

ORDINANCE NO. 2019-04

Amending Chapter 17 of the Town of Kewaskum Code of Ordinances

WHEREAS, The Town of Kewaskum Plan Commission, by a majority vote of the entire Commission at a meeting held on August 19, 2019, recommended to the Town Board an amendment to Chapter 17 – Communication Antennas or Towers, Mobile/Cell Towers. The amendment will remove reference to Communication Antennas or Towers as a Permitted Use. This amendment will also change Mobile/Cell Towers from a Permitted Use to a Conditional Use under the following Districts: EA, A-1, B-1, M-1, and I-1; adding it as a Conditional Use to Districts: R-1 and P-1; and adding Section 17.40- Mobile Tower Siting holding Sections 17.36-17.39 open.

WHEREAS, The Town of Kewaskum Town Board, by a majority vote at a meeting held on August 19, 2019, approved amending Chapter 17 – Communication Antennas or Towers, Mobile/Cell Towers. The amendment will remove reference to Communication Antennas or Towers as a Permitted Use. This amendment will also change Mobile/Cell Towers from a Permitted Use to a Conditional Use under the following Districts: EA, A-1, B-1, M-1, and I-1; adding it as a Conditional Use to Districts: R-1 and P-1; and adding Section 17.40- Mobile Tower Siting holding Sections 17.36-17.39 open.

NOW, THEREFORE, the Town Board of the Town of Kewaskum, do ordain as follows:

Section 1:

1. Section 17.07
 - Removing Section 17.07(1)(D)
 - Creating Section 17.07(3)(D) Mobile/Cell Towers “See Section 17.40”
 - Renumbering Section 17.07 as needed
2. Section 17.08
 - Removing Section 17.08(1)(C)
 - Creating Section 17.08 (3)(E) Mobile/Cell Towers “See Section 17.40”
 - Renumbering Section 17.08 as needed
3. Section 17.09
 - Creating Section 17.09 (3)(B) Mobile/Cell Towers “See Section 17.40”
 - Renumbering Section 17.09 as needed
4. Section 17.10
 - Removing Section 7.10(1)(L)
 - Creating Section 7.10 (3)(B) Mobile/Cell Towers “See Section 17.40”
 - Renumbering Section 17.10 as needed
5. Section 17.11
 - Removing Section 17.11(1)(C)
 - Creating Section 17.11 (3)(B) Mobile/Cell Towers “See Section 17.40”

- Renumbering Section 17.11 as needed
- 6. Section 17.12
 - Removing Section 17.12(1)(C)
 - Creating Section 17.12 (3)(A) Mobile/Cell Towers “See Section 17.40”
 - Renumbering Section 17.12 as needed
- 7. Section 17.13
 - Creating Section 17.13 (3)(B) Mobile/Cell Towers “See Section 17.40”
 - Renumbering Section 17.13 as needed

Section 2:

1. Creating Section 17.40 Mobile Tower Siting
 - A. Purpose. The purpose of this Section 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 1 collocation, the substantial modification of an existing support structure and mobile service facilities.
 - (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.
 - B. Authority. The Town Board has the specific authority under Chapters 60.61 and 66.0404, Wis. Stats., to adopt and enforce this ordinance.
 - C. Definitions. All definitions contained in Chapter 66.0404(1), Wis. Stats., are hereby incorporated by reference.
 - D. Siting and Construction of Any New Mobile Service Support Structure and Facilities.
 - (1) Application Process.
 - (a) A 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.
 - (b) A written permit application must be completed by any applicant and submitted to the Town. The application must contain 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) A permit application will be provided by the Town upon request to any applicant.
- (d) 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.
- (e) 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:
1. Review the application to determine whether it complies with all applicable aspects of the Town's building code and, subject to the limitations in this section, zoning ordinance.
 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.
- (f) 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 Section 17.40.D(1)(b).6 of this Chapter.
- (g) 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, the zoning ordinance does not apply to such a structure unless the Town provides the applicant with substantial evidence that the engineering certification is flawed.
- (h) The fee for the permit is \$3,000.00 payable upon submittal of a complete application.

E. Class 1 Collocation.

(1) Application Process.

- (a) A Conditional Use Permit is required for a Class 1 collocation.
- (b) An application for a Conditional Use Permit must be completed by any applicant and submitted to the Town. The application must contain 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) A permit application will be provided by the Town upon request to any applicant.

(d) 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.

(e) 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:

1. Review the application to determine whether it complies with all applicable aspects of the Town's building code and, subject to the limitations in this section, zoning ordinance.
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.

(f) 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 Section 17.40.E(1)(b).6 of this Chapter.

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

(h) The fee for the permit is \$3,000.00 payable upon submittal of a complete application.

F. Class 2 Collocation.

(1) Application Process.

(a) A 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 zoning permit.

(b) An application must be completed by any applicant and submitted to the Town. The application must contain 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.

(c) A permit application will be provided by the Town upon request to any applicant.

(d) 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 as per the Town Code.

(e) 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.

(f) 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:

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.
5. The fee for the permit is \$500.00 payable upon submittal of a complete application.

G. 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 \$250.00 nor more than \$500.00, 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 Town Board may seek injunctive relief from a court of record to enjoin further violations.

Section 3:

This ordinance shall be effective August 19, 2019 upon passage and publication as required by law.

Dated this _____ day of _____

Scott J. Wollner, Chairperson

Michael Otten, Supervisor

Anthony Gonring, Supervisor

Attest:

Holly Knoeck, Clerk