



**WAUPACA COUNTY
MOBILE SERVICE FACILITIES AND
SUPPORT STRUCTURES ORDINANCE**

CHAPTER 48

Creation of Chapter 48 of the General Code of Ordinances, Mobile Service Facilities and Support Structures. Created and enacted by the Waupaca County Board of Supervisors on December 17, 2013. Published and effective as of December 26, 2013.

Be it known, that the Waupaca County Board of Supervisors enacted amendments to the Waupaca County Mobile Service Facilities and Support Structures, Chapter 48 of the Waupaca County General Code of Ordinances on May 19, 2015. Amendments effective upon publication of May 28, 2015.

Create Chapter 48, Waupaca County General Code of Ordinances Mobile Service Facilities and Support Structures

The Waupaca County Board of Supervisors does hereby ordain that the current Section 12 of the Waupaca County Zoning Ordinance, Chapter 34 of the Waupaca County Code of Ordinances be repealed in its entirety and create Chapter 48, Waupaca County Mobile Service Facilities and Support Structures as a stand-alone ordinance:

WHEREAS, Wisconsin Statute §59.69 (5) authorizes the County Board to adopt a zoning ordinance and §59.692 mandates the county to zone by ordinance all shorelands in its unincorporated area; and

WHEREAS, Wisconsin Statute §59.69(5)(e) authorizes the County Board to amend an ordinance and Wisconsin Statute §59.692(2)(a) states that the powers of §59.69 apply to ordinances and their amendments enacted under §59.692; and

WHEREAS, 2013 Wisconsin Act 20 makes unenforceable any ordinance in effect after July 2, 2013 which is inconsistent with the provisions set forth in Wisconsin Statute §66.0404; and

WHEREAS, Waupaca County has in effect an ordinance which is inconsistent with the provisions set forth in Wisconsin Statute §66.0404; and

WHEREAS, it is deemed in the best interest of the County of Waupaca to create Chapter 48 Code of Ordinances, Waupaca County, Wisconsin, pertaining to Mobile Tower Siting Regulations to conform with the requirements of 2013 Wisconsin Act 20; and

NOW, THEREFORE, the Waupaca County Board of Supervisors does hereby ordain as follows:

Section 1. Chapter 48 [Mobile Tower Siting Regulations.] is hereby created to read as follows:

Chapter 48 Mobile Tower Siting Regulations.

- (a) Purpose and Intent.** The purpose of this ordinance is to regulate by conditional use 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 by conditional use permit; 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 also by land use permit.

It is intended that the 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 and provided to serve the community, as well as serve as an important and effective part of Waupaca County's police, fire, and emergency response network.
- (3) Provide a process of obtaining necessary permits for mobile service facilities and support structures while at the same time protecting the legitimate interests of Waupaca County citizens.
- (4) Encourage the use of alternative support structures, co-location of new antennas on existing support structures, camouflaged mobile service support structures, and construction of support structures with the ability to locate three (3) or more providers.

Furthermore, this section is not intended to regulate residential satellite dishes or residential television antennas that are used privately. Additionally, it is not intended to regulate satellite dishes/antennas whose regulation is prohibited by Sec. 59.69(4d), or its successor sections, of the Wisconsin Statutes or as permitted by Federal Law.

(b) Definitions.

- (1) All definitions contained in s. 66.0404(1), Wisconsin Statutes are hereby incorporated by reference.
- (2) For the purpose of this section, the following terms and phrases shall be defined as:
 - a. Camouflaged Mobile Service Support Structure: Any mobile service support structure that due to design or appearance hides, obscures, or conceals the presence of the mobile service support structure.

- b. Satellite Dish: A device incorporating a reflective surface that is solid, open mesh, or bar configured that is shallow dish, cone, horn or cornucopia shaped and is used to transmit and/or receive electromagnetic signals. This definition is meant to include, but is not limited to, what are commonly referred to as satellite earth stations, TVROs and satellite microwave antennas.

(c) Exempt from Permitting. The following shall be exempt from the requirement to obtain a land use permit, unless otherwise noted.

- (1) The use of all receive-only television antenna and satellite dishes.
- (2) 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 is used for amateur radio purposes or is used exclusively for receive-only purposes.
- (3) Mobile services providing public information coverage of news events of a temporary or emergency nature.

(d) Siting and Construction of any New Mobile Service Support Structure and Facilities and Class 1 Collocation.

(1) Application Process.

- a. A conditional use permit is required for the siting and construction of any new mobile service support structure and facilities and for Class 1 Collocation.
- b. 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:
 - i. The name and business address of, and the contact individual for, the applicant.
 - ii. The location of the proposed or affected support structure.
 - iii. The location of the proposed mobile service facility.
 - iv. 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 all initial antennas on the tower being enumerated on the application, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - v. 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.

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

(2) **Completed Applications.** If an applicant submits to the Planning and Zoning Department 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 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.

(3) **County Responsibilities.** Within ninety (90) 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 Planning and Zoning Department may agree in writing to an extension of the ninety (90) day period:

a. 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, 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.

(4) **Disapproval.** The Planning and Zoning 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 (d)(1)b.vi.

(5) **Application of Set Back/Fall Zone.** In all zoning districts, any building or structure that exceeds one hundred (100) feet in height must be set back from all parcel, property lines and lot lines a distance equal to the height of the building or structure. If an applicant provides the Planning and 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 set back or fall zone area required in a zoning ordinance, that zoning ordinance does not apply to such a structure unless the Planning and Zoning Department provides the applicant with substantial evidence that the engineering certification is flawed.

(6) **Fees.** The fee for the permit is Three Thousand Dollars (\$3,000).

(7) **Limitations.** Conditional Use Permits for Siting and Construction of any new mobile service support structure and facilities and Class 1 Collocations 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 collocation of other providers. For leased sites, written authorization for the facilities from the property owner must be provided.
- b. The applicant has obtained Federal Communications Commission (FCC) license numbers and registration numbers if applicable.
- c. 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.
- d. The applicant and/or agent have copies of the determination of no hazard from the Federal Aviation Administration (FAA) and/or the airport's operator including any aeronautical study determination or other findings, if applicable.
- e. The applicant and/or agent have plans indicating security measures (i.e. access, fencing, lighting, etc.).
- f. 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.
- g. The applicant and/or agent have proof of liability coverage.
- h. 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.
- i. 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.

(e) Class 2 Collocation.

(1) Application Process.

- a. A land use permit is required for a class 2 collocation. A class 2 collocation is a permitted use, but still requires the issuance of the permit.
- b. 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:
 - i. The name and business address of, and the contact individual for, the applicant.
 - ii. The location of the proposed or affected mobile service support structure.
 - iii. The location of the proposed mobile service facility.
- c. A permit application will be provided by the Planning and Zoning Department upon request to any applicant.

(2) Requirements. A class 2 collocation is subject to the same requirements for the issuance of a land use permit to which any other type of commercial development or land use development is subject, except that the maximum fee for this land use permit shall be Five Hundred Dollars (\$500). See attached schedule of fees.

(3) Completed Applications. If an applicant submits to the Planning and Zoning Department 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 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.

(4) County Requirements. 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 Planning and Zoning Department may agree in writing to an extension of the forty-five (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.

(5) Fees. The fee for the permit shall be One Hundred Dollars (\$100).

(f) Information Report. The purpose of the report under this subsection is to provide the County with accurate and current information concerning the mobile service facility owners and providers 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.

(1) **Information Report.** 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. 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 collocation 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.

(g) Removal/Security for Removal.

(1) It is the express policy of Waupaca 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 Waupaca 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. Permittee shall record a document with the Waupaca 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.

(2) **Security for Removal.** The owner of any mobile service support structure other than a municipality or other unit of government shall provide to Waupaca County, prior to the issuance of the conditional use 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), whichever is less, to guarantee that the mobile service support structure will be removed when no longer in operation. Waupaca 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). 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 a letter of credit may, in the Committee's discretion, be in an amount sufficient to secure removal from one 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.

(h) Structural, Design and Environmental Standards.

(1) **Mobile Service Support Structure, Antenna and Facilities Requirements.** All mobile service facilities and mobile service support structures, except exempt facilities as defined in subsection (c), 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 nonreflective 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.
- 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, Waupaca County Subdivision Ordinance, Waupaca County Sanitation Ordinance, 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.

(2) **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 colocators.

(3) **Vegetation protection and facility screening.**

- a. Except exempt facilities as defined in subsection (c), all mobile service facilities shall be installed in a manner to 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.

- b. 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.

(4) **Fire prevention.** All mobile service facilities shall be designed and operated in accordance with all applicable codes regarding fire prevention.

(5) **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 (c):

- 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.

(6) **Separation Requirements.** Mobile service support structures shall be separated by a minimum of two thousand six hundred forty (2640) feet, except that:

- a. Two (2) mobile service support structures may be permitted to be located within one hundred (100) feet of each other subject to approval of the Waupaca County Planning and Zoning Committee.
- b. Camouflaged mobile service support structures are exempt from the separation between mobile service support structures requirement listed above.

(i) Compliance/Penalties.

(1) **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 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 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 to the depth as otherwise herein required within ninety (90) days of receipt of notice from the Planning and Zoning Department notifying the owner of such abandonment. If removal to the satisfaction of the Planning and Zoning Department does not occur within said ninety (90) days, the Waupaca County Planning and Zoning Director may order removal utilizing the established bond as

provided under subsection (g) 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 service support structure, then this provision shall not become effective until all operations of the mobile service support structure cease.

- b. The recipient of a conditional use permit allowing a mobile service support structure and facility under this section, or the current owner or operator, shall notify the Waupaca County Planning and Zoning Department within forty-five (45) days of the date when the mobile service facility is no longer in operation.

(3) **Penalties.** Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall be subject to the penalty provisions set forth in Sec. 15-07 of the Waupaca County Zoning Ordinance, and, upon conviction, may pay a forfeiture of not less than Ten Dollars (\$10.00) nor more than Five Hundred Dollars (\$500.00), 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 Planning and Zoning Department may seek injunctive relief from a court of record to enjoin further violations.

Section 3. Except as specifically modified and amended by this ordinance, the Waupaca County Code of Ordinance shall remain in force and effect exactly as originally adopted and previously amended. All ordinances or parts of ordinances inconsistent with or in contravention of the provisions of this ordinance are hereby repealed.

Section 4. SEVERABILITY. If a court of competent jurisdiction adjudges any section, clause, provision, or portion of this ordinance unconstitutional or invalid, the remainder of this ordinance shall not be affected thereby.

Section 5. EFFECTIVE DATE. This ordinance shall take effect and be in full force from and after its passage.