

Memo

To: Plan Commission

Fr: Trevor Fuller, Planning and Zoning Administrator

Re: APPROVAL OF AMENDMENT TO SECTION 11.27 OF THE VILLAGE ZONING ORDINANCE

Date: September 18, 2014

Attached is a proposed amendment to section 11.27 of the village zoning ordinance, as well as section 66.0404 of the Wisconsin State Statutes, which details the limitations to municipalities as a result of the enacted legislation in June 2013. The proposed amendment follows the guidelines of the new state legislation, while maintaining the maximum oversight allowed to the village by the new legislation.

Plan commission is asked to review section 66.0404 of the Wisconsin State Statutes and the proposed amendment to section 11.27 of the village zoning ordinance. Please come to the meeting prepared for a recommendation to the Village Board to approve or approve with revisions.

ORDINANCE NO. _____

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 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.

(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 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.

(4) DEFINITIONS.

(a) All definitions contained in s. 66.0404(1) are hereby incorporated by reference.

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

(a) Application Process.

1. A village conditional use 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 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 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. 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 village 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 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 COLLOCATION.

(a) Application Process

1. A village conditional use permit is required for a class 1 collocation. A class 1 collocation 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 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 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. 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 village 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 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 2 COLLOCATION.

(a) Application Process.

1. A village building permit is required for a class 2 collocation. A class 2 collocation 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 2 collocation 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 its final decision.
 - c. If the application is approved, issue the applicant the building 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 building 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 ____ day of _____, 2014.

Steve VandenAvond, Village President

ATTEST:

Debra M. Baenen, Village Clerk

DATE OF PUBLICATION:

66.0404 Mobile tower siting regulations.

(1) Definitions. In this section:

(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 \(2\) \(v\)](#); for electricity; or to provide light.

(2) New construction or substantial modification of facilities and support structures.

(a) Subject to the provisions and limitations of this section, a political subdivision may enact a zoning ordinance under s. [59.69](#), [60.61](#), or [62.23](#) to regulate any of the following activities:

1. The siting and construction of a 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.

(b) If a political subdivision regulates an activity described under par. [\(a\)](#), the regulation shall prescribe the application process which a person must complete to engage in the siting, construction, or modification activities described in par. [\(a\)](#). The application shall be in writing and shall contain all of the following information:

1. The name and business address of, and the contact individual for, the applicant.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. 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.
5. 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.
6. 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.

(c) If an applicant submits to a political subdivision an application for a permit to engage in an activity described under par. [\(a\)](#), which contains all of the information required under par. [\(b\)](#), the political subdivision shall consider the application complete. If the political subdivision does not believe that the application is complete, the political subdivision 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.

(d) Within 90 days of its receipt of a complete application, a political subdivision shall complete all of the following or the applicant may consider the application approved, except that the applicant and the political subdivision may agree in writing to an extension of the 90 day period:

1. 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.
2. Make a final decision whether to approve or disapprove the application.
3. Notify the applicant, in writing, of its final decision.
4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

(e) A political subdivision 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 par. [\(b\) 6.](#)

(f) A party who is aggrieved by the final decision of a political subdivision under par. [\(d\) 2.](#) may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

(g) If an applicant provides a political subdivision 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 a zoning ordinance, that zoning ordinance does not apply to such a structure unless the political subdivision provides the applicant with substantial evidence that the engineering certification is flawed.

(h) A political subdivision may regulate the activities described under par. [\(a\)](#) only as provided in this section.

(i) If a political subdivision has in effect on July 2, 2013, an ordinance that applies to the activities described under par. [\(a\)](#) and the ordinance is inconsistent with this section, the ordinance does not apply to, and may not be enforced against, the activity.

(3) Collocation on existing support structures.

(a)

1. A class 2 collocation is a permitted use under ss. [59.69](#), [60.61](#), and [62.23](#).

2. If a political subdivision has in effect on July 2, 2013, an ordinance that applies to a class 2 collocation and the ordinance is inconsistent with this section, the ordinance does not apply to, and may not be enforced against, the class 2 collocation.

3. A political subdivision may regulate a class 2 collocation only as provided in this section.

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.

(b) If an applicant submits to a political subdivision an application for a permit to engage in a class 2 collocation, the application shall contain all of the information required under sub. [\(2\) \(b\) 1.](#) to [3.](#), in which case the political subdivision shall consider the application complete. If any of the required information is not in the application, the political subdivision 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.

(c) Within 45 days of its receipt of a complete application, a political subdivision shall complete all of the following or the applicant may consider the application approved, except that the applicant and the political subdivision may agree in writing to an extension of the 45 day period:

1. Make a **final** decision whether to approve or disapprove the application.
2. Notify the applicant, in writing, of its final decision.
3. If the application is approved, issue the applicant the relevant permit.
4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

(d) A party who is aggrieved by the final decision of a political subdivision under par. [\(c\) 1.](#) may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

(4) Limitations. With regard to an activity described in sub. [\(2\) \(a\)](#) or a class 2 collocation, a political subdivision may not do any of the following:

(a) Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.

(b) Enact an ordinance imposing a moratorium on the permitting, construction, or approval of any such activities.

(c) Enact an ordinance prohibiting the placement of a mobile service support structure in particular locations within the political subdivision.

(d) Charge a mobile radio service provider a fee in excess of one of the following amounts:

1. For a permit for a class 2 collocation, the lesser of \$500 or the amount charged by a political subdivision for a building permit for any other type of commercial development or land use development.
2. For a permit for an activity described in sub. [\(2\) \(a\)](#), \$3,000.

(e) Charge a mobile radio service provider any recurring fee for an activity described in sub. [\(2\) \(a\)](#) or a class 2 collocation.

(f) Permit 3rd party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.

(g) Disapprove an application to conduct an activity described under sub. [\(2\) \(a\)](#) based solely on aesthetic concerns.

(gm) Disapprove an application to conduct a class 2 collocation on aesthetic concerns.

(h) Enact or enforce an ordinance related to radio frequency signal strength or the adequacy of mobile service quality.

(i) 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 political subdivision which fall into disuse. There is a rebuttable presumption that a surety requirement of \$20,000 or less complies with this paragraph.

(j) Prohibit the placement of emergency power systems.

(k) Require that a mobile service support structure be placed on property owned by the political subdivision.

(L) Disapprove an application based solely on the height of the mobile service support structure or on whether the structure requires lighting.

(m) Condition approval of such activities on the agreement of the structure or mobile service facility owner to provide space on or near the structure for the use of or by the political subdivision at less than the market rate, or to provide the political subdivision other services via the structure or facilities at less than the market rate.

(n) Limit the duration of any permit that is granted.

(o) Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.

(p) Disapprove an application based on an assessment by the political subdivision of the suitability of other locations for conducting the activity.

(q) Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.

(r) Impose a setback or fall zone requirement for a mobile service support structure that is different from a requirement that is imposed on other types of commercial structures.

(s) Consider an activity a substantial modification under sub. [\(1\) \(s\) 1.](#) or [2.](#) if a greater height is necessary to avoid interference with an existing antenna.

(t) Consider an activity a substantial modification under sub. [\(1\) \(s\) 3.](#) if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.

(u) Limit the height of a mobile service support structure to under 200 feet.

(v) Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the political subdivision in connection with the political subdivision's exercise of its authority to approve the application.

(w) Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the political subdivision 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 political subdivision or an entity in which a political subdivision has a governance, competitive, economic, financial or other interest.

(5) Applicability. If a county enacts an ordinance as described under sub. [\(2\)](#) the ordinance applies only in the unincorporated parts of the county, except that if a town enacts an ordinance as described under sub. [\(2\)](#) after a county has so acted, the county ordinance does not apply, and may not be enforced, in the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

History: [2013 a. 20](#), [173](#).

