

TOWN OF BURNS HARBOR, INDIANA

TOWN CODE

CHAPTER 17
THE TOWN OF BURNS HARBOR, INDIANA

**ORDINANCE TO REGULATE THE CONSTRUCTION, PLACEMENT
AND MODIFICATION OF COMMUNICATION FACILITIES (Ord. 161).**

WHEREAS, there is an increasing demand for Commercial Wireless Communications Services, as hereinafter defined, within the Town of Burns Harbor, Porter County, Indiana which has resulted in, and is likely to continue to result in, a proliferation of Communications Facilities, as hereinafter defined, within the Town of Burns Harbor; and,

WHEREAS, the Town Council of Burns Harbor believes it to be in the best interests of the residents of the Town of Burns Harbor, Porter County, Indiana, to encourage and facilitate the installation of necessary and desirable wireless communication infrastructure, while at the same time protecting the Town of Burns Harbor from the clutter and design of Communications Facilities which are incompatible with existing and future land use in the Town; and

WHEREAS, in order to achieve such goals, the Town Council of Burns Harbor has deemed it to be in furtherance of the health, safety and general welfare of the citizens of Burns Harbor, Porter County, Indiana to regulate the construction, placement and modification of Communications Facilities in order to: encourage the location of Communications Facilities in areas least disruptive to residential uses, parks and greenways and their uses, to be as unobtrusive and invisible as reasonably possible; and to promote current and long-range planning with communications service providers in order to better accommodate changing needs and technologies; and,

WHEREAS, the Town of Burns Harbor Town Council adopted the Burns Harbor Town Code on December, 13, 1995, pursuant to Ordinance No. 150; and,

WHEREAS, the Town Council of Burns Harbor has deemed it necessary to add an Ordinance to the Burns Harbor Town Code that addresses wireless communication tower issues;

NOW, THEREFORE, BE IT, AND IT HEREBY IS ORDAINED THAT Chapter 17 (Ordinance regulating wireless communication towers) is added to the Town of Burns Harbor Town Code to read as follows:

- A. APPLICABILITY:** Section 17.1 (Applicability) is added to the Burns Harbor Town Code to read as follows:

This ordinance shall apply to the construction, placement and modification of all Communication Facilities, as hereinafter defined, within the Town of Burns Harbor. No such Communications Facility shall be constructed, erected, placed, modified or altered within the Town of Burns Harbor unless a Special Exception and a Building Permit has first been obtained as required in this Ordinance; and such Communications Facility otherwise complies with the terms and provisions of this Ordinance.

B. DEFINITIONS. Section 17.2 (Definitions) is added to the Town of Burns Harbor Town Code to read as follows:

The following definitions shall apply throughout this Ordinance:

Antenna: A device used in communications which transmits or receives radio or television signals, or any other spectrum-based transmissions/receptions; but expressly excluding an antenna for the receipt of television signals which does not exceed thirty-five (35) feet in height, inclusive of the height of the building or structure to which it is attached. Antenna types include, but are not limited to, omni-directional "whip" antenna, directional "panel" antenna and ancillary antenna.

Co-Location: A single site where Commercial Wireless Communications Service equipment from more than one provider are located.

Commercial Wireless Communications Service: _____ FCC licensed commercial wireless communications services that are marketed to the general public, including cellular telephone, personal communications services (PCS), specialized mobilized radio (ESMR) paging and similar services.

Communications Facility: A land use facility, including without limitation any building, structure, Communications Tower, or accessory buildings and structures, which support Antennae or other devices intended for use in connections with the commercial transmission or receipt of radio or television signals, or any other spectrum-based transmissions/receptions.

Communications Tower: Any structure that is designed and constructed primarily for the purpose of supporting one or more Antennae. The term includes radio and television transmission towers, microwave towers, cellular telephone and Commercial Wireless Communications Service towers, alternative tower structures and the like. Tower types include, but are not limited to, guyed towers, wooden poles, lattice towers and monopoles.

Designed Fail Area: The area surrounding a Communications Tower in which the

tower could fall, should it fail as structurally designed. The Designed Fail Area is quantified in terms of linear distance from the base of the Communications Tower to the perimeter of the Designed Fail Area. The Designed Fail Area shall be certified by an Indiana licensed structural engineer.

Guyed Towers: A Communications Tower anchored by cables or wires typically ranging in height from 100 to 400 feet, which can accommodate a variety of users and Antennae.

Lattice Towers: A free standing Communications Tower typically ranging in height from 60-400 feet which can accommodate a variety of users. These towers generally have three or four support steel “legs” and hold a variety of Antennae.

Monopole Towers: A free standing Communications Tower which can accommodate multiple users. These towers consist of a single pole and hold a variety of Antennae.

Subdivision: A division of a tract of land into two (2) or more lots for the purpose of residential development. The plat of subdivision must be recorded in the office of the Porter County Recorder.

Tower Height: The vertical distance from the ground level to the highest point of a Communications Tower, or attached Antenna or similar device, including attached Communications Facilities.

Tower Setback: The horizontal distance from the base of a Communications Tower to an abutting property line and/or proposed right-of-way.

C. **SPECIAL EXCEPTION REQUIRED** Section 17.3 (Special Exception Required) is added to the Burns Harbor Town Code to read as follows:

No Communications Facility may be located in any Zoning District in the Town of Burns Harbor unless a Special Exception has been granted in accordance with the provisions of Section 15-4-6 et. seq of Chapter 15 of the Burns Harbor Town Code, as amended, and in accordance with the provisions of this Ordinance. In addition to any criteria set forth in Chapter 15 of the Burns Harbor Town Code, as amended, any application for a Special Exception for a Communications Facility shall be subject to the following requirements:

1. **Location of Communications Facilities.** A Communications Facility may be located in the BP, SD-1, SD-2, SD-3, SD-6 and SD-7 Zoning District upon receipt of a Special Exception as set forth herein, provided, however, that: no Communications Facility may be located in ROS, R, RC1, RC2, DD, SD-4 or SD-5 District; and no

Communications Facility may be located within the boundaries of any recorded residential subdivision. (*Ordinance 229*)

2. Application. An application for a Special Exception for a Communications Facility may be made by the property owner, the owner of the Communications Facility, or a duly authorized agent of the property owner or the owner of the Communications Facility. All applications shall be initially filed with the Building Commissioner. Each application shall include the following information and/or materials:
 - a) Name, address and telephone number of the applicant.
 - b) Name, address and telephone number of the property owner or owner of the Communications Facility, as applicable, if not the applicant.
 - c) Name(s), address(es) and telephone number(s) of the intended lessee(s) or user(s) of the Communications Facility, if different from the owner of the Communications Facility.
 - d) Name, address and telephone number of the contractor who will erect, alter, construct or relocate the Communications Facility, if not the applicant.
 - e) A report from an Indiana Licensed Professional Engineer, which:
 - i. Describes the height of the Communications Facility or tower height and the structural design of the Communications Facility and all footings or anchors. Cross-sections and elevations of Communications Towers shall be shown on a scaled drawing;
 - ii. Describes the height above grade for all potential mounting positions for co-located Antennae and the minimum separation distances between Antennae;
 - iii. Describes the Communications Facility's capacity, including the number and type of Antennae that it can accommodate and their effective range;
 - iv. Includes a copy of the stress sheets and calculations showing the structure's deadload and wind pressure capacities;
 - v. Includes a detailed site plan of the parcel or lot, showing the position of the Communications Tower and/or Communications Facility in relation to existing building(s) or structures, easements, right-of-ways and applicable setback lines.

Detailed site plans should include adjoining parcels and lots, if located within a distance equal to 120% of the Tower Height; and

- vi. Includes a description of any right-of-way cuts and/or utility service to be installed.
 - f) Written consent or other proof of authorization of the owner of the building, structure or land to which or on which the Communications Facility is to be erected.
 - g) Written documentation or other proof that the Communications Facility will be in service within one (1) month of completion of construction.
 - h) Copies of any necessary easements.
 - i) A written commitment by the applicant to notify the Town not less than thirty (30) days prior to any changes in ownership of the Communications Facility or ownership of the property in question.
 - j) Written proof of adequate liability insurance with minimum limits of \$2,000,000 per person or occurrence including property damage covering the Communications Facility owner and operator, together with a written commitment to file proof of such adequate liability insurance with the Town on an annual basis.
 - k) For all Communications Towers for Commercial Wireless Communications Service, a letter of intent committing the Communications 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.
 - l) A plan delineating any existing and proposed and/or anticipated Communications Facilities within the Town of Burns Harbor for the purpose of promoting long-range planning to minimize the number of Communications Facilities and their potential adverse impacts on the Town of Burns Harbor.
3. Review of Application: Upon receipt of an application for a Special Exception for a Communications Facility, the Building Commissioner shall forward the application to the Town of Burns Harbor Board of Zoning Appeals for its review. The Building Commissioner shall review the application for compliance with the provisions of this Ordinance and shall make recommendations to the Board within thirty (30) days after filing of the application with the Building Commissioner. (*Ordinance 229*)
4. Criteria for Approval of Special Exception: In addition to any criteria set forth in Section 15-4-6 and 15-4-9 of the Burns Harbor Town Code, as amended, the Board of Zoning

Appeals may not grant approval of a Special Exception for a Communications Facility unless the following criteria have been satisfied: (*Ordinance 229*)

- a) No new Communications Tower for a Commercial Wireless Communications Service may be approved unless the Board of Zoning Appeals finds that the telecommunication equipment planned for the proposed Communications Tower cannot be accommodated on an existing or approved Communications Tower or building within a two (2) mile search radius of the proposed Communications Tower due to one or more of the following reasons.
 - i. The planned equipment would exceed the structural capacity of the existing or approved communications Tower or building, as documented by a qualified and licensed Professional Engineer with the State of Indiana, and the existing or approved Communications Tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.
 - ii. The planned equipment would cause interference, materially impacting the usability of other existing or planned equipment at the Communications Tower or building, as documented by a qualified and licensed Professional Engineer in the State of Indiana, and the interference cannot be prevented at a reasonable cost.
 - iii. Existing or approved Communications Towers and buildings with the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed Professional Engineer with the State of Indiana.
 - iv. Other unforeseen reasons that make it unfeasible to locate the planned telecommunications equipment upon an existing or approved Communications Tower or building.
- b) The applicant has submitted all required application materials as set forth in Paragraph 2 of this Section above, including without limitation the plan of existing and proposed Communications Facilities and the written commitment to notify the County of changes in ownership of the Communications Facility and/or land;
- c) The proposed Communications Facility meets the design criteria specified in Paragraph 2(e) of this Section of this Ordinance;

- d) The applicant has furnished evidence of appropriate licensure and approval by the Federal Communications Commission (“FCC”) for the construction and operation of the Communications Facility, and Communications Tower approval by the Federal Aviation Administration (“FAA”), as applicable; and,
- e) As a condition of the grant of the Special Exception, the applicant shall be required to send written notice, by certified mail, to all Commercial Wireless Communications Service providers then licensed by the FCC to provide service within the Town of Burns Harbor, of the availability of the applicant's Communications Facility for Co-Location of future equipment or services. The applicant shall furnish proof of such notification prior to issuance of an Improvement Location Permit, in accordance with Paragraph 5 of Section 17.4 (Improvement Location Permit) of this Ordinance.

D. IMPROVEMENT LOCATION PERMIT: Section 17.4 (Improvement Location Permit) is added to the Burns Harbor Town Code to read as follows:

No Communications Facility may be constructed, erected, altered or modified in any Zoning District in the Town of Burns Harbor unless an Improvement Location Permit has been issued authorizing the same in accordance with the provisions of Chapter 15 of the Burns Harbor Town Code, as amended, and in accordance with the provisions of this Ordinance. In addition to any requirements set forth in Chapter 15 of the Burns Harbor Town Code, as amended, no Improvement Location Permit may be issued for the construction, erection, alteration or modification of any Communications Facility unless the requirements of this Section have been satisfied.

1. Application. An application for an Improvement Location Permit for a Communications Facility shall include the information required for the Special Exception application, as specified in Paragraph 2 of Section C of this Ordinance.
2. Permit Fees. All applicable Improvement Location Permit fees shall have been paid prior to issuance.
3. Evidence of Special Exception. The applicant shall file evidence demonstrating that a Special Exception has been duly granted pursuant to the provisions of Section C of this Ordinance, or demonstrating the Communication Facility's compliance with the provisions of Paragraph 1 of Section H of this Ordinance.
4. FCC and FAA Approval. The applicant shall furnish evidence of appropriate licensure and approval by the Federal Communications Commission (“FCC”) for the construction and Tower approval by the Federal Aviation Administration (“FAA”), as applicable.

5. Notification of Other Providers. The applicant for an Improvement Location Permit for the construction or erection of a new Communications Facility shall file proof of delivery of the written notice required in Paragraph 4(e) of Section C of this Ordinance.
6. Compliance with Design Standards. The proposed Communications Facility shall meet the design criteria specified in Section E of this Ordinance.
7. Site Plan Review. Applications for an Improvement Location Permit for alteration or modification of an existing Communications Facility shall be submitted to the Plan Commission for site plan approval prior to issuance of an Improvement Location Permit. Upon receipt of an application for an Improvement Location Permit for alteration or modification of an existing Communications Facility, the Building Commissioner shall review the application for compliance with provisions of this Ordinance, and shall make his recommendation to the Plan Commission within thirty (30) days after filing of the application. The Plan Commission shall then review the application and site plan for compliance with the provisions of this Ordinance and shall either approve or deny the site plan within thirty (30) days after receipt of the Building Commissioner's recommendations. No Improvement Location Permit for alteration or modification of an existing Communications Facility may be issued without Plan Commission approval of the application and site plan hereunder.
8. Antennae Mounted on Roofs and Walls. Notwithstanding the provisions of this Section D or Paragraph 7 of Section E, the installation of Antennae for Commercial Wireless Communications Service on existing roofs and walls may be approved by the Building Commissioner, provided that:
 - a) The requirements of Paragraphs 1 through 7 of this Section C including Plan Commission Review are satisfied; and,
 - b) The applicant submits a report prepared by a qualified Indiana Licensed Professional Engineer, indicating the suitability of the Antenna(e), and specifying the proposed method of affixing the antenna to the structure. Complete details of all fixtures and couplings, and the precise point of attachment shall be indicated.

Except as otherwise stated in Paragraph 7 of this Section, an Improvement Location Permit shall be issued within thirty (30) days of the filing of the completed application and satisfaction of the criteria specified in this Subsection.

E. DESIGN STANDARDS: Section 17.5 (Design Standards) is added to the Burns Harbor Town Code to read as follows:

Any Communications Facility constructed, erected, altered or modified in any Zoning District in the Town of Burns Harbor shall comply with the following design standards:

1. Accommodation of Multiple Users: Any proposed Communications Tower for Commercial Wireless Communications Service shall be designed structurally, electrically and in all respects, to accommodate both the applicant's Antennae and comparable Antennae for at least one (1) additional user, if the Communications Tower is over sixty (60) feet in height but less than one hundred (100) feet in height, or for at least two (2) additional users if the Communications Tower is over one hundred (100) feet in height.
2. Tower and Antenna Design Requirements. Proposed or modified Communications Towers and Antennae shall meet the following design requirements:
 - a) Communications Towers and Antennae shall be designed to blend into the natural surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by Federal and State authorities, such as the FAA.
 - b) Communications Towers for Commercial Wireless Communications Service shall be of a monopole design, unless the Board of Zoning Appeals determines that an alternative design would better blend in with the surrounding environment.
3. Minimum Tower Setbacks: The minimum Tower setback requirements for Communications Facilities shall be as follows:
 - a) All Communications Facilities shall, at minimum, meet the setback requirements of the underlying zoning districts, provided, however, that Communications Towers erected or constructed in Industrial zoning districts may encroach up to ten (10) feet into the rear setback area, if the adjoining parcel is also zoned industrial.
 - b) Communications Towers shall be set back from any right-of-way, a minimum distance equal to one half ($\frac{1}{2}$) the Tower Height, including all Antennae and attachments.
 - c) Communication Towers shall be setback on all sides a minimum distance equal to the Designed Fail Area, plus 10% of the Tower Height.
 - d) Communications Towers shall not be located between a principal structure and a public street.
 - e) Communications Facilities shall be set back from the boundaries of any recorded residential subdivision a minimum distance equal to the Tower Height plus 10% of the Tower Height.
 - f) A Communications Tower's setback may be reduced or its location in relation to a public street varied at the sole discretion of the Board of Zoning Appeals, to allow for the

integration of the Communications Tower into an existing or proposed structure, such as a church steeple, light standard, power line support device or similar structure.

4. Accessory Utility Buildings: All utility buildings and structures accessory to a Communications Tower or other Communications Facility shall be architecturally designed to blend in with the surrounding environment, and shall meet the minimum setback requirements of the underlying zoning district.
5. Screening: The lowest ten (10) feet of a communications ancillary building and tower shall be visually screened on a year-round basis with suitable vegetation and/or nearby buildings. The scale and nature of vegetation shall be of sufficient density to conform with the above requirements within three (3) years..
6. Security Fence: Communications Towers or other Communications Facilities and all ancillary buildings shall be protected by a seven (7) foot security fence erected within the visually screened area.
7. Maximum Tower Height: Communications Towers shall not exceed two hundred (200) feet in height in the following zoning districts: BP, SD-2, SD-3 and SD-6. Towers may exceed two hundred (200) feet in the SD-1 and SD-7 zoning district as long as adjoining properties are zoned the same. Roof mounted Antennae may exceed the maximum building height in the applicable zoning district by no more than twenty (20) feet. Antennae located on utility poles or other structures not covered above may not exceed 110% of the existing pole height. (*Ordinance 229*)
8. Lighting: Communications Towers and other Communications Facilities shall not be illuminated by artificial means and shall not display strobe light , except for such lighting as is specifically required by the FAA or other Federal or State authority for a particular Communications Tower.
9. Signs and Advertising: The use of any portion of a Communications Tower for the posting of any signs or advertisements of any kind, other than warning or equipment information signs, is prohibited.

F. FEES. Section 17.6 (Fees) is added to the Burns Harbor Town Code to read as follows:

The applicable fee(s) for applications for a Special Exception, an Improvement Location Permit, and/or Board of Zoning Appeals review under this Ordinance shall be as specified in Section 15-3-5 and Addendum 15-1 of Chapter 15 of the Burns Harbor Town Code.

In addition to the required fees, the applicant whether successful or not shall reimburse the Town for the cost of any experts retained by the Board of Zoning Appeals to assist the evaluation of the applicant's Petition. (*Ordinance 229*)

G. ENFORCEMENT: Section 17.7 (Enforcement) is added to the Burns Harbor Town Code to read as follows:

In addition to any applicable enforcement rights or remedies available under the Burns Harbor Code, or applicable state or federal law, the following shall apply:

1. **Inspections:** All Communications Facilities for which an Improvement Location Permit is required shall be subject to inspection by the Building Commissioner or his designee. If an easement is required for location of a Communications Facility on the property, the easement shall be staked by an Indiana licensed and registered Land Surveyor so as to provide proof that the Communications Facility has been constructed within the easement. Footing inspections may be required by the Building Commissioner for all Communications Facilities having footings. All Communications Facilities containing electrical wiring shall be subject to the provisions of the National Electric Code.
2. **Right of Entry:** In order to determine if any Communications Facility is unlawfully constructed, erected, altered, or modified in compliance with the provisions of this Ordinance and applicable building codes and ordinances of the Town of Burns Harbor, the Building Commissioner or his respective designees may enter onto property to investigate the matter, and may order that appropriate action be taken to bring such Communications Facility into compliance.
3. **Removal.** The Building Commissioner shall have the authority to order the correction or removal of any Communications Facility that is constructed, erected, altered or modified in violation of this Ordinance and/or applicable building codes or ordinances of the Town of Burns Harbor, or that constitutes an unlawful non-conforming use under this Ordinance.

H. NON-CONFORMING COMMUNICATIONS FACILITIES: Section 17.8 (Non-conforming Communications Facilities) is added to the Burns Harbor Town Code to read as follows:

Communications Facilities in existence on the date of adoption of this Ordinance which do not conform or comply with the provisions of this Ordinance are subject to the following:

1. **Legal Non-Conforming Communications Facility:** Any Communications Facility located within the Town of Burns Harbor on the date of adoption of this Ordinance, which does not conform to the provisions of this Ordinance shall be deemed a legal non-conforming provided that the following requirements are satisfied:
 - a) The Communications Facility:

- i. was constructed pursuant to a validly issued Improvement Location Permit Building Permit if one was required under applicable law at the time of construction; and,
 - ii. was constructed under, or, as of the date of the adoption of this Ordinance, existed pursuant to, a validly issued Variance or Special Exception;
 - or,
 - b) As of the date of the adoption of this Ordinance, the Communications Facility had legal, non-conforming use status.
2. **Unlawful Communications Facility:** A Communications Facility as specified in subparagraphs (1) or (2) below, is an unlawful Communications Facility:
- a) Any non-conforming Communications Facility which does not meet the criteria for a legal nonconforming use as specified in Paragraph 1 of this Subsection is an unlawful Communications Facility.
 - b) A Communications Facility meeting the criteria for a legal non-conforming use under Paragraph 1 of this Section H shall immediately lose its legal non-conforming use status if:
 - i. The Communications Facility, because of improper installation or maintenance, becomes or constitutes a threat to public health or safety, if the condition is not remedied within sixty (60) days after written notice from the Building Commissioner or his designee, as applicable;
 - ii. The Communications Facility is demolished or damaged (i.e. because of fire, weather conditions, etc) to the extent of fifty (50%) percent or more of its value;
 - iii. The permit, variance or Special Exception under which the Communications Facility was permitted expires or lapses, or any condition of such permit, variance or special exception expires, lapses or ceases to exist; or,
 - iv. The Communications Facility is structurally altered so as to prolong its expected life, unless such alteration is made in compliance with the provisions of this Ordinance.
3. **Obligation of Owners:** Nothing in this Ordinance shall relieve the owner or user of a Communications Facility that is a legal non-conforming use, or the owner of the property on which the legal non-conforming Communications Facility is located, from any obligation to maintain the Communications Facility in a safe condition and in good repair.

I. CONFLICTING ORDINANCES: Section 17.9 (Conflicting Ordinances) is added to the Burns Harbor Town Code to read as follows:

Any Ordinance or provision of this Ordinance of Burns Harbor in conflict with the provisions of this Ordinance is hereby superseded by this Ordinance.

J. SEVERABILITY: Section 17.10 (Severability) is added to the Burns Harbor Town Code to read as follows:

The invalidity of any section, clause, sentence or provision of this Ordinance shall not affect the validity of any other part of this Ordinance which can be given effect without such invalid part or parts.

K. ENFORCEMENT: Section 17.11 (Enforcement) is added to the Burn Harbor Town Code to read as follows:

1. Compliance: It shall be the duty and obligation of the owner(s) and occupants or operator(s) of land and uses subject to a variance or Special Exception and approved site plan therefore, that the continued use of such land shall at all times be in compliance with the use requirements of this Chapter. Failure thereof shall be violation of this Chapter and subject to the penalties and remedies provided in this Chapter and the continuance thereof is declared to be a nuisance per se.
2. Penalties:
 - (a) Any person who willfully or knowingly violates any provision of this Chapter shall be fined for each offense a sum of not less than Seven Hundred and Fifty (\$750.00) Dollars and no more than Two Thousand Five Hundred (\$2,500.00) Dollars.
 - (b) Each occurrence or violation of any provision of this Chapter shall constitute a separate offense. Each day of violation shall be deemed a separate occurrence for penalty purposes.
3. Other Remedies: No provision of this Chapter shall be construed to impair any common law or statutory cause of action, or legal remedy therefrom, of any person for injury or damage arising from any violation of this Chapter or from other law.

L. EFFECTIVE DATE: Section 17-12 (Effective Date) is added to the Burns Harbor Town Code to read as follows:

This Ordinance shall be in full force and effect after it's passage and approval by the Town Council of the Town of Burns Harbor, Porter County, Indiana and publication as required by law.

PASSED AND ADOPTED by the Town Council of the Town of Burns Harbor on this 12th day of July, 2000.

TOWN COUNCIL OF THE
TOWN OF BURNS HARBOR

CLIFFORD J. KEPPEN,
Town Council President

ATTEST:

ESTHER NICKELL
CLERK/TREASURER
TOWN OF BURNS HARBOR