

## Section

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## § 162.01 Definitions.

(A) *Antenna array*. An antenna array is one (1) or more rods, panels, discs or similar devices used for transmission or reception of radio frequency signals, which may include omnidirectional antenna (rod), directional antenna (panel) and parabolic antenna (disc). The antenna array does not include the support structure defined below.

(B) *Attached wireless communication facility (Attached WCFs)*. An attached WCF is an antenna array that is attached to an existing building or structure (attachment structure), which structures shall include but not be limited to utility poles, signs, water towers, with any accompanying pole or device (Attachment device) which attaches the antenna array to the existing building or structure and associated connection cables, and an equipment facility which may be located either inside or outside of the attachment structure.

(C) *Co-location/site sharing*. Co-location/site sharing shall mean use of a common WCF or common site by two (2) or more wireless license holders or by one (1) wireless license holder for more than one (1) type of communications technology and/or placement of a WCF on a structure owned or operated by a utility or other public entity.

(D) *Equipment facility*. An equipment facility is any structure used to contain ancillary equipment for a WCF which includes cabinets, shelters, a buildout of an existing structure, pedestals or any other similar structures.

(E) *FAA*. FAA shall mean the Federal Aviation Administration.

(F) *FCC*. FCC shall mean the Federal Communications Commission.

(G) *Height*. When referring to a WCF, height shall mean the distance measured from the ground level to the highest point on the WCF, including the antenna array.

(H) *Setback*. Setback shall mean the required distance from the property line of the parcel on which the WCF is located to the support structure.

(I) *Support structure*. A support structure is a structure designed and constructed specifically to support an antenna array and, for purposes of this chapter, shall be limited to monopoles. Any device (attachment

device) which is used to attach an attached WCF to an existing building or structure (attachment structure) shall be excluded from the definition of and regulations applicable to support structures.

(J) *TCA*. TCA shall mean the Federal Telecommunications Act of 1996.

(K) *Temporary wireless communication facility*. A Temporary WCF shall mean a WCF to be placed in use for ninety (90) or fewer days.

(L) *Wireless communications*. Wireless communications shall mean any personal wireless services as defined in the TCA, which includes FCC licensed commercial wireless telecommunications services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and similar services that currently exist or that may in the future be developed.

(M) *Wireless communication facility (WCF)*. A WCF is an unstaffed facility for the transmission and/or reception of wireless telecommunications services, usually consisting of an antenna array, connection cables, an equipment facility and a support structure to achieve the necessary elevation.

(N) *Zone*. Zones are as defined in Title XV, Chapter 150 of the Code of Ordinances of the City of Muncie, Indiana.  
(Ord. No. 66-98, 12-7-98)

## § 162.02 Purpose and goals.

(A) The purpose of this chapter is to establish general and specific guidelines for the siting and regulation of WCFs.

(B) The goals of this chapter are to:

(1) Provide a range of locations for WCFs in a variety of zones;

(2) Provide clear performance standards addressing the siting of WCFs within each zone;

(3) Encourage the location of WCFs on existing structures, including utility structures, signs, water towers, buildings and other WCFs where feasible;

(4) Encourage co-location and site sharing of new and existing WCFs;

(5) Facilitate the use of public property and structures for WCFs;

(6) Streamline and expedite any existing permitting procedures in accordance with the intent of any state statute enacted with the purpose to effect compliance with the TCA; and,

(7) Enhance the ability of providers of telecommunication services to provide such service to the community quickly, effectively and efficiently.  
(Ord. No. 66-98, 12-7-98)

**§ 162.03 Applicability.**

(A) Pre-existing WCFs, functioning prior to the effective date of this chapter shall not be required to meet the requirements of this chapter except as specified in section 162.08.

(B) This chapter shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

(C) This chapter shall supersede all conflicting requirements of other codes, titles or chapters regarding the locating, siting and regulating of WCFs. (Ord. No. 66-98, 12-7-98)

**§ 162.04 Performance and usage standards.****(A) Height standards.**

(1) Attached WCFs shall not add more than twenty (20) feet in height to the existing attachment structure to which it is attached.

(2) WCFs with support structures shall not exceed a maximum height of two hundred (200) feet.

**(B) Setback standards.**

(1) Attached WCFs with antenna arrays for attached WCFs are exempt from the setback standards of this title and from the setback standards for the zone in which they are located. An attached WCF antenna array may extend up to five (5) feet horizontally beyond the edge of the attachment structure so long as the antenna array does not encroach upon an adjoining parcel.

(2) Equipment facilities shall meet the setback standards for buildings for the underlying zone in which they are located.

(3) WCFs with support structures shall be setback a minimum of twenty (20) feet from all lot lines.

**(C) Landscaping and screening.**

(1) WCFs with support structures shall be landscaped to effectively screen the view of the base of the support structure, the equipment facility and the security fence; to ensure the public health, safety, comfort and to improve the environment surrounding the support structure.

(2) All WCFs with support structures shall comply with the green belt and landscaping standards as established in Title XV Chapter 150 section 150.214.5 (B)(3)(a), (B)(3)(b)5, (B)(3)(f)(1—5 and 7) and (B)(3)(g) of the Code of Ordinances for the City of Muncie, except for the following:

(a) All fences shall be as specified in subsection (G) of this section; and,

(b) All references to owner or developer shall apply to the site lessee.

(3) All required landscaping shall be completed by the conclusion of construction; however, if the weather conditions prohibit this, then all landscaping shall be completed within eight (8) months after con-

clusion of construction. Surety, such as, but not limited to, bonds, letters of credit or personal guaranties may be required to ensure installation.

(4) Appeals of any decision rendered in connection with this subsection shall be reviewed pursuant to Title XV, Chapter 150, Section 150.214.5(C) of the Code of Ordinances for the City of Muncie.

(5) Attached WCFs are exempt from this subsection.

(6) Existing mature growth and natural land forms on the site shall be preserved to the extent feasible; however, vegetation that causes interference with the antennas or inhibits access to the equipment facility may be trimmed.

**(D) Aesthetics placement, materials and colors.**

(1) Attached WCFs which are significantly visible to the adjacent residences shall be designed so as to blend in with the existing structure to the extent feasible, including placement in a location which is consistent with proper functioning of the WCF and the use of compatible or neutral colors.

(2) Attached WCFs which are significantly visible to adjacent residences and have aesthetic impacts that are not able to be reasonably mitigated by placement and color solutions are required to be screened in a reasonable and achievable manner.

(3) WCFs with support structures shall be designed so as to blend in with the existing surroundings to the extent feasible, including the use of compatible colors.

(4) Equipment facilities shall, to the extent practicable, use materials, colors and textures that will blend with the natural setting and environment.

**(E) Lighting and signage.**

(1) WCFs shall not be artificially lighted, except for:

(a) Security and safety lighting of the equipment facility as long as the lighting is appropriately down shielded and kept within the boundaries of the site; and,

(b) Such lighting of WCFs as may be required by the FAA or FCC or other applicable authority and installed in a manner to comply with the requirements but to minimize the impact on adjacent parcels.

(2) WCFs shall not display any signage, logos, decals, symbols or any messages of a commercial or noncommercial nature, except for a small message containing provider information and other such identification and emergency telephone information and such other information as may be required by local, state or federal regulations governing WCFs.

**(F) Noise.**

(1) No equipment shall be operated at a WCF so as to produce noise in excess of the applicable noise standards under the laws of the State of Indiana,



except for emergency situations requiring the use of a backup generator. In such situations, the noise standards may be exceeded on a temporary basis.

(G) *Security fencing.*

(1) WCFs with support structures shall be enclosed by a security fence not less than six (6) feet in height and the support structure shall be constructed in a manner that reasonably prevents unauthorized personnel from climbing the support structure. Nothing herein shall prevent security fencing which is necessary to meet other state or federal requirements.

(H) *Radio frequency emissions.*

(1) The TCA gives the FCC sole jurisdiction of the regulation of radio frequency (RF) emissions and WCFs which meet the FCC standards shall not be conditioned or denied on the basis of RF impacts.

(2) In order to provide information to its citizens, applicants for WCFs shall be required to provide information, upon request, on the projected power density of the facility and how this meets the FCC standards.

(3) No unusual sound emissions such as alarms, bells, buzzers or the like are permitted on any WCFs.

(I) *Structural integrity.*

(1) WCFs with support structures must be constructed to the Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision F Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" as it may be updated or amended. (Ord. No. 66-98, 12-7-98)

## § 162.05 Siting requirements.

(A) *Attached WCFs.*

(1) Attached WCFs are allowed in all zones as long as the attachment structure complies with the underlying zone's requirements and the attached WCF complies with this chapter and any other applicable local, state or federal regulations.

(B) *WCFs with support structures.*

(1) WCFs with support structures are allowed in all zones as long as they:

(a) Are at least three hundred (300) feet in every direction from any type of residence, measuring from the security fence on the side closest to the residence, if the height is between one hundred fifty (150) feet and two hundred (200) feet; or

(b) Are at least two hundred (200) feet in every direction from any type of residence, measuring from the security fence on the side closest to the residence, if the height is between one hundred (100) feet and one hundred forty-nine (149) feet; or

(c) Are at least one hundred fifty (150) feet in every direction from any type of residence, measuring from the security fence on the side closest to the residence, if the height is less than one hundred (100) feet; and

(d) Comply with this chapter and any other applicable local, state or federal regulations.

(2) WCFs with support structures that cannot comply with subsection (1)(a)—(c) may request a variance. Such request shall be made to the Delaware-Muncie Board of Zoning Appeals, as outlined in section 162.06 of this chapter.

(C) *WCFs as a part of a coordinated development approval.*

(1) WCFs as a part of a proposed residential or nonresidential subdivision, planned unit development, site plan, rezoning or other coordinated development approval shall be permitted as outlined in subsections (A) and (B).

(D) *WCFs for temporary terms.*

(1) Temporary WCFs, of any type, are allowed for a term of not more than ninety (90) days with a possible one time ninety (90) day extension. Said temporary WCFs are to allow service that was interrupted by an act of God or other means to continue while repairs are being completed on the permanent WCF. The city building commissioner shall be notified, within one (1) business day from the date of discovery that repairs are needed, that repairs are going to begin and that a temporary WCF is going to be used. If the damage to the WCF exceeds fifty (50) percent of the replacement cost, either a WCF building permit or an attached WCF building permit, whichever is appropriate, will be required before repairs are made.

(E) *Co-location/site sharing of WCFs.*

(1) No building permit shall be issued for a new WCF with support structure or attached WCF until the applicant demonstrates, to the reasonable satisfaction of the Delaware-Muncie Metropolitan Board of Zoning Appeals, by written report, that no existing support structure or attachment structure can accommodate the applicant's proposed antenna. Evidence to be submitted shall consist of:

(a) Whether existing structures are located within the geographical area required to meet the applicant's engineering requirements.

(b) Whether existing structures are of sufficient height to meet the applicant's engineering requirements.

(c) Whether existing structures have sufficient structural strength to support applicant's proposed antenna and related equipment.

(d) Whether the applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing structures or whether the antenna on the existing structures would cause interference with the applicant's proposed antenna.

(e) Whether the fees, costs or contractual provisions required by the owner of the existing structure or for adapting an existing structure for co-location are unreasonable. Costs exceeding the costs of creating a new structure are to be deemed unreasonable.

(f) Any other limiting factors presented by the applicant that render existing structures unsuitable.

(2) Any type of WCF that co-locates or site shares, either on a support structure or an attachment structure, shall be required to comply with this chapter and shall be required to purchase only a WCF co-location/site sharing building permit.

(3) It shall be a violation of this chapter for an owner of a WCF to unreasonably deny co-location/site sharing. For purposes of this subsection, an unreasonable denial of co-location/site sharing shall include, but shall not be limited to, instances when the owner of a WCF causes a wireless license holder, utility or public entity to reject co-location/site sharing due to an excessively high, non-market monthly co-location fee or when the owner of a WCF denies co-location/site sharing due to unjustified competitiveness concerns.

**(F) Distance between WCFs.**

(1) No new WCFs with support structures may be constructed within a distance of seven hundred fifty (750) yards from an existing support structure, unless the applicant can demonstrate to the Delaware-Muncie Metropolitan Board of Zoning Appeals, through the variance procedure, that a lesser proximity to the existing structure is required to satisfy the operational requirements of the applicant.

**(G) Location on public property.**

(1) To encourage and facilitate the use of public property for the siting of any type of WCFs, any variance request for a proposed WCF on public property shall be approved or denied expeditiously and without extensive cost to the applicant.  
(Ord. No. 66-98, 12-7-98)

**§ 162.06 Approval procedures.**

**(A) Allowed outright.**

(1) Where an attached WCF is allowed outright, only an attached WCF building permit is required.

(2) Where a WCF with support structure is allowed outright, only a WCF building permit is required.

**(B) Variance request.**

(1) Where a WCF with support structure applicant requests a variance, the Delaware-Muncie Metropolitan Board of Zoning Appeals shall review such requests and issue such variance when deemed appropriate.

(2) Each applicant requesting a variance shall submit a scaled plan and a scaled elevation view and other support drawings, calculations and other documentation showing the location and dimensions of the WCF and all improvements associated therewith, including information concerning structure specifications, antenna locations, equipment facilities, landscaping, fencing and, if relevant, topography, adjacent uses and existing vegetation.

(3) A review fee of five hundred dollars (\$500.00) and a radio frequency intermodulation study fee of five hundred dollars (\$500.00) (for co-location applicants only and only if the applicant does not supply the study itself) shall accompany each request. These fees may be used to engage consultants to review the technical aspects of the plan and study (if required).

(4) Notice, hearing, approval or denial and appeal of the request shall be given in accordance with Title XV Chapter 150 section 150.234 of the Code of Ordinances for the City of Muncie.

(5) Every request for variance shall be reviewed for compliance with section 162.04 of this chapter; however, the applicable standards may be reduced or waived so long as the approval of the WCF meets the goals and purpose of this chapter.

(6) The Delaware-Muncie Metropolitan Board of Zoning Appeals may impose conditions in addition to the standards of section 162.04 if all of the following findings have been made:

(i) The WCF would result in probable significant adverse visual impacts on nearby residences.

(ii) The conditions are based upon the goals and purposes of this chapter and other adopted policies and regulations of this jurisdiction.

(iii) The conditions are reasonable and capable of being accomplished.

(7) Upon granting of a variance, the applicant shall then be required to purchase the appropriate building permit.  
(Ord. No. 66-98, 12-7-98)

**§ 162.07 Removal of abandoned WCFs.**

(A) Any WCF that is not operated for a continuous period of twelve (12) months shall be considered abandoned and the WCF owner shall remove the WCF within ninety (90) days after notice from the City of Muncie. If the abandoned WCF is not removed within ninety (90) days, the City of Muncie may remove it and recover all costs from the WCF owner, including all attorney's fees and court costs that may arise while collecting these costs.

(B) If there are two (2) or more users of a WCF, then subsection (A) shall not be effective until all providers cease to use the WCF for a continuous period of twelve (12) months.

(C) If the owner of an abandoned WCF cannot be located or is no longer in business, the requirements of subsection (A) shall be the responsibility of the landowner on whose property the WCF is located.  
(Ord. No. 66-98, 12-7-98)

**§ 162.08 Nonconforming WCFs.**

(A) WCFs in existence on the effective date of this chapter and that do not comply with the requirements of this chapter are nonconforming WCFs and are subject to the following provisions:

(1) Nonconforming WCFs may continue in use for the purpose now used but may not be expanded without complying with this chapter, except as herein-after provided.



(2) Nonconforming WCFs may add additional antennas (belonging to the same carrier or other carriers) subject to the purchase of a WCF building modification permit and the additional antenna must comply with this chapter.

(3) Nonconforming WCFs which are hereafter damaged or destroyed due to any reason or cause may be repaired and restored to their former use, location and physical dimensions subject to obtaining a WCF building modification permit but without otherwise complying with this chapter; however, if the damage to the WCF exceeds fifty (50) percent of the replacement cost, the WCF may only be repaired or restored pursuant to the requirements of this chapter.

(4) The owner of any nonconforming WCF may replace, repair, rebuild and/or expand such WCF only in order to improve the structural integrity of the facility, to allow the facility to accommodate co-located antennas or facilities, or to upgrade the facilities to current engineering, technological or communications standards, without having to conform to the provisions of this chapter, so long as such facilities are not increased in height by more than ten (10) percent.  
(Ord. No. 66-98, 12-7-98)

#### **§ 162.09 Modifications of WCFs.**

(A) Any modification to any type of WCF allowed under this chapter shall be approved by the city building commissioner.

(B) Any modification of any type of WCF that is approved by the city building commissioner shall require a WCF building modification permit.  
(Ord. No. 66-98, 12-7-98)

#### **§ 162.10 Severability.**

(A) The various sections, subsections and clauses of this chapter are hereby declared to be severable. If any part, sentence, paragraph or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the chapter shall not be affected thereby.  
(Ord. No. 66-98, 12-7-98)

#### **§ 162.11 Repealer.**

(A) Any ordinances or parts thereof in conflict with the provisions of this chapter are hereby repealed to [the] extent of such conflict.  
(Ord. No. 66-98, 12-7-98)

#### **§ 162.12 Enforcement.**

(A) The city building commissioner or an authorized representative shall enforce all provisions of this chapter.  
(Ord. No. 66-98, 12-7-98)

#### **§ 162.13 Effective date.**

(A) This chapter shall take effect on December 7, 1998.  
(Ord. No. 66-98, 12-7-98)