

CHAPTER 834

WIRELESS COMMUNICATIONS FACILITIES

834-1. Purpose and Legislative Intent.

The wireless communications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless communications facilities. Likewise, amendments to the Indiana Code, effective beginning in 2016, preserved, with limitations, local government authority to regulate the land use aspects of wireless communication structures and facilities. The purpose of this Wireless communications Facilities Chapter is to ensure that residents, public safety operations, and businesses in Monroe County have reliable access to wireless communications networks and state of the art wireless communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to Monroe County zoning, planning, and design standards.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless communications structures and facilities complies with all applicable Federal and Indiana laws and is consistent with Monroe County land use policies, Monroe County adopts the following comprehensive, wireless communications regulations. No provisions of this Chapter shall apply to the siting of Distributed Antenna Systems (DAS) or wireless facilities located within and intended to provide wireless coverage exclusively within a structure.

This Chapter establishes parameters for the siting of wireless communications structures and facilities. By enacting this Ordinance it is Monroe County's intent to:

- (A) Ensure Monroe County has sufficient wireless infrastructure to support public safety wireless communications throughout Monroe County;
- (B) Ensure access to reliable wireless communications services throughout all areas of Monroe County;
- (C) Encourage the use of existing structures for the collocation of wireless communications facilities;
- (D) Encourage the location of wireless support structures, to the extent possible, in areas where any potential adverse impacts on the community will be minimized;
- (E) Facilitate the deployment of wireless communications structures and facilities in residential areas, as necessary to establish comprehensive wireless services across Monroe County, in a manner that preserves the character of the residential areas;
- (F) Minimize the potential adverse effects associated with the construction of monopoles and replacement of towers through the implementation of reasonable design, landscaping, and construction practices;
- (G) Ensure public health, safety, welfare, and convenience; and,
- (H) To help ensure compliance with federal legislative changes to zoning authority under the 1996 Wireless communications Act and Indiana Code Sections 8-1-32.3-19 through 8-1-32.3-21.

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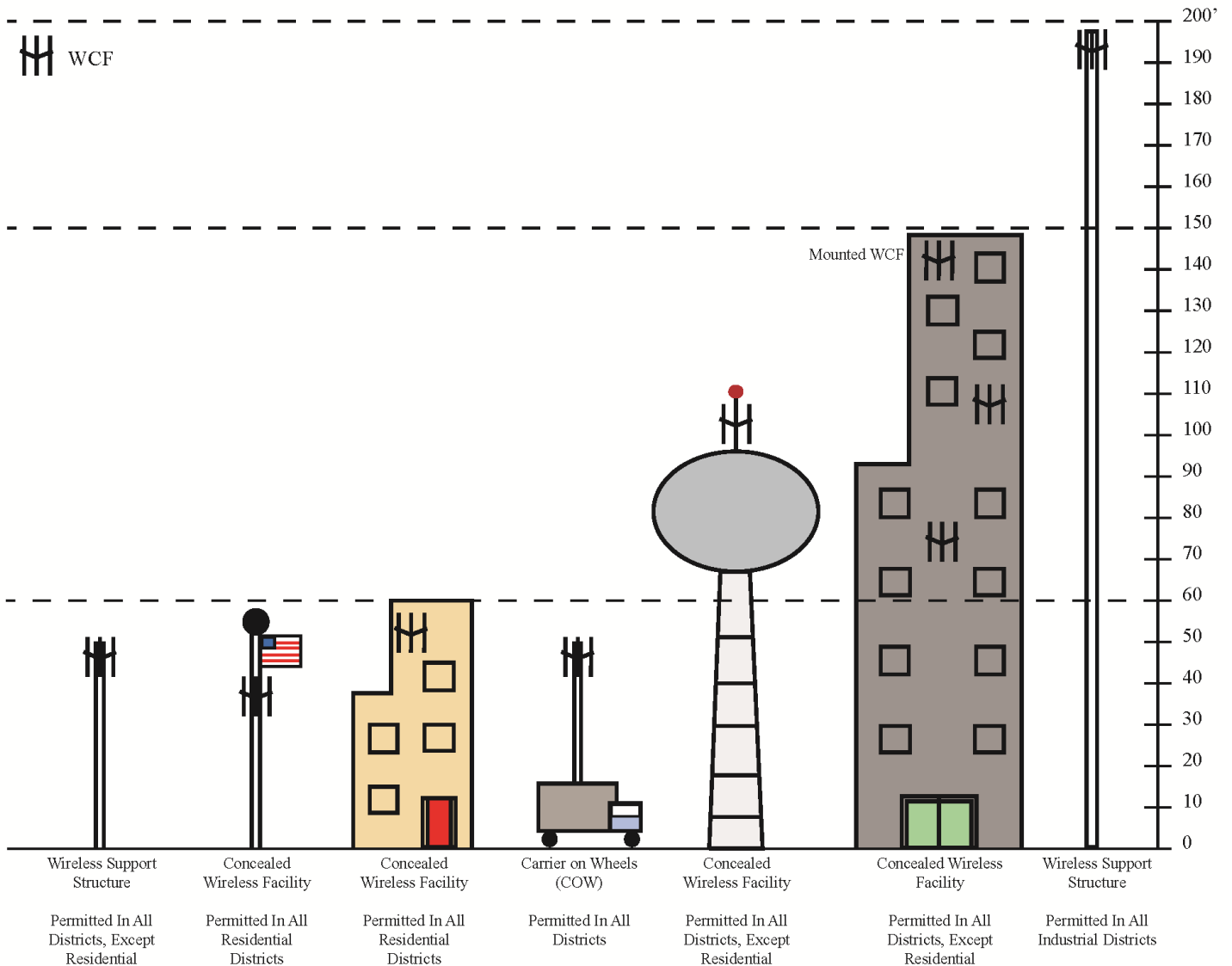
834-2.

Approvals Required for Wireless communications Facilities and Wireless support structures.

- (A) For the purposes of this ordinance:
- (1) The term Residential Zoning Districts refers to:
RE2.5, RE1, RS2, RS3.5, RS4.5, RT7, RM7, RM15
AG, FR, CR, ER, LR, SR, MR, HR, UR
 - (2) The term Industrial Zoning Districts refers to:
IL, IG, LI, HI
- (B) Administrative Review.
- (1) Collocations and minor modifications shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this Ordinance.
 - (2) New wireless support structures that are less than sixty (60) feet in height shall be permitted in any zoning district except residential after administrative review and administrative approval in accordance with the standards set forth in this ordinance.
 - (3) Concealed wireless communications facilities that are less than sixty (60) feet in height shall be permitted in any residential zoning district after administrative review and administrative approval in accordance with the standards set forth in this ordinance.
 - (4) Concealed wireless communications facilities up to one hundred and fifty (150) feet shall be permitted in any zoning district other than residential after administrative review and administrative approval in accordance with the standards set forth in this Ordinance except as noted above.
 - (5) New wireless support structures up to one hundred ninety-nine (199) feet in height shall be permitted in any industrial zoning district after administrative review and administrative approval in accordance with the standards set forth in this Ordinance.
 - (6) Wireless communication facilities placed on utility poles shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this ordinance.
 - (7) The use of COWs shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this ordinance if the use is not otherwise exempt.

(C) Administrative Review Eligible Facilities Exhibit Figure 834-1:

WCF Administrative Approval Requirements



Note: Any Proposed WCF not meeting Administrative Approval Requirements needs Conditional Use Approval

(D) Conditional Use Permit.

Wireless communications facilities and wireless support structures not permitted by administrative approval shall be permitted in any district upon the granting of a conditional use permit from the Board of Zoning Appeals in accordance with the standards set forth in this ordinance.

(E) Exemptions.

Ordinary maintenance of existing wireless communications facilities and support structures, as defined herein, shall be exempt from additional zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this ordinance:

- (1)** antennas used by residential households solely for broadcast radio and television reception;
- (2)** satellite antennas used solely for residential or household purposes;
- (3)** COWs placed for a period of not more than one hundred twenty (120) days at any location within Monroe County after a declaration of an emergency or a disaster; or,
- (4)** television and AM/FM radio broadcast towers and associated facilities.

834-3. Wireless communications facilities and wireless support structures permitted by administrative approval.

(A) Wireless communications facilities located on existing structures.

- (1)** Wireless communications facilities are permitted in all zoning districts when located on any existing structure subject to administrative approval in accordance with the requirements of this Part.
- (2)** Antennas may exceed the maximum building height limitations within a zoning district, provided they do not constitute a substantial modification.
- (3)** Minor modifications are permitted in all zoning districts subject to administrative approval in accordance with the requirements of this part.
- (4)** Minor modifications shall not increase the fall zone to an extent that would result in a violation of the setback requirement of 834-5 (B) (1).

(B) New wireless support structures.

- (1)** New wireless support structure less than sixty (60) feet in height shall be permitted in all zoning districts except residential districts in accordance with the requirements of this part.

- (2)** Concealed wireless communications facilities that are less than sixty (60) feet in height shall be permitted in any residential district after administrative review and administrative approval provided that it meets the applicable concealed wireless communications facility standards in accordance with this ordinance
- (3)** New wireless support structures up to one hundred ninety-nine (199) feet in height shall be permitted in all industrial districts in accordance with the requirements of this part. The height of any proposed wireless support structure shall not exceed the minimum height necessary to meet the coverage or capacity objectives of the facility. The setback of the structure shall be governed by the setback requirements of the underlying zoning district.
- (4)** A monopole or replacement pole under the regulatory control of the Indiana Utility Regulatory Commission that will support utility lines as well as a wireless communications facility shall be permitted within utility easements or rights-of-way, in accordance with requirements of this part.

 - (a)** The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
 - (b)** The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
 - (c)** The height of the monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility wireless support structures.
 - (d)** Monopoles and the accessory equipment shall be set back a minimum of fifteen (15) feet from all boundaries of an easement or right-of-way.
 - (e)** Single carrier monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
 - (f)** Poles that use the structure of a utility tower for support are permitted under this part. Such poles may extend up to twenty (20) feet above the height of the utility tower.
- (5)** Monopoles or replacement poles located on public property or within public rights-of-way that will support public facilities or equipment in addition to wireless communications facilities shall be permitted in accordance with requirements of this part. Examples include, but are not limited to, municipal communication facilities, athletic field lights, traffic lights, street lights, and other types of utility poles in the public right-of-way.

(C) Concealed wireless communications facilities.

- (1)** Concealed wireless communications facilities shall be permitted in all zoning districts after administrative review and administrative approval in accordance with the requirements below. Concealed facilities in residential areas must not exceed sixty (60) feet and comply with the requirements below in order to qualify for administrative review.
- (2)** Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- (3)** Existing Structures utilized to support the Antennas must be allowed within the underlying zone district. Such structures may include, but are not limited to, flagpoles, bell towers, clock towers, crosses, monuments, smoke stacks, parapets, and steeples.
- (4)** Setbacks for Concealed Wireless Facilities that utilize a new structure shall be governed by the setback requirements of the underlying zoning district.

(D) COW facilities and minor modifications.

The use of COWs shall be permitted in any zoning district after administrative review and administrative approval in accordance with the standards set forth in this ordinance if the use of the COW is either not in response to an officially declared emergency or will last in excess of one hundred-twenty (120) days.

(E) General standards, design requirements, and miscellaneous provisions.

- (1)** Unless otherwise specified herein, all wireless communications facilities and wireless support structures permitted by administrative approval are subject to the applicable general standards and design requirements of Section 834-5 and the provisions of Section 834-6.
- (2)** Unless otherwise specified herein, all new wireless support structures shall be monopole construction.

(F) Administrative review process.

- (1)** All administrative review applications must contain the following:
 - (a)** Administrative review application form signed by applicant.
 - (b)** Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.

- (c) Site plans detailing proposed improvements which complies with Chapters 814 and 815 of this ordinance. Drawings must depict improvements related to the requirements listed in this part, including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
- (d) In the case of a new wireless support structure:
 - (1) Statement documenting why collocation cannot meet the applicant's requirements. Such statement may include justifications, including why collocation is either not reasonably available or technologically feasible as necessary to document the reasons why collocation is not a viable option; and,
 - (2) The applicant shall provide a list of all the existing structures considered as alternatives to the proposed location. The applicant shall provide a written explanation why the alternatives considered were either unavailable, or technologically or reasonably infeasible.
 - (3) Applications for new Wireless support structures with proposed Wireless communications Facilities shall be considered together as one application requiring only a single application fee.
- (e) Administrative review application fee as listed in the Monroe County Plan Commission and Board of Zoning Appeals published fee schedule.
- (f) A fall zone calculation for the wireless support structure certified by a registered engineer.
- (g) Applicant is responsible for identifying any confidential or proprietary information included in the application and for providing that information only on green colored paper.

(2) Procedure.

- (a) Within ten (10) days of the receipt of an application for administrative review, the Administrator shall either:
 - (1) Inform the applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements. If the applicant is not so informed, the application shall be deemed complete; or
 - (2) Deem the application complete.

- (b) An applicant that receives a written notice under subsection (a) above may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within fifteen (15) days of receiving the notice. If an applicant is unable to cure the defects within the fifteen (15) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.
- (c) The Administrator must issue a written decision granting or denying the request within forty-five (45) days of the initial determination of completeness. Failure to issue a written decision within forty-five (45) days shall constitute an approval of the application, unless:
 - (1) the applicant requested additional time under subsection (b) to cure defects in the application, the forty-five (45) day period set forth in subsection (e) is extended for a corresponding amount of time; or,
 - (2) extension of time is agreed to by the applicant in writing.
- (d) Should the Administrator deny the application, the Administrator shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this Ordinance.

834-4. Wireless communications facilities and wireless support structures permitted by conditional use permit.

- (A) Any wireless communications facility or wireless support structures not meeting the requirements of Section 834-3 shall be permitted by conditional use permit in all zoning districts subject to:
 - (1) The submission requirements of Section 834-4 (B) below; and,
 - (2) The applicable standards of Sections 834-5 and 834-6 below; and,
 - (3) The requirements of the conditional use permit general conditions in Chapter 813 of this Ordinance.
- (B) Submission requirements for conditional use permit applications.

All conditional use permit applications for wireless communications facility and wireless support structures must contain the following:

- (1) Conditional use permit application submittal materials to be submitted by applicant.
- (2) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms.

- (3)** Written description and scaled drawings of the proposed support structure, including structure height, ground and structure design, and proposed materials.
- (4)** Number of proposed antennas and their height above ground level, including the proposed placement of antennas on the support structure.
- (5)** When locating within a residential area, a written technical and operational analysis of why a monopole or similar structure at a height of less than one hundred (100) feet cannot be used.
- (6)** Line-of-sight diagram or photo simulation, showing the proposed wireless support structure set against the skyline and viewed from at least four (4) directions within the surrounding areas.
- (7)** A statement justifying why collocation is not feasible. Such statement shall include:
 - (a)** Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; and
 - (b)** A list of the existing structures considered as possible alternatives to the proposed location and a written explanation why the alternatives considered were either unavailable or technologically infeasible.
- (8)** A statement that the proposed wireless support structure will be made available for collocation to other service providers at commercially reasonable rates.
- (9)** Notification of surrounding property owners as required by the notification rules set forth by the rules of procedure of the Monroe County Plan Commission or Board of Zoning Appeals, dependent upon applicability.
- (10)** Conditional use permit application fee as listed in the Monroe County Plan Commission and Board of Zoning Appeals published fee schedule.
- (11)** A fall zone calculation for the wireless support structure certified by a registered engineer.
- (12)** Applicant is responsible for identifying any confidential or proprietary information included in the application and for providing that information only on green colored paper.

(C) Procedure.

- (1)** Within ten (10) days of the receipt of an application for conditional use approval, the Administrator shall either:

- (a) Inform the applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements. If the applicant is not so informed, the application shall be deemed complete; or
 - (b) Deem the application complete.
- (2) An applicant that receives a written notice under subsection (a) above may cure the defects set forth in the notice and resubmit the corrected application to the permit authority within thirty (30) days of receiving the notice. If an applicant is unable to cure the defects within the thirty (30) day period, the applicant shall notify the permit authority of the additional time the applicant requires to cure the defects.
- (3) The Administrator must issue a written decision granting or denying the request within ninety (90) days of the initial determination of completeness. Failure to issue a written decision within ninety (90) days shall constitute an approval of the application, unless:
 - (a) the applicant requested additional time under subsection (b) to cure defects in the application, the ninety (90) day period set forth in subsection (e) is extended for a corresponding amount of time;
 - (b) extension of time is agreed to by the applicant in writing; or,
 - (c) if the application for the proposed wireless support structure requires a variance of use from the terms of an applicable zoning ordinance in accordance with IC 36-7-4-918.4, the permit authority may have not more than thirty (30) additional days to make a decision.
- (4) Should the Administrator deny the application, the Administrator shall provide written justification for the denial. The denial must be based on substantial evidence of inconsistencies between the application and this ordinance.

834-5.

General Standards and Design Requirements.

(A) Design.

(1) Applicants are encouraged to include the following elements in their Wireless support structures designs:

(a) In order to promote collocation:

(1) Wireless support structures sixty (60) to one hundred (100) feet should be designed to support at least two (2) wireless communications providers;

(2) Wireless support structures from one hundred (100) to one hundred-fifty feet (150) should be designed to support at least three (3) wireless communications providers;

(3) Wireless support structures greater than one hundred-fifty (150) feet in height should be designed to support at least four (4) wireless communications carriers.

(b) The compound area surrounding the monopole should be of sufficient size to accommodate accessory equipment for the appropriate number of wireless communications providers in accordance with Section 834-5 (A)(1)(a).

(2) Concealed wireless communications facilities should be designed to accommodate the collocation of other antennas whenever economically and technically feasible.

(3) Unless otherwise specified herein, all new wireless support structures shall be monopole construction.

(B) Setbacks.

(1) Unless otherwise stated herein, wireless support structures shall be set back from all property lines a distance equal to the sum of the fall zone and the applicable setback for the zoning district.

(2) Unless otherwise stated herein, all accessory equipment shall be set back fifteen (15) feet from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.

(C) Height.

(1) Wireless support structures shall not exceed a height equal to one hundred ninety-nine (199) feet from the base of the structure at ground level to the top of the highest point, including appurtenances.

- (2) COWs shall not exceed 60' in height, however, if erected in response to an officially declared emergency no specific height limit shall apply.
- (D) Aesthetics.
- (1) Wireless communications facilities or wireless support structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
 - (2) Ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation shall be posted on site.
 - (3) In all non-industrial zoning districts a Type B Bufferyard standard shall be installed in the areas surrounding the equipment compound and wireless support structure as set forth in Chapter 830. Landscaping shall not be required in industrial zoning districts.
- (E) Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the wireless communication facility or wireless support structure. Any equipment not used in direct support of such operation shall not be stored on the site. The accessory equipment must conform to the development standards of the applicable zone.

834-6.

Miscellaneous Provisions.

- (A) Ground mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the Board of Zoning Appeals or Administrator. The Board of Zoning Appeals or Administrator may waive the requirement above if it is deemed that a fence is not appropriate or needed at the proposed location.
- (B) If a Wireless support structure is abandoned, and it remains abandoned for a period in excess of twelve (12) consecutive months, Monroe County may require that such wireless support structure be removed only after first providing written notice to the owner of the wireless support structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the wireless support structure within thirty (30) days of receipt of said written notice. In the event the owner of the wireless support structure fails to remove the wireless support structure within the thirty (30) day period, the owner of the wireless support structure shall be required to remove the same within six (6) months thereafter. Monroe County shall ensure and enforce removal by means of its existing regulatory authority.
- (C) Wireless communications facilities and wireless support structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

- (D) Unless otherwise stated herein, any modification or addition to a wireless support structure which would result in a height in excess of one-hundred and ninety-nine (199) feet shall be subject to the requirements set forth in section 834-4 requiring a Conditional Use approval.

834-7. Wireless communications facilities and wireless support structures in existence on the date of adoption of this ordinance.

Wireless communications facilities and wireless support structures that were legally permitted on or before the date this ordinance was enacted shall be considered pre-existing lawful uses or structures subject to Chapter 803. The above notwithstanding:

- (A) ordinary maintenance may be performed on a non-conforming support structure or wireless communications facility; and,
- (B) collocation and/or minor modifications of wireless communications facilities on an existing non-conforming wireless support structure may be permitted through the administrative approval process defined in Section 834-3.

Major modifications may be made to non-conforming wireless support structures utilizing the regulatory approval process defined in Section 834-4.

-END CHAPTER-