

**TOWN OF BUFFALO
Marquette County
State of Wisconsin**

ORDINANCE

CHAPTER 11

TELECOMMUNICATIONS ANTENNAS AND TOWERS

MAY 2008

REVISED December 10, 2013

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SECTION I – TITLE/PURPOSE

This ordinance is titled the Town of Buffalo Telecommunications Antennas and Towers Ordinance. The purpose of this ordinance is for the Town of Buffalo 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 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. The purpose of the ordinance is to protect the health, safety and welfare of township residents by assuring that any construction in the Town of Buffalo will comply with:

- 1) County permit requirements.
- 2) County and state floodplain, wetland and shore land zoning requirements.
- 3) Any state-mandated or county building ordinances that exist at the time of construction.
- 4) State and Federal building plan approval procedures.
- 5) Town of Buffalo land use ordinances and permit requirements

A. Abrogation and Greater Restrictions. It is not intended by this Ordinance to interfere with, abrogate or annul any existing easements, covenants or other agreements between parties. Whenever the Marquette County Shoreland/Flood Plain, Subdivision or Airport Zoning Ordinances conflict with applicable underlying provisions of this Ordinance or of the Town of Buffalo Subdivision/Land Division Ordinance (Chapter 11), the more restrictive combinations of such ordinances shall govern.

B. Interpretation. The provisions of this Ordinance shall be held to be minimum requirements adopted to promote the health, safety, and general welfare of the Town of Buffalo, Marquette County, Wisconsin, and shall be liberally construed in favor of the Ordinance.

SECTION II- AUTHORITY

The town board of the Town of Buffalo has the specific authority pursuant to ss. 60.61 Wisconsin Statutes to adopt and enforce this ordinance.

SECTION III – ADOPTION OF ORDINANCE

This ordinance, adopted by a majority of the town 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 IV – DEFINITIONS

All definitions contained in s. 66.0404(1) as follows:

- (a) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.
- (b) "Application" means an application for a permit under this section to engage in an activity specified in sub. (2) (a) or a class 2 collocation.
- (c) "Building permit" means a permit issued by a political subdivision that authorizes an applicant to conduct construction activity that is consistent with the political subdivision's building code.
- (d) "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.
- (e) "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.
- (f) "Collocation" means class 1 or class 2 collocation or both.
- (g) "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.
- (h) "Equipment compound" means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.
- (i) "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 a political subdivision.
- (j) "Fall zone" means the area over which a mobile support structure is designed to collapse.
- (k) "Mobile service" has the meaning given in [47 USC 153](#) (33).
- (L) "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.

(m) "Mobile service provider" means a person who provides mobile service.

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

(o) "Permit" means a permit, other than a building permit, or approval issued by a political subdivision which authorizes any of the following activities by an applicant:

1. A class 1 collocation.
2. A class 2 collocation.
3. The construction of a mobile service support structure.

(p) "Political subdivision" means a city, village, town, or county.

(q) "Public utility" has the meaning given in s. [196.01 \(5\)](#).

(r) "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.

(s) "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.

(t) "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.

(u) "Utility pole" means a structure owned or operated by an alternative telecommunications utility, as defined in s. [196.01 \(1d\)](#); public utility, as defined in s. [196.01 \(5\)](#); telecommunications utility, as defined in s. [196.01 \(10\)](#); political subdivision; or cooperative association organized under ch. [185](#); and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in s. [182.017 \(1g\) \(cq\)](#); [for] video service, as defined in s. [66.0420 \(2\) \(y\)](#); for electricity; or to provide light.

Plus the following definitions used in this ordinance:

FAA shall mean the Federal Aviation Administration.

FCC shall mean the Federal Communications Commission.

Governing Authority shall mean the governing authority of the Town of Buffalo.

Height shall mean, when referring to a tower or other structure, the distance measured from the ground level to the highest point on the tower or other structure, even if said highest point is the antenna.

Tower shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, PCS towers, alternative tower structures, and the like.

Town means the Town of Buffalo, Marquette County, Wisconsin.

Town board means the board of supervisors for the Town of Buffalo, Marquette County, Wisconsin and includes designees of the board authorized to act for the board.

Town clerk means the clerk of the Town of Buffalo, Marquette County, Wisconsin.

Wis. stats. means the Wisconsin Statutes, including successor provisions to cited statutes.

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

A. Application Process

1. A town 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 town obtainable with this permit.

2. A written permit application must be completed by any applicant and submitted to the town. 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 town upon request to any applicant.

4. If an applicant submits to the town 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 town shall consider the application complete. If the town does not believe that the application is complete, the town 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 town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town 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 town 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 town 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 town provides the applicant with substantial evidence that the engineering certification is flawed.

8. The fee for the permit is \$ 3000 and a construction surety bond for \$20,000 is required.

SECTION VI – CLASS 1 COLLOCATION

A. Application Process

1. A town zoning permit is required for a class 1 collocation. A class 1 collocation is a conditional use in the town obtainable with this permit.

2. A written permit application must be completed by any applicant and submitted to the town. 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 town upon request to any applicant.
4. If an applicant submits to the town 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 town shall consider the application complete. If the town does not believe that the application is complete, the town 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 town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town 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 town 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 town 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 town provides the applicant with substantial evidence that the engineering certification is flawed.
8. The fee for the permit is \$ 3000 and a construction surety bond for \$20,000 is required.

SECTION VII – CLASS 2 COLLOCATION

A. Application Process

1. A town zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use in the town but still requires the issuance of the town permit.
2. A written permit application must be completed by any applicant and submitted to the town. 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 town 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. See Town Ordinances Chapter 10 and 16.
5. If an applicant submits to the town 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 town shall consider the application complete. If any of the required information is not in the application, the town 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 town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town 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.

SECTION VIII –REMOVAL OF ABANDONED ANTENNAS AND TOWERS

1. Any antenna or tower that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such antenna or tower shall remove same within ninety (90) days of receipt of notice from the governing authority notifying the owner of such abandonment. If such antenna or tower is not removed within said ninety (90) days, the governing authority may remove such antenna or tower at the 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. A surety bond of \$20,000 with the statutory presumption that the fee is reasonable is therefore required.

SECTION IX– PENALTY PROVISION

General Penalty. Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction of such violation, be subject to a penalty, which shall be as follows:

1. First Offense – Penalty. Any person who shall violate any provision of this Ordinance shall, upon conviction thereof, forfeit not less than One Hundred (\$100.00) nor more than Three Hundred Dollars (\$300.00), together with the cost of prosecution including reasonable attorneys' fees and, in default of payment of such forfeiture and cost of prosecution including reasonable attorneys' fees shall be added to the property tax, with an interest rate, with interest, at the current interest rate charged for delinquent property taxes.
2. Second Offense – Penalty. Any person found guilty of violating any or part of this Ordinance who shall previously have been convicted of a violation of the same Ordinance within one (1) year shall, upon conviction thereof, forfeit not less than Three Hundred Dollars (\$300.00) nor more than One Thousand (\$1,000.00) for each such offense, together with the cost of prosecution including reasonable attorneys' fees and, in default of payment of such forfeiture and cost of prosecution including reasonable attorneys' fees, shall be added to the property tax, with interest, at the current interest rate charged for delinquent property taxes.
3. Continued Violations. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
4. Other Remedies. The Town shall have any and all other remedies afforded by the Wisconsin Statutes in addition to the forfeitures and costs of prosecution,

including reasonable attorneys' fees above. The town board may seek injunctive relief from a court of record to enjoin further violations.

SECTION X – SEVERABILITY

Each of the provisions of the ordinance is severable and if any provision is held invalid for any reason, the remaining provisions shall not be affected but shall remain in full force and effect.

SECTION XI – EFFECTIVE DATE

This Ordinance is effective on publication.

The town clerk shall properly post or publish this ordinance as required under s. 60.80, Wis. stats.

Adopted this 9th day of December, 2013.

Effective Date: December 10th, 2013

Charles R. Corso, Chairman

Jan Banicki, Supervisor

Mary-Anne Raab, Supervisor

Attest: _____
Donna Seddon, Town Clerk