

## Chapter 332

### UTILITIES

**[HISTORY: Adopted by the Town Board of the Town of Erin as indicated in article histories. Amendments noted where applicable.]**

#### GENERAL REFERENCES

Streets and sidewalks — See Ch. 317.

Zoning — See Ch. 360.

#### ARTICLE I

##### Electric and Telephone Lines

**[Adopted 1-10-1972 by Ord. No. 72-2]**

##### **§ 332-1. Purpose; underground installation.**

The Town Board hereby declares that it is in the interests of the public welfare of the residents of the Town of Erin that all new electric and telephone lines within the said Town be installed underground. This provision shall not apply to repairs or rebuilding of existing lines nor to the installation of new service lines from an existing line to a single new customer, unless such new lines shall be over 300 feet in length.

##### **§ 332-2. Violations and penalties.**

Any person who shall violate any of the provisions of this article shall, upon conviction thereof, forfeit not less than \$1 nor more than \$200 together with the costs of prosecution, and in default of payment of the forfeiture and costs of prosecution shall be imprisoned in the county jail until said forfeiture and costs are paid, but not exceeding 90 days.

#### ARTICLE II

##### Transmission Facilities

**[Adopted 7-11-1988 by Ord. No. 88-3]**

##### **§ 332-3. Permit application.**

Every utility intending to install, construct or operate transmission facilities within the rights-of-way of Town roads shall first make application for and obtain a permit from the Town Clerk in accordance with the following:

- A. The application shall be in the form as established by the Clerk or may be in the form as approved for such purposes and used by the Wisconsin Department of Transportation.
- B. The applicant shall file copies of construction plans which will reasonably describe the proposed work.
- C. The application shall be accompanied by the fee prescribed in § 332-6 hereof.

**§ 332-4. Construction standards and specifications.**

Every applicant granted a permit under this article shall comply with the following standards and specifications:

- A. The location of the transmission lines within the highway right-of-way shall be as represented in the application submitted as a basis of this consent and permit.
- B. All poles used in the construction of overhead transmission lines shall be set in a manner and location so as not to interfere with use of the highway by the public or use of adjoining land by the owners thereof.
- C. Trees and shrubs shall not be cut, trimmed or branches thereof cut or broken in the construction of the line without the consent of the owner thereof.
- D. All brush, excavation spoil, or debris resulting from construction or maintenance of the line shall be removed from the highway right-of-way.
- E. Work may only be done when ground conditions are dry.
- F. Driving through ditches at specified access points will be permitted, but not wherever contractors feel permissible. The Town Board reserves the right to stop any or all work if conditions are not compatible.
- G. Temporary sheeting and shoring shall be used as necessary to prevent soil caving in trenches and tunnels.
- H. There shall be no open cuts to close roads and all boring must be at least three feet from the edge of blacktop.
- I. All excavations shall be backfilled with suitable granular material, placed in layers compacted mechanically to the density of the adjacent ground. Any subsequent settlements or heavings shall be repaired to the satisfaction of the Town Board.
- J. Roadway surfaces, pavements, structures, vegetation or other highway facilities damaged shall be repaired or restored within 30 days from the date that construction or maintenance work is begun unless specific approval is granted by the Town Board for additional time to complete restoration, any damage to the surface must be blacktopped. Whenever any digging is done in the ditch, it must be restored with topsoil and reseeded, or if necessary to prevent erosion, sodded.
- K. Construction and maintenance operations shall be performed without closing any highway to traffic except as may be specifically authorized by the Town Chair. Unless otherwise authorized, two-way traffic shall be maintained at all times. Proper barricades, signs, flags, lights, and flagmen shall be provided and maintained at all locations where construction and maintenance work interferes with normal traffic use of the highway.
- L. All driveways shall remain open to vehicular traffic or be restored within four hours. Before any digging is done in private driveways, owner's permission must be obtained.

**§ 332-5. Restrictions and conditions.**

Permits granted under this article are subject to the following restrictions and conditions:

- A. The cost of constructing and maintaining the transmission lines shall be the obligation of the applicant. It shall be the responsibility of the permit applicant to determine the location of, and suitably protect from damage, any underground facilities already in place in the area influenced by the permitted work.
- B. Transmission lines shall be relocated at the expense of the applicant, its successors or assigns if necessary to permit alteration, improvement, or maintenance of the highway as may hereafter be ordered by the Town Board.
- C. The applicant will pay all damage caused by the applicant, including any agent, employee or servant, in the execution of the work for which a permit is granted and will hold and save the Town of Erin free and harmless of any damages or claims against it caused by or resulting from such work.
- D. Upon completion of the work, written notice thereof shall be filed with the Town Clerk.
- E. The Town Board reserves the right to stop any work which does not conform to the provisions of this article.

**§ 332-6. Permit fee.** <sup>1</sup>

Each application for a permit shall be accompanied by a fee as established by the Town Board in the Town Fee Schedule payable to the Town of Erin.

ARTICLE III  
**Telecommunication Facilities**  
[Adopted 8-26-1998 by Ord. No. 98-17]

**§ 332-7. Findings.**

It is the finding of the Erin Town Board that communication and other facilities, including but not limited to cellular and microwave towers, are potentially inconsistent with surrounding uses of land within the Town and the unique aesthetics of the terrain and scenic vistas throughout the Town and create special problems if allowed to develop and locate as a matter of right. It is the intent of the Erin Town Board to allow such uses within the areas designated by this article only when the conditions imposed herein are met. Conditions so imposed as a basis for granting a conditional use permit shall be binding on all grantees, assignees, heirs, legatees, donees, transferees and trustees of anyone requesting a conditional use permit.

**§ 332-8. Definitions.** [Amended 4-23-2001]

As used in this article, the following terms shall have the meanings indicated:

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<sup>1</sup>. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

COMMERCIAL TELECOMMUNICATIONS FACILITY — An apparatus and/or structure such as a tower, antenna, monopole, panel, microwave dish, including accessory structures or equipment, used or intended to be used by the applicant or by others for the commercial electromagnetic transmission of information, or primarily for the support of facilities conducting such transmission, but not including facilities used for amateur or recreational purposes such as ham radio or citizen band radio facilities or satellite dish stations. For purposes of this article, a commercial facility includes a facility owned and/or operated by or for the benefit of a nonprofit organization, if the intended use is more than personal recreational-hobby use.

**§ 332-9. Districts allowed.** <sup>2</sup>

Commercial telecommunications facilities shall be allowed only as a conditional use in the Upland Conservancy and Institutional Districts, and in the Industrial District when the site has an approved and established industrial use. These districts must be in conformity with the Town Land Use Plan. Any site proposed prior to the adoption of the current comprehensive revision of the Town Land Use Plan and Zoning Ordinance may be required to conform to certain additional conditions that will insure that there will be no nonconformity in the future.

**§ 332-10. Application for conditional use permit.**

- A. The application for a conditional use permit for such a structure shall include the following:
- (1) Name, address and phone number of the applicant, the owner of the site, any architect or engineer, contractor or other agent.
  - (2) The legal description of the subject site.
  - (3) A textual and graphic depiction of the structure proposed along with a description of the operation or use of the structure and site.
  - (4) A site plan for the subject property showing elevations, ground cover, existing and proposed structures.
  - (5) The application fee as established by the Town Board in the Town Fee Schedule.<sup>3</sup>
- B. Applications for a conditional use approval of commercial telecommunications facilities shall be made to the Zoning Administrator. The Administrator shall estimate the need of the Town to engage expertise to assist the Town in reviewing the application. The Zoning Administrator shall inform the applicant of these requirements and the expectation that the applicant will pay for all or part of these costs in advance as well as normal conditional use application fees and other normal Town fees and charges. The amount that the applicant will be required to

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2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

pay shall be confirmed by the Plan Commission at its initial review and may be modified by the Commission if additional expertise needs to be engaged. These amounts shall be due and payable from the applicant to the Town on a timetable established by the Town. Applicants will be expected to cooperate in sharing systems information, subject to reasonable protection of confidential business secrets, and in exploring grid modifications, and/or collocation and/or location at public properties to achieve Town objectives. The application shall not be approved by the Zoning Administrator for presentation to the Plan Commission or Town Board until initial background studies have been conducted under the auspices of the Town using funds deposited for this purpose by the applicant. Applications shall contain information on the company plan/projection for sites and facilities in the Town or Erin and within one section along the perimeter of the Town of Erin.

- C. The application form shall also require the applicant to consent to a technical study/verification conducted by a consultant hired by the Town, but paid for from the advance deposit from the applicant, dealing with safety, necessity of location, alternative locations, height, alternative structural configurations, collocation, stealth siting, etc.
- D. Each application for a conditional use permit to allow construction of such facility, shall include either a preliminary or a certified statement that the construction of the tower, including reception and transmission functions, will not interfere with the usual and customary transmission or reception of radio, television, telephone and microwave service enjoyed by adjacent residential and nonresidential properties. In the event only a preliminary statement is submitted with the application, a final, certified statement of noninterference must be provided and approved by the Town prior to the issuance of a building permit. The statement shall be prepared by an engineer licensed by the State of Wisconsin or other professional accepted by the Town. In the event of interference the owner shall take all necessary measures to eliminate such interference, including but not limited to cessation of operations.

**§ 332-11. Approval of conditional use permit.**

The following findings must be made prior to the issuance of any conditional use permit for a commercial telecommunications facility:

- A. The proposed structure shall not endanger the health and safety of residents, including but not limited to the likelihood of the failure or collapse of such structure.
- B. The proposed structure shall not substantially impair the use of, or prove detrimental to neighboring properties, considering, among other relevant factors, the following:
  - (1) Elevation of the property on which such structure is proposed to be located and the appearance and visibility of such structure from neighboring and surrounding properties and from public rights-of-way.
  - (2) The location of the surrounding building and structures and public rights-of-

ways and their uses.

- (3) The character of the surrounding neighborhood and the Town Land Use Plan recommendations for the ultimate use of the surrounding properties.
- (4) The likelihood of interference with existing radio, television, telephone, and microwave reception or service.
- (5) The proposed structure will cause no objectionable noise, glare, physical activity or effects that will impair the peaceful enjoyment of neighboring properties.
- (6) The proposed structure will be served by adequate public services and facilities.
- (7) No graphic message or advertising may be permitted on such structure.
- (8) In the event the Federal Aviation Administration requires red beacon lighting, a special lens, which when installed, shall ensure that the safety lamps will have a minimal impact on adjacent home sites.
- (9) No commercial telecommunications facility may be established if there is a technically suitable space available on an existing communication tower or other location nearby.
- (10) All structures must meet minimum setback requirements as set by the Plan Commission after site plan review. Every effort should be made to have the fall distance lie within the property boundary. In no case should the fall distance be closer than 100 feet from a residence or a potential residence. [Amended 8-4-1999]
- (11) The entire facility must be reasonably aesthetically compatible with its environment.
- (12) Fencing must be provided to secure the site. No barbed wire or razor wire fencing is to be permitted.
- (13) Vegetative buffering must be provided to separate the facility and accessory buildings from adjacent land uses.
- (14) The facility's owner must file an annual report with the Building Inspector's office detailing how the facility is continuing to conform to the standards set forth herein or otherwise established by the Town.
- (15) A line of sight analysis identifying the potential visual and aesthetic impacts of the proposed tower on all adjacent and proposed residential zoning districts. The specific points to be included within the line of sight analysis shall be determined in coordination with the Town of Erin prior to preparation and completion of this analysis. The visual impact analysis shall be prepared and sealed by an engineer or architect registered by the State of Wisconsin. This shall be done at the expense of the applicant. The Town may employ consulting assistance to review the findings and conclusions of the visual

impact analysis. Where the site analysis shall indicate any of the following, an application may be denied:<sup>4</sup>

- (a) The tower will be highly visible from one or more public rights-of-way.
- (b) The tower may adversely affect a residential neighborhood when an average of at least 50% of total height of the proposed tower will be visible from one or more of the specific points utilized from final site analysis.
- (c) The tower may adversely affect adjacent nonresidential properties.

**§ 332-12. Investigation of alternatives; action on alternatives.**

Conditional use applications for telecommunications facilities may be denied, with or without invitation extended by action of the Plan Commission for resubmittal, in the event the Town identifies a reconfiguration of cells, grids on location of proposed facilities, or the like, based upon the finding by the Town that alternatives could reasonably satisfy needs of the applicant while better protecting Town concerns.

**§ 332-13. Conditions.**

The Commission shall condition any approvals as follows:

- A. All obsolete or unused facilities must be removed within 12 months of cessation of operation of the site.
- B. The structure shall be maintained along with all wires, conduits, cables, and other real and personal property associated with the facility and such facility shall be maintained in good condition, order, repair and dismantle.
- C. The owner of said structure shall provide indemnity insurance and performance bonds, or demonstrate financial responsibility and comply with all the rules and regulations issued by the Town relative to the construction, installation and operation and removal of such system.
- D. The Town shall be permitted to remove such structure in the event of noncompliance with the provisions of this permit.
- E. The Town shall be permitted discovery of any and all documents maintained by the owner of said facility relative to health hazards associated with such facility.
- F. If a new equipment building is necessary for transmitting, receiving and switching equipment, it shall be situated in the rear yard of the principal use and shall be screened with landscaping or other appropriate screening materials.
- G. Each conditional use application for a tower shall include written approval or a statement of no objection from other federal, state or county agencies that regulate tower sites, design and construction.

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4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).

- H. All proposed communication towers shall comply with current standards of the Federal Communications Commission for nonionizing electromagnetic radiation (NIER) and electromagnetic fields (EMF). Each conditional use application for such a tower shall include preliminary or certified documentation or a statement from a Wisconsin registered engineer or other professional accepted by the Town, indicating compliance with these standards.
- I. The Town may hire a consultant to evaluate the required NIER or EMF documentation. The fee charged by the consultant shall be paid, in advance, by the applicant.
- J. No-trespassing signs shall be posted.
- K. Towers shall be painted in neutral colors, designed to blend into the surrounding environment.
- L. All approved towers or other support structures established or used primarily for support or placement of telecommunications facilities shall be designed, built or adopted to hold no less than six transmission antennas on a collocation basis, and the approved applicant shall record a covenant committing to allowing shared usage if requested by the Town.

**§ 332-14. Violations and penalties.**<sup>5</sup>

Any person who shall violate any of the provisions of this article shall, upon conviction thereof, forfeit \$500. Each day on which violation continues shall constitute a separate offense. The Town retains the right to pursue injunction to terminate improper use.

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<sup>5</sup>. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. II).