

ORDINANCE NO. 2016-05, SERIES 2016
AN ORDINANCE REPLACING CHAPTER 13-1-145
OF THE FREDONIA MUNICIPAL CODE
RELATING MOBILE SITING PERMIT ORDINANCE

SECTION I – TITLE

This ordinance is entitled the Village of Fredonia Mobile Tower Siting Permit Ordinance.

SECTION II – PURPOSE

The purpose of this 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 of an existing support structure and mobile service facilities; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

SECTION III – AUTHORITY

The Village board has the specific authority under ss. 66.0404, Wis. Stats., to adopt and enforce this ordinance.

SECTION IV – ADOPTION OF ORDINANCE

This ordinance, adopted by a majority of the Village board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation 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.

SECTION V – DEFINITIONS

A. All definitions contained in s. 66.0404(1) are hereby incorporated by reference.

SECTION VI - SUBDIVISION AND NUMBERING OF THIS ORDINANCE

This ordinance is divided into sections designated by uppercase Roman numerals. Sections may be divided into subsections designated by uppercase letters. Subsections may be divided into paragraphs designated by numbers. Paragraphs may be divided into subdivisions designated by lowercase letters. Subdivisions may be divided into

subdivision paragraphs designated by lowercase Roman numerals. Reference to a "section," "subsection," "paragraph," or "subdivision" includes all divisions of the referenced section, subsection, paragraph, or subdivision.

SECTION VII – SITING AND CONSTRUCTION OF ANY NEW MOBILE SERVICE SUPPORT STRUCTURE AND FACILITIES

A. Application Process

1. A Village zoning permit is required for the siting and construction of any new mobile service support structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the Village obtainable with this permit.
2. A written permit application must be completed by any applicant and submitted to the Village. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
 - d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - e. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
 - f. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an Individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
3. A permit application will be provided by the Village upon request to any applicant.
4. If an applicant submits to the Village 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 Village shall consider the application complete. If the Village does not believe that the application is complete, the Village shall notify the applicant in writing, within 10 days of receiving the application, that the

application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

5. Within 90 days of its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the 90 day period:

- a. Review the application to determine whether it complies with all applicable aspects of the political subdivision'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.

6. The Village may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.

7. If an applicant provides the Village 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 Village provides the applicant with substantial evidence that the engineering certification is flawed.

8. The fee for the permit is \$3,000.00

SECTION VIII – CLASS 1 COLLOCATION

A. Application Process

1. A Village zoning permit is required for a class 1 collocation. A class 1 collocation is a conditional use in the Village obtainable with this permit.
2. A written permit application must be completed by any applicant and submitted to the Village. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
 - d. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
 - e. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components,

including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.

- f. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
3. A permit application will be provided by the Village upon request to any applicant.
4. If an applicant submits to the Village 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 Village shall consider the application complete. If the Village does not believe that the application is complete, the Village shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
5. Within 90 days of its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the 90 day period:
 - a. Review the application to determine whether it complies with all applicable aspects of the political subdivision'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.
6. The Village may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.
7. If an applicant provides the Village 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 Village provides the applicant with substantial evidence that the engineering certification is flawed.
8. The fee for the permit is \$3000.00

SECTION IX – CLASS 2 COLLOCATION

A. Application Process

1. A Village zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use in the Village but still requires the issuance of the Village permit.
2. A written permit application must be completed by any applicant and submitted to the Village. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
3. A permit application will be provided by the Village upon request to any applicant.
4. A class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject. Reference other ordinances such as, but not limited to, electrical codes, plumbing codes, and zoning codes. **~~[You should list these here or simply incorporate them by reference to the other local ordinance.]~~**
5. If an applicant submits to the Village 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 Village shall consider the application complete. If any of the required information is not in the application, the Village 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 its receipt of a complete application, the Village shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Village may agree in writing to an extension of the 45 day period:
 - a. Make a final decision whether to approve or disapprove the application.
 - b. Notify the applicant, in writing, of its final decision.
 - c. If the application is approved, issue the applicant the relevant permit.
 - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
7. The fee for the permit is \$500.00

SECTION X – PENALTY PROVISIONS

Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than \$100.00 nor more than \$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 Village board may seek injunctive relief from a court of record to enjoin further violations.

SECTION XI – 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.

~~SEC. 13-1-145 SPECIFIC REQUIREMENTS REGARDING WIRELESS COMMUNICATION FACILITIES.~~

~~(a) Additional Standards.~~ Wireless communication facilities, commonly referred to as "cell towers," and their appurtenant buildings shall satisfy the requirements of this Section in addition to those found elsewhere in this Article.

~~(b) Application.~~ At the time of application for a conditional use permit, the applicant shall submit the following information:

~~(1) A site plan showing the location of the proposed tower as well as the location of the proposed equipment storage building. The site plan shall include any equipment storage buildings which shall be designed to accommodate other potential carriers that may locate on the tower and accommodate expansion.~~

~~(2) A written statement signed by the applicant that Federal Aviation Administration (FAA) and Wisconsin Department of Transportation, Division of Aeronautics, approvals are not required, or a copy of the FAA and Wisconsin Department of Transportation, Division of Aeronautics, application if such approval is required.~~

~~(3) An application for Department of Commerce (COMM) approval or a statement submitted by the applicant as to why COMM approval is not required.~~

~~(4) An explanation describing how the proposal is in concert with zoning and land use requirements of the particular zoning district.~~

~~(5) A visual impact statement, including a site photo, drawing of the proposed structure, and setting forth the location of the structure plotted on an official zoning map. The site shall be plotted on an aerial map of a scale of 1 inch equals 300 feet or finer, showing adjacent land uses within a radius of 2500 feet of the structure.~~

~~(6) A statement describing the access to the facility.~~ In addition, applicant shall submit a horizontal plan of the facility, showing the relationship of all major components of the facility, including a tower, fence, buildings on site, lot lines and nearest residences and access roads.

~~(7) A statement describing the impact on utility services at the proposed facility.~~

~~(8) An engineering analysis, conducted by a registered professional engineer familiar with the structure, which considers the following:~~

~~a. Structural capacity~~

~~b. Antenna aperture~~

~~c. Space and equipment building~~

~~d. FCC, FAA, and/or Department of Commerce limitations.~~

~~e. The analysis shall include a written report from the engineer in the application describing strengthening methods to be used along with a statement that the proposed facility meets the latest Electrical Industrial Association (EIA) requirements for the southeast Wisconsin area wind loading zoning.~~

~~f. A detailed statement of how arcing, spurious emissions, intermodulation, and distortion will be minimized by RF transmitter filtering, secure bonding of waveguide, transmissions lines and other tower and guy attachments and the use of corrosion resistant hardware.~~

~~(9) If the application proposes a new tower structure instead of co-location, the applicant must also submit documentation outlining the reasons for not co-locating.~~

~~(c) Co-Location Requirements.~~

No proposal for the construction of a new wireless telecommunication tower shall be approved unless the applicant documents to the satisfaction of the Village Board that the antenna planned for the proposed tower cannot reasonably be accommodated on an existing, conforming co-location tower or structure, or on a utility pole within the applicant's search ring due to one or more of the following:

- ~~(1) The antenna would exceed the structural capacity of the existing or approved tower or building.~~
- ~~(2) The antenna would cause interference with other existing or planned equipment at the tower or building.~~
- ~~(3) Existing or approved towers and buildings cannot reasonably accommodate the antenna at a height necessary for the proposed antenna to provide services to the residents and businesses of the Village.~~
- ~~(4) Existing or approved towers and commercial buildings are outside of the documented search area.~~
- ~~(5) The owners or lessors of the existing or approved towers and buildings are unwilling to allow co-location upon their facilities.~~

~~(d) Abandonment.~~

~~Any wireless communication facility that is not operated for a continuous period of six months shall be considered abandoned and the owner of such facility shall remove the same within 90 days of receipt of notice from the Village notifying the owner of abandonment.~~

~~(e) Construction.~~ ~~Wireless communication facilities shall be constructed and anchored in such a manner to withstand wind pressure of not less than forty (40) pounds per square foot in area.~~

~~(f) Noise.~~ ~~No noise shall be generated that can be measured at the lot line.~~

~~(g) Electro-magnetic Interference.~~ ~~Wireless communication facilities shall be filtered and/or shielded so as to prevent the emission of radio-frequency energy that would cause any harmful interference with radio and/or television broadcasting or reception, or exceed permissible standards under federal regulations. In the event that harmful interference is caused subsequent to the granting of a conditional use permit, the operator of the wireless communication facility owner shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.~~

~~(h) Location and Height.~~ ~~Wireless communication facilities shall meet all setback and yard requirements for the district in which they are located and, in addition, shall be located not closer to a property boundary than a distance equal to their height. Wireless communication towers are exempt from the height requirements of this Chapter; however, all such installations over seventy five (75) feet in height shall submit plans to the Federal Aviation Administration (FAA) to determine whether the system is to be considered an object affecting navigable air space and subject to FAA restrictions. A copy of any FAA restrictions imposed shall be included as a part of the wireless communication facility conditional use permit application.~~

~~(i) Fence Required.~~ ~~All wireless communication facilities shall be surrounded by a security fence not less than six (6) feet in height. A warning sign shall be posted on the fence.~~

SECTION XII – EFFECTIVE DATE

This ordinance is effective on the day following publication.

Adopted this _____ day of _____, 2016.

Don Dohrwardt, Village President

Attest: _____
Sandra Tretow, Village Clerk