

# MOBILE TOWER SITING REGULATIONS

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## 12.18.1-1 PURPOSE

The purpose of this section of the 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 to 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 to an existing support structure and mobile service facilities.

It is intended that Kenosha County shall apply these regulations to accomplish to the greatest degree possible the following: (1) minimize adverse effects of mobile service facilities and mobile service support structures; (2) maintain and ensure that a non-discriminatory, competitive and broad range of mobile services and high quality mobile service infrastructure consistent with the Federal Telecommunications Act of 1996 are provided to serve the community; and (3) provide a process of obtaining necessary zoning permits for mobile service facilities and support structures while at the same time protecting the legitimate interests of Kenosha County citizens.

Kenosha County encourages the use of alternative support structures, co-location of new antennas on existing support structures and construction of supports structures with the ability to locate at least three (3) additional users (minimum of 4 total users required for each mobile tower facility).

It is not the intent of this section to regulate residential satellite dishes or residential television antennas that are used privately. Additionally, it is not intended to regulate satellite dishes or antennas whose regulation is prohibited by Wis. Stat. § 59.69 (4)(d), as it may be amended from time to time.

## 12.18.1-2 DEFINITIONS

All definitions contained in Wis. Stat. § 66.0404 (1), as amended from time to time, are hereby incorporated by reference.

## 12.18.1-3 EXCEPTIONS

The following shall be exempt from the requirements to obtain a zoning permit, unless otherwise noted.

- (a) Amateur Radio and/or Receive-Only antennas. This ordinance shall not govern the installation of any antenna that is owned and/or operated by a federally licensed amateur radio operator and used for amateur radio purposes or is used exclusively for receive-only purposes.
- (b) Mobile services providing public information coverage of news events of a temporary or emergency nature.
- (c) Utility pole mounted antenna if the height of the antenna is thirty (30) feet or less above the highest part of the utility pole.

## 12.18.1-4 SITING AND CONSTRUCTION

Siting and Construction of Any New Mobile Service Support Structure and Facilities and Class 1 Collocation:

- (a) Application Process: A zoning permit is required for the siting and construction of any new mobile service support structure and facilities for a Class 1 Collocation if the following substantial modifications are added to the existing mobile service support structure:

- 1 An increase in the overall height of the structure by more than twenty (20) feet, for structures with an overall height of two hundred (200) feet or less.
  - 2 An increase in the overall height of the structure by 10% or more, for structures with an overall height of more than two hundred (200) feet.
  - 3 An increase in width of the support structure by twenty (20) feet or more, measured at the level of the appurtenance added to the structure as a result of the modification.
  - 4 An increase in the square footage of an existing equipment compound to a total area of more than 2,500 square feet.
- (b) A zoning permit application must be completed by any applicant and submitted to the the Division of Planning Operations (hereinafter referred to as the “Department”). The application must contain the following information:
- 1 The name, business address and phone number of the contact individual for the applicant. The applicant should include an email address if available.
  - 2 The location of the proposed affected support structure.
  - 3 The location of the proposed mobile service facility.
  - 4 If the applicant does not own the site or the tower, the applicant must provide an agent letter or lease agreement that provides consent from the property owner. The applicant should also provide the legal descriptions and amount of property leased.
  - 5 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. The construction plan shall include a sketch concept or rendering of the site and a scaled site plan which shows property lines, lease areas, setback distances, structures including support structure, buildings, equipment pads, and fencing.
  - 6 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. The construction plan shall include a sketch concept or rendering of the site and a scaled site plan which shows property lines, lease areas, setback distances, structures including support structure, buildings, equipment pads, and fencing. The Department may also request the submittal of propogation maps.
  - 7 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.

- (c) An application for a zoning permit shall be made available by the Department upon request by any applicant.
- (d) **Completed Applications.** If an applicant submits to the Department an application for a zoning permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the Department shall consider the application complete. If the Department does not believe that the application is complete, the Department shall notify the applicant in writing, within ten (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.
- (e) In the event the department determines that it is necessary to consult with a third party in considering a zoning permit application, all reasonable costs and expenses, excluding travel expenses, associated with such consultation shall be borne by the applicant. Failure to pay such costs and expenses or to provide information requested by the department shall be grounds for denial or revocation of the zoning permit.
- (f) **Department Responsibilities.** Within ninety (90) days of its receipt of a complete application, the Department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Department may agree in writing to an extension of the ninety (90) day period:
  - 1 Review the application to determine whether it complies with all applicable aspects of the County's zoning ordinance.
  - 2 Make a final decision whether to approve or disprove the application.
  - 3 Notify the applicant, in writing, of its final decision.
  - 4 If the decision is to disprove the application, include with the written notification substantial evidence which supports the decision.
- (g) **Disapproval.** The Department 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 12.18.1-4 (b)6.
- (h) **Application of Set Back/Fall Zone.** If an applicant provides the Department 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 areas required in a zoning ordinance (§ 12.27-1(b)) that zoning ordinance does not apply to such a structure unless the Department provides the applicant with substantial evidence that the engineering certification is flawed.
- (i) **Fees.** The fee for a zoning permit relating to construction of a new mobile service support structure and facility or for a Class 1 Collocation is listed in the Department's Fee Schedule.

- (j) Limitations. The zoning permits for Siting and Construction of any new mobile service support structure and facilities and for any Class 1 Collocation shall only be granted provided the following conditions exist:
- 1 The applicant has obtained Federal Communications Commission (FCC) license numbers and registration numbers if applicable.
  - 2 The applicant and/or agent have copies of Findings of No Significant Impacts (FONI) statement from the Federal Communications Commission (FCC) or Environmental Assessment or Environmental Impact Study (EIS), if applicable.
  - 3 The applicant and /or agent have copies of the determination of no hazard from the Federal Aviation Administration (FAA) including any aeronautical study determination or other findings, if applicable.
  - 4 The applicant and/or agent have copies of an Affidavit of Notification indicating that all operators and owners of public or private airports and landing strips located within five (5) miles of the proposed site have been notified via certified mail.
  - 5 If the location of the proposed mobile service support structure or mobile service facility is on leased land, the lease agreement does not preclude the lessee from entering into leases on the site with other provider(s) and there is no other lease provision operating as a bar to collocation of other providers.

12.18.1-5

**CLASS 2 COLLOCATION**

- (a) A zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use, but still requires the issuance of a zoning permit.
- (b) A zoning permit application must be completed by any applicant and submitted to the Department. The application must contain the following information:
- 1 The name, business address and the phone number of the contact individual for the applicant. The applicant should include an email address if available.
  - 2 The location of the proposed or affected mobile service support structure.
  - 3 The location of the proposed mobile service facility.
- (c) A zoning permit application will be provided by the Department upon request to any applicant.
- (d) Requirements. A class 2 collocation is subject to the same requirements for the issuance of a zoning permit to which any other type of commercial development or land use development is subject.

This will require construction plans which describe the proposed equipment and network components including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the existing mobile service support structure. The construction plan shall include a scaled site plan which shows property lines, lease areas, structures including support structure, buildings, equipment pads, and fencing.

- (e) **Completed Applications.** If an applicant submits to the Department an application for a zoning permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the Department shall consider the application complete. If any of the required information is not in the application, the Department shall notify the applicant in writing, within five (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.
- (f) **Department Requirements.** Within forty-five (45) days of its receipt of a completed application, the Department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Department may agree in writing to an extension of the forty-five (45) day period:
  - 1 Make a final decision whether to approve or disprove the application.
  - 2 Notify the applicant, in writing, of its final decision.
  - 3 If the application is approved, issue the applicant the relevant zoning permit.
  - 4 If the decision is to disprove the application, include with the written notification substantial evidence which supports the decision.
- (g) **Fees.** The fee for a zoning permit relating to a Class 2 Collocation is listed in the Department's Fee Schedule.

12.18.1-6

**ABANDONMENT, REMOVAL AND SECURITY FOR REMOVAL**

- (a) The recipient of a Zoning permit allowing a mobile service support structure and facility under this section, or the current owner or operator, shall notify the Department within forty-five (45) days of the date when the mobile service facility is no longer in operation.
- (b) **Abandonment:** any antenna, mobile service facility, or mobile service support structure that is not operated for a continuous period of twelve (12) months shall be considered abandoned. Upon application, the Planning, Development and Extension Education Committee may extend the time limit to abandon once for an additional twelve-month period. Such extension shall be based on the finding that the owner or zoning permit holder is actively seeking tenants for the site.

If abandonment is determined to have occurred, 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, building(s) and foundations to the depth as otherwise herein required within ninety (90) days of receipt of notice from the Department notifying the owner of such abandonment. If removal to the satisfaction of the Department does not occur within said ninety (90) days, the Director of Planning Operations may order removal utilizing the established bond or letter of credit discussed below. If there are two or more users of a single tower, abandonment shall not be determined to have occurred until all operation of the tower ceases by all users.

- (c) Removal. It is the express policy of Kenosha County and this ordinance that mobile service support structures be removed once they are no longer in use and not a functional part of providing mobile service and that 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 a condition approved by the Department. 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 ninety (90) days to effect removal and restoration unless weather prohibits such efforts. This restoration shall include removal of any subsurface structure or foundation, including concrete, used to support the mobile service support structure down to 5 feet below the surface. The owner shall record a document with the Kenosha County Register of Deeds showing the existence of any subsurface structure remaining below grade. Such recording shall accurately set forth the location and describe the remaining structure.
- (d) Security for Removal. Before the issuance of any zoning permit, a performance bond or letter of credit shall be provided to Kenosha County to guarantee that a structure that has ceased being used for mobile services facilities is removed. The bond amount shall be the lesser of twenty thousand (\$20,000) or an amount based on a written estimate of a person qualified to remove such structures. Kenosha County will be named as the recipient of the bond or letter of credit and Kenosha County is entitled to approve the bonding company. If necessary, Kenosha County may require an increase in the bond amount after five (5) year intervals to reflect increases in the Consumer Price Index, but at no point shall the bond amount exceed Twenty Thousand Dollars (\$20,000).

12.18-1-7

**MOBILE SERVICE SUPPORT STRUCTURE, ANTENNA AND FACILITIES REQUIREMENTS**

All mobile service facilities and mobile service support structures, except exempt facilities as defined in subsection 12.18.1-3, shall be designed as follows:

- (a) Mobile Service support structures shall be constructed of metal or other nonflammable material, unless specifically permitted by the Department to be otherwise.
- (b) Mobile service support structures towers, guy wires, appurtenant equipment, and buildings shall comply with the yard and setback requirements of the zoning district in which they are located.
- (c) Mobile service facilities, support structures and antennas shall be designed and constructed in accordance with all other applicable local, state and federal codes.
- (d) Equipment compounds shall meet the site plan requirements set forth in Section 12.08-2 and this shall be applicable in all zoning districts.
- (e) 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 Kenosha County.
- (f) All mobile service facilities and support structures, except exempt facilities, shall be designed to blend into the surrounding environment to the greatest extent feasible. The tower location shall provide for the maximum amount of screening of the facilities. The site shall be landscaped and maintained with a buffer of plant materials that effectively screen the view of all facility structures, equipment and improvements at ground level from adjacent properties. The standard buffer shall consist of a landscaped strip of at least four (4) feet wide outside the perimeter of the area where the tower accessory structures and equipment are located at ground level. In locations where the visual impact of the facility would be minimal the landscaping requirements may be reduced or

waived by the Department. Existing mature vegetation and natural landforms on the site shall be preserved to the maximum extent possible or replaced with vegetative screening meeting the intent of this section. Upon project completion, the owner(s)/operator(s) of the facility shall be responsible for maintenance and replacement of all required landscaping during the current growing season.

- (g) Access to the mobile service facilities and support structures must be provided by an all weather gravel or paved driveway.
- (h) The applicant has obtained a report prepared by an engineer licensed by the State of Wisconsin certifying the structural design of the tower and its ability to accommodate three (3) additional antennas.
- (i) Accessory buildings, structures, cabinets and other accessory facilities may be allowed and shall not exceed fifteen (15) feet in height, measured from the original grade, and two hundred fifty (250) square feet in area. All visible surfaces shall be constructed of nonreflective materials and designed to blend with the existing architecture in the area to the greatest extent feasible.
- (j) 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 that end the following measures shall be implemented for all mobile service facilities, except exempt facilities as defined in subsection 12.18.1-3:
  - 1 Noise producing construction activities shall take place only on weekdays (Monday through Saturday, non-holiday) between the hours of 6:00 a.m. and 6:00 p.m., except in times of emergency repair.
  - 2 Backup generators, if present, shall be operated only during power outages and for testing and maintenance purposes. Emergency back-up generators shall be completely enclosed on all sides and other efforts to mitigate noise from such generators may be required.
- (k) The Facility or collocation is designed to promote site sharing, such that space is reasonably available to collocators and such that telecommunication towers and necessary appurtenances, including but not limited to parking areas, access road, and utilities, are shared by site users whenever possible.

#### 12.18.1-8

#### **LOCATION AND SEPARATION REQUIREMENTS**

A good faith effort should be made to have mobile service support structures separated by a minimum of five thousand two hundred eighty (5280) feet, measured from the base of the existing structure to the base of the proposed structure. Two (2) mobile service support structures may be permitted to be located closer if the applicant provides a sworn statement to the Department 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. The Department may request other supporting documentation, drawings and information to evaluate the applicant's request and/or assist in a third-party review.

A mobile service facility is encouraged to locate on existing mobile towers or on alternative support structures, such as clock towers, chimneys, steeples, barns, silos, light poles, buildings, water towers or similar structures, provided that the placement of the antenna will not extend more than six (6) feet from the structure.

12.18.1-9 **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.

12.18-10 **LIABILITY**

The Department does not warrant any mobile service support structure against design or structural failure. The Department does not certify that the design is adequate for any tower and the Department hereby accepts no liability through the issuance of a zoning permit.

12.18.1-11 **TRANSFERABILITY OF MOBILE TOWER SITING ZONING PERMITS**

Zoning permits granted under this section go with the land and are transferable. Zoning permits granted under this section are not limited in duration. All section and zoning permit requirements shall apply to subsequent owners. The department shall be notified of any change in ownership including, but not limited to facility leases, mortgages, liens or other instruments which may affect title to the property.