

ORDINANCE 2019-08 AMENDING THE VILLAGE OF FREDONIA CODE OF ORDINANCES PERTAINING TO SPECIFIC REQUIREMENTS FOR MOBILE SITING PERMITS

§ 575-82 Specific requirements for mobile siting permits.
[Amended 6-2-2016 by Ord. No. 2016-05]

- A. Title. This section is entitled the "Village of Fredonia Mobile Tower Siting Permit Ordinance."
- B. Purpose. The purpose of this section 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 co-location, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a Class 2 co-location, co-location on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.
- C. Authority. The Village Board has the specific authority under § 66.0404, Wis. Stats., to adopt and enforce this chapter.
- D. Adoption of ordinance. This chapter, 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 of: (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a Class 1 co-location, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a Class 2 co-location, co-location on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.
- E. Definitions. All definitions contained in § 66.0404(1), Wis. Stats., are hereby incorporated by reference.
- F. Siting and construction of any new mobile service support structure and facilities. 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. Small wireless facilities are classified as a permitted use in non-residential zoning districts and are not subject to this zoning ordinance if collocated in a right-of-way.
 - (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. Towers shall be set back a minimum distance equal to the height of the tower from adjacent residential zoned parcels. Small wireless facilities and utility poles, may not obstruct or hinder travel, drainage, maintenance, or the public health, safety, and general welfare on or around the right-of-way, or obstruct the legal use of the right-of-way for other communications providers, public utilities, cooperative associations organized for the purpose of producing or furnishing heat, light, power, or water to their members only, or pipes or pipelines transmitting liquid manure.

- (1) Except as provided in paragraph (c), the height of a utility pole installed, or modified, in a right-of-way may not exceed the greater of:
- (a) A height that is 10 percent taller than the tallest existing utility pole as of the effective date of this subd. 1.a. that is located within 500 feet of the new or modified utility pole in the same right-of-way.
 - (b) Fifty feet above ground level.
- (2) The height of a small wireless facility installed, or modified, in a right-of-way may not exceed the greater of:
- (a) A height that is 10 percent taller than the existing utility pole or wireless support structure on which the small wireless facility is located.
 - (b) Fifty feet above ground level.
- (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 co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that co-location 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) Damage and repair. The Village requires a wireless provider to repair all damage that is directly caused by the activities of the wireless provider in a right-of-way involving its small wireless facilities or structures, and to return the right-of-way to its former condition before it was so damaged. If the wireless provider fails to make the required repairs within a reasonable amount of time after receiving a written request to do so from the Village, the Village may make the necessary repairs and charge the liable party for the cost of the repairs. This paragraph does not prohibit the Village from recovering damages under Wis. Stats. 86.02.
- ~~(45)~~ If an applicant submits to the Village 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 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.
- ~~(56)~~ 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 ninety-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~~7) The Village may disapprove an application if an applicant refuses to evaluate the feasibility of co-location within the applicant's search ring and provide the sworn statement described under Subsection **F(2)(f)**.
- (~~7~~8) 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 setback 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~~9) The fee for the permit shall be in accordance with the Village's current Schedule of Fees. [**Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)**]

G. Class 1 co-location. Application process:

- (1) A Village zoning permit is required for a Class 1 co-location. A Class 1 co-location 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 co-location, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that co-location 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 chapter, which contains all of the information required under this chapter, 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 ninety-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 co-location within the applicant's search ring and provide the sworn statement described under Subsection **G(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 shall be in accordance with the Village's current Schedule of Fees. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

H. Class 2 co-location. Application process:

- (1) A Village zoning permit is required for a Class 2 co-location. A Class 2 co-location 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 co-location 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.
- (5) If an applicant submits to the Village 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 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 five 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 forty-five-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 shall be in accordance with the Village's current Schedule of Fees. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**
- I. Penalty provisions. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this chapter shall, upon conviction, be punishable as set forth in § 1-4, General penalty, of the Code. Each day a violation exists or continues constitutes a separate offense under this chapter. In addition, the Village Board may seek injunctive relief from a court of record to enjoin further violations. **[Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II)]**

This ordinance shall take effect and be in force one day after its passage and posting as provided by law.

PASSED AND ADOPTED by the Village Board of the Village of Fredonia, Ozaukee County, Wisconsin, this 7th day of November, 2019.

Donald Dohrwardt, Village President

ATTEST:

Sandra Tretow, Village Clerk