

Chapter 65 – Mobile Service Support Structures and Wireless Communication Facilities

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1.0 Statutory Authorization, Purpose, Finding of Fact.

- A. Statutory Authorization. This Article is adopted pursuant to the authorization contained in §§ 59.69 and 66.0404, Wis. Stats.
- B. The purpose of this Article 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.

2.0 Jurisdiction.

- A. This Article shall be effective in the unincorporated areas of the County except those areas where a Town enacts an ordinance after the effective date of this Article.

3.0 Applicability.

This Article does not apply to:

- A. The installation of any tower or antenna that is owned and/or operated by a federally licensed amateur radio operator or is used exclusively for receive only antennas.
- B. The use of all receive-only television antenna and satellite dishes, or mobile services providing public information coverage of news events of temporary or emergency nature are exempt from this Article.
- C. The siting, construction or collocation of any new mobile service support structure or facility used for the provision of governmental police or emergency services purposes.

4.0 Siting and Construction of any New Mobile Service Support Structure and Facilities and Class 1 Collocation.

- A. Application Process.
 - 1. A Special Exception permit under Chapter 61 - Section 12.0 is required for the siting and construction of any new mobile service support structure and facilities and for Class 1 Collocation.
 - 2. A written permit application must be completed and submitted to the Zoning Department. 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, an applicant must provide 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. For purposes of Subsection (2)(f), "search ring" shall be, at a minimum, a five (5) mile radius from the proposed site of a new mobile service support structure.
- h. For purposes of Subsection (2)(f), the applicant shall identify the current mobile service functionality, coverage, and capacity, within the search ring regardless of whether or not the applicant is the provider of that service.
- i. For an application to construct a new mobile service support structure, the applicant shall submit \$3,000.00 advance fees for use of a 3rd party consultant to review the information provided in the application, and to provide such other information to the Planning and Zoning Department that it deems necessary to review the application. The Planning and Zoning Department will not use advance fees to pay for any travel expenses incurred in the consultant's review of the application. The Planning and Zoning Department will use such fees to the extent necessary to reimburse the Planning and Zoning Department for its actual and reasonable expense in reviewing and considering the application. Any unused fees will be returned to the applicant. If the Planning and Zoning Department's actual and reasonable review costs exceed this amount, the applicant shall reimburse the Planning and Zoning Department for the same prior to the issuance of a permit. No permit will be issued if the applicant fails to comply with the provisions of this section.
- j. A description of how the applicant will comply with the other requirements of this Article including, but not limited to, Sections 7.0(A)(1)(f), 7.0(A)(1)(g), and 7.0(A)(1)(i)(2).
- k. Signed, sworn statements from each person or entity that intends to locate on the mobile service support structure.

3. A permit application will be provided by the Planning and Zoning Department upon request to any applicant.

B. Completed Applications.

1. If an applicant submits to the Planning and Zoning Department an application for a permit to engage in an activity described in the Chapter,

which contains all of the information required under the Chapter, the Planning and Zoning Department shall consider the application complete. If the Planning and Zoning Department does not believe that the application is complete, the Planning and Zoning 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.

C. Marquette County Responsibilities.

1. Within ninety (90) days of its receipt of a complete application, the Zoning Department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Planning and Zoning Department may agree in writing to an extension of the ninety (90) day period:
 2. Review the application to determine whether it complies with all applicable aspects of the County's building code and, subject to the limitations in this Section.
 3. Make a final decision whether to approve or disapprove the application.
 4. Notify the applicant, in writing, of its final decision.
 5. If the decision is to disapprove the application, substantial evidence which supports the decision will be included with the written notification.

D. Disapproval.

1. The Planning and Zoning Department may disapprove an application if an applicant refuses to comply with the provisions of Section 4.0.

E. Application of Set Back/Fall Zone.

1. Mobile service support structures shall meet all applicable setbacks as set forth in the Code. If an applicant provides the Zoning 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 height of the structure, the setback shall be the required setback for the zoning district or the distance shown in the engineering certification, whichever is greater. The setback distance may be increased if the Planning and Zoning Department provides the applicant with substantial evidence that the engineering certification is flawed.

F. Self-Supporting.

1. Mobile service support structures shall be self-supporting monopoles or lattice towers except where satisfactory evidence is submitted to the Planning and Zoning Department that only a guyed tower is feasible.

G. Guyed Tower Requirements

1. Each and every guy wire (not just external wires) should be clearly marked for the length of the wire.
2. Starting at the top of the guy wire, the first marker must be placed within the first 15 feet of length. The last marker can be no more than 15 feet from the ground at the end of the guy wire. Markers should be of a color that does not blend with the wire.
3. Choice of marker and spacing of the markers along the guy wire must use one of the following options.
 - a. Spiral flight diverters (i.e., open-ended BIRD FLIGHT™ diverter or closed SWAN FLIGHT™ diverter or equivalent technology) spaced at intervals no greater than 15 feet apart.
 - b. "FireFly™" 'flapper' secured with a dropped forged galvanized cable (U-bolt) clamp or equivalent technology, spaced at intervals no greater than 30 feet apart.
 - c. In an alternating pattern, FireFly™ (or equivalent technology), and spiral flight diverters (e.g., open-ended BIRD FLIGHT™ diverter or closed SWAN FLIGHT™ diverter or equivalent technology) at spacing intervals of 15 feet apart.
4. Applicants must comply with manufacturer recommendations when using the methods outlined above.
5. If an applicant proposes an alternative method of marking guy wires, and the County approves of an alternative installation, the County may require applicant to change that method if the County determines the alternatives result in bird fatalities (including scavenger and detectability correction factor studies).
6. Avoid placing lines within wetlands, over canyons, or within important avian movement corridors (i.e., between foraging and nesting sites).
7. Lights are sometimes used to mark guy wires and power lines. Because lights can both attract and confuse migrating birds, use lights only if lighting is needed for aviation safety. Unless otherwise, if required by the Federal Aviation Administration, use only the minimum number of strobed, strobe-like, or blinking incandescent lights with a minimum intensity, maximum "off-phased" dual strobe lights. No steady burning lights (e.g., L-810) should be used. All lights should illuminate simultaneously.
8. If fatalities are observed, they must be reported to the County.

H. Fees.

1. The fee for the permit is three thousand dollars (\$3,000.00).

I. Limitations.

1. Zoning Permits for Siting and Construction for any new mobile service support structure and facilities and zoning permits for Class 1 Colocations shall only be granted provided the following conditions exist:

- a. 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 colocation of other providers.
- b. 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 (FONSI) 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 plans indicating security measures (i.e., access, fencing, lighting, etc.).
5. For new mobile service support structures, 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 additional antennas.
6. The applicant and/or agent have proof of liability coverage.
7. The applicant and/or agent have copies of an Affidavit of Notification indicating that all operators and owners of airports located within five (5) miles of the proposed site have been notified via certified mail.
8. The Facility or colocation is designed to promote site sharing, such that space is reasonably available to collocutors 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.

5.0 Class 2 Collocation.

A. Application Process.

1. A zoning permit is required for a Class 2 collocation.
 - a. A written permit application must be completed by any applicant and submitted to the Planning and Zoning Department. The application must contain the following information:
 - (1) The name and business address of, and the contact individual for, the applicant.
 - (2) The location of the proposed or affected mobile service support structure.
 - (3) The location of the proposed mobile service facility.
 - b. A permit application will be provided by the Planning and Zoning Department upon request to any applicant.

B. Requirements.

1. 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 is subject, except that the maximum fee for a zoning permit shall be one hundred fifty dollars (\$150.00).
2. Completed Applications.
 - a. If an applicant submits to the Planning and Zoning Department an application for a permit to engage in an activity described in this Chapter, which contains all of the information required under this Chapter, the Planning and Zoning Department shall consider the application complete. If any of the required information is not in the application, the Planning and Zoning 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.

3. Marquette County Requirements.

- a. Within forty-five (45) days of its receipt of a complete application, the Planning and Zoning Department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Zoning Department may agree in writing to an extension of the forty-five (45) day period:
 - (1) Make a final decision whether to approve or disapprove the application.
 - (2) Notify the applicant, in writing, of its final decision.
 - (3) If the application is approved, issue the applicant the relevant permit.
 - (4) If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

6.0 Removal/Security for Removal.

A. Removal

1. It is the express policy of the County and this Chapter 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 County Planning and Zoning Department. This restoration shall include removal of any subsurface structure or foundation, including concrete, used to support the mobile service support structure down to five (5) feet below the 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 one hundred eighty (180) days to effect removal and restoration unless weather prohibits such efforts. The Permittee shall record a document with the 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.

B. Security for Removal.

1. The owner of any mobile service support structure other than a municipality or other unit of government shall provide to the County, prior to the issuance of the zoning permit, a performance bond in an amount based on a written estimate of a qualified remover of said types of structures, or twenty thousand dollars (\$20,000.00), whichever is less, to guarantee that the mobile service support structure will be removed when no longer in operation. The County will be named as obligee in the bond and must approve the bonding

company. The 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 (\$20,000.00). The provider shall supply any increased bond within a reasonable time, not exceeding sixty (60) days, after the County's request. A permittee may submit a letter of credit in the amount set forth above, or, in the alternative, a permittee with several sites in the County may submit a master bond to cover all of said sites. A master bond or letter of credit may, in the Zoning Committee's discretion, be in an amount sufficient to secure removal from one (1) site if the master bond or letter of credit provides for replenishing any amount used as the master bond or letter of credit covers any other site in the County.

7.0 Structural, Design and Environmental Standards.

A. Mobile Service Support Structure, Antenna and Facilities Requirements.

1. All mobile service facilities and mobile service support structures, except exempt facilities as defined in Section 3.0 shall be designed to reduce the negative impact on the surrounding environment by implementing the measures set forth below:
 - a. Mobile Service support structures shall be constructed of metal or other nonflammable material, unless specifically permitted by the County to be otherwise.
 - b. Satellite dish and parabolic antennas shall be situated as close to the ground as possible to reduce visual impact without compromising their functions.
 - c. 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 site by mature landscaping and shall be located or designed to minimize their visibility.
 - d. Mobile service facilities, support structures and antennas shall be designed and constructed in accordance with the State of Wisconsin Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, the County Subdivision Article, the County Sanitation Article, Electronic Industries Association (EIA), American National Steel Institute Standards (ANSI), and American National Standards Institute (ANSI) in effect at the time of

manufacture.

- 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 County.
- f. Comply with the most recent Recommended Best Practices for Communication Tower Design, Siting, Construction, Operation, Maintenance, and Decommissioning as set forth by the U.S. Fish and Wildlife Service.
- g. Lighting shall comply with the following:
 - (1) No tower lighting is the preferred option if Federal Aviation Administration (FAA) regulations and lighting standards (FAA 2015, Patterson 2012) permit.
 - (2) For some towers, the FAA can permit an Aircraft Detection Lighting System (ADLS), which maintains a communication tower of any height to be unlit until the ADLS radars detect nearby aircraft, at which time the tower lighting system is triggered to illuminate until the aircraft is out of radar range.
 - (3) If taller (> 199 ft. AGL) towers requiring lights for aviation safety must be constructed, the minimum amount of pilot warning and obstruction avoidance lighting required by the FAA should be used. Unless otherwise required by the FAA, only white or red flashing lights should be used at night, and these should follow FAA obstruction and marking standards with regards to the minimum number of lights, minimum intensity (< 2,000 candela), and minimum number of flashes per minute (i.e., longest duration between flashes and "dark phase"). Avoid using non-flashing warning lights at night (FAA 2015, Patterson 2012). Owners of existing towers lit with lighting systems that include non-flashing lights should submit plans to the FAA explaining how and when they will transition to the new standards.
 - (4) Security lighting for on-ground facilities, equipment, and infrastructure should be motion- or heat-sensitive, down-shielded, and of a minimum intensity to reduce nighttime bird attraction and eliminate constant nighttime illumination while still allowing safe nighttime access to the site and any other guidelines established by the

United States Fish and Wildlife Service for such facilities.

- h. 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 customers.
- i. Vegetation protection and facility screening.
 - (1) Except exempt facilities as defined in Section 3.0, all mobile service facilities shall be installed in a manner as to minimize disturbance to existing native 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 minimum initial height of five (5) feet that will provide the appropriate level of visual screening immediately upon installation.
 - (2) With regard to invasive species, the owner(s)/operator(s) shall comply with the following:
 - i. Plan activities to limit the potential for the introduction and spread of invasive species, prior to construction.
 - ii. Select appropriate species for revegetation and landscaping activities.
 - iii. Minimize soil disturbance which may include using existing roads, access points, staging areas, and alternative construction.
 - iv. Prior to moving equipment out of an infested area and then into an uninfested area, clean soils, seeds, plant parts, or invertebrates from exterior surfaces to the extent possible.
 - v. Locate and use staging areas that are free of invasive plants to avoid spreading seeds and other viable plant parts.
 - vi. Inspect and clean clothing, footwear and gear for soils, seeds, plant parts, and invertebrates before and after activities.
 - vii. Carefully dispose of soils, seeds, plant parts or invertebrates found during inspection and cleaning.
 - viii. Manage stockpiles to limit the spread of invasive species.
 - ix. Keep and reuse onsite materials rather than importing new materials.

- x. Stabilize disturbed soils as soon as possible.
- xi. Use non-invasive cover crops or native seed for revegetation.
- xii. Provide appropriate resources so that workers can identify invasive species.

(3) Upon project completion, the owner(s)/operator(s) of the facility shall be responsible for maintenance and replacement of all required landscaping as long as a telecommunication facility is maintained on the site.

B. Fire Prevention.

1. All mobile service facilities shall be designed and operated in accordance with all applicable codes regarding fire prevention.

C. Noise and Traffic.

1. 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 Section 3.0:
 - a. 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; and
 - b. Backup generators, if present, shall be operated only during power outages and for testing and maintenance purposes.

8.0 Information Report.

A. Purpose

1. The purpose of the report under this Subsection is to provide the County with accurate and current information concerning the mobile service facility owners who offer or provide mobile services within the County, or that own or operate mobile service facilities within the County, to assist the County in enforcement of this Subsection, and to assist the County in monitoring compliance with local, state, and federal laws.

B. Information Report.

1. All mobile service support structure owners of any new mobile service support structure shall submit to the Planning and Zoning Department a Telecommunications Facility Information Report (the "Report") within forty-five (45) days: (1) following land use approval; (2) of receipt of a written request from the Planning and Zoning Department; and (3) of any change in occupancy of the mobile service facility.
2. The Report shall include the mobile service support structure owner's name(s), address(es), phone number(s), contact person(s), and proof of bond as security for removal. The support structure owner shall supply the mobile service support structure height or current occupancy, if applicable, the number of colocation positions designated, occupied or vacant. This information shall be submitted on the County form provided and designated for such use and shall become evidence of compliance.

9.0 Compliance/Penalties.

A. Abandonment.

1. 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 Committee may extend the time limit to abandon once for an additional twelve (12)-month period. Such extension shall be based on the finding that the owner or permit holder is actively seeking tenants for the site. After the expiration of the time periods established above, the following shall apply:
 - a. 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 within ninety (90) days of receipt of notice from the Zoning Administrator notifying the owner of such abandonment. If removal to the satisfaction of the Zoning Administrator does not occur within said ninety (90) days, the Zoning Administrator may order removal utilizing the established bond as provided under 6.0(B) and salvage said antenna, mobile service facility or mobile service support structure, including all supporting equipment and building(s). If there are two (2) or more users of a single mobile service support structure, then this provision shall not become effective until all operations of the mobile service support structure cease.
 - b. The current owner or operator of any antenna, mobile service facility or

mobile service support structure shall notify the Zoning Administrator within forty-five (45) days of the date when the mobile service facility is no longer in operation.

B. Penalties.

1. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this Article shall be subject to the penalty provision set forth in Article 100. Each day a violation exists or continues constitutes a separate offense under this Article. In addition, the Planning and Zoning Department may seek injunctive relief from a court of record to enjoin further violations.

10.0 Definitions.

All definitions contained in § 66.0404(1), Wis. Stats., are hereby incorporated by reference.