Board of Commissioners meeting on the application.
10. Permits will be issued upon final approval of the Commission as set forth in this ordinance.
11. A brief description of the character of the general area in which the tower is proposed to be constructed including the effect it may have on development trends expected in the area, including the proposed height of the tower, to be coordinated with the Director of Equalization and Planning.
12. A clear and precise statement with documentation that the applicant has considered the likely effects of the installation on nearby land uses and has concluded that upon reviewing other locations, based on their final selection, there is no more suitable location available for a tower space from which adequate service to the area can be provided. (Not required for agricultural property of 160 acres or more).
13. All applicants that require platting for a proposed tower(s) must follow Meade County Ordinance No. 20 and all other applicable ordinances of the county.
14. The hearing for the Approval of the tower application with the Commission must be advertised 10 days in advance by the applicant, prior to the final hearing and placed in 2 separate legally designated local Meade County newspapers stating the purpose of the hearing, the date and time of the hearing, the name of the company who is requesting the hearing along with a contact name and working phone number to answer questions which may arise from the public along with a legal description of the property in which the tower is proposed to be placed.
16. A statement or documentation from Federal Communications Commission that the applicant is requesting a permit to site a telecommunications tower, antenna support structure, or wireless communications facility.

17. Provide a copy of the Notice and Application for Aeronautical Hazard submitted to the South Dakota Aeronautics Commission per South Dakota Codified Laws 50-9-1 and 50-9-7 if the structure or tower is 200 feet above the terrain.
18. Provide evidence that all registered or existing private airports within 1 mile of the proposed tower have been notified.
19. If Approval is granted by the Commission the applicant must provide a copy of the response letter from the FAA (Federal Aviation Administration) notifying the FAA of the proposed tower and site location before any building permits are issued as well as:
 - a. Provide a Geotechnical Report stating the native soils on the proposed site are capable of supporting the proposed tower.
 - b. Provide copy of approved Tall Structures Permit (Permit for Aeronautical Hazard), from the South Dakota Aeronautics Commission per South Dakota Codified Laws 50-9-1 and 50-9-7 if the structure or tower is 200 feet above the terrain.

Section 5: Performance and Construction Standards

1. Structural Design. New Communication towers and increasing size or height to existing towers shall be constructed in accordance with all applicable Meade County Building Codes and shall meet or exceed current standards and regulations of all applicable Federal, State and Local authorities.
2. Setbacks; Communication tower setbacks must be located at a minimum horizontal distance of 1.2 times the length of the complete tower including the highest antenna, measured from the bottom of the tower to the very top of the highest antenna to an existing structure or property line, or in case of a break-away monopole tower, the setback distance shall be 1.2 times the length of the break-away portion of the monopole type tower. Communication towers and their accessory structures shall comply with the minimum lot and setback requirements of Meade County. Towers placed inside a Subdivision, within 750' feet of residence, shall only be a "Monopole type tower" or a Camouflaged Monopole type tower, to blend in with a building or similar or "Monopole Tree tower" that will blend in with the trees in a forested area".
 - a. Guy wires with support anchors are required to meet all setback requirements. Support anchors for guy wires must be protected with a concrete abutment, 2' x 2' and at a height of two (2) feet above the finish grade and depth of 2 feet below the ground surface or similar approved by the Director of Equalization and Planning or designee.
3. Fencing. A chain link fence or wall not less than six (6) feet in height, from finished grade equipped with an appropriate anti-climbing device shall be provided around each communication tower, or the communication center. Access to the tower(s) shall be through a locked gate. Where towers or centers are located on agricultural land protected by South Dakota trespass law, no fencing is required.

- a. Damaged fence must be repaired or replaced within 30 days from when the damage occurred.
 4. Landscaping. The use of existing vegetation shall be preserved to the maximum extent practicable so that the tower compound will blend in with the surrounding land use. The tower lot must be kept mowed, clean and maintained, free from tall weeds. (Landscaping requirements are not required on agricultural property of 160 acres or more).
 5. Illumination. Communication towers shall not be artificially lighted unless required by the FCC or FAA or approved by Meade County.
 6. Signs and Advertising. A small sign may be placed on the entrance gate not to exceed four (4) square feet in total area. All signage must be in accordance with Meade County Ordinance No. 24.
 7. Abandonment. Without waiving Meade County's right to determine whether or not a communication tower has been abandoned, it shall be the duty of the tower owner to notify Meade County's Director of Equalization & Planning in writing of any intent to abandon use of the tower. Said notice shall include steps that tower owner shall take to accomplish removal of the tower structures including concrete footings, anchors or abutments to a depth of six (6) feet below the surface. In the event the use of any communication tower has been discontinued for a period of 180 consecutive days, the tower shall be deemed to have been abandoned. Upon such abandonment, the owner/operator of the tower shall have an additional 45 days within which to: (1) reactivate the use of the tower or transfer the tower to another owner/operator who makes actual use of the tower; or (2) dismantle and remove the tower. The owner of the tower shall be ultimately responsible for all costs of dismantling and removal and in the event the tower is not removed within 45 days of abandonment, Meade County may proceed to do so and assess the costs against the tower owner. The lien of such assessment shall bear interest, have priority and be collectable at the same rate and in the like manner as provided for by South Dakota law. At the earlier of 46 days from the date of abandonment without reactivation or upon completion of dismantling and removal, any permit or variance approval for the tower shall automatically expire.
 8. Finished Color. Communication towers shall follow FAA painting requirements or FAA published standards for finish color.
 9. Maintenance. To ensure the structural integrity of communication towers, the owner of a communication tower shall be in compliance with all applicable local, state and federal maintenance standards for communication towers.
12. Fees:
- a) The application fee for a communication tower shall be set by Resolution of the Commission.
 - b) Building permit fee for any permanent structures (not including the tower), shall be set in accordance with the official fee schedule set by Resolution of the Commission.

c) Carrier on Wheels or Cell on Wheels (“COW”) fee for up to 90 day period shall be set by Resolution of the Commission and can be found on the Official Fee Schedule.

d) Any variance to this ordinance requires that the applicant completes a Variance Application and fee shall be set by Resolution by the Commission. Variance requests must first be heard by the Planning Board.

Section 6: *Third Party Review*

1. If the Commission suspects that a proposed telecommunication tower placement might affect a third party, (such as a private airport, Ellsworth AFB, commercial wind farm etc.), the Commission may request the telecommunication package be reviewed by the said third party.

Section 7: “Carrier on Wheels” or “Cell on Wheels” (“COW”)

1. Definition: “Carrier on Wheels” or “Cell on Wheels” (“COW”) -- A portable self-contained cell site that can be moved to a location and set up to provide personal wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure and its use is only temporary.
2. A cell on wheels or other temporary personal wireless communications facility shall be permitted for a maximum of 90 days in any 365 day period or during an emergency or otherwise declared by the Meade County Commission.
3. “COW” can be permitted for special events. The “COW” must be contained within a secure area.
4. The “COW” must be located on a property of a minimum of 3+ acres and must be 150’ (feet) from any residential or public use structure and/or an area used by the public, such as a permanent campsite (area used by the public for sleeping overnight), RV site or shower house etc.
5. The maximum height of a tower of a “COW” must be 120’ (feet) or less
6. An Application Form must be complete for a “COW” permit along with a Site Plan that includes the following information:
 - a. Location of the compound as it relates to the tract of land or lot (leased area) and roads and or streets (rights of way).
 - b. Location of tower or “COW”.

- c. Location of equipment.
 - d. Location of drive or roadways.
 - e. Dimensions must be clearly marked on site plan for all of the above.
8. The Director of Equalization and Planning or his/her designee will review the Application and the supporting data and will issue the permit if approved.

ARTICLE 3: VARIANCES

Section 1: Variance Procedure

Variations. Any request to deviate from any of the requirements of this Ordinance shall require a variance. A variance application must be completed and a variance fee must accompany the application. The variance fee is set by Resolution of the Commission. Variance applications can be obtained from the Meade County Equalization & Planning Department and must be submitted through the same department. If staff determines the application is complete, the variance request will be placed on the Commission's agenda. Variance(s) must be Approved by the Commission

The Commission shall hear appeals and requests for variances from the terms of this ordinance, and decisions will be made by the Commission.

Section 2: Penalties for violation of Ordinance No. 31

- A. In addition to other remedies set forth in this ordinance, violation of this ordinance may be punishable by (30) day's imprisonment in a county jail or a \$500.00 fine, or both; each day in violation may be deemed a separate offense.
- B. The provisions of this ordinance shall be administered and enforced by a County Ordinance Enforcement Officer appointed by the Commission, who shall have the power to make inspections of buildings or premises necessary to carry out duties in enforcement of the ordinance;
- C. The County Ordinance Enforcement Officer shall have the power to appoint deputies to assist in duties, such deputies to be approved by the Commission;
- D. The County Ordinance Enforcement Officer, and any deputies appointed, shall have authority to issue an ordinance violation notice which shall specify, in addition to other information at the discretion of such officer, the following:
 - 1. the date of violation;
 - 2. the nature of violation;

- 3. the amount of fine associated with the violation;
 - 4. the date the individual is required to appear in court unless the designated fine is paid prior thereto; and
 - 5. the signature, or noted refusal to sign, of the violator.
- E. An ordinance violation notice issued under authority of this ordinance shall be enforced before a magistrate court.

ARTICLE 4: SEVERABILITY AND SEPARABILITY

Should any Article, Section, Sub-section or Provision of the Communication Tower Ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the Communication Tower Ordinance as a whole or any part thereof other than the part so declared to be invalid or unconstitutional.

ARTICLE 5: EFFECTIVE DATE

Communication Tower Ordinance No. 31 shall take effect and be in force from and after 20 days from the date of completed publication. Subdivision regulations heretofore adopted are hereby repealed. Adopted (2nd Revision) this 8th day of October, 2014

Dated at Sturgis, South Dakota, this 8th day of October, 2014

Chairman Alan Aker _____
Commissioner

Attested: _____

Lisa Schieffer, Meade County Auditor

First Reading: May 2nd, 2007
Second Reading: August 2nd, 2007
Adopted: August 2nd, 2007

Revision 1 First Reading: July 8th, 2009
Second Reading: August 12, 2009
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