

**MINUTES
CITY OF JEFFERSON COMMON COUNCIL
TUESDAY, AUGUST 19, 2008**

The Tuesday, August 19, 2008 meeting of the City of Jefferson Common Council was called to order at 7:30 p.m. by Mayor Myers. Members present were: Ald. Beyer, Ald. Carnes, Ald. Endl, Ald. Cross, Ald. Oppermann, Ald. Beyer, Ald. Tully and Ald. Peachey. Also present were: City Administrator Freitag, City Attorney Brantmeier, City Clerk/Treasurer Stewart and City Engineer Ludwig.

PUBLIC PARTICPATION

Janet Werner, N4018 Highway Y, Jefferson presented the Council with a check for over \$1,000 for a Flood Relief Project in Riverfront Park. The money was raised during a Flood Relief Event held by the Jefferson Chamber of Commerce.

PUBLIC HEARING AND ACTION ON AN ORDINANCE TO CREATE SECTION 300-97, SECTION 300-22 A. (1)(D), SECTION 300-28 G., 300-29L AND 300-30 N. OF THE MUNICIPAL CODE OF THE CITY OF JEFFERSON RELATED TO TELECOMMUNICATIONS STRUCTURES AND TOWERS

Mayor Myers called the public hearing to order.

Administrator Freitag read the Notice of Public Hearing.

City Attorney Brantmeier gave an explanation of the proposed code change.

Mayor Myers then announced that if any citizen wished to address the Common Council on this issue, they could stand and give their name and address and address the Council at this time.

Mayor Myers noted that the owners were present for any questions the Council may have.

Hearing from no one, Mayor Myers closed the public hearing.

Ald. Brandel introduced Proposed Ordinance #13-08 for its second reading.

**CITY OF JEFFERSON
PROPOSED ORDINANCE NO. 13-08**

An Ordinance to Create Section 300-97, Section 300-22 A. (1)(d), Section 300-28 G., 300-29L., and 300-30 N. of the Municipal Code of the City of Jefferson Related to Telecommunications Structures and Towers

The Common Council of the City of Jefferson, Wisconsin, do ordain as follows:

Section 1. Section 300-97 of the City of Jefferson Municipal Code is hereby created:

300-97. Telecommunications Structures and Towers.

(A) Purpose. In order to accommodate the communication needs of the City of Jefferson while protecting the public health, safety, and general welfare of the community, the City of Jefferson finds that these regulations are necessary in order to:

1. Facilitate the provision of wireless telecommunications services to the residents and businesses of the City and accommodate the communication, radio, television, electricity generation needs while protecting the public health, safety, and general welfare;
2. Minimize the adverse visual effects of towers through careful design and setting standards;
3. Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements;
4. Maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunications antennas in order to reduce the number of towers needed to serve the community;
5. This Ordinance is not intended to have the effect of prohibiting wireless services to or within the City, but rather its intent is to ensure that a non-discriminatory, competitive, and broad range of telecommunications services and high quality telecommunications are provided to serve the community;
6. Accomplish the foregoing while preserving the character of the City so as to ensure that structures and other features that would distract from the natural scenic value and appearance of the City be minimized or prohibited.

(B) Wireless communications facilities.

1. Definitions. The following words, terms and phrases, when used in this subsection (g), shall have the meanings ascribed to them in this subsection (g)(1), except where the context clearly indicates a different meaning:

Alternative tower structure means manmade structures such as clock towers, bell steeples, lightpoles, and similar mounting structures.

Antenna means any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic magnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communications signals.

Backhaul network means the lines that connect a provider's towers/cell sites to one or more cellular telephone switching offices, and/or long distance providers, or the public switch telephone network.

Collocation means the provision of multiple antennas or more than one commercial wireless communication service provider or government entity on a single tower or structure.

FAA means Federal Aviation Administration.

FCC means Federal Communications Commission.

Personal communications service (PCS) means a provider of personal wireless service as defined in section 704 of the Telecommunications Act of 1996, 47 USC 332, and as the same may be amended from time to time.

Personal wireless facilities means transmitters, antenna structures and other types of installations used to provide personal wireless services.

Preexisting towers/antennas means any tower or antenna for which a building permit or conditional use permit has been properly issued prior to the effective date of this ordinance.

Tower means any structure that is designed and constructed for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like. The terms “tower” includes the structure and any support thereto.

2. Applicability/additional standards and exceptions.

- a. *New towers and antennas.* All towers or antennas constructed after passage of the ordinance from which this subsection is derived shall be subject to all applicable standards of this subsection (g).
- b. *Preexisting towers and antennas.* Any tower or antenna for which a permit has been properly issued prior to the effective date of the ordinance from which this subsection (g) is derived shall not be required to meet the requirements of this ordinance, other than the requirements of section 300-62. Any such towers or antennas shall be referred to hereinafter as “preexisting towers” or “preexisting antennas.”
- c. *Amateur radio and receive-only antennas.* This subsection (g) shall not apply to any tower, or the installation of any antenna, that is under 70 feet in height and is owned by a federally licensed

amateur radio station operator or is used exclusively for a receive-only antenna.

3. General requirements.

- a. *Building codes; safety standards.* To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time.
- b. *State or federal requirements.* All towers shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the state or federal government with the authority to regulate towers and antennas.
- c. *Collocation.*
 1. Petitioner shall design and construct the tower to allow for 6 telecommunications providers to locate on the tower at its currently proposed height, and to allow for a total of 8 telecommunications providers to locate on the tower if the tower is extended in height. The leased area shall also be of a sufficient size and configuration to allow the communications providers to install their telecommunications equipment. Petitioner shall lease space on the tower and within their leased area to telecommunications providers at a reasonable rate that is consistent with the going rate in the industry. In the event a communications provider alleges Petitioner is requesting a lease rate that is in excess of the industry standard for the area, and if Petitioner and the telecommunications provider are unable to reach agreement, Petitioner shall agree to submit the amount of the lease to binding arbitration between Petitioner and the prospective telecommunications provider, and shall offer to lease the property at the lease amount established by the arbitrator. No such communications operations shall be approved however, unless the City first issues a conditional use permit for that provider.
 2. Petitioner shall also reserve space at an elevation in excess of 80 feet agl on the tower and at the base of the tower for use by the City of Jefferson for police and fire public works or other municipal communication purposes in the

locations as to be determined by the City Council. This reservation shall be at no cost to the City, and shall continue during the term of this conditional use permit unless waived in writing by the City Council. In the event the City chooses to locate communications antennas on the tower and related equipment at the base of the tower, the City shall pay the actual costs of installation, but shall not have any other rent or payment obligations during the term of this conditional use permit. The City's use of the tower may be subject to reasonable restrictions that may apply to protect the tower and existing uses, which may be negotiated between Petitioner and the City. Upon failure to reach agreement as to such terms, either party may submit the matter to binding arbitration to determine the reasonable protections that Petitioner may require regarding the City's use, provide, however, that in no case shall the City be required to pay rent or other compensation to Petitioner.

- d. *Antenna height.* Antenna height shall not be restricted, provided that such device is installed and maintained in accordance with current standards of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate antennas.
- e. *Tower height.* Tower height shall be 190 feet maximum.
- f. *Separation between towers.* Separation distances between towers shall be applicable for a proposed tower and any preexisting towers. The separation distance shall be measured by a straight line between the base of an existing tower and the base of a proposed tower.

New Tower Type	Existing Tower Type		Monopole 75 feet in height or greater (feet)	Monopole less than 75 feet in height (feet)
	Lattice (feet)	Guyed (feet)		
Lattice	5,000	5,000	3,000	750
Guyed	5,000	5,000	3,000	750
Monopole more than 75 feet in height	1,500	1,500	3,000	750
Monopole less than 75 feet in height	750	750	1,500	750

g. *Availability of suitable existing towers, other structures or alternative technology.* No new tower shall be permitted unless the applicant demonstrates that no existing tower, structure or alternative technology that does not require the use of towers or structures can accommodate the applicant's proposed antenna. Evidence submitted to determine that no existing tower, structure or alternative technology can accommodate the applicant's proposed antenna may consist of any of the following:

1. No existing towers or structures are located within the geographic area which meets the applicant's engineering requirements.
2. Existing towers or structures are not of sufficient height to meet the applicant's engineering requirements.
3. Existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
4. The proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the proposed antenna.
5. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
6. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.
7. The applicant demonstrates that an alternative technology that does not require the use of towers or structures, such as a cable microcell network using multiple low-powered transmitters/receivers attached to a wireline systems, is unsuitable. Costs of alternative technology that exceed new tower or antenna development cost shall not be presumed to render the technology unsuitable.

h. *Aesthetics.*

1. Towers shall maintain either a galvanized steel finish or subject to any applicable standards of the FAA, be painted a light grey, so as to reduce visual obtrusiveness and blend into the natural setting and built environment, or otherwise camouflaged.
 2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.
 3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure to make the antenna and related equipment as visually unobtrusive as possible.
- i. *Lighting.* Towers shall not be artificially illuminated unless required by the FAA or any other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
 - j. *Fencing.* A tower shall be enclosed by security fencing not less than eight feet in height and secured so that it is not accessible by the general public. Fence design, materials and colors shall reflect the character of the surrounding area.
 - k. *Landscaping.* A buffer of plant materials (evergreen hedge or suitable landscaping treatments) to effectively screen the tower compound from public view and from adjacent properties shall be provided. The minimum buffer shall consist of a landscape strip at least five feet in width outside the perimeter of the tower compound. Existing mature tree growth and natural land forms shall be preserved to the maximum extent possible. In some cases, such as towers placed on large, wooded lots, natural growth around the property perimeter may be a sufficient buffer.
- l. *Accessory equipment and buildings.*
 1. Antennas mounted on structures on rooftops: The equipment cabinet or structure used in association with an antenna may be located on a roof. Equipment storage buildings or cabinets shall comply with all applicable building and zoning requirements.

2. Antennas mounted on utility poles, lightpoles or towers: The equipment cabinet or structure used in association with an antenna shall be sited in accordance with the development standards of the underlying zoning district. Equipment cabinets or structures shall be screened from view by an evergreen hedge or other suitable landscape treatments, except where the use of nonvegetative screening would better reflect and complement the architectural character of the surrounding neighborhood.
 - m. *Signs.* No signage or advertising is allowed to be placed on a wireless communication tower.
 - n. ~~*Tower separation from residential buildings or land.* Towers must be set back a distance equal to the height of the tower from any offsite residential structures or from any parcel of land zoned residential, unless approved by Planning Commission.~~
4. *Permitted uses.* The installation of a tower or antenna, including the placement of buildings or other supporting equipment used in connection with such tower or antenna, is permitted in all industrial zoning districts.
 - a. *Antennas or towers on existing structures.* An antenna or tower may be situated on the roof of a commercial, industrial, professional, institutional or municipal structure, provided that such device is installed and maintained in accordance with applicable state or local building codes, and complies with current standards of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate antennas. Antennas installed on a structure other than a new communication tower, or antennas installed on an existing communication tower shall be permitted where located on property owned, leased or otherwise controlled by the city, irrespective of zoning district, provided that a lease or other agreement to authorize such antenna or tower has been approved by the city.
 - b. *Antennas on existing towers.* The attachment of a new antenna on an existing tower may be allowed, to minimize adverse visual impacts associated with the proliferation and clustering of towers, provided that:
 1. A tower which is modified or reconstructed to accommodate the collocation of an additional antenna shall be of the same type as the existing tower, unless reconstructed as a monopole.

2. An existing tower may be modified or rebuilt to accommodate the collocation of additional antenna and may be moved on site within 50 feet of its existing location, but the relocation may only occur one time per communication tower.
 3. After a tower is rebuilt to accommodate collocation, only one tower may remain on site.
 4. The on-site relocation of a tower which comes within the separation distances to residential units or residentially zoned lands shall only be permitted when approved by the city. The separation distance required is the height of the tower.
- c. *Cable microcell network.* The installation of a cable microcell network may be permitted through the use of multiple low-powered transmitters/receivers attached to an existing wireline systems, such as conventional cable or telephone wires, or similar technology that does not require the use of towers.
- d. *Permit required.* All commercial wireless telecommunications structures, except amateur radio operators licensed by the FCC, require a Conditional Use Permit pursuant to the City of Jefferson Zoning Code.
- e. *Fees.*
1. Each permit granted pursuant to this Ordinance shall contain a condition, which requires the permittee to reimburse the City for all direct and indirect expenses reasonably incurred in connection with the modification, amendment, or transfer of the permit.
 2. Each permittee shall be required to reimburse the City for all direct and indirect expenses not otherwise covered by permit application fees reasonably incurred while reviewing, inspecting, and supervising the construction, installation, and/or maintenance of the wireless telecommunications facility authorized by a permit granted pursuant to this section.
 3. Costs incurred by the City in response to any emergency at the facility shall be included within the reimbursable expenses set forth in this section.

4. Except as otherwise provided, each permittee shall pay to the City, in consideration of the issuance of a wireless telecommunications Conditional Use Permit, the following:

- (a) A Conditional Use Permit Application fee of One thousand five hundred Dollars (\$1500.00).
- (b) An initial and annual report fee of five hundred Dollars (\$500.00).

5. *Conditional uses.* The installation of towers and antennas, including the placement of accessory equipment or buildings, may be allowed by conditional use permit in all commercial, agricultural, and industrial zoning districts. Such permit to be granted after hearing before the plan commission and recommendation to the council upon such conditions as are appropriate as determined in a case-by-case basis. Towers must be set back a distance equal to the height of the tower from any offsite residential structure.

6. *Removal of abandoned antennas and towers.* An antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the antenna or tower within 90 days of receipt of notice from the city notifying the owner of such abandonment. Failure to remove an abandoned antenna or tower within 90 days shall be grounds to remove the antenna or tower at the owner's expense. If there are two or more users of a single tower, then this subsection shall not become effective until all users cease using the tower.

7. *Removal of the Communications Facilities.* Within ninety (90) days after termination or expiration and non-renewal of this conditional use permit, Petitioner shall remove its tower, antennas, equipment, equipment building and all affiliated equipment or improvements that are part of the Communications Facilities. In the event the Communications Facilities are not removed from the premises within the 90-day period, the City shall have the right to remove the antennas, equipment, equipment building and all their components of the Communications Facilities at the expense of Petitioner. If such costs of removal have not been paid by Petitioner or the Owner of the Subject Property to the City within thirty (30) days after billing, the City may charge the costs of such removal to the Owner of the Subject Property by placing a charge on the tax roll as a special charge pursuant to Section 66.0627 of the Wisconsin Statutes.

8. *Nonconforming uses.* See section 300-62, nonconforming use regulations. (For existing telecommunicating structures and towers at the time of adoption of this ordinance).

Section 2. Section 300-22 A. (2)(d) of the City of Jefferson Municipal Code is hereby created:

§300-22. Industrial districts

A. ML Limited Industrial District. By virtue of its location and because of the existing and proposed character of development within and around the area, present and anticipated accessibility of major transportation facilities, and the availability of adequate facilities and other public services, the ML District is established.

(2) The following industrial uses shall be conditional uses and may be permitted as specified:

(a) Telecommunicating Structures and Towers.

Section 3. Section 300-28 G. of the City of Jefferson Municipal Code is hereby created:

§300-28. Public and quasi-public uses.

The following public and quasi-public uses shall be conditional uses and may be permitted as specified:

G. Telecommunicating Structures and Towers.

~~**Section 4.** Section 300-29 L. of the City of Jefferson Municipal Code is hereby created:~~

~~**§300-29. Residential uses.**~~

~~The following residential and quasi-residential uses shall be conditional uses and may be permitted as specified. The following provisions shall be complied with. (See Schedule of Regulations, §300-24.)~~

~~**L. §300-29. Residential uses.**~~

~~The following residential and quasi-residential uses shall be conditional uses and may be permitted as specified. The following provisions shall be complied with. (See Schedule of Regulations, §300-24.)~~

Section 4. Section 300-30 N. of the City of Jefferson Municipal Code is hereby created:

§300-30. Highway-oriented and commercial uses.

The following commercial uses shall be conditional uses and may be permitted as specified:

N. Telecommunicating Structures and Towers.

§300-31. Industrial and agricultural uses.

The following industrial and agricultural uses shall be conditional uses and may be permitted as specified:

I. Telecommunicating Structures and Towers

Section 5. This Ordinance shall take effect and be in full force after passage and publication as provided by law and notification and attestation.

Ald. Brandel, seconded by Ald. Endl moved to recommend Proposed Ordinance #13-08. On call of the roll, motion carried unanimously.

CONSENT AGENDA

Ald. Oppermann introduced Resolution No. 33.

**CITY OF JEFFERSON
RESOLUTION NO. 33**

BE IT RESOLVED, by the Common Council of the City of Jefferson, Wisconsin that the consent agenda for August 19, 2008 is hereby adopted.

The consent agenda for tonight includes:

- ◆ Vouchers Payable for July and August 2008 in the amounts of \$25,598.41 and \$118,863.60 and Payroll Summary for August 1, 2008 in the amount of \$138,194.66.
- ◆ Council Minutes from the ~~July 31, 2008 Special Common Council Minutes~~ and the August 5, 2008 Regular and Closed Session Meeting of the Common Council.
- ◆ Licenses as Approved by the Regulatory Committee.
 - ◆ Operator's Licenses
 - ◆ Special Class B Licenses

A correction to the August 5th minutes was then noted: Ordinance 12-08 was not unanimously approved; the correct roll was 5 to 1 – Ald. Peachey casting the dissenting vote.

Ald. Oppermann, seconded by Ald. Brandel moved to recommend Resolution No. 33. On call of the roll, motion carried unanimously. Ald. Brandel and Ald. Tully abstained from the approval of the minutes.

RESOLUTION APPROVING THE GENERAL PURPOSE FINANCIAL STATEMENTS AND AUDIT REPORT

Ald. Peachey introduced Resolution No. 34.

**CITY OF JEFFERSON
RESOLUTION NO. 34**

BE IT RESOLVED by the Common Council of the City of Jefferson that the 2007 General Purpose Financial Statement and Audit Report are hereby accepted.

Heather Acker of Virchow Krause and Company LLP then provided the Council with an overview of the General Purpose Financial Statements and Audit Report. Ms. Acker reviewed the report and then entertained questions from the Council.

Ald. Peachey, seconded by Ald. Cross moved to recommend Resolution No. 34. ON call of the roll, motion carried unanimously.

RESOLUTION APPROVING THE SEWER UTILITY FINANCIAL STATEMENTS AND AUDIT REPORT

Ald. Endl introduced Resolution No. 35.

**CITY OF JEFFERSON
RESOLUTION NO. 35**

BE IT RESOLVED by the Common Council of the City of Jefferson that the 2007 Sewer Utility Financial Statement and Audit Report are hereby accepted.

Heather Acker of Virchow Krause LLP then provided the Council with a brief overview of the 2007 Financial Statements and Audit Report. Mr. Andres then noted that the Utility is financially healthy and that all the financial requirements for the Clean Water Fund have been met.

Ald. Endl, seconded by Ald. Brandel moved to recommend Resolution No. 35. On call of the roll, motion carried unanimously.

Ald. Cross seconded by Ald. Tully moved to adjourn the Tuesday, August 19, 2008 meeting of the Common Council. On call of the roll, motion carried unanimously.

The minutes of the Tuesday, August 19, 2008, meeting of the Common Council are uncorrected. Any corrections made thereto will be noted in the proceedings at which time the minutes are approved.

Please Publish: ASAP
Need an affidavit
Not in the legal section