

Amendment I: Mobile Tower Siting [to the] The Town of Harmony, Vernon County, Wisconsin Comprehensive Zoning Ordinance

SECTION I - TITLE

This amendment is entitled: Amendment I: Mobile Tower Siting.

SECTION II - PURPOSE

The purpose of this ordinance amendment is to regulate: (1) the siting and construction of any new mobile service support structure (towers) and facilities; (2) with regard to a class I 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 of Supervisors has the specific authority under §60.61, §62.23 and §66.0404, Wisconsin Statutes and Town of Harmony's Zoning Ordinance to adopt and enforce this ordinance amendment.

SECTION IV - ADOPTION OF ORDINANCE AMENDMENT

This ordinance amendment, adopted unanimously by the Town Board of Harmony on a roll call vote with a quorum present and voting with proper notice having been given, provides for the regulation of: (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class I 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 §66.0404(1), Wisconsin Statutes, as it currently exists and as revised by the Legislature, are hereby incorporated by reference.

SECTION VI - SUBDIVISION AND NUMBERING OF THIS ORDINANCE AMENDMENT

This ordinance amendment 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 of Harmony Conditional Use Permit is required for the siting and construction of any new mobile service support structure and facilities.

2. A written Conditional Use Permit application must be completed by any applicant and submitted to the Town's Zoning Coordinator. 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.
 - g. Verification of written notice of the application to every resident and land owner within one mile of the proposed tower site.

3. An application will be provided by the Town of Harmony upon request to any applicant.

4. If an applicant submits to the Town an application for a Conditional Use Permit to engage in an activity described in this ordinance amendment, which contains all of the information required under this amendment, 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 Conditional Use Permit application to determine whether it complies with all applicable aspects of the Town's comprehensive Zoning Ordinance, subject to the limitations in this section, including the Town's Comprehensive Plan and Limitations set forth in Section X.

- 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 a summary of the substantial evidence in the record 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. of this section.
7. The application fees shall be established by the Town Board, not to exceed the Statutory maximum, currently \$3000.

SECTION VIII - CLASS 1 COLLOCATION

A. Application Process:

1. A Town Conditional Use Permit is required for a class 1 collocation.
2. A written Conditional Use Permit application must be completed by any applicant and submitted to the Town's Zoning Coordinator. 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 Conditional Use 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 amendment, which contains all of the information required under this amendment, 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 Town's comprehensive Zoning Ordinance and, subject to the limitations in this section, including the Town's Comprehensive Plan and limitations set forth in Section X.
 - 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 deny granting a Conditional Use Permit, a written notification of the substantial evidence in the record which supports the decision will be provided to the applicant.
6. The Town may disapprove a Conditional Use Permit 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. of this section.
7. The application fee shall be established by the Town Board, not to exceed the Statutory maximum, currently \$3000.

SECTION IX - CLASS 2 COLLOCATION

A. Application Process:

1. A Town Conditional Use 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 a Town Conditional Use Permit.
2. A written permit application must be completed by any applicant and submitted to the Town's Zoning Coordinator. 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 Conditional Use 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 to requirements specified in the Town's comprehensive Zoning Ordinance and under the Statutes and Administrative Code of the State of Wisconsin.
5. If an applicant submits to the Town an application for a Conditional Use Permit to engage in an activity described in this ordinance amendment, which contains all of the information required under this ordinance amendment, 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 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.

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 application fee shall be established by the Town Board, not to exceed the Statutory maximum, currently \$500.

SECTION X - LIMITATIONS

A. The Town may deny, request that the application be modified, or place limitations upon the application as long as the basis for denial, modification, or limitation is not prohibited under §66.0404, Wis. Stat.

B. The Town will require that the application adhere to the following setback requirements:

1. The setback requirement of the tower and supporting cable anchors is the distance equal to the height of the proposed mobile tower.
2. The setback requirement shall be measured from the lot line of other adjacent parcels for which single-family residential use is a permitted use under the Town's Zoning Ordinance.
3. The Town Board may determine that a smaller area may be allowed, than the setback or fall zone area required above, based upon substantial evidence that the tower is designed to collapse in a smaller circle than its height.

SECTION XI - STRUCTURAL, DESIGN, AND ENVIRONMENTAL STANDARDS

A. Mobile service support structure, antenna, and facility requirements. All mobile service facilities and mobile service support structures shall be designed to reduce the negative impact on the surrounding environment by implementing the following measures:

1. Mobile service support structures shall be constructed of metal or other nonflammable material, unless specifically permitted by the Town to be otherwise.
2. Satellite dish and parabolic antennas shall be situated as near to the ground as possible to reduce visual impact without compromising their functions.
3. Equipment compounds shall be constructed of non-reflective materials (visible exterior surfaces only). Equipment compounds shall be designed to blend with existing architecture in the area or shall be screened from sight by mature landscaping, and shall be located or designed to minimize their visibility.

4. Mobile service facilities, support structures, and antennas shall be designed and constructed in accordance with the state Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Fire Code, Electronic Industries Association (EIA), American National Steel Institute Standards (ANSI), and ANSI standards in effect at the time of manufacture.
5. Mobile service facilities and support structures shall not interfere with or obstruct existing or proposed public safety, fire protection, or supervisory controlled automated data acquisition (SCADA) operation telecommunication facilities. Any actual interference and/or obstruction shall be corrected by the applicant at no cost to the Town.

B. Site development. A leased parcel intended for the location of new mobile service facilities, mobile service support structures, and equipment compounds shall be located so as to permit expansion for mobile service facilities to serve all potential collocators.

C. Vegetation protection and facility screening. All mobile service facilities shall be installed in a manner as to minimize disturbance to existing vegetation and shall include suitable mature landscaping to screen the facility, where necessary. For purposes of this section, "mature landscaping shall mean trees, shrubs, or other vegetation of a minimal height of five feet that will provide the appropriate level of visual screening immediately upon installation. Upon completion, the owner/operator of the facility shall be responsible for maintaining and replacing all required landscaping as long as the facility is maintained on the site.

D. Fire prevention. All mobile service facilities shall be designed and operated with all applicable codes regarding fire prevention.

E. Noise and traffic. All mobile service facilities shall be constructed and operated in such a manner as to minimize the amount of disruption caused to nearby properties. To accomplish this, the following measures shall be implemented for all mobile service facilities, covered by this ordinance.

1. Noise producing construction activities shall take place only on weekdays (Monday through Saturday, non-holidays) between the hours of 6:00 a.m. to 6:00 p.m., except in times of emergency repair.
2. Backup generators, if present, shall be operated only during power outages and for maintenance and testing purposes.

F. Any standards set forth in the Town's comprehensive Zoning Ordinance and Comprehensive Plan.

SECTION XII -- REMOVAL AND SECURITY FOR REMOVAL

A. It is the express policy of the Town and this ordinance amendment that mobile service support structures be removed once they are no longer in use and not a functioning part of providing mobile service. It is the mobile service support structure owner's responsibility to remove such mobile service support structures and restore the site to its original condition or as a condition approved by the Town Board. This restoration shall include removal of any subsurface structure or foundation, including concrete, used to support the mobile service support structure down to five feet below the ground surface. After a mobile service support structure is no longer being used for

mobile service that is in operation, the mobile service support structure owner shall have 180 days to effect removal and restoration, unless weather prohibits such efforts. The owner shall record a document with the Vernon County Register of Deeds showing the existence of any subsurface structure remaining below the ground surface. Such recording shall accurately set forth the location and described the remaining structure.

B. Security. The owner of any mobile service support structure other than the Town or other unit of government shall provide to the Town a bond, prior to the issuance of a Conditional Use Permit, based upon a written estimate of a qualified remover of said types of structures, or \$25,000.00, whichever is less, to guarantee that the mobile service support structure will be removed when no longer in operation. The Town will be named as obligee in the bond and must approve the bonding company. The Town may require an increase in the bond amount at five year intervals to reflect increases in the consumer price index, but at no time shall the bond amount exceed \$25,000.00. The provider shall supply any increased bond within a reasonable time, not to exceed 60 days after the Town's request.

SECTION XIII – ABANDONMENT

A. Abandonment. Any antenna, mobile service facility, or mobile service support structure that is not operated for a period of 12 months shall be considered abandoned. Upon application, the Town Board may extend the time limit for abandonment for an additional 12-month period. Such extension shall be based on the finding that the owner or Conditional Use Permit holder is actively seeking tenants for the site. After expiration of the established time period, the following shall apply:

1. The owner of such antenna, mobile service facility or mobile service support structure shall remove said antenna, mobile service facility or mobile service support structure, including all supporting equipment, buildings, and foundations to the depth required in this chapter within 90 days of receipt of notice from the Town that abandonment is required. If removal to the satisfaction of the Town Board does not occur within said 90 days, the Town Board may order removal utilizing the established bond as provided under Wis. Stats. §62.08(2). And salvage said antenna, mobile service facility or mobile service support structure, including all supporting equipment and building(s). If there are two or more users of a single mobile support structure, then this provision shall not become effective until all operations of the mobile service support structure cease.
2. The recipient of a permit allowing a mobile service support structure and facility under this chapter, or the current owner or operator, shall notify the Town Board within 45 days of the date when the mobile service facility is no longer in operation.

SECTION XIV-- PENALTY PROVISIONS

Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance amendment shall, upon conviction, pay a forfeiture of not less than \$100 or more than \$500 a day, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance amendment. In addition, the Town Board may seek injunctive relief from a court of record to enjoin further violations.

SECTION XVI - SEVERABILITY

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

SECTION XVII - EFFECTIVE DATE

The Town Clerk shall properly publish this ordinance amendment as required per §60.80 Wis. Stats. This ordinance amendment is effective upon publication as provided in §60.80, Wis. Stats.

Enacted this _____ day of _____ 2020.

Lorn Goede, Town Chairman

Charles Gartner, Supervisor 1

Keith Bauer, Supervisor 2

Brenda Hass, Town Clerk