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ORDINANCE NO. 586

AN ORDINANCE TO AMEND THE POLSON DEVELOPMENT CODE TO PROVIDE REGULATIONS FOR WIRELESS COMMUNICATION FACILITIES:

WHEREAS, the City of Polson adopted the Polson Development Code in 1993; and,

WHEREAS, the 1996 Federal Telecommunications Act requires local governments to allow wireless telecommunication service providers to serve an area and the present Polson Development Code does not do so due to high and tower location constraints; and,

WHEREAS, the City Council finds that the public safety, health, and welfare requires amendment of the Polson Development Code in the particulars set forth below to prohibit uses which may be in conflict with a contemplated growth policy and zoning plan the City intends to study within a reasonable time hereof; and,

WHEREAS, all steps necessary and required to amend the Polson Development Code have been observed, the Board of Lake County Commissioners has adopted the proposed Appendix I thereto, attached as Exhibit A, and the City Council deems amendment of the Polson Development Code necessary and appropriate in order to comply with the terms of the 1996 Federal Telecommunications Act.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF POLSON, MONTANA:

1. That the Polson Development Code is hereby amended to include Appendix I, Detailed Performance Standards for Wireless Communication Facilities, a copy of which is attached hereto as Exhibit A and by this reference made a part hereof as if fully set forth in this place.
2. The Polson Building and Planning Office shall have the responsibility to administer the terms of Appendix I adopted herein.
3. That this Ordinance shall be applicable within the City limits and up to 1 mile beyond the said corporate boundaries, and shall remain in force and effect for a period of six months from the date of adoption hereof, thereafter to be extended, if at all, for one year upon a further public hearing.

REPEALING CLAUSE: All Ordinances or parts of ordinances in conflict herewith are hereby repealed.

FIRST READING: September 16, 2002.

SECOND READING: October 7, , 2002.

NOW, THEREFORE, it is resolved that the subject Ordinance shall become effective on November 7, 2002.

PASSED AND ADOPTED THIS 7th day of October , 2002.

CITY OF POLSON


Randy Ingram, Mayor

ATTEST:

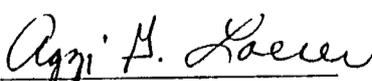

Aggi Loesser, City Clerk

EXHIBIT "A"

DETAILED PERFORMANCE STANDARDS FOR
WIRELESS COMMUNICATION FACILITIES
APPENDIX I
POLSON DEVELOPMENT CODE

A. Purpose

1. To accommodate the provision of wireless communication services to residents, businesses and visitors.
2. To enhance the ability of service providers to serve the community as quickly, effectively and efficiently as possible by clarifying the permitting process and design requirements.
3. To protect residential property values and the visual environment from the adverse impacts of communication facilities through careful design standards.
4. To limit the number of towers needed to serve the Polson area by requiring the co-location of wireless communication devices on existing and new antenna support structures, rooftop-mounted structures, public buildings and utilities.

B. Definitions

1. **Antenna:** Any structure or device used for the purpose of collecting or transmitting electromagnetic waves, including but not limited to directional antennae such as panels, microwave dishes, and satellite dishes and omni-directional antennae, such as whip antennae.
2. **Antenna Support Structure:** Any structure or device designed, constructed, used and/or erected for the purpose of attaching, mounting or otherwise affixing antennae. The term includes but is not limited to buildings, light poles, radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative antenna support structures, and the like. The term includes the structure and any support thereto.
3. **Antenna Support Structure Height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure including any attached antennae. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.
4. **Co-location:** The use of a wireless communications facility by more than one wireless communications provider.
5. **FAA:** Federal Aviation Administration.
6. **FCC:** Federal Communications Commission.
7. **Non-Conforming:** Antenna support structures and/or facilities in existence on the date of the adoption of the Polson Development Code that do not comply with the regulations contained therein.
8. **Wireless Communication Facility:** A facility for the transmission and/or reception of radio frequency, microwave or other signals for communications purposes, typically consisting of an equipment enclosure, an antenna support structure, foundation and one or more antennae. Amateur radio and land mobile radio are excluded from this definition.

C. Applicability

All wireless communication facilities located within the Polson Master Plan area except for tribal, allotment or trust lands are subject to this ordinance/resolution. Amateur radio and other residential communication devices are exempt from the application of this ordinance/resolution.

D. Location

Wireless communication facilities within the Polson Master Plan area may be permitted in all zoning districts if the proposal meets the requirements of Section E. (General Standards), Section F. (Co-location Requirements), and Section I.

(Application Information) and the application is approved according to the terms of Section J. (Application and Appeal Procedure).

The use of existing buildings and other structures for the placement of antennae is hereby encouraged. Additionally, all wireless communication facilities must meet the requirements of the FAA and FCC.

E. General Standards

- 1. **Height:** The maximum antenna support structure height is 70 feet.
- 2. **Design:** The tower associated with a wireless communication facility shall be a monopole or similar structure designed so that guy wires are not necessary. Lattice towers are prohibited. Creative designs that seek to hide the structure or minimize the visual impact are encouraged.
- 3. **Spacing:** The minimum distance from the base of an antenna support structure to the closest boundary of a residentially zoned parcel is equal to the height of the structure, including antennae. The spacing requirement does not apply to parcels adjacent to an existing wireless communication facility (i.e., there is no spacing requirement between antenna support structures).
- 4. **Color:** All structures at a wireless communication facility shall be non-reflective and finished with a uniform earth or sky tone color including white, gray and brown. Galvanized steel is considered non-reflective.
- 5. **Lighting:** No tower shall be artificially lit unless to assure safety as required by the FAA or FCC. If lighting is required, red beacons are preferable to flashing strobe lights.
- 6. **Signage:** No advertising is permitted anywhere on the facility. Identification signage that lists contact information and is less than four square feet in size shall not be considered advertising.
- 7. **Screening:** Communication facilities shall not include staffed offices, vehicle or equipment storage or other uses not required to send, receive or relay transmissions unless they are screened from public view.
- 8. **Fencing:** A chain link or solid wood or masonry fence at least six feet in height shall be constructed and maintained around the perimeter of the wireless communication facility. Barbed wire fences are prohibited within the City limits. If the facility is located on top of a building or other structure, no fencing is required.
- 9. **Landscaping:** A continuous hedge at least four feet in height when planted shall be planted and maintained around the perimeter of the fencing to provide a visual screen. If the facility is located on top of a building or other structure, no landscaping is required.

F. Co-location Requirements

- 1. New antenna support structures shall be designed to accommodate the applicant's antenna and at least one additional antenna unless technically infeasible.
- 2. All new antennae must co-locate on existing or approved antenna support structures or existing structures. If co-location is not feasible, the service provider must demonstrate evidence supporting its claim. Such evidence may consist of the following:
 - A. No existing structures are located within the geographic area required to meet the applicant's technical requirements.
 - B. Existing structures are not of sufficient height or strength (including the possibility of reinforcement) to support the proposed antenna.
 - C. The applicant's proposed antenna would electromagnetically interfere with an existing antenna or vice versa.

- D. The cost to co-locate substantially exceeds the costs to erect a new facility.
- E. Property owners or owners of existing facilities are unwilling to accommodate the applicant's needs.
- F. The applicant clearly demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

G. Abandonment

If at any time the use of a wireless communication facility is discontinued for 180 days, the facility shall be declared abandoned. Determination of abandonment shall be made by the Zoning Administrator who shall have the right to request documentation from the facility owner regarding support or antenna usage. Upon abandonment, the facility owner will have 90 days to:

- 1. Re-use the facility or transfer it to another service provider who will re-use it; or
- 2. Dismantle the facility and return the site to pre-construction condition. If the facility is not removed within 90 days of determination of abandonment, the City of Polson or Lake County may remove the facility at the property owner's expense.

H. Variance

If a service provider is unable to meet the requirements of this ordinance/resolution, the service provider may petition the applicable planning board and elected officials or board of adjustment for a variance. Such a request must include the fee associated with a variance request, steps to be taken to minimize impacts to surrounding landowners and demonstrate why the applicant cannot comply with the requirements. Variances from this resolution/ordinance may be granted so long as, in the board's determination, no other reasonable options exist and all relevant impacts are mitigated.

I. Application Information

The applicant shall submit the following information for review:

- 1. A site plan showing the location and legal description of the site, adjacent roadways, parking and access, areas of vegetation and landscaping, setbacks from property lines, rights-of-way, easements, covenants and residentially zoned areas, and the location of all improvements within the proposed or existing facility.
- 2. A vicinity map showing properties and listing the names and addresses of landowners within 1000 feet and describing land uses.
- 3. Elevation drawings showing all antennae, towers, structures, fencing, lighting, signage, landscaping and other improvements.
- 4. A statement describing the reasons for the proposed design, the need for the facility including its role in the larger network, the capacity of the antenna and the number and type of antennae it can accommodate. Present and future need must be demonstrated by the applicant.
- 5. A letter of intent to allow co-location on the antenna support structure.
- 6. A letter of intent to remove the facility at the expense of the facility owner or landowner if it is abandoned. The letter shall include a signed statement by the property owner consenting to the County or City staff entering the property to remove an abandoned facility.
- 7. Proof of ownership of the land upon which a communication facility is proposed to be constructed or a copy of the appropriate lease or rental agreement.
- 8. Proof of legal and physical access.

- 9. A statement by a licensed professional engineer that the facility will comply with all FAA and FCC standards for structures and radio emissions and local, state and/or federal building codes.
- 10. A copy of the applicant's current FCC license.

J. Application and Appeal Procedure

Upon receipt of a complete application and a designated fee, the Zoning Administrator will issue proper legal notice and notify landowners within 1000 feet of the proposed location. The Polson City-County Planning Board shall hold a public hearing and make a recommendation to the appropriate governing body. The recommendation of the planning board shall be based upon the application's degree of compliance with this ordinance/resolution. The governing body shall meet to decide on the proposal and issue a decision within 60 days from the date of the public hearing.

All appeals of a staff decision may be made to the appropriate board of adjustment by way of an application and fee. Appeals shall be noticed in a newspaper of general circulation 15 days prior to a public hearing and impacted parties shall receive written notice of the hearing. All appeals of a board of adjustment's decision may be made to district court.

K. Non-conforming uses

- 1. Non-conforming antenna support structures may continue to be used but may not be expanded or increased in height or size (with the exception of additional antenna arrays) without complying with these regulations and permitting process.
- 2. Non-conforming antenna support structures which are damaged to less than 50 percent of the replacement cost may be repaired and restored to the former use, location and dimensions. If damaged to more than 50 percent of replacement cost, the replacement antenna support structure shall be brought into compliance with these regulations.
- 3. Minor modifications to existing facilities shall be reviewed by a Zoning Administrator. Examples of such modifications include additional antenna arrays or general maintenance.

L. Penalties

Any person, firm or corporation that violates the provisions of this ordinance/resolution upon conviction shall be guilty of a misdemeanor. Each separate violation of this ordinance/resolution shall be deemed a separate offense. This includes landowners, contractors, service providers and other parties. In cases of violation, the Lake County Attorney and/or Polson City Attorney shall prosecute to the fullest extent of the law.

M. Severability

If any part or portions of this ordinance/resolution is declared invalid or unenforceable by a court of competent jurisdiction, the remainder shall nonetheless continue in effect.

N. Licensure

All service providers must annually submit a copy of their FCC license and supporting information that demonstrate that they are using the wireless communication facilities in the Polson Master Plan area.