

Note: This version of the Zoning Code differs from the official printed version as follows:

- a. Dimensions are expressed in numerical format rather than alpha format, e.g., “27 feet” rather than “twenty-seven feet.”
- b. Paragraph indentation style is different.
- c. Unused and blank section numbers are omitted rather than shown as reserved.
- d. Editor’s notes, amendment history, cross references and other editorial enhancements are omitted.
- e. Page numbering is different.

Chapter 63
Effective October 22, 2015

ZONING OVERLAY DISTRICTS

Article I Mobile Tower Siting and Radio Broadcast Service Facility Overlay District Regulations

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**ARTICLE I MOBILE TOWER SITING AND RADIO BROADCAST SERVICE
FACILITY OVERLAY DISTRICT REGULATIONS**

Sec. 63-1 General

(a) *Purpose.* The purpose of the mobile tower siting and radio broadcast service facility overlay district regulations is to regulate the following:

- (1) The siting and construction of any new mobile service support structure and facilities;
- (2) The substantial modification of an existing support structure and mobile service structure and mobile service facility (class 1 collocation);
- (3) The collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities (class 2 collocation).
- (4) The siting, placement, construction or modification of radio broadcast service facilities.

(b) *Intent.* The intent of the mobile tower siting and radio broadcast service facility overlay district regulations are:

- (1) To encourage the construction and location of mobile service facilities, mobile service support structures and radio broadcast service facilities in areas where the adverse impact on the environment, the community and the citizens of Town of Beaver Dam is minimized.
- (2) To maintain and ensure that a nondiscriminatory, competitive and broad range of mobile services and high quality mobile service infrastructure consistent with the Federal Telecommunications Act of 1996 are provided to serve the community, as well as the Town of Beaver Dam's police, fire, and emergency response network quickly, effectively and efficiently.
- (3) To provide a process of obtaining the necessary permits for mobile service facilities, support structures and radio broadcast service facilities while at the same time protecting the legitimate interests of the citizens of Town of Beaver Dam.
- (4) To encourage the use of alternative support structures, collocation of new antennas on existing support structures, and construction of support structures with the ability to locate three or more providers.
- (5) To promote the public health, safety and general welfare of the citizens of Town of Beaver Dam with the minimum practical regulation that is necessary to accomplish this objective.

(c) *Applicability and exemptions.*

- (1) The requirements of the mobile tower siting and radio broadcast services overlay district regulations shall apply to all towers, antennas, and other communication facilities in the Town of Beaver Dam Land Use Code in accordance with the authority granted by Wis. Stats. § 59.69.
- (2) Towers and antennas that are under 70 feet in height and are owned and operated by federally licensed amateur radio station operators or are receive-only antennas shall be exempt from these regulations.
- (3) Towers and antennas for which a permit has been properly issued by the town prior to the effective date of this chapter shall not be required to meet the requirements of this chapter.
- (4) These overlay district regulations are not intended to regulate residential satellite dishes or residential television antennas that are used privately. Additionally, the regulations in this overlay district are not intended to regulate satellite dishes or antennas whose regulation is prohibited by [Wis. Stats.] § 59.69(4d) or its successor sections of the Wisconsin State Statutes or as permitted by federal law.

- (5) Mobile services providing public information coverage of news events of a temporary or emergency nature are exempt from these regulations.

(d) Principal or accessory use. Towers and antennas may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with zoning regulations, including, but not limited to, setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed and antennas that are installed in accordance with the provisions of this section shall not be deemed to constitute the expansion of a nonconforming use or structure.

(e) Definitions. All definitions contained within Wis. Stats. §§ 66.0404(1) and 66.0406(1) are hereby incorporated in this overlay district by reference.

Sec. 63-2 Administration

(a) Permit requirements.

- (1) A conditional use permit shall be required for new support structures and facilities and for a class 1 collocation.
- (2) A land use permit shall be required for a class 2 collocation.
- (3) A conditional use permit shall be required for the placement, construction, or modification of radio broadcast service facilities.

(b) Application process for new mobile service support structures and facilities and for class 1 collocations.

- (1) All conditional use permit applications for new mobile service support structures and facilities and for class 1 collocation projects shall be submitted to the land use administrator upon forms provided by the department. Applications for a conditional use permit for new mobile service support structures and facilities and for class 1 collocation projects shall include the following:
 - 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 support structure 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.
- (2) *Completed applications.* If an applicant submits an application to the department for a conditional use permit to engage in an activity described in this section of the chapter, which contains all of

the information required under this section, the department shall consider the application complete. If the department does not believe that the application is complete, the department 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.

- (3) *Town responsibilities.* Within 90 days of receipt of a complete application, the department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the department may agree in writing to an extension of the 90-day period.
 - a. Review the application to determine whether the proposed project complies with all applicable aspects of the chapter, subject to the limitations in this section. If the application is determined to be incomplete, the land use administrator shall notify the developer/applicant of the application deficiencies and no further action shall be taken on the application until the required information is submitted and the application is determined to be complete.
 - b. The land use administrator shall review each complete application in light of the approval criteria of section 2.3.6.F [of the Land Use Code] and shall provide a report to the committee recommending approval, approval with conditions or denial of the application. Failure of the land use administrator to provide a report to the committee shall constitute a recommendation for approval of the application.
 - c. Public hearings for conditional use permit applications shall be held within 45 days of receipt by the department of a complete application and shall receive written and published notice in accord with the applicable Wisconsin State Statutes and the general notice provisions of section 2.2.6 [of the Land Use Code]. In addition, the land use administrator shall notify all property owners within 300 feet of the subject property boundary of the time, date and subject matter of the hearing. Furthermore, the land use administrator shall notify the county highway department and/or the state department of transportation for any development within 500 feet of an existing or proposed right-of-way of freeways, expressways, interstate and controlled access traffic-ways, and within 1,000 feet of an existing or proposed interchange or turning lane right-of-way and request a recommendation for proposed projects within their jurisdiction. Failure to comply with this provision shall not, however, invalidate any previous or subsequent action on the application. The 45-day time limit in which to hold the public hearing may be extended by written agreement with the applicant. The 45-day time limit in which to hold the public hearing may also be extended by the committee when it has been determined by the committee that the public hearing notice requirements in section 2.2.6 [of the Land Use Code] for said hearing have not been met. In such instances, the committee shall reschedule the public hearing for a date that is within 30 days of the date of determination by the committee that the public hearing notice requirements in section 2.2.6 [of the Land Use Code] were not met or within the time limit as extended by the written agreement with the applicant.
 - d. *Committee review and decision.* The committee shall hold a public hearing on the application and following the public hearing shall approve, approve with conditions or deny the conditional use permit application within 15 days after the public hearing based on the general approval criteria listed in 2.3.6.F of the [Land Use] Code subject to the limitations in this overlay district unless the time is extended by written agreement with the applicant. Failure of the committee to take final action within 90 days of the receipt of a complete application or within the time as extended by agreement with the applicant shall constitute an approval of the conditional use permit as proposed.
 1. Compliance with all other provisions of this chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access, and performance standards, shall be required of all conditional uses, subject to the limitations in this overlay district.

2. The committee may disapprove an application if the applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under subsection (b)(1)f.
 3. The department shall notify the applicant, in writing, of the committee's final decision. If the decision is to disapprove the application, the department shall include with the written notification substantial evidence which supports the decision.
 4. A party who is aggrieved by the final decision of the committee under this subsection, may bring an action in circuit court of Dodge County in which the proposed activity, which is the subject of the application, is to be located.
- (4) *Factors considered in granting a conditional use permits.* The committee shall consider the following factors in determining whether to issue a permit, although the committee may waive or reduce the burden on the applicant of one or more of these criteria if the committee concludes that the intent of this chapter is better served thereby.
- a. Height of the proposed tower;
 - b. Proximity of the tower to residential structures;
 - c. Design of the tower, with particular reference to design characteristics that have the effect of accommodating other users.
 - d. Proposed ingress and egress; and
 - e. Availability of suitable existing towers and other structures.
- (5) *Availability of suitable existing towers or other structures.* The committee may disapprove an application if the applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under subsection (b)(1)f. Evidence submitted to demonstrate that no existing tower or structure can accommodate the applicant's proposed antenna may consist of any of the following:
- a. No existing towers or structures are located within the geographic area required to meet applicant's engineering requirements.
 - b. Existing towers or structures are not of sufficient height to meet applicant's engineering requirements.
 - c. Existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
 - d. The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
 - e. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are economically burdensome.
 - f. The applicant demonstrates that there are other limiting factors that render existing towers and structures unsuitable.

(c) *Application process for class 2 collocation.*

- (1) All land use applications for class 2 collocation projects shall be submitted to the land use administrator upon forms provided by the department. Applications for a class 2 collocation project shall include the following:
 - 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.

- (2) *Completed applications.* If an applicant submits an application to the department for a land use permit to engage in a class 2 collocation, which contains all of the information required under this subsection, the department shall consider the application complete. If the department does not believe that the application is complete, the department 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.
- (3) *Town responsibilities.* Within 45 days of receipt of a complete application, the land use administrator shall complete all of the following or the applicant may consider the application approved, except that the applicant and the department may agree in writing to an extension of the 45-day period.
 - a. Review the application to determine whether the proposed project complies with all applicable aspects of the chapter, subject to the limitations in this section. If the application is determined to be incomplete, the land use administrator shall notify the developer/applicant of the application deficiencies and no further action shall be taken on the application until the required information is submitted and the application is determined to be complete.
 - 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 application is approved, issue the applicant the relevant permit.
 - e. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
 - f. A party who is aggrieved by the final decision of the land use administrator under this subsection, may bring action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

(d) *Application process for the placement, construction or modification of a radio broadcast facility.*

- (1) A conditional use permit application for the placement, construction or modification of a radio broadcast facility shall be submitted to the land use administrator upon forms provided by the department. The application, review and decision procedures for the conditional use permit shall be in accord with section 2.3.6 of the Land Use Code.

Sec. 63-3 Development standards

(a) *General design requirements.*

- (1) Towers shall be painted with alternate bands of aviation orange and white paint in accordance with standards listed in Chapter 3, Marking Guidelines, of the FAA Federal Advisory Circular 70/7460-1, Obstruction, Marking and Lighting and subsequent revisions. The tower owner shall also be responsible for repainting when the color changes noticeably or its effectiveness is reduced by scaling, oxidation, chipping, or layers of contamination.
- (2) At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities to the natural setting and built environment.
- (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- (4) Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

- (5) Towers and antennas shall not be used for displaying any advertising.
- (6) No tower shall exceed 500 feet in height.
- (b) *Federal requirements.* All towers shall meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate towers and antennas.
- (c) *Accommodations of other users (collocation).*
 - (1) Any proposed communication tower and tower site shall be designed, structurally, electrically and in all respects, to accommodate co-location of both the applicant's antenna(s) and comparable antenna(s) for at least three additional users. Towers and tower sites shall be designed to allow for future rearrangement of antennas upon the tower, to accept antennas mounted at varying heights, and to accommodate supporting buildings and equipment.
 - (2) The holder of a permit for a tower shall allow co-location for at least three additional users and shall not make access to the tower and tower site for the additional users economically unfeasible. If additional user(s) demonstrate (through an independent arbitrator or other pertinent means) that the holder of a tower permit has made access to such tower and tower site economically unfeasible, then the permit shall become null and void.
- (d) *Setbacks and separation.* The following setbacks and separation requirements shall apply to all towers and antennas for which a permit is required; provided, however, that the committee may reduce the standard setbacks and separation requirements if the intent of this section would be better served thereby.
 - (1) Communication towers and projecting aerials shall be located a minimum distance equal to the height of the tower from any residential structure.
 - (2) Communication towers, including, but not limited to, radio and television transmission and relay towers, aerials, and observation towers, are exempt from the zoning district height requirements, however, no tower or any projecting aerial attached to the tower shall exceed 500 feet in height.
 - (3) Guy wires, and accessory facilities must satisfy all applicable setback requirements of Chapter 5 of the [Land Use] Code.
 - (4) Communication towers and projecting aerials shall be located a minimum distance equal to one-third the structure height from the side and rear lot line.
 - (5) Communication towers and projecting aerials shall be located in accordance with the minimum setback distances required in section 5.1.2.E [of the Land Use Code] for roads.
 - (6) Communication towers that are located within the jurisdictional boundaries of the Town of Beaver Dam Airport Zoning Ordinance shall not exceed the maximum airport height regulations.
 - (7) Setback exception: Application of setback fall zone. If an applicant provides the Department with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller fall zone area than the setback required in the [Land Use] Code, the smaller fall zone setback area shall be used as the setback requirement unless the department provides the applicant with substantial evidence that the engineering certification is flawed.
- (e) *Security fencing.* Tower sites shall be enclosed by security fencing and shall be equipped with an appropriate anti-climbing device sufficient to deter the general public from obtaining access to the site.
- (f) *Landscaping.* Tower facilities shall be landscaped with a buffer of plant material that effectively screens the base of the tower and the supporting facilities from direct view of the tower site from an adjacent property. The standard buffer shall consist of a landscaped strip at least 4 feet wide outside the perimeter of the security fencing. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived altogether.

- (g) *Removal of abandoned antennas and towers.* Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned. In such circumstances, the following shall apply:
- (1) The owner of such antenna or tower or owner(s) of the property where the tower site is located shall remove said antenna and/or tower, including all supporting equipment and building(s), within 90 days of receipt of notice from the land use administrator notifying the owner of such abandonment. If removal to the satisfaction of the land use administrator does not occur within said 90 days, the land use administrator may remove and salvage said antenna or tower and all supporting equipment and building(s) at the property owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.
 - (2) The applicant for a permit under this section shall submit a copy of a signed agreement between the property owner and the owner of the tower, antenna(s), and supporting equipment and building(s), detailing requirements for abandonment and subsequent removal based on the provisions of subsection (g)(1). This agreement shall contain provisions binding said agreement on future property owner(s) and future owner(s) of a tower, antenna, and all supporting equipment and building(s).
- (h) *Limitations.* With regard to an activity described in this overlay district, the town may not do any of the following:
- (1) Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.
 - (2) Enact an ordinance imposing a moratorium on the permitting, construction, or approval of any such activities.
 - (3) Enact an ordinance prohibiting the placement of a mobile service structure in particular locations within the town.
 - (4) Charge a mobile radio service provider any recurring fee for an activity described in subsections 63-2(b) or 63-2(c).
 - (5) Permit third party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.
 - (6) Disapprove an application to conduct an activity described under subsection 63-2(b) based solely on aesthetic concerns.
 - (7) Disapprove an application to conduct a class 2 collocation on aesthetic concerns.
 - (8) Enact an ordinance related to radio frequency signal strength or the adequacy of mobile service quality.
 - (9) Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the town which fall into disuse. There is a rebuttable presumption that a surety requirement of \$20,000.00 or less complies with this paragraph.
 - (10) Prohibit the placement of emergency power systems.
 - (11) Require the mobile service support structure be placed on property owned by the town.
 - (12) Disapprove an application based solely on the height of the mobile service structure or on whether the structure requires lighting.
 - (13) Condition approval of such activities on the agreement of the structure or mobile service facility to provide space on or near the structure for the use of or by the town at less than the market rate, or to provide the town with other services via the structure or facilities at less than the market rate.

- (14) Limit the duration of any permit that is granted under this overlay district.
- (15) Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.
- (16) Disapprove an application based on an assessment by the town of the suitability of other locations for conducting the activity.
- (17) Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.
- (18) Consider an activity a substantial modification if a greater height is necessary to avoid interference with an existing antenna.
- (19) Consider an activity a substantial modification if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.
- (20) Limit the height of a mobile service support structure to under 200 feet.
- (21) Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the town in connection with the town's exercise of its authority to approve the application.
- (22) Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the town to place at or collocate with the applicant's support structure any mobile service facilities provided or operated by, whether in whole or in part, a town or an entity in which a town has governance, competitive, economic, financial or other interest.

Sec. 63-4 Effective date of the permit

- (a) Conditional use permits and land use permits granted for mobile service support structures and facilities, class 1 collocation projects and class 2 collocation projects under section 4.2.9.A.1 [of the Land Use Code] and subsection 63-2(a)(2) of this overlay district shall not expire.
- (b) Conditional use permits granted for radio broadcast facilities under section 4.2.9.A.3 [of the Land Use Code] shall expire one year after its effective date or at such alternative time specified in the approval process unless construction has been diligently pursued, a certificate of zoning compliance has been issued, the use established or the conditional use permit is renewed for a period not to exceed one year. A conditional use permit shall also expire upon termination of the project or if the rights granted by the permit are discontinued for 180 consecutive days.