

**ORDINANCE NO. 2014-25**

**AN ORDINANCE REPEALING AND RECREATING SECTION 11.27, PERSONAL COMMUNICATION SERVICES OF CHAPTER 11, ZONING CODE, RELATING TO MOBILE TOWER SITING REGULATIONS, OF THE MUNICIPAL CODE OF THE VILLAGE OF ALLOUEZ, BROWN COUNTY, WISCONSIN**

**THE VILLAGE BOARD OF THE VILLAGE OF ALLOUEZ, BROWN COUNTY, WISCONSIN, DOES ORDAIN THAT SECTION 11.27 BE CREATED TO READ AS FOLLOWS:**

**SECTION 1. Section. 11.27. Mobile Tower Siting Regulations.**

**(1) PURPOSE.**

The purpose of this ordinance 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 I co-location, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class II 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.

**(2) AUTHORITY.**

The Village Board has the specific authority under ss. 61.35, 62.23 and 66.0404, Wis. Stats., to adopt and enforce this ordinance.

**(3) ADOPTION OF ORDINANCE.**

This ordinance, 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 (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to a class I co-location, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a class II 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.

**(4) DEFINITIONS.**

Words and phrases used in this ordinance shall have the meanings set forth in this section. Words and phrases not defined in this section, but defined in other ordinances of the village or by state statute shall be given the meanings set forth in such ordinance or statute. For the

purpose of this ordinance, in the event of any conflict in definitions of any word or phrase as defined in this ordinance, and as defined in any other village ordinance, the definition in this ordinance shall take precedence and be used.

(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 II co-location.

(c) "Building permit" means a permit issued by the village that authorizes an applicant to conduct construction activity that is consistent with the village's building code.

(d) "Class I co-location" 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 II co-location" 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) "Co-location" means class I or class II co-location 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 the village.

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

1. A class I co-location.
2. A class II co-location.
3. The construction of a mobile service support structure.

(p) "Public utility" has the meaning given in s. 196.01 (5).

(q) "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.

(r) "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 co-location.
4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

(s) "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.

(t) "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.

## (5) SITING AND CONSTRUCTION OF ANY NEW MOBILE SERVICE SUPPORT STRUCTURE AND FACILITIES

(a) 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.
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 ordinance, which contains all of the information required under this ordinance, 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 90 day period:
  - a. Village staff shall review the application to determine whether it complies with all applicable aspects of the village's building code and, subject to the limitations in this section, zoning ordinances.
  - b. Plan Commission shall meet to discuss the plans and recommend to the Village Board that the application be approved, approved with conditions, or disapproved based on the compliance of the proposed project to Wisconsin State Statute 66.0404 and aspects of the village's building code and, subject to the limitations in this section, zoning ordinances as these apply.
  - c. Upon receipt of the recommendation of the Plan Commission, the Village Board shall meet to discuss the plans and recommendations and make the final decision whether the application be approved, approved with conditions, or disapproved based on the compliance of the proposed project to Wisconsin State Statute 66.0404 and aspects of the village's building code and, subject to the limitations in this section, zoning ordinances as these apply.
  - d. Notify the applicant, in writing, of the final decision.
  - e. 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 paragraph 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 is listed in the village's Fee Schedule under Chapter 8 of the village's ordinances.

(6) CLASS I CO-LOCATION.

(a) Application Process

1. A village zoning permit is required for a class I 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.
  - f. 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.

- g. 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 ordinance, which contains all of the information required under this ordinance, 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 90 day period:
  - a. Village staff shall review the application to determine whether it complies with all applicable aspects of the village's building code and, subject to the limitations in this section, zoning ordinances.
  - b. Plan Commission shall meet to discuss the plans and recommend to the Village Board that the application be approved, approved with conditions, or disapproved based on the compliance of the proposed project to Wisconsin State Statute 66.0404 and aspects of the village's building code and, subject to the limitations in this section, zoning ordinances as these apply.
  - c. Upon receipt of the recommendation of the Plan Commission, the Village Board shall meet to discuss the plans and recommendations and make the final decision whether the application be approved, approved with conditions, or disapproved based on the compliance of the proposed project

to Wisconsin State Statute 66.0404 and aspects of the village's building code and, subject to the limitations in this section, zoning ordinances as these apply.

- d. Notify the applicant, in writing, of the final decision.
  - e. 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 paragraph 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 is listed in the village's Fee Schedule under Chapter 8 of the village's ordinances

#### (7) CLASS II CO-LOCATION.

##### (a) Application Process.

- 1. A village zoning permit is required for a class II co-location. A class II 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 II co-location is subject to the same requirements contained in Chapter 13 of the village ordinances for the issuance of a building permit to which any other type of commercial development or land use development is subject.
5. If an applicant submits to the village 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 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 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 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 45 day period:
  - a. Make a final decision whether to approve or disapprove the application.
  - b. Notify the applicant, in writing, of the final decision.
  - c. If the application is approved, issue the applicant the permit.
  - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
7. The Village Board shall be notified upon approval of the zoning permit.
8. The fee for the permit is listed in the village's Fee Schedule under Chapter 8 of the village's ordinances.

#### (8) PENALTY PROVISIONS.

Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this ordinance shall, upon conviction, pay a forfeiture of not less than the permit fee identified in the village's Fee Schedule, nor more than \$10,000, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. In addition, the village

board may seek injunctive relief from a court of record to enjoin further violations.

(9) SEVERABILITY.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

**SECTION 2.** All ordinances or parts of ordinances, in conflict herewith are hereby repealed.

**SECTION 3.** This ordinance shall take effect upon approval and publication as provided by law.

Approved and adopted this 28<sup>th</sup> day of October, 2014.

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Steve VandenAvond, Village President

ATTEST:

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Debra M. Baenen, Village Clerk

DATE OF PUBLICATION:

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