

**TOWN OF HARMONY
ORDINANCE NO. 030314**

AN ORDINANCE AMENDING CHAPTER 1 OF THE CODE OF ORDINANCES IN
RELATION TO MOBILE TOWER SITING.

RECITALS

A. Chapter 1 of the Code of Ordinances of the Town of Harmony has previously provided for regulation of Telecommunications Towers and Antennas.

B. 2013 Act 20 of the Laws of Wisconsin has created Wis. Stat. § 66.0404, which substantially limits the authority previously exercised by the Town Board with regard to Mobile Tower Siting.

C. The Town Board has the specific authority under Wis. Stat. §§ 66.0404, 60.22 (3), 61.34, and 62.23 (7) to adopt and enforce this Ordinance.

D. The Town Board wishes to exercise the power available to it to regulate the placement of mobile towers in the Town of Harmony.

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF HARMONY,
COUNTY OF ROCK, STATE OF WISCONSIN, ORDAINS AS FOLLOWS:

SECTION 1: Section 15 of Chapter 1 of the Code of Ordinances of the Town of Harmony is repealed and recreated to read as follows:

SECTION 15.0 MOBILE TOWER SITING

15.1 Purpose

The purpose of this Section is to regulate by Conditional Use Permit and 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.

15.2 Definitions

As used in this Section, the following definitions apply, except to the extent they may be inconsistent with the definitions set forth in Wis. Stat. § 66.0404(1), as amended from time-to-time and, in all other respects, the definitions set forth in Wis. Stat. § 66.0404(1) and any amendment to that subsection shall apply:

"Antenna" means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

"Application" means an application for: a) a Conditional Use Permit under this Section to engage in the siting or construction of a new mobile service support structure or a class 1 collocation; or b) a Zoning Permit under this Section to engage in a class 2 collocation.

"Class 1 collocation" means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.

"Class 2 collocation" means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility or engage in substantial modification.

"Collocation" means class 1 or class 2 collocation or both.

"Committee" means the Town Planning & Zoning Committee created under this Chapter.

"Distributed antenna system" means a network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

"Equipment compound" means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

"Existing structure" means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with the Town Clerk.

"FAA" means the Federal Aviation Administration.

"FCC" means the Federal Communications Commission.

"Mobile Service" means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, as defined in federal law.

"Mobile service facility" means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

"Mobile service provider" means a person who provides mobile service.

"Mobile service support structure" means a freestanding structure that is designed to support a mobile service facility.

“Political subdivision” means a city, village, town, or county.

"Public utility" has the meaning provided under Wis. Stat. § 196.01 or any amendment thereto.

"Search ring" means a shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

"Substantial modification" means the modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

1. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.
2. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.
3. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation.
4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

"Support structure" means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

"Utility pole" means a structure owned or operated by an alternative telecommunications utility, as defined in Chapter 196 of the Wisconsin Statutes and any amendment thereto; public utility, as defined in Chapter 196 of the Wisconsin Statutes and any amendment thereto; telecommunications utility, as defined in Chapter 196 of the Wisconsin Statutes and any amendment thereto; political subdivision; or cooperative association organized under Chapter 185 of the Wisconsin Statutes and any amendment thereto; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in Chapter 182 of the Wisconsin Statutes and any amendment thereto; for video service, as defined in Chapter 66 of the Wisconsin Statutes and any amendment thereto; for electricity; or to provide light.

15.3 Application Process for Siting and Construction of New Mobile Service Support Structure and Facilities.

1. A Conditional Use Permit is required for the siting and construction of any new mobile service support structure and facilities in the Town.
2. A written permit application must be completed by any applicant and submitted to the Town Clerk. The application must contain all information required for a Conditional Use Permit under this Chapter, plus 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. 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. 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. A scaled site plan clearly indicating the location, type and height of the proposed structure and equipment compound, adjacent land uses and structures, adjacent roadways, on-site parking and driveways, structure and equipment compound setbacks from property lines, and other information deemed necessary by the Committee to assess compliance with this Section.
 - h. The distance between the structure and the nearest residential unit and residentially zoned properties.
 - i. The distance from the nearest other mobile service support structure.
 - j. A landscape plan showing specific plant materials.
 - k. The method of fencing, including location, materials and finished color and, if applicable, vegetative screening.
3. A permit application will be provided by the Town Clerk upon request to any applicant.

4. If an applicant submits to the Town Clerk an application for a permit for the siting and construction of any new mobile service support structure and facilities, which application contains all of the information required under this Section, the Clerk shall consider the application complete. If the Clerk does not believe that the application is complete, the Clerk 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 the Town Clerk's receipt of a complete application, the Committee shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Town Board may agree in writing to an extension of the 90 day period:

a. The Committee shall review the application to determine whether it complies with all applicable aspects of this Chapter, subject to the limitations in this section.

b. The Committee shall make a final decision whether to approve or disapprove the application.

c. The Clerk shall notify the applicant, in writing, of the Committee's final decision.

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

7. The Committee 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 subparagraph 2.f above.

8. A mobile service support structure shall be located not closer than a distance equal to 100% of the height of the structure from any adjoining lot line, provided that, if an applicant provides the Committee with an engineering certification showing that the structure is designed to collapse within a smaller area than a distance equal to 100% of the height of the structure from any adjoining lot line, then the setback shall be reduced to the smaller area unless the Committee provides the applicant with substantial evidence that the engineering certification is flawed.

9. The fee for the permit is \$3000.

15.4 Application Process for Substantial Modification of an Existing Support Structure and Mobile Service Facilities as Part of Class 1 Collocation.

1. A Conditional Use Permit is required for substantial modification of an existing support structure and mobile service facilities as part of a Class 1 collocation in the Town.
2. A written permit application must be completed by any applicant and submitted to the Town Clerk. The application must contain all information required for a Conditional Use Permit under this Chapter, plus the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the affected support structure.
 - c. The location of the affected mobile service facility.
 - d. 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. A scaled site plan clearly indicating the location, type and height of the existing structure and equipment compound, adjacent land uses and structures, adjacent roadways, on-site parking and driveways, structure and equipment compound setbacks from property lines, and other information deemed necessary by the Committee to assess compliance with this Section.
 - f. The distance between the existing structure and the nearest residential unit and residentially zoned properties.
3. A permit application will be provided by the Town Clerk upon request to any applicant.
4. If an applicant submits to the Town Clerk an application for a permit for a Class 1 collocation, which application contains all of the information required under this Section, the Clerk shall consider the application complete. If the Clerk does not believe that the application is complete, the Clerk 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 the Town Clerk's receipt of a complete application, the Committee shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Town Board may agree in writing to an extension of the 90 day period:

- a. The Committee shall review the application to determine whether it complies with all applicable aspects of this Chapter, subject to the limitations in this section.
- b. The Committee shall make a final decision whether to approve or disapprove the application.
- c. The Clerk shall notify the applicant, in writing, of the Committee's final decision.
- d. If the decision of the Committee is to disapprove the application, it shall include with the written notification substantial evidence which supports the decision.

6. A mobile service support structure to be modified hereunder shall be located not closer than a distance equal to 100% of the height of the structure from any adjoining lot line, provided that, if an applicant provides the Committee with an engineering certification showing that the structure is designed to collapse within a smaller area than a distance equal to 100% of the height of the structure from any adjoining lot line, then the setback shall be reduced to the smaller area unless the Committee provides the applicant with substantial evidence that the engineering certification is flawed.

7. The fee for the permit is \$3000.

15.5 Application Process for Class 2 Collocation.

1. A Zoning Permit is required for a Class 2 collocation in the Town.
2. A written permit application must be completed by any applicant and submitted to the Zoning Officer. The application must contain all information required for a Zoning Permit under this Chapter, plus the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the affected support structure.
 - c. The location of the proposed or affected mobile service facility.
 - d. A scaled site plan clearly indicating the location, type and height of the proposed structure and equipment compound, adjacent land uses and structures, adjacent roadways, on-site parking and driveways, structure and equipment compound setbacks from property lines, and other information deemed necessary by the Committee to assess compliance with this Section.

e. The distance between the structure and the nearest residential unit and residentially zoned properties.

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

4. 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 under this Chapter.

5. If an applicant submits to the Zoning Officer an application for a Zoning Permit for a class 2 collocation, which contains all of the information required under this Section, the Zoning Officer shall consider the application complete. If the Zoning Officer, in consultation with the Committee, does not believe that the application is complete, the Zoning Officer shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

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

a. Review the application to determine whether it complies with all applicable aspects of this Chapter, subject to the limitations in this section.

b. Make a final decision whether to approve or disapprove the application.

c. Notify the applicant, in writing, of the Zoning Officer's final decision.

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

7. The fee for the permit is \$500.

15.6 Limitations

A Conditional Use Permit for the siting and construction of any new mobile service support structure and facilities or for a Class 1 collocation in the Town, and a Zoning Permit for a Class 2 collocation, shall be subject to all regulations under this Chapter for such permits, provided that no limitation shall be imposed which is contrary to the provisions of Wis. Stat. § 66.0404 (4), as amended from time to time, and further provided as follows:

- (a) No permit shall be issued for any structure or facility unless the applicant reasonably assures that the structure or facility shall be constructed and maintained in compliance with all applicable state or local building codes, with applicable standards for towers that are published by the Electronic Industries Association, and with applicable standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas.
- (b) Proposed or modified structures and facilities shall be constructed so as to reasonably blend in with the surrounding environment, provided that no application shall be disapproved solely for aesthetic concerns.
- (c) The applicant for a Conditional Use Permit for a proposed or modified structure and facilities may be required by the Committee to provide a surety bond or a cash deposit as reasonably necessary to protect the interests of the Town and its residents and property owners.
- (d) Proposed or modified structures shall blend in with the surrounding environment except as may be required by rules of the FAA or FCC. The equipment compound shall also blend in with the character of the district in which it is located.
- (e) No mobile service support structure may be located within 2500 feet of an existing mobile service support structure, measured by a straight line between the base of an existing mobile service support structure and the base of a proposed mobile service support structure.
- (f) The height of a mobile service support structure may be limited by the Town Board as reasonably necessary to protect the interests of the Town and its residents and property owners, but not to a height of under 200 feet, and no application may be disapproved solely because of the height.
- (g) No advertising material or signage other than warning or equipment information shall be allowed on any mobile service support structure. This prohibition shall include the attachment to a mobile service support structure of any flag, decorative sign, streamers, pennants, ribbons, spinners or waving, fluttering or revolving devices.
- (h) A mobile service support structure shall not be artificially illuminated unless required by government authority. Lighting shall be designed to minimize disturbance to the surrounding area. No application may be disapproved solely because the structure requires lighting.

(i) A mobile service support structure shall be enclosed by security fencing not less than 6 feet in height and secured so that it is not accessible by the general public. Fence design, materials and colors shall reflect the character of the surrounding area.

(j) A buffer of plant materials to effectively screen the equipment compound from public view and from adjacent properties shall be provided. The minimum buffer shall consist of a landscaped strip at least 5 feet in width outside the perimeter of the tower compound. In locations where the visual impact of the compound would be minimal, the landscaping requirement may be reduced or waived. Existing mature tree growth and natural land forms shall be preserved to the maximum extent possible.

(k) The mobile service support structure shall be shielded, filtered and grounded in a manner consistent with the FCC and the Electronic Industries Association guidelines so as to minimize the possibility of interference with locally received transmissions. In the event any complaint of interference is received by the Town, and the interference is verified by a qualified engineer to be caused by the structure, the Town shall notify the owner and operator in writing and the owner and operator shall have period of 30 days to investigate the complaint and respond to the Town. In the event it is determined that the structure is the source of the interference, the owner and operator shall take steps to correct the interference.

SECTION 2: Section 5.8 of Chapter 1 of the Code of Ordinances of the Town of Harmony is repealed and recreated to read as follows:

“5.8 Conditional Use Permit Fee

The applicant, upon filing of his application, shall pay a fee to the Town of Harmony in the amount of \$350, or such other fee as is provided in this Chapter, such as for mobile tower siting, or as determined by Town Board Resolution.”

SECTION 3: Section 5.10 of Chapter 1 of the Code of Ordinances of the Town of Harmony is created to read as follows:

“5.10 Conditional Use Permit for Mobile Tower Siting

The procedure for issuance of a Conditional Use Permit for a mobile tower shall be as set forth in Section 15 of this Chapter and, to the extent the conditions for issuance of a Conditional Use Permit under that Section are inconsistent with that Section or contrary to Wis. Stat. § 66.0404, the provisions of that Section and that statute shall apply.”

SECTION 4: Section 6.4 of Chapter 1 of the Code of Ordinances of the Town of Harmony is repealed and recreated to read as follows:

“6.4 Zoning Permit Fee

The applicant, upon filing of his application, shall pay a fee to the Town of Harmony of \$50, except as otherwise provided in this Chapter, such as for mobile tower siting, or as determined by Town Board Resolution. In addition to the Zoning Permit Fee, the applicant shall also pay any Town building permit fees and any state inspection fees which are necessary in order to obtain any required building permit.”

SECTION 5: Section 6.10 of Chapter 1 of the Code of Ordinances of the Town of Harmony is created to read as follows:

“6.10 Zoning Permit Fee for Mobile Tower Siting

The procedure for issuance of a Zoning Permit for a mobile tower shall be as set forth in Section 15 of this Chapter and, to the extent the conditions for issuance of a Zoning Permit under that Section are inconsistent with that Section or contrary to Wis. Stat. § 66.0404, the provisions of that Section and that statute shall apply.”

SECTION 6: Subsection 4.3 (6) is amended by adding the following as a second paragraph of that subsection:

“(20) No structure shall be constructed, the height of which exceeds the distance of the foot of the structure from any property line, except that such a structure may be constructed upon issuance of a Conditional Use Permit permitting such construction if the Planning & Zoning Committee is satisfied that any reasonable safety concerns raised by the height of the structure have been addressed. This provision is subject to the limitations on mobile tower siting setbacks set forth in Section 15 of this Chapter.”

CERTIFICATION

I hereby certify that the above ordinance number 03-0314 was adopted by the Town Board of the Town of Harmony on the 3rd day of March, 2014, and that on the 14th day of March, 2014, a copy of the above ordinance was posted in three places in the Town as follows:

Harmony Town Hall, 440 N Hwy 14, Janesville, WI
JAMC, 5021 Wright Ct., Milton WI
Fanning Excavating, 2930 N Harmony Town Hall Rd., Janesville

Lisa Tollefson, Town Clerk, Town of
Harmony, Rock County, Wisconsin

Subscribed and sworn to before me
this _____ day of _____, 2014.

Notary Public, Rock County, Wisconsin
My Commission expires: _____