

ORDINANCE NO. 2013-10

**AN ORDINANCE TO REPEAL SECTION 17.05(5)(M),  
AND TO CREATE SECTION 17.06(6)  
OF THE TOWN OF DELAFIELD MUNICIPAL CODE  
REGARDING WIRELESS TELECOMMUNICATIONS  
MOBILE SERVICE FACILITIES**

WHEREAS, the Town of Delafield has regulated wireless telecommunication facilities for many years, through zoning powers and conditional use procedures; and

WHEREAS, effective July 2, 2013, the State of Wisconsin adopted Wisconsin Statutes Section 66.0404 that places a number of limitations and requirements on local zoning authorities with regard to wireless telecommunications mobile service facilities; and

WHEREAS, the federal government has also placed limitations on local authority with regard to modifications to existing wireless towers and base stations, per 47 USCA §1455, effective February 22, 2012; and

WHEREAS, the Town Board desires to continue to regulate wireless telecommunications mobile service facilities to the extent the Town Board can do so in compliance with applicable laws, in order to preserve the health, safety and welfare of the Town of Delafield, and the residents of the Town of Delafield, and its environment; and

WHEREAS, by this ordinance the Town intends, therefore, to adopt and incorporate all lawful powers and authority over the procedure, review and regulatory control concerning wireless telecommunications mobile service facilities; and

WHEREAS, pursuant to Section 17.10(5)(A) of the Town of Delafield Zoning Code, the Town Board has submitted this proposal to the Plan Commission for report and recommendation; and

WHEREAS, pursuant to Section 17.10(5)(F) of the Town of Delafield Zoning Code, the Town Board held a public hearing in this matter on November 5, 2013, upon due notice as described in Section 17.10(6) of the Town of Delafield Zoning Code; and

WHEREAS, the Town of Delafield Town Board, having carefully reviewed the recommendation of the Town of Delafield Plan Commission, having determined that all procedural requirements and notice requirements have been satisfied, having given the matter due consideration, and having based its determination on the effect of the adoption of this ordinance on the health, safety, and welfare of the community and the preservation and enhancement of property values in the community; and having given due consideration to the

municipal problems involved, as well as the impact on surrounding properties as to noise, dust, smoke and odor, hereby determines that the zoning amendment will not violate the spirit or intent of the Zoning Code for the Town of Delafield, will not be contrary to the public health, safety or general welfare of the Town of Delafield, will not be hazardous, harmful, noxious, offensive, or a nuisance by reason of noise, dust, smoke, odor or other similar factors and will not for any other reason cause a substantial adverse effect on the property values and general desirability of properties affected by these zoning amendments, and further finds that these amendments will be consistent with the Town of Delafield Comprehensive Plan.

NOW, THEREFORE, The Town Board of the Town of Delafield, Waukesha County, Wisconsin DO HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Chapter 17 of the Town of Delafield Municipal Code entitled, "Zoning Code," Section 17.05, entitled "Conditional Uses," subsection (5) entitled "Conditional Uses Permitted," subsection (M) entitled "Communication Tower," is hereby repealed.

SECTION 2: Chapter 17 of the Town of Delafield Municipal Code entitled, "Zoning Code," Section 17.06, entitled "Accessory Uses, Accessory Buildings and Other Structures," subsection (6) is hereby created as follows:

6. **WIRELESS TELECOMMUNICATIONS MOBILE SERVICE FACILITIES.**

- A. **Purpose** . This section is intended to regulate mobile service facilities to the full extent allowed by Wisconsin Statutes Section 66.0404 and other applicable laws. Nothing herein is intended to regulate or to authorize the regulation of mobile service facilities in a manner that is preempted or prohibited by Wisconsin Statutes Section 66.0404 or other applicable laws.
- B. **Definitions** . All terms used herein shall have the meaning described in Wisconsin Statutes Section 66.0404(1).
- C. **New Towers and Facilities**. The siting and construction of a new mobile service support structure and facilities shall be subject to the following requirements:
1. **Application Process**. The applicant shall submit a written application which shall include all of the following information:
    - a. The name and business address of, and the contact individual for, the applicant.
    - b. The location of the proposed tower.

- c. The location of the mobile service facility.
  - d. A construction plan which describes the tower, equipment, network components, antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new tower.
  - e. An explanation as to why the applicant chose the proposed location, and why the applicant did not choose collocation, including a sworn statement from the responsible party attesting that collocation within the applicant's service area would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome.
2. Determination of Completeness within 10 Days of Submittal. The Town Zoning Administrator shall review the application and determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town Zoning Administrator shall notify the applicant in writing within ten days of receiving the application if it is found not to be complete, and such notice shall specify in detail the required information that was incomplete. Applicants are allowed to resubmit their applications as often as necessary until it is complete.
3. Conditional Use Review Procedure. The wireless telecommunications mobile service facility shall be a conditional use, however it is not subject to Section 17.05 of this code, and instead shall be reviewed pursuant to the following procedures:
- a. **Public Hearing.** Within a reasonable time after an application and all required information has been filed, a public hearing shall be held by the Plan Commission pursuant to this chapter. Within 40 days after the public hearing and all investigation, the Plan Commission shall make a recommendation to the Town Board unless the time is extended by the Petitioner.
  - b. **Fee.** Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of notification and holding of public hearing. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the

review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).

**c. Requirements.**

- i. Conditional use status shall not be granted to communication towers unless the tower is located so that there is sufficient radius of clear land around the tower so that its collapse shall be completely contained on the property, subject to the following. If an applicant provides the Town with engineering certification showing that the tower is designed to collapse within a smaller area than the radius equal to the height of the tower, the smaller area shall be used unless the Town has and provides to the applicant substantial evidence that the engineering certification is flawed.
- ii. Offsets and setback distances shall be increased according to Section 17.036.D. "Increase Permitted" of this Code.
- iii. All facilities shall meet all State and federal codes.

**d. Determination.** The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations, provided further that final action shall be taken within 90 days of receipt of a complete application unless the time extended by the Petitioner. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If conditional use status is not granted, the reasons therefor will be included in such record. A grant of conditional use status, subsequent changes or additions thereto and terminations thereof shall be recorded as follows:

- i. An official record of such conditional grant shall be prepared by the Town Clerk on a form prescribed therefor which shall include the description of the use for which the grant is given and all conditions attached thereto as well as a copy of the resolution of

the Town Board approving the grant. A copy of the completed form shall be recorded at the Waukesha County Register of Deeds as a covenant on the title for the premises for which the conditional use was granted.

- ii. The occupancy permit shall be appropriately noted as to the conditional status granted.
- iii. Indication shall also be made on the zoning map by appropriate code number or symbol.

e. **Changes or Additions.** Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Plan Commission and, if in the opinion of the Plan Commission, such change or addition constitutes a substantial alteration, a public hearing before the Plan Commission shall be required and notice thereof be given pursuant to this Chapter.

f. **Conditions.** Conditions such as landscaping, architectural design, type of construction, floodproofing, anchoring of structures, construction commencement and completion dates, sureties, lighting, fencing, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards, or parking requirements, among other issues as deemed appropriate may be required by the Plan Commission upon its finding that these are necessary to fulfill the purpose and intent of this Chapter; subject to the limitations of Section 17.06(6)C.4., below.

4. **Limitations upon Authority.** The Town review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4). In the event the applicant believes the Town has exceeded its authority in this regard, the applicant shall notify the Town Board in writing and the Town Board reserves the right to reconsider the matter, to ensure that applicable laws are followed.

D. **Modifications.** The construction of modifications to an existing mobile service support structure or mobile service facility shall be subject to the following requirements:

1. **Substantial Modification.**

- a. **Application and Review Process.** The application and review process for a substantial modification is identical to the application and review process for a new tower, as described in Section 17.066.C. above, except that the required plans should describe the proposed modifications, rather than describe the new structure.

2. **Not Substantial Modifications.**

- a. **Application Information.** The applicant shall submit a written application that describes the applicant's basis for concluding that the modification is not substantial, and all of the following information:
  - i. The name and business address of, and the contact individual for, the applicant.
  - ii. The location of the affected support structure.
  - iii. The location of the proposed facility.
- b. **Completeness Determination within Five Days.** The Town Zoning Administrator will determine whether the application is complete. If the application includes all of the foregoing information, the application shall be found to be complete. The Town Zoning Administrator must notify the applicant in writing within five (5) days of receiving the application if it is found not to be complete, specifying in detail the required information that was incomplete. The applicant may resubmit as often as necessary until it is complete.
- c. **Fee.** Any petition shall be accompanied by a fee as set from time-to-time by the Town Board to defray the cost of review. Costs incurred by the Town in obtaining legal, planning, engineering and other technical and professional advice in connection with the review of the conditional use and preparation of the conditions to be improved shall be charged to the Petitioner. Such fee shall not exceed the limits established by Wisconsin Statutes Section 66.0404(4)(d).

- d. **Determination.** The Town Board shall make a decision on the application within a reasonable time after receipt of the Plan Commission recommendations, provided further that final action shall be taken within 45 days of receipt of a complete application unless the time extended by the Petitioner. Said decision shall be stated in writing and a copy made a permanent part of the Town records. If approval is not granted, the reasons therefor will be included in such record.
  
- e. **Limitations Upon Authority.** The Town review and action in the matter shall be subject to the limitations imposed by Wisconsin Statutes Section 66.0404(4), and such other laws as may apply which may include 47 USCA §1455. In the event the applicant believes the Town has exceeded its authority in this regard, the applicant shall notify the Town Board in writing and the Town Board reserves the right to reconsider the matter, to ensure that applicable laws are followed.

SECTION 3: SEVERABILITY.

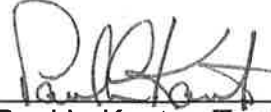
The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any other provisions, sections or portions thereof of the ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances whose terms are in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.

SECTION 4: EFFECTIVE DATE.

This ordinance shall take effect immediately upon passage and posting or publication as provided by law.

Dated this 11<sup>th</sup> day of February, 2014.

TOWN OF DELAFIELD



Paul L. Kanter, Town Chair

ATTEST:



Mary Elsner, Town Clerk

Published and/or posted this 18<sup>th</sup> day of February, 2014.

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