

CHAPTER 28

MOBILE TOWER, TELEVISION OR RADIO BROADCAST SERVICE FACILITY SITING

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28.01 PURPOSE.

(1) The purpose of this ordinance is to regulate by Conditional Use Permit and Zoning/Occupancy Permit the siting and construction of any new mobile service or television/radio broadcast support structure; with regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and with regard to a class 2 collocation, collocation on an existing support structure which does not require a substantial modification of an existing support structure and mobile service facilities.

It is intended that La Crosse County apply these regulations to accomplish to the greatest degree possible the following:

(a) Minimize adverse effects of mobile service facilities and mobile support structures.

(b) 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 La Crosse County's police, fire and emergency response network.

(c) Provide a process of obtaining necessary permits for these facilities and support structures while at the same time protecting the legitimate interest of La Crosse County citizens.

(d) Encourage the use of alternative support structures, collocation of new antennas on existing support structures, camouflaged support structures, and construction of support structures with the ability to collocate three or more providers.

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

28.02 INTERPRETATION, PURPOSE, APPLICABILITY, AND SEVERABILITY

(1) The provision of this Chapter shall be held to be minimum requirements adopted to promote the public health, safety and general welfare as authorized by s.66.0404 Wis. Stats.

(2) It is not intended by this chapter to repeal, abrogate, annul, impair or interfere with any existing easement, covenant of agreement between parties or with any rules, regulations or permits previously adopted or issued pursuant to laws.

(3) The powers granted by the provisions of this chapter shall be liberally construed in favor of the County exercising such powers. Whenever there is a reference to a state statute, state administrative code section, or any other state or local rule or ordinance, such reference shall include any future amendments to the statute, code section, rule, or ordinance.

(4) This chapter is effective in all unincorporated towns located within La Crosse County that do not regulate the same subject matter under town zoning.

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(5) If a court of competent jurisdiction adjudges any section, clause, provision or portion of this chapter unconstitutional or invalid, the remainder of this chapter shall not be affected thereby.

28.03 DEFINITIONS. All definitions contained in s.66.0404(1) and 66.0406(1), Wisconsin Statutes are hereby incorporated by reference. For the purposes of this chapter, mobile service support structure also includes any existing or new structure that supports television or radio broadcast service facilities.

(1) 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.

(2) Satellite dish. A device incorporating a reflect surface that is a 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.

28.04 EXEMPT FROM PERMITTING. The following shall be exempt from the permitting requirements of this chapter, unless otherwise noted:

(1) The use of all receive-only television antennas and satellite dishes.

(2) Amateur radio and/or receive-only antennas. This chapter shall not regulate the installation of any antenna that is owner or operated by a federally licensed amateur radio operator and is used for amateur radio purposes or is used for receive-only purposes.

(3) Mobile service facilities providing public information coverage of news events of a temporary or emergency nature.

28.05 SITING AND CONSTRUCTION OF NEW MOBILE SERVICE SUPPORT STRUCTURES AND CLASS 1 COLLOCATIONS.

(1) A Conditional Use Permit is required for the siting and construction of any new mobile service support structure and facilities, and for class 1 collocations.

(2) An application for a Conditional Use Permit must be completed by the applicant and submitted to the La Crosse County Zoning, Planning and Land Information department. The application must contain the following information:

(a) The name and business address of, and contact individual for, the applicant.

(b) The location of the proposed or existing 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.

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(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 the 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 La Crosse County Zoning, Planning and Zoning Department upon request by an applicant.

(4) If an applicant submits to the Zoning & Planning Department an application for a permit to engage in an activity described in this section which contains all of the information required under this section, the Zoning & Planning Department shall consider the application complete. If the Zoning & Planning Department finds the application is incomplete, the department shall notify the applicant in writing within 10 days of the receipt of 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 is necessary until it is complete.

(5) County Responsibilities. Within 90 days of its receipt of a complete application, the Planning, Resources & Development Committee and La Crosse County Board shall complete all of the following or the applicant may consider the Conditional Use application approved, except that the applicant and the County and/or Department may agree in writing to extending this 90 day period:

(a) Review the application to determine whether it complies with all applicable aspects of the County's Zoning Ordinances, subject to the limitations in this section.

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

(c) Notify the applicant of its decision in writing.

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

(e) If the Conditional Use Permit is approved, a Zoning/Occupancy Permit as required for class 2 collocation under s.28.06 shall be applied for and issued prior to commencing construction of any new support structure.

(6) Disapproval. The La Crosse County Board may disapproval an application for a Conditional Use Permit under this section if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described in sub(2)(f).

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(7) Setback/Fall Zone. If an applicant provides the Zoning & Planning 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 setback or fall zone area required in Chapter 17, that setback or fall zone does not apply to such a structure unless the Zoning & Planning Department provides the applicant with substantial evidence that the engineering certification is flawed.

(8) Fees. The fees are established by the La Crosse County Board of Supervisors, not to exceed \$3,000 for a Conditional Use Permit under this chapter.

(9) Limitations. Conditional Use Permits for siting and construction of any new mobile service support structure and facilities or class 1 collocation shall be granted provided the following conditions exist:

(a) If the location of a 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 providers and there is no other lease provision operating as a prohibition to collocation of other providers.

(b) The application has obtained Federal Communications Commission (FCC) license and registration numbers if applicable.

(c) Where applicable, the applicant and/or agent must have copies of Findings of No Significant Impacts (FONI) statement from the FCC or Environmental Assessment or Environmental Impact Study (EIS) if applicable.

(d) The applicant and/or agent have copies of determination of no hazard from the Federal Aviation Administration (FAA) including any aeronautical study or other findings, if applicable.

(e) The applicants and/or agent have plans indicating security measures (i.e. fencing, access, lighting, etc...)

(f) For a new mobile service support structure, 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 addition 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 all operators and owners of airports located within five (5) miles of the proposed site have been notified by certified mail.

(i) The new facility 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 roads and utilities are shared by site users whenever possible.

28.06 CLASS 2 COLLOCATION.

(1) A Zoning/Occupancy Permit for a Commercial Structure is required for a class 2 collocation. A class 2 collocation is considered an allowed (permitted) use.

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(2) Application process. A written permit application for a Zoning/Occupancy Permit must be completed by any applicant and submitted to the La Crosse County Zoning & Planning Department. The application must include the following information:

- (a) The name and business address of, and the contact individual for, the applicant.
- (b) The location of the affected mobile service support structure.
- (c) The location of the proposed mobile service facility.

(3) Requirements. A class 2 collocation is subject to the same requirements for the issuance of a Zoning/Occupancy Permit as any other commercial structure or building.

(4) Completed applications. If an applicant submits to the Zoning & Planning Department an application to engage in an activity described in this section which contains all of the information required under this section, the Zoning & Planning Department shall consider the application complete. If any of the required information is not in the application, The Zoning & Planning Department shall notify the applicant in writing within five (5) days of receiving the application that the application is not complete. An applicant may resubmit an application as often as necessary until it is complete.

(5) County requirements. Within forty-five (45) days of its receipt of a complete application, the Zoning & Planning Department shall complete all of the following or the applicant may consider the application under this section approved, except that the applicant and the Department 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 of its decision in writing.
- (c) If the application is approved, issue a Zoning/Occupancy Permit.
- (d) If the decision is to disapprove the application, include with the written notification substantial evidence to support the decision.

(6) Fees. The fee for a Zoning/Occupancy Permit is established by the La Crosse County Board of Supervisors and the maximum fee under this section cannot exceed \$500.00.

28.07 INFORMATION REPORT.

(1) Purpose. The purpose of this report under this section is to provide La Crosse County with accurate and current information regarding 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 section and to assist the County in monitoring compliance with local, state, and federal laws.

(2) Report. All mobile service support structure owners of any new mobile service support structure shall submit to the La Crosse County Zoning & Planning a "Telecommunications Facility Information Report" within 45 days:

- (a) Following issuance of a Conditional Use or Zoning/Occupancy Permit

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- (b) Of receipt of a written request from the Zoning & Planning Department.
- (c) Of any change in occupancy of the mobile service facility.

(3) Report contents. 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, and/or vacant. The information shall be submitted on a form provided by the La Crosse County Zoning & Planning Department, and shall become evidence of compliance.

28.08 REMOVAL AND SECURITY FOR REMOVAL.

(1) It is the express policy of La Crosse County and this ordinance that mobile service support structures be removed once they are no longer in use and not a functioning part of providing mobile service. 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 as condition approved by the La Crosse County Zoning & Planning 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 ground 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 La Crosse County Register of Deeds showing the existence of any subsurface structure remaining below the ground surface. Such recording shall accurately set forth the location and described the remaining structure.

(2) Security. The owner of any mobile service support structure other than a municipality or other unit of government shall provide to La Crosse County a bond, prior to the issuance of a Zoning/Occupancy Permit, based upon 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. La Crosse 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 time shall the bond amount exceed twenty thousand dollars (\$20,000). The provider shall supply any increased bond within a reasonable time, not to exceed sixty (60) days after the County's request. A permittee may submit a letter of credit in the amount set forth above, or as an alternative, a permittee with several sites within La Crosse County may submit a master bond to cover all of said sites. A master bond or letter of credit may, at the discretion of the Planning, Resources and Development Committee's discretion, be in an amount sufficient to secure removal from the 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.

28.09 STRUCTURAL, DESIGN, AND ENVIRONMENTAL STANDARDS.

(1) Mobile service support structure, antenna, and facility requirements. All mobile service facilities and mobile service support structures, except exempt facilities as described in s. 28.04, shall be designed to reduce the negative impact on the surrounding environment by implementing the following measures:

(a) Mobile service support structures shall be constructed of metal or other nonflammable material, unless specifically permitted by the County to be otherwise.

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(b) Satellite dish and parabolic antennas shall be situated as near 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 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, Uniform Fire Code, La Crosse county Subdivision Ordinance, La Crosse County Sanitary Ordinance, Electronic Industries Association (EIA), American National Steel Institute Standards (ANSI), and ANSI standards 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 collocators.

(3) Vegetation protection and facility screening. Except exempt facilities defined in s.28.04, all mobile service facility shall be installed in a manner as to minimize disturbance to existing 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 minimal height of five (5) feet that will provide the appropriate level of visual screening immediately upon installation. Upon completion, the owner/operator of the facility shall be responsible for maintaining and replacing all required landscaping as long as the facility is maintained on the site.

(4) Fire prevention. All mobile service facilities shall be designed and operated 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 accomplish this, the following measures shall be implemented for all mobile service facilities, except exempt facilities as described under s.28.04:

(a) Noise producing construction activities shall take place only on weekdays (Monday through Saturday, non-holidays) between the hours of 6:00 a.m. to 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 maintenance and testing purposes.

(6) Separation requirements. Mobile service support structures shall be separated by a minimum of 2,640 feet, except that:

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(a) Two (2) mobile service support structures may be permitted to be located within 100 feet of each other subject to approval by the La Crosse County Planning, Resources and Development Committee.

(b) Camouflaged mobile service support structures are exempt from the separation between mobile service support structures requirement listed above.

28.10 COMPLIANCE & PENALTIES, EFFECTIVE DATE.

(1) Abandonment. Any antenna, mobile service facility, or mobile service support structure that is not operated for a period of twelve (12) months shall be considered abandoned. Upon application, the Planning, Resources & Development Committee may extend the time limit for abandonment 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 expiration of the established time period, 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, buildings, and foundations to the depth required in this chapter within ninety (90) days of receipt of notice from the Zoning & Planning Department that abandonment is required. If removal to the satisfaction of the Zoning & Planning Department does not occur within said ninety (90) days, the La Crosse County Zoning, Planning & Land Information Director may order removal utilizing the established bond as provided under s. 28.08(2). 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 support structure, then this provision shall not become effective until all operations of the mobile service support structure cease.

(b) The recipient of a permit allowing a mobile service support structure and facility under this chapter, or the current owner or operator, shall notify the La Crosse County Zoning & Planning Department within 45 days of the date when the mobile service facility is no longer in operation.

(2) Penalties. Any person, partnership, corporation, or other legal entity that fails to comply with this ordinance shall be subject to the penalties set forth in s.17.11 of Chapter 17 Zoning Code of the La Crosse County Code of Ordinances and upon conviction, may pay a forfeiture of not less than \$100, nor more than \$500, plus applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this chapter. In addition, the Zoning & Planning Department may seek injunctive relief from a court of record to enjoin further violations.