

**AMENDMENT TO THE LEWIS COUNTY  
ZONING AND DEVELOPMENT ORDINANCE**

ORDINANCE NO. 2002- 08

AN ORDINANCE OF LEWIS COUNTY, IDAHO A POLITICAL SUBDIVISION OF THE STATE OF IDAHO, AMENDING CHAPTER 5 OF THE ZONING AND DEVELOPMENT ORDINANCE #97-2 BY ADDING SECTION 6: WIRELESS TELECOMMUNICATION TOWERS AND TRANSMISSION FACILITIES

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF LEWIS COUNTY, IDAHO:

CHAPTER 5            SUPPLEMENTARY REGULATIONS

SECTION 6-1        PURPOSE

The purpose of this section is to regulate the placement of wireless telecommunication facilities in a manner consistent with the provisions of applicable law and the Lewis County Comprehensive Plan.

SECTION 6-2        DEFINITIONS

**Antenna.** A device used in the sending and receiving of electromagnetic waves.

**Co-location.** The use of a single wireless telecommunication tower or other support structure by more than one wireless telecommunications service provider.

**Equipment Enclosure.** A small structure, shelter, cabinet, box or vault designed for or used to house or protect the electronic equipment necessary and/or desirable for processing wireless telecommunications signals and data, including any provisions for air conditioning, ventilation, or auxiliary electricity generators.

**Support Structures.** Any structure designed or used to support wireless telecommunication transmission or reception devices, including "towers" as further defined herein.

**Tower.** Any structure or device designed, constructed and/or erected and used to attach or otherwise affix an antenna(s) that exceeds 20 feet in height from the base of the structure. Residential, commercial, agricultural, or utility buildings and utility poles shall not be considered towers; however, "towers," shall include structures or devices erected on or attached to such buildings, poles, or structures which increase the total height by more than twenty (20) feet.

**Wireless Telecommunications Facility.** A facility for the transmission and/or reception of radio frequency signals, usually composed of an equipment structure, a support structure, transmission and/or reception devices consisting of linear or parabolic or other antennas, and related equipment.

**Wireless Telecommunications Provider.** Any person or entity that provides wireless telecommunications service through the use of wireless telecommunications facilities, whether or not such facilities are owned by or under the control of such provider.

**Wireless Telecommunication Service.** The providing of transmittal and reception of voice, data, image, graphic, and other information by the use of wireless telecommunications facilities. This term includes any personal wireless telecommunication services as defined in the Telecommunications Act of 1996, 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.

#### SECTION 6-3 DUTIES OF WIRELESS TELECOMMUNICATION PROVIDERS

All wireless telecommunication providers operating or using wireless telecommunication facilities in Lewis County shall file a statement with the Lewis County Planning and Zoning Department by December 31 of each year. The report shall state whether the wireless telecommunication provider is continuing to use its facilities and, if so, verify that it remains in compliance with all applicable federal/state rules and conditions set forth in any applicable Conditional Use Permit. This annual report shall also include the number of antennas and the location of each antenna in Lewis County, and documentation demonstrating that the provider is licensed in good standing by the Federal Communications Commission (FCC). Failure to comply with these duties shall be subject to the provisions of Subsection 6-11 for any uses subject to a Conditional Use Permit issued after September 13, 1997.

#### SECTION 6-4 USE OF EXISTING STRUCTURES

- A. All wireless telecommunication providers shall make reasonable attempts to co-locate on legally existing support structures before applying for a Conditional Use Permit to build a tower. The installation or location of antennas on legally existing support structures shall be considered a permitted use in the agricultural/forest zone provided that:
1. The use of the equipment does not exceed radio frequency emission [RF] standards as set by the FCC;
  2. The installation does not exceed twenty feet in height above the existing support structure.
- B. Placement of transmission or reception devices on legally existing support structures shall comply with the following:
1. Prior to installation or operation of the equipment, the applicant must complete and return a Conditional Use Permit application form provided by the Planning and Zoning Department along with a \$50 application fee and the following documents:
    - a. Documents demonstrating landowner authorization and necessary easements have been obtained;
    - b. Plans showing how vehicle access will be provided;
    - c. Unlighted antenna(s) and/or support structure, regardless of height, shall be retrofit with flashing strobe lighting conforming to Chapter 6, Federal Aviation Administration (FAA) Advisory Circular AC 70/7460-1K; and
    - d. Documentation demonstrating that no additional lighting is required by the FAA or the Idaho Transportation Department; and
    - e. Map showing the area of coverage that will be provided by the transmission of the proposed antenna(s).

2. Prior to use of the antenna(s):

- a. Documentation demonstrating the provider is licensed in good standing by the Federal Communications Commission (FCC) must be provided to the Planning and Zoning Department;
- b. If equipment enclosures will be located on the ground, a six foot high fence constructed of wood, masonry or privacy slats shall completely surrounding the equipment enclosure to secure and screen the equipment and structure; and,
- c. A warning sign no larger than three (3) square feet and no smaller than two (2) square feet must be placed on the fence or the access/gate. It must contain the name of the owner and operator of the facility, a phone number for cases of emergency and any other information required by law.

SECTION 6-5 VERIFICATION THAT USE OF EXISTING SUPPORT STRUCTURES IS NOT POSSIBLE

No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Planning and Zoning Commission that no legally existing support structure is available or can accommodate the proposed antenna(s) based on:

A. Testimony or written verification:

1. By an engineer licensed in the state of Idaho that the legally existing support structures located within the geographic area are not of sufficient size or structural strength to meet applicant's reasonable engineering requirements;
2. That no legally existing support structure is located within the geographic area which meets the applicant's reasonable engineering requirements;
3. That use of the legally existing structure would cause electromagnetic interference with the existing antennas or the proposed antenna(s);
4. That co-locating on a legally existing support structure would violate the RF emissions set by the FCC; and/or
5. That there are other limiting factors that render legally existing support structures unsuitable.

B. That the fees, costs, or contractual provisions required by the owner of an existing support structure are unreasonable.

SECTION 6-6 CONSTRUCTION OF NEW WIRELESS TELECOMMUNICATION TOWERS

A. A Conditional Use Permit is required for the following:

1. The construction of a tower;
2. The installation of an antenna that would require lighting by the FAA or the Idaho Transportation Department.

B. Conditional Use Permits for wireless telecommunication towers or support structures are subject to the provisions of Chapter 3 of this Ordinance and the following standards and requirements:

1. All applicants must complete a Conditional Use Permit application for the construction of a wireless telecommunication tower as provided by Chapter 3 of this Ordinance. The application must be signed by all legal landowners of the property, the applicant, and proposed tower owner.
2. The following documents must be attached and submitted along with the application:
  - a. A legal description of the parcel of land on which the proposed tower is to be located. This legal description shall include all real property described on the deed of conveyance most recently recorded for that parcel that complies with the Lewis County Subdivision and Zoning ordinances.
  - b. A detailed drawing of the tower with the height specified.
  - c. The general capacity of the tower in terms of the number and type of antennas it is designed to accommodate.
  - d. A signed agreement with Lewis County stating that the applicant will allow co-location with other users and that any future owners or operators will allow co-location on the tower. The Planning and Zoning Department will record this agreement in the Lewis County recorder's office.
  - e. Documents demonstrating to the satisfaction of the Planning and Zoning Commission that the necessary easements have been obtained, as well as plans showing how vehicle access will be provided.
  - f. Documents demonstrating that the applicant has complied with FAA or Idaho Transportation Department requirements (FAA form 7460-1) as well as a diagram showing the placement and type of lighting that will be used in accordance with FAA or Idaho Transportation Department requirements.
  - g. Evidence satisfactorily demonstrating to the Planning and Zoning Commission that use of an existing support structure is not possible pursuant to Section 6-5.
  - h. A map showing the area of coverage provided by the transmission of the proposed antenna(s).
  - i. If the proposed tower is less and 1000 feet from any residence or commercial building, the applicant shall submit a signed notarized letter from all owners of record of such residential or commercial buildings consenting to the tower. The Planning and Zoning Department shall record this letter in the Lewis County Recorder's Office at the applicant's expense.
3. Notification shall follow the requirements of Idaho Code 67-6512, and all record owners of property located within 1000 feet of the proposed tower shall be notified by regular mail at the last address listed in the Lewis County Assessor's office records by the Planning and Zoning Department fifteen (15) days prior to the hearing.

SECTION 6-7           FACTORS CONSIDERED BY THE PLANNING AND ZONING COMMISSION

In addition to the Conditional Use Permit criteria set out in Chapter 3 of this Ordinance, the Planning and Zoning Commission shall take the following considerations into account when deciding whether to grant a Conditional Use Permit for a wireless telecommunication tower:

1. Whether or not the wireless telecommunication provider has attempted in good faith to co-locate or use an existing structure in the county;
2. Whether the height, design, and any proposed future modification of the wireless telecommunication facility, will reduce or eliminate visual obtrusiveness to the greatest extent feasible and practical;
3. Whether it has been demonstrated the tower will have a negative impact on nearby property;
4. Whether or not the existing land use of the proposed site is unique to that site; and
5. Whether any lighting required may pose an unreasonable nuisance at the proposed site.

#### SECTION 6-8 REQUIRED CONDITIONS FOR TOWERS

The following are required conditions for the approval of the construction of towers and shall appear in any Conditional Use Permit approved for such use:

1. All towers must be built so as to allow for a total of at least three wireless telecommunication providers on the tower.
2. All towers must be setback a minimum of 150% the height of the tower from any public road or adjoining property line, and a minimum of 1000 feet from any residence or commercial building unless consents pursuant to Section 6-6.B.2(i) are filed with the Planning and Zoning Department in which event the Planning and Zoning Commission may waive such 1000 foot setback if it deems such to be appropriate.
3. If equipment enclosures will be located on the ground, a 6 foot high fence of wood, masonry or privacy slats completely surrounding the equipment enclosure is required to secure and screen the equipment and structure.
4. A warning sign no larger than three (3) square feet and no smaller than two (2) square feet must be placed on the fencing access/gate. It must contain the name of the owner and operator of the facility, and a phone number for cases of emergency as well as any other information required by law.
5. Any tower/structure shall be finished in a non-reflective neutral color or as otherwise specified by the Planning and Zoning Commission.
6. No ladder rungs or climbing pegs on towers shall be allowed within 20 feet of the ground.
7. No towers with guy wires are allowed.

8. All towers, antennas or antenna support structures regardless of height shall be lighted with flashing strobe lights meeting the requirements Federal Aviation Administration (FAA) Advisory Circular AC 70/7460-1K.
9. Prior to turning on the antenna(s) or using them, the applicant must submit the Federal Communications Commission (FCC) licenses documentation demonstrating the provider in good standing.
10. Compliance at all times, with any applicable laws or regulations including the Lewis County Zoning ordinance.
11. All applicants granted a permit under this shall cooperate and negotiate in good faith with other providers or tower owners in efforts to co-locate. Such good faith shall include sharing technical information to evaluate the feasibility of co-location. Such technical information is limited to necessary information to evaluate the feasibility of co-location.
  - a. If a provider is denied the opportunity to co-locate by a tower owner or operator with a Conditional Use Permit granted under Section 6-5, the denied party shall obtain a technical study showing co-location is possible from an independent third property prior to consideration for a permit. If the study concludes co-location may occur without impairment to the existing operators, the tower owner shall be charged the expense of the study and co-location shall be permitted at a reasonable fee.
  - b. In the event that the parties are unable to agree as to what is a reasonable fee, the parties must notify the Planning and Zoning Department of such in writing and shall then select a certified general appraiser in the state of Idaho to determine the fair market value and notify the County of the same within thirty (30) days. If the parties do not agree on the selection of an appraiser and so notify the Planning and Zoning Department, the Planning and Zoning Department may arrange for an appraiser, at the expense of both parties. The determination of fair market value by any such appraiser shall be binding on the parties.
  - c. Failure of a tower owner to allow co-location at a reasonable fee and on reasonable terms shall result in the immediate revocation of the owner's Conditional Use Permit.

## SECTION 6-9      AUTOMATIC LIEN/PERFORMANCE BOND

If an applicant or tower owner or operator fails to comply with any conditions of this ordinance or any permit issued under this ordinance Lewis County may enforce compliance by an automatic lien, a performance bond, or both at the discretion of the Planning and Zoning Commission; provided however, that a performance bond has preference and a lien may be imposed only for good cause shown or with the applicant's consent.

### A.      Lien:

1. Subject to the above declared preference, the Planning and Zoning Commission may, as a condition of granting a Conditional Use Permit, impose a lien on the parcel of land on which the tower is located so long as the value of said property is at least equal to the amount the Planning and Zoning Commission estimates it would cost to remove such tower and return the location to its original state or better in the event of abandonment or otherwise pursuant to Section 6- 1 0.

2. Such lien is created upon issuance of a Conditional Use Permit pursuant to this Section and shall attach to the real property described in the permit and to all other property then or subsequently located thereon.
3. Any lien created by this Section shall be perfected upon recording in the county recorder's office and such lien shall have a priority date as of the date of the issuance of the Conditional Use Permit.

B. Performance Bond:

1. The Planning and Zoning Commission may, as a condition of granting a Conditional Use Permit, require a tower owner to provide a commercial or performance bond in such amount as the Planning and Zoning Commission estimates it would cost to remove such tower and facilities and return the location to its original state or better in the event of abandonment or otherwise pursuant to Section 6-10.
2. The bond shall be executed by a surety company or companies duly authorized to do business in the state of Idaho. The tower owner/operator shall insure that said bond remains in full force and effect at all times; shall demonstrate proof of the same, satisfactory to Lewis County, prior to building or issuance of a building permit for the tower; and shall demonstrate proof of such bond in each annual statement to the Planning and Zoning Department by December 31 of each year. The bond shall name Lewis County as the payee.
3. The bond shall not be cancelled by any party without 90 days advance written notice to the Lewis County Planning and Zoning Department. Such notice of intended cancellation prior to satisfactory removal of the tower, antenna(s), and related facilities is a violation of the Conditional Use Permit and the county may immediately demand and receive payment in full on said bond.

C. In any action brought to enforce the lien or bond(s) herein, or against the tower owner for failing to maintain the payment of the bond, the prevailing party, shall be entitled to recover reasonable attorney fees and court costs.

D. Enforcement by lien or performance bond is non-exclusive and in addition to any and all other remedies available at law or in equity.

#### SECTION 6-10 ABANDONMENT AND REMOVAL

B. Any tower that has had no antenna mounted upon it for a period of 120 consecutive days, or if the antennas mounted thereon are not operated for, a period of 120 consecutive days, shall be considered abandoned. The tower owner or landowner thereof shall:

1. Remove any such tower and any accompanying equipment enclosure within 90 days of abandonment and;
2. Return the location of the removed facility to its original state, or better. However, foundation material more than three feet below grade does not need to be removed

unless otherwise required by the Planning and Zoning Commission as a condition of approval.

- B. The tower owner or landowner may during the 90 days, apply, and for good cause shown, have granted, an extension of time on such terms as the Planning and Zoning Department shall determine.
- C. If such structure and equipment enclosure are not so removed within said 90 days or any extension thereof, then the county has the right without further notice to enter upon the land and remove and abate such structures at the expense of the tower owner or landowner, which may be collected through the automatic lien or performance bond created in Subsection 6-9 and/or by any other remedy available at law or in equity. In the event Lewis County exercises its right hereunder, any and all salvage rights shall inure to, and become property of Lewis County at the County's sole option.
- D. Any notice under this section is subject to appeal under Chapter 9.
- E. In the event that more than one wireless telecommunications provider is using the support structure, then this provision shall not become effective until all users cease transmitting from the structure.

#### SECTION 6-11 FAILURE TO COMPLY WITH ALL CONDITIONS

Failure to comply with any conditions set forth in this section and all applicable sections, federal and state laws will result in immediate revocation of the wireless telecommunication provider's permit(s) and require removal of their antennas, tower, and/or related equipment if applicable in accordance with Section 6-10. Procedures for appeals are set out in Chapter 9 of this ordinance.

#### SECTION 6-12 SEVERABILITY

This ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

#### SECTION 6-13 REPEAL OF CONFLICTING PROVISIONS

All provisions of the current LEWIS COUNTY ZONING AND DEVELOPMENT ORDINANCE #97-2 or any other ordinances of LEWIS COUNTY, IDAHO which conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

#### SECTION 6-14 EFFECTIVE DATE.

This ordinance shall be effective upon its passage and publication as provided by law.

PASSED UNDER SUSPENSION of all rules and regulations of this County Commission, upon which proper roll call votes were duly taken and entered as an Ordinance of this county at a regular meeting of the Commissions of the County of Lewis.



DATED this 9<sup>th</sup> day of December, 2002.

LEWIS COUNTY, IDAHO

Joe A. Leitch

Joe A. Leitch, Chairman

Charles E. Doty

Charles E. Doty, Member

LeAnn J. Trautman

LeAnn J. Trautman, Member

ATTEST:

Cathy Larson

Cathy Larson, Clerk