

**TOWN OF CEDARBURG
ORDINANCE NO. 2014-2**

An Ordinance to Repeal and Recreate Chapter 320-107 regarding Mobile Tower Siting and Collocation under the Zoning Code, Town of Cedarburg Code of Ordinances, Ozaukee County, Wisconsin.

WHEREAS, The Town of Cedarburg is a body corporate and politic; and

WHEREAS, the Town Board exercises village powers by Ch. 61, Wis. Stats.; and

WHEREAS, the Plan Commission has reviewed Chapter 320 regarding telecommunication installations, has reviewed this ordinance, and has made a favorable recommendation to the Town Board for its adoption; and

WHEREAS, the Town Board held a public hearing regarding the proposed amendments, a notice of which was published twice, once at least ten days prior to the date of the hearing,

NOW, THEREFORE, BE IT ORDAINED the Town Board of the Town of Cedarburg, Wisconsin, does, by the enactment of this ordinance, formally repeal Chapter 320-107: Telecommunication installation, of the Town of Cedarburg Code of ordinances, and replace with new language. This ordinance shall take effect upon passage by a majority vote of the members-elect of the Town Board and publication or posting as required by law. The new language shall read as follows:

§ 320-107. Mobile Tower Siting and Collocation.

SECTION I – TITLE

This ordinance is entitled the Town of Cedarburg Mobile Tower Siting Permit Ordinance.

SECTION II – PURPOSE

The purpose of this ordinance is to regulate by zoning permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

SECTION III – AUTHORITY

The Town Board has the specific authority under ss. 60.62, 62.23, and 66.0404, Wis. Stats., to adopt and enforce this ordinance.

SECTION IV – ADOPTION OF ORDINANCE

This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation by zoning permit (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities;

and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

SECTION V – DEFINITIONS

All definitions contained in s. 66.0404(1) are hereby incorporated by reference.

SECTION VI - SUBDIVISION AND NUMBERING OF THIS ORDINANCE

This ordinance is divided into sections designated by uppercase Roman numerals. Sections may be divided into subsections designated by uppercase letters. Subsections may be divided into paragraphs designated by numbers. Paragraphs may be divided into subdivisions designated by lowercase letters. Subdivisions may be divided into subdivision paragraphs designated by lowercase Roman numerals. Reference to a "section," "subsection," "paragraph," or "subdivision" includes all divisions of the referenced section, subsection, paragraph, or subdivision.

SECTION VII – SITING AND CONSTRUCTION OF ANY NEW MOBILE SERVICE SUPPORT STRUCTURE AND FACILITIES

A. Application Process

1. A town zoning permit is required for the siting and construction of any new mobile service support structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the town obtainable with this permit.
2. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
 - d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - e. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - f. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an

individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

3. A permit application will be provided by the town upon request to any applicant.
4. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If the town does not believe that the application is complete, the town shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
5. Within 90 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 90 day period:
 - a. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
 - b. Make a final decision whether to approve or disapprove the application.
 - c. Notify the applicant, in writing, of its final decision.
 - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
6. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.
7. If an applicant provides the town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.
8. The fee for the permit shall be paid according to the Annual Fee Schedule established by the Town Board.

SECTION VIII – CLASS 1 COLLOCATION

Application Process

1. A town zoning permit is required for a class 1 collocation. A class 1 collocation is a conditional use in the town obtainable with this permit.

2. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:

- a. The name and business address of, and the contact individual for, the applicant.
- b. The location of the proposed or affected support structure.
- c. The location of the proposed mobile service facility.
- d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
- e. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
- f. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

3. A permit application will be provided by the town upon request to any applicant.

4. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If the town does not believe that the application is complete, the town shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

5. Within 90 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 90 day period:

- a. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
- b. Make a final decision whether to approve or disapprove the application.

c. Notify the applicant, in writing, of its final decision.

d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

6. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.

7. If an applicant provides the town with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.

8. The fee for the permit shall be paid according to the Annual Fee Schedule established by the Town Board.

SECTION IX – CLASS 2 COLLOCATION

A. Application Process

1. A town zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use in the town but still requires the issuance of the town permit.

2. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:

a. The name and business address of, and the contact individual for, the applicant.

b. The location of the proposed or affected support structure.

c. The location of the proposed mobile service facility.

3. A permit application will be provided by the town upon request to any applicant.

4. A class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject.

5. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If any of the required information is not in the application, the town shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

6. Within 45 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 45 day period:

- a. Make a final decision whether to approve or disapprove the application.
- b. Notify the applicant, in writing, of its final decision.
- c. If the application is approved, issue the applicant the relevant permit.
- d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

7. The fee for the permit shall be paid according to the Annual Fee Schedule established by the Town Board.

SECTION X – PENALTY PROVISIONS


Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than \$100 nor more than \$500, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. In addition, the town board may seek injunctive relief from a court of record to enjoin further violations.

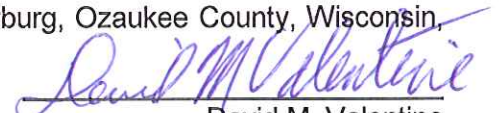
SECTION XI – SEVERABILITY

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

This ordinance shall be in full force and effect upon its passage and posting as provided by law.

PASSED AND ADOPTED by the Town Board of the Town of Cedarburg, Ozaukee County, Wisconsin, this 5th day of February, 2014.


Debra Otto, Town Clerk


David M. Valentine
Town Chairman