

Town of Lincoln, Kewaunee County, Wisconsin

Ordinance # 2019-6

Telecommunication Tower Ordinance

SECTION I – TITLE

This ordinance is entitled the Town of Lincoln Telecommunication Tower Ordinance.

SECTION II – PURPOSE

The purpose of this ordinance is to regulate by zoning permit (1) the siting and construction of any new telecommunication service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and telecommunication 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 telecommunication service facilities.

SECTION III – AUTHORITY

The town board has the specific authority under s. 60.61 and 66.0404, Wis. Stats., to adopt and enforce this ordinance.

SECTION IV – 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 telecommunication service support structure and facilities; (2) with regard to a class 1 collocation, the substantial modification of an existing support structure and telecommunication 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 telecommunication service facilities.

SECTION V – DEFINITIONS

- (a) "Antenna" means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of telecommunication 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 telecommunication 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 telecommunication 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 telecommunication 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 telecommunication service facilities.

(i) "Existing structure" means a support structure that exists at the time a request for permission to place telecommunication service facilities on a support structure is filed with a political subdivision.

66.0404(1)(i)

(j) "Fall zone" means the area over which a telecommunication support structure is designed to collapse.

(k) "Telecommunication service" has the meaning given in 47 USC 153 (33).

(L) "Telecommunication 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 telecommunication service to a discrete geographic area, but does not include the underlying support structure.

(m) "Telecommunication service provider" means a person who provides telecommunication service.

(n) "Telecommunication service support structure" means a freestanding structure that is designed to support a telecommunication 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 telecommunication 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 telecommunication 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 telecommunication 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 telecommunication service facility, including a telecommunication 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.

SECTION VI - SUBDIVISION AND NUMBERING OF THIS ORDINANCE

This ordinance is divided into sections designated by uppercase Roman numerals. Sections may be divided into subsections designated by uppercase letters. Subsections may be divided into paragraphs designated by numbers.

Paragraphs may be divided into subdivisions designated by lowercase letters. Subdivisions may be divided into subdivision paragraphs designated by lowercase Roman numerals. Reference to a "section," "subsection," "paragraph," or "subdivision" includes all divisions of the referenced section, subsection, paragraph, or subdivision.

SECTION VII – SITING AND CONSTRUCTION OF ANY NEW TELECOMMUNICATION SERVICE SUPPORT STRUCTURE AND FACILITIES

A. Application Process

1. A town zoning permit is required for the siting and construction of any new telecommunication service support structure and facilities. The siting and construction of any new telecommunication service support structure and facilities is a conditional use in the town obtainable with this permit.

2. A written building permit application must be completed by any applicant and submitted to the town. In addition, 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. A site plan showing the location of the proposed telecommunication service structure and facility, and setbacks from property lines and other pertinent structures on the property.
- d. Plans indicating security measures, including access, fencing, climbing guards, signage, or other measures the developer will install.
- e. 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 telecommunication service support structure, a construction plan which describes the proposed telecommunication 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 telecommunication service support structure.
- g. If an application is to construct a new telecommunication 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 telecommunication service support structure attesting that collocation within the applicant's search ring would not result in the same telecommunication service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the telecommunication service provider.
- h. Proof of comprehensive general liability insurance coverage for personal injury, death, or property damage arising from the maintenance and/or operation of the support structure or related facility with a single combined limit of not less than one million dollars (\$1,000,000) per occurrence. The policy shall contain a provision that it may not be canceled or materially modified without the approval of the Town. The applicant shall provide the Town with a certificate of such insurance.
- i. A copy of the property lease agreement or memorandum of the lease with the property owner.
- j. The structural design report prepared by an engineer or the tower manufacturer.

3. 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.

4. 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.

5. 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.g.

6. If an applicant provides the town with an engineering certification showing that a telecommunication 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.

7. The fee for the permit shall be set from time to time by the town board of supervisors.

B. Limitations.

1. The Town shall determine appropriate setbacks from property lines, and may determine setbacks from other pertinent structures on the property.

2. Ancillary lighting other than that required by the FAA, if any, is discouraged. Any ancillary lighting shall conform to Section 10.0313 or Chapter 10, Town of Lincoln Zoning Ordinance.

3. The purpose of the permitted tower is to support communication antennas. Any and all signage shall conform to the Town of Lincoln's Sign Ordinance.

SECTION VIII – 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 telecommunication service facility.

d. Plans indicating security measures, including access, fencing, climbing guards, signage, or other measures the developer will install.

e. 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 telecommunication service support structure, a construction plan which describes the proposed telecommunication 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 telecommunication service support structure.

g. If an application is to construct a new telecommunication 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 telecommunication service support structure attesting that collocation within the applicant's search ring would not result in the same telecommunication service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the telecommunication service provider.

3. 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.

4. 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.

5. 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.g.

6. If an applicant provides the town with an engineering certification showing that a telecommunication 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.

7. The fee for the permit shall be set from time to time by the town board of supervisors.

B. Limitations.

1. Ancillary lighting other than that required by the FAA, if any, is discouraged. Any ancillary lighting shall conform to Section 10.0313 or Chapter 10, Town of Lincoln Zoning Ordinance.

2. The purpose of the permitted tower is to support communication antennas. Any and all signage shall conform to the Town of Lincoln's Sign Ordinance.

SECTION IX – 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 telecommunication service facility.
- d. Plans indicating security measures, including access, fencing, climbing guards, signage, or other measures the developer will install.

3. 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.

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 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.

5. 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.

6. The fee for the permit shall be set from time to time by the town board of supervisors.

B. Limitations.

1. Ancillary lighting other than that required by the FAA, if any, is discouraged. Any ancillary lighting shall conform to Section 10.0313 or Chapter 10, Town of Lincoln Zoning Ordinance.

2. The purpose of the permitted tower is to support communication antennas. Any and all signage shall conform to the Town of Lincoln's Sign Ordinance.

SECTION X – PERMIT TRANSFERABILITY

A. Permits are valid only for the person or persons listed on the permit.

B. Permits may only be transferred in the real property is sold or the lease is transferred; the transferee meets all of the requirements of this Ordinance; and the permit application section is completed and submitted to the Zoning Administrator, and approved by the Town Board.

SECTION XI – 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 \$1000 nor more than \$5000, plus the applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this ordinance. A second violation within 24 months will result in double the forfeiture. In addition, the town board may seek injunctive relief from a court of record to enjoin further violations.

SECTION XII – 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.

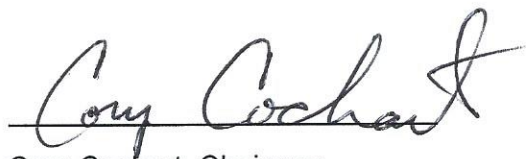
SECTION XIII – EFFECTIVE DATE

This ordinance is effective on the day following publication per s. 60.80.

The town clerk shall properly publish this ordinance as required per s. 60.80.

Adopted by the Town Board of Supervisors of the Town of Lincoln, Kewaunee, County,


Wisconsin on this 9th day of Sept, 2019.



Cory Cochart, Chairman



Jordan Nowak, Supervisor #1



Jesse Jerabek, Supervisor #2

CERTIFICATION OF ENACTMENT

I hereby certify that the foregoing ordinance was duly enacted by the Town Board of the Town of Lincoln on this

9th day of Sept, 2019.

Mary Ann Salmon

Mary Ann Salmon, Town Clerk