

TOWN OF HUMBOLDT
CHAPTER 25
TELECOMMUNICATIONS ORDINANCE

Ordinance to Repeal and Recreate Article XIX of the
Town of Humboldt Zoning Ordinance

SECTION 1. REPEAL AND RECREATION. By this Ordinance the Town Board of the Town of Humboldt hereby:

- 1.1 Recognizes that new Wisconsin Statutes §66.0404 requires amendments to current Article XIX of the Town of Humboldt Zoning Ordinance.
- 1.2 Repeals current Article XIX of the Town of Humboldt Zoning Ordinance; and
- 1.3 Recreates Article XIX of the Town of Humboldt Zoning Ordinance as set forth in the following sections of this Ordinance.

SECTION 2. TITLE AND PURPOSE

2.1 TITLE: Article XIX Telecommunications Facilities.

2.2 PURPOSE: The purpose of this Ordinance is to establish regulations and guidelines for the administration of permits allowing siting, constructing, installing and maintaining “mobile service support structures” and “mobile service facilities” as those terms are defined below; including new construction or substantial modification of facilities and support structures and collocation on existing support structures in the Town of Humboldt. The intent here is to strike a balance between the public interest in siting, constructing, modifying and maintaining mobile service facilities providing wireless services in the community and the interest of the community in preserving and protecting the community’s health, safety, general welfare and convenience. The regulations in this Ordinance are designed to abide and assist with the enforcement of State and Federal law, while protecting and promoting the health, safety, general welfare and convenience of community and the rural character and quality of the Humboldt community. This Ordinance shall be administered to protect the Town from the potential adverse impacts of such structures while enhancing the ability of mobile service providers to provide such services to the community quickly, effectively, and efficiently.

2.3 AUTHORITY: The Humboldt Town Board enacts this Ordinance pursuant to Sections 60.22, 60.10(2)(c), 60.61, and 66.0404 Wisconsin Statutes.

2.4 STATE STATUTORY LIMITATIONS ON AUTHORITY: At the time of this Ordinance’s adoption Wisconsin Statutes Section 66.0404 imposes the following limitations upon the Town’s authority:

- 2.4.1 The Town of Humboldt shall not enact an ordinance imposing a moratorium on the permitting, construction, or approval of any of activities governed by this Ordinance.

- 2.4.2 The Town of Humboldt shall not enact an ordinance prohibiting the placement of a mobile service support structure in particular locations within the Town of Humboldt.

SECTION 3. DEFINITIONS

- 3.1 "Antenna" means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.
- 3.2 "Application" means an application for a permit under this Ordinance to: engage in an activity specified in Section 4; or to accomplish a Class 2 collocation pursuant to Section 5.
- 3.3 "Building Permit" means a permit issued by the Town Board that authorizes an applicant to engage in construction activities pursuant to a conditional use permit issued under Section 4 of this Ordinance or to conduct a Class 2 collocation consistent with this Section 5 of this Ordinance.
- 3.4 "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" as defined at Subsection 3.20 below.
- 3.5 "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.
- 3.6 "Collocation" means Class 1 or Class 2 collocation or both.
- 3.7 "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.
- 3.8 "Equipment compound" means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.
- 3.9 "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 Town Clerk.
- 3.10 "Fall zone" means the area over which a mobile service support structure is designed to collapse.
- 3.11 "Improvement" and "Improvements" means and includes: any mobile service support structure; any mobile service facility; equipment compound; the grounds

containing any mobile service facility or mobile service support structure and any road, driveway, parking lot or area utilized or reserved for accessing the mobile service facility and/or mobile service support structure.

- 3.12 "Mobile service" has the meaning given in 47 USC 153 (33).
- 3.13 "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.
- 3.14 "Mobile service provider" means a person who provides mobile service.
- 3.15 "Mobile service support structure" means a freestanding structure that is designed to support a mobile service facility including but not limited to a Tower as defined below.
- 3.16 "Owner" means collectively all of the titleholders to a property containing either or both a mobile service support structure or a mobile service facility.
- 3.17 "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:
 - 3.17.1. A Class 1 collocation.
 - 3.17.2. A Class 2 collocation.
 - 3.17.3. The construction of a mobile service support structure.
- 3.18 "Public utility" has the meaning given in s. 196.01 (5).
- 3.19 "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.
- 3.20 "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:
 - 3.20.1. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.
 - 3.20.2. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.

- 3.20.3. 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.
- 3.20.4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.
- 3.21 "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.
- 3.22 "Tower" means a mast, pole, Monopole, guyed tower, Lattice Tower, free-standing tower, or other structure designed and primarily used to support Antennas. A ground or building mounted mast greater than fifteen feet tall and six inches in diameter supporting one or more Antennas, dishes, or arrays shall be considered to be a telecommunications Tower.
- 3.23 "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 4. APPLICATION REQUIREMENTS AND PROCESS FOR SITING AND CONSTRUCTION OF NEW SUPPORT STRUCTURES AND/OR MOBILE SERVICE FACILITIES ; OR SUBSTANTIAL MODIFICATION OF EXISTING MOBILE SERVICE SUPPORT STRUCTURES AND MOBILE SERVICE FACILITIES DEFINED AS CLASS 1 COLLOCATIONS

- 4.1 Conditional Use Permit Required. No siting and construction of a new mobile service support structure or mobile service facility; or substantial modification of an existing support structure and mobile service facility shall be constructed, installed, enlarged, substantially repaired, modified, altered or reconstructed upon any Owner's property until or unless both a conditional use permit and building permit have been granted pursuant to this Ordinance. This conditional use permit requirement does not apply to:
- 4.1.1 A mobile service support structure and mobile service facility to be located upon property owned, leased or otherwise controlled by the Town or a Town subdivision, provided that a license or lease for such structure or facility has been approved by the Town Board. However, unless otherwise prohibited by law, mobile service support structures and mobile service facilities which are publicly owned and operated to provide for and

maintain a radio frequency system for police, fire and other municipal services are governed by this Ordinance and do require both permits from the Town regardless of whether or not they are to be used for any commercial use in addition to the primary public safety use.

4.1.2 Any facility where the Antenna height is under seventy (70) feet the Antenna and is owned and operated by a federally licensed amateur radio station operator or is used exclusively as a receive only Antenna. No more than one Tower for a licensed amateur is allowed on a parcel.

4.1.3 Any pre-existing mobile service facility or Antenna which has been in use and for which all Federal, State and local permits have been properly issued prior to the effective date of this Ordinance, may not be required to meet all of the requirements of this Ordinance, but shall meet: the Federal and State requirements, building codes, and safety standards; and the conditional use application and permit requirements as set forth at Section 4.5 below.

4.1.4 Mobile communication towers and masts providing public information coverage of news events of a temporary or emergency nature.

4.2 Zoning Districts. Applicants may seek a conditional use permit for a mobile service facility in any zoning district.

4.3 Application Content. Applications shall be submitted to the Town Clerk. The application shall be in writing and shall contain all of the following information:

4.3.1 The name and business address of, and the applicant's contact individual's identity and information.

4.3.2 The location of the proposed or affected support structure.

4.3.3 The location of the proposed mobile service facility.

4.3.4 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.

4.3.5 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.

- 4.3.6 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.

4.4 Application Completeness and Determination Procedure. Due to State law time limits the Plan Commission shall not conduct any public hearing(s) which would normally yield a written Plan Commission recommendation. Instead, upon filing the conditional use and building permit Application shall be submitted directly to the Town Board for public hearing and final determination by the Town Board.

- 4.4.1 The Town Chairperson shall initially determine whether the Application is complete. . If the Town Chairperson does not believe that the application is complete, the Clerk 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 either missing or incomplete. An applicant may resubmit an application as often as necessary until it is accepted as complete.
- 4.4.2 If the applicant disputes the determination concerning the completeness of the application, the applicant shall appeal that decision directly to the Town Board by delivering a written appeal request to the Town Clerk. The appeal request shall state all of the disputed issues concerning the application's completeness. The Town Board will conduct a hearing concerning application completeness at the next regularly scheduled monthly Town Board meeting if the appeal request is received by the Town Chairperson ten or fewer days before the last date and time upon which an amended agenda can be posted and provide not less than twenty four (24) hours advance notice of the Town Board's intent to take action on the matter at such regular meeting. Otherwise, the Town Board shall conduct an application completeness appeal hearing at a special Town Board meeting to be held not more than ten days following the Town Clerk's receipt of the applicant's appeal request. For the avoidance of doubt, a complete application does not preclude the Town Board from requiring the applicant to submit other and further information during the course of the conditional use and building permit hearing.
- 4.4.3 Within 90 days of its receipt of a complete application, the Town Board shall complete all of the following or the applicant may consider the application for permits approved, except that the applicant and the Town Board may agree in writing to an extension of the 90 day period:

- 4.4.3.1 Review the application to determine whether it complies with all applicable requirements of this Ordinance and all applicable building codes.
- 4.4.3.2 Make a final decision whether to approve or disapprove the application.
- 4.4.3.3 Notify the applicant, in writing, of the Town Board's final decision.
- 4.4.3.4 If the decision is to disapprove the application, include with the written notification substantial evidence which supports the Town Board's decision. A decision to disapprove may not be solely based upon esthetic concerns. The Town Board's final determination shall be documented in a separate writing, and if the recommendation or final determination is to deny the requested permit then the separate writing shall contain written statements of all of the reasons supporting the denial. A written record of the stated reasons for denial shall also be maintained in the meeting minutes of the Town Board public hearing.
- 4.4.4 The application process from submission to final determination by the Town Board shall be completed within a reasonable time after the application is determined to be complete. To expedite a final determination the applicant should provide along with the application a construction plan which describes, provides information and adheres to the requirements contained at Section 4.4.5 below.
- 4.4.5 Application Plan Content. The application and accompanying construction plan shall contain and address the following:
- 4.4.5.1 Full disclosure of the wireless service carriers and providers who intend or may be solicited to utilize the planned mobile service facility ("Users" "User") including: the identity and legal entity status of all applicants and Users including disclosure of any affiliates; the name, address and telephone number of the officer, agent or employee responsible for the accuracy of the information provided in the application; documentary proof of the applicants and Users registration and good standing with the FCC, showing that they are licensed by the FCC to construct, use and operate facilities; and evidence that any required FCC licenses are in good standing; a narrative and map description of the applicant(s) and Users existing telecommunications facilities in Brown County and Kewaunee County.

- 4.4.5.2 A narrative and map description of all applicants and Users' system wide plans describing existing and applied for mobile service facilities to serve the Town of Humboldt and its adjacent surrounding communities. Verification from a licensed professional that the proposed mobile service facility is being configured and located so as to minimize the number of facilities required to provide coverage for the Town of Humboldt and its adjacent surrounding communities.
- 4.4.5.3 A scaled site plan and a scaled elevation view and other supporting photos, drawings, calculations and other documented specifications, signed and sealed by appropriate licensed professionals, showing the location and dimensions of all planned Improvements, including information concerning topography, frequency coverage, Tower height requirements, set backs, driveways, parking, fencing, landscaping, adjacent uses, and other information regarding the proposed mobile service facility, including but not limited to demonstrating that the planned facility meets the following building code requirements:
- 4.4.5.3.1 Towers shall be constructed out of metal or other nonflammable material, unless specifically permitted by the Town Board to be constructed otherwise.
 - 4.4.5.3.2 Improvements constituting support facilities (e.g. equipment rooms, utilities and equipment enclosures shall be constructed out of non-reflective materials (visible exterior surfaces only) to the extent possible and, where possible, shall be sited below the ridge line or otherwise designed and placed to minimize their visual impact.
 - 4.4.5.3.3 Improvements constituting equipment buildings, shelters and cabinets shall be designed and treated to look like a building or facility typically found in the area.
 - 4.4.5.3.4 The plan shall include reasonable special design accommodations (materials, architectural features and color) if the mobile service facility is to be located in proximity to residential, historic or aesthetically significant structures, views and/or community features.
 - 4.4.5.3.5 Showing that the mobile service facility will contain sufficient anti-climbing and other safety and security measures to reduce potential for trespass and injury.

- 4.4.5.3.6 Showing that Improvements are located, designed and screened to reduce visual impacts to the extent feasible considering the technological requirements of the proposed mobile services facility and the need to be compatible with the surrounding property uses and the character of the Humboldt community as reflected in the Town's Comprehensive Plan.
- 4.4.5.3.7 Showing that Antennas have been designed to blend in with its supporting Tower or structure and that the color selected will minimize the visibility of the Antennas to the greatest extent feasible.
- 4.4.5.3.8 Fully documenting that the applicant has made a good faith effort to achieve Co-location on an existing Tower as an alternative to the proposed Tower. The Town Board 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 Subsection 4.3.6.
- 4.4.5.4 An affidavit binding the applicant to make feasible space available on the Tower to other mobile service providers, including but not limited to competing providers at rates within the industry normal range of comparable market rates.
- 4.4.5.5 A separate document designating the applicant's duly appointed representative authorized to receive all notices for and on behalf of the applicant and Owner shall be filed as part of the application. Such designation may not appoint more than two (2) agents for receipt of notice per applicant and Owner, and shall provide the full name, mailing address, email address, and telephone number of the applicant's and Owners designated representatives and agents authorized to receive notices for and on behalf of the applicant and Owner. Any change of representative or agent by an applicant or Owner at any time prior or subsequent to the issuance of a permit, shall be immediately reported in writing to the Town Clerk. The applicant, Owner and their successors and assigns are solely responsible for updating their authorized representative(s) information on file with the Town Clerk. Any failure of receipt of notice attributable to an applicant or Owner failure to update the name or address of an authorized representative which results in adverse action being taken against the applicant or Owner is at the applicant and Owner's sole risk and does not void any such action

which may be taken by the Town Board in their absence. Delivery of all notices by the Town to an applicant or Owner prior or subsequent to the issuance of any permit under this Ordinance: shall be by regular U.S. Postal Service mail; and shall be deemed delivered on the third (3rd) day following the date of deposit with the U.S. Postal Service.

SECTION 5. APPLICATION REQUIREMENTS AND PROCESS FOR MODIFICATION OF MOBILE SERVICE SUPPORT STRUCTURES AND MOBILE SERVICE FACILITIES DEFINED AS CLASS 2 COLLOCATIONS

- 5.1 A Class 2 collocation is a permitted use which is nevertheless subject to the regulations contained in this Section. A building permit is required for a Class 2 collocation. The required building permit shall be applied for and determined for issuance or denial based upon the regulations contained in this Section 5.
- 5.2 If an applicant submits an application for a Class 2 collocation building permit, the application shall contain all of the information required under subsection 5.3 and if all of the Subsection 5.3 information is submitted the application shall be considered complete.
- 5.3 The Class 2 collocation application shall be in writing and shall contain all of the following information:
 - 5.3.1 The name and business address of, and the contact individual for, the applicant.
 - 5.3.2 The location of the proposed or affected support structure.
 - 5.3.3 The location of the proposed mobile service facility.
- 5.4 If the Town Chairperson believes that any of the required information is not in the application, the Town Clerk 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.
- 5.5 Within 45 days of its receipt of a complete application, except that the applicant and the Town Board may agree in writing to an extension of the 45 day period, the Town Board shall complete all of the following or the applicant may consider the application for building permit approved:
 - 5.5.1 Make a final decision whether to approve or disapprove the application.
 - 5.5.2 Notify the applicant, in writing, of the Town Board's final decision.

- 5.5.3 If the application is approved, issue the applicant the requested building permit.
 - 5.5.4 If the decision is to disapprove the application, include substantial evidence which supports the decision within the written notification of that disapproval.
 - 5.5.5 A decision to disapprove may not be based solely upon esthetic concerns.
- 5.6 The Class 2 collocation building permit application process from submission to final determination by the Town Board, shall be completed within a reasonable time after the application is determined to be complete. To expedite processing of a Class 2 collocation application and a final determination by the Town Board to grant or deny the requested building permit, the application documents and/or the applicant at the Town Board hearing regarding the requested permit should address the requests and be prepared to demonstrate adherence to the requirements contained at Section 5.7 below.
- 5.7 To expedite the issuance or denial of a Class 2 collocation building permit the application documents and/or the applicant's hearing presentation should address and demonstrate adherence to the following:
- 5.7.1 The requirements contained in Sections 4.4.5.3.2 through 4.4.5.3.7 of this Ordinance should be reviewed by the applicant and those which are relevant should be addressed by the applicant as to their feasibility and efficacy under the particular circumstances of the applicant's plan for the Class 2 collocation and the remaining useful life of the mobile service facility where the Class 2 collocation is proposed.
 - 5.7.2 A Town Board hearing shall be commenced as soon as possible after the application is deemed or determined to be complete.
 - 5.7.3 The applicant should submit a separate document committing the applicant to reasonable continuing compliance with the Class 2 collocation representations made by the applicant in the application and/or thereafter during the public hearing, all of which collectively shall be deemed included as a condition to the issuance and continuing authority granted by issuance of the Class 2 collocation building permit.

SECTION 6. CONDUCT OF TOWN BOARD HEARINGS FOR SECTION 4 AND SECTION 5 PERMITS

- 6.1 Applicant's Presentation. The Applicant's presentation shall open the hearing, shall be made at the applicant's cost, and shall include the following as relevant to the application:

- 6.1.1 A visual analysis, which may include photo montage, field mockup, or other visual aids which show the potential visual impacts and the design capacity of the proposed mobile service facility, Class 1 collocation or Class 2 collocations to the satisfaction of the Town Board. Consideration shall be given to views from public areas as well as from private properties. The applicant's presentation shall accurately describe the current uses of the surrounding properties within the purview of the proposed or affected mobile service facility.
- 6.1.2 A thorough analysis assessing the impacts of the proposed mobile service facility or Class 1 collocation other existing mobile service facilities in the area; and the applicant shall identify and include all feasible alternative mitigation measures consistent with the technological requirements of the proposed mobile service facility.
- 6.1.3 Some verbal presentation may be part of the presentation, but documented facts and statements should be the predominate part the applicant's hearing presentation.
- 6.1.4 A full report from a qualified reputable licensed professional engineering firm or consultant demonstrating that the proposed mobile service facility has been designed and will be constructed in compliance with all codes, rules and regulations of any federal, state or local government agency and in accord with industry best practices. Applicant shall commit that the same consultant will inspect the mobile service facility during construction and at the conclusion of construction and shall submit both an interim and a final written report to the Town Board attesting and confirming that the mobile service facility has been constructed in compliance with both applicable law and industry best practices.
- 6.1.5 Documentation demonstrating that the applicant has made a good faith best effort to achieve collocation as required by Subsection 4.3.6 above. Such documentation may be supplemented by hearing testimony and other documentation which demonstrates that: no available collocation exists in the area where the applicant's mobile service facility must be located; or that no Tower of sufficient height exists and that the height deficiency on any existing available collocation Tower cannot be remedied at a reasonable cost; or the existing available collocation Tower is not of sufficient strength to support applicant's required equipment and its structural strength deficiency cannot be remedied at a reasonable cost; or the applicant's equipment would cause electromagnetic interference with equipment on the existing Tower(s) within the area where collocation may be available and where applicant needs to establish coverage, or that the equipment already on the existing available collocation Towers in that area would cause interference with the applicant's equipment and that in

either event the interference cannot be eliminated at a reasonable cost; or the fees, costs or contractual provisions attributable to Co-location as required by the owner of the existing Tower are unreasonable relative to industry norms; or that there are other factors which render collocation upon existing Towers unsuitable or unavailable and establishes that the public interest is best served by the placement and construction of a new Tower or mobile service facility. For purposes of this subsection, all existing mobile service facilities shall be deemed available unless demonstrated by the applicant to be unavailable for collocation.

- 6.1.6 Documentation from federal authorities that the proposed mobile service facility will be in compliance with all FCC and FAA regulations and that the applicant is duly licensed by and in good standing with the FCC.
- 6.1.7 Documentation demonstrating the applicant's financial ability to fulfill the applicant's financial responsibility to: complete the construction as planned; maintain the mobile service facility as required by this Ordinance; and ultimately remove the mobile service facility and restore the site as required by this Ordinance.

6.2 Town Board Participation. At any point in the applicant's presentation or thereafter, members of the Town Board, their consultants or legal representative may raise questions as to any particular matter presented by or on behalf of the applicant and may proffer evidence or witnesses or raise questions concerning any other relevant matters.

6.3 Public Participation. Following the applicant's initial presentation, the Town Board may elect to suspend the rules to hear from interested members of the public who may address questions to the applicant or the applicant's witnesses and may present evidence and witnesses concerning any relevant matters.

SECTION 7. APPROVAL OR DENIAL OF PERMIT CONSIDERATIONS

- 7.1 When determining whether to grant, deny or place additional conditions upon a conditional use or building permit under Section 4 or a building permit requested under Section 5 of this Ordinance, the Town Board shall consider the Purposes of this Ordinance set forth in Section 2.2 above and the following:
 - 7.1.2 Whether the proposed new mobile service facility or Class 1 collocation as planned by the applicant is feasible. However, the Town Board shall not consider radio frequency signal strength or the adequacy of mobile service quality when making its determination.
 - 7.1.3 How high the Tower must be to meet the requirements of the service area. Provided however, the Town Board shall not disapprove an application

based solely on the height of the mobile service support structure or on whether the structure requires lighting.

- 7.1.4 Whether there are alternative solutions already available or under construction pursuant to a Town issued permit which are within or near the Town and designed to fill the gap in the community's service area which the application seeks to fill.
- 7.1.5 Has the applicant provided sufficient information and documentation to demonstrate that there is a lawful need as defined by Subsection 4.3.6 above to construct the Tower and mobile service facility as proposed by the applicant?
- 7.1.6 Whether the Tower should be camouflaged (e.g. as a sign, tree, flag pole, etc.) and whether the applicants planned Improvements must be modified to fit into the neighborhood better by conditions specified in the permit.
- 7.1.7 Has the applicant been candid and truthful in its application and fully answered all questions raised during the hearing regarding the application and hearing submissions?
- 7.1.8 Has the applicant demonstrated the requisite licensure and good standing with the FCC?
- 7.1.9 Has the applicant delivered adequate proof of compliance with any applicable FAA requirements?
- 7.1.10 Has the applicant provided sufficient evidence regarding the potential users of the mobile service facility and is the applicant's plan consistent with that potential usage?
- 7.1.11 Does the applicant's plan adequately address the traffic, parking and other concerns owners and users of the facility may bring to the area?
- 7.1.12 Is the applicant's construction design and plan, consistent with the Town's Comprehensive Plan for the area where the facility is to be located?
- 7.1.13 Will the area of the community where the mobile service facility is to be located be damaged as to its current or intended uses, and if so, does the applicant's plan mitigate those damages to a reasonably acceptable level?
- 7.1.14 Has the applicant fully and fairly considered all reasonably available and feasible collocation alternatives?
- 7.1.15 Is the applicant's planned facility in compliance with FCC regulations?

- 7.1.16 The capacity of the Tower structure for additional Antennas to accommodate expansion of the Tower's use for future collocations.
 - 7.1.17 Proximity and visibility of the Tower to residential structures and current residential district or Comprehensive Plan identified future residential district boundaries.
 - 7.1.18 The nature of current and future Comprehensive Plan identified uses on adjacent and nearby properties.
 - 7.1.19 The surrounding topography, tree coverage and foliage.
 - 7.1.20 Proposed ingress and egress plan for the mobile service facility.
 - 7.1.21 All Towers, Antennas and Improvements must meet or exceed current standards and regulations of the FAA, the FCC, and any other agency of the Federal or State government with authority to regulate them.
 - 7.1.22 Any other and further matters or considerations consistent with the Purposes of this Ordinance and the law governing the subject matter of this Ordinance.
- 7.2 When determining whether to grant or deny or place conditions upon a conditional use or building permit pursuant to this Ordinance, the Town Board shall not:
- 7.2.1 Unreasonably discriminate against providers of functionally equivalent mobile services.
 - 7.2.2 Prohibit or have the effect of prohibiting the provision of personal wireless services.
 - 7.2.3 Fail to act upon a request to place, construct or modify a facility within a reasonable time.
 - 7.2.4 Fail to present any decision to deny a request in writing.
 - 7.2.5 Issue a denial decision that is not based upon substantial evidence contained in the hearing record and recounted in the written denial decision.
 - 7.2.6 Regulate or act on a request based upon the environmental effects of radio frequency emissions. These facilities only need to comply with the FCC regulations regarding radio frequency emissions.

- 7.2.7 Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile service providers.
- 7.2.8 Condition approval of such activities on the agreement of the structure or mobile service facility owner to provide space on or near the structure or facility for the use of or by the Town or an agency of the Town at less than the market rate, or to provide the Town or an agency of the Town with any other services via the owner's structures or facilities at less than the market rate.
- 7.2.9 Limit the duration of any permit that is granted.
- 7.2.10 Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.
- 7.2.11 Disapprove an application based on an assessment by the Town Board of the suitability of other locations for conducting the activity.
- 7.2.12 Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.
- 7.2.13 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.
- 7.2.14 Consider an activity a substantial modification under Subsections 3.20.1 or 3.20.2 if a greater height is necessary to avoid interference with an existing antenna.
- 7.2.15 Consider an activity a substantial modification under Subsection 3.20.3 if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.
- 7.2.16 Limit the height of a mobile service support structure to under 200 feet.
- 7.2.17 Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the Town in connection with the Town's exercise of its authority to approve the application.
- 7.2.18 Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the Town 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, an agency or entity in which the Town has a governance, competitive, economic, financial or other interest.

7.2.19 Require that a mobile service support structure be placed on property owned by the Town or an agency or entity in which the Town has a governance, competitive, economic, financial or other interest.

7.2.20 Prohibit the placement of emergency power systems.

SECTION 8. CONDITIONS APPLICABLE TO ALL CONDITIONAL USE AND BUILDING PERMITS ISSUED PURSUANT TO SECTION 4

8.1 Security & Signs. The premises containing the mobile service facility shall be secured and reasonably protected from unauthorized entrance. A sign not greater than nine square feet shall be posted in the immediate vicinity of the Improvements warning of electrical equipment and climbing dangers, informing the public of the owner's name, and providing an emergency contact telephone number. No commercial advertising sign(s) shall be placed upon the Tower, any Antenna or Improvement(s) upon the mobile service facility.

8.2 Abandonment/Removal. If a mobile service facility shall cease to be used for a period exceeding six months and a day, the applicant holding the permit granted pursuant to this Ordinance shall remove the mobile service facility upon delivery of a written request for removal from the Town's authorized representative. If there are two or more users of the mobile services facility, then this abandonment provision shall not become effective until all users cease using the mobile service facility, but only if those remaining users thereupon undertake full responsibility for all permit requirements via transfer of the permit as permitted by Section 10.3 below. The request for removal shall be in the form of a Town Board resolution a copy of which shall be delivered via regular mail and shall be deemed delivered upon the third day following deposit of the notice in the U.S. Postal service regular mail addressed to the addressee designated in the Town's records as the permit holder's representative to receive notices. Removal shall be completed by the applicant at no cost to the Town within ninety (90) days of the date such resolution was deposited in the mail per the affidavit of the Town Clerk filed in the Town records upon the date of mailing. If the removal of the mobile services facility is not timely completed, then the Town may proceed to retain the contractor described at Section 8.3 below and shall be reimbursed for the contractor's charges from the performance bond, letter of credit or other security posted pursuant to Section 8.3. If the funds available to the Town pursuant to Section 8.3 are insufficient to cover the Town's expenditures incurred in the removal, then the Town may proceed to collect any unreimbursed amount as a tax assessed and as a lien against the property upon which the mobile service facility was located. Removal may include dismantling and removal of all Improvements and restoration of the property including but not limited to excavation and removal of all foundations, pads and buried electrical improvements, replacement of topsoil and restoring the grade of the property to its original state.

- 8.3 Performance Bond. No permit shall be granted until the applicant has delivered a performance bond or an irrevocable letter of credit payable to the Town of Humboldt in the sum of \$20,000.00 or a greater amount only if the Town Board determines pursuant to a firm all inclusive bid offered by a responsible local contractor demonstrating that a sum greater than \$20,000.00 is required to fully pay that contractor to effect the removal of the mobile service facility anytime during the upcoming two year period in the event that the applicant fails to fully perform its obligations to remove the mobile service facility and restore the property following abandonment of the mobile service facility.
- 8.4 Setbacks. All Towers shall be placed not less than 100% of the height of the Tower away from any right of way and any adjoining property boundary unless the applicant provides the Town Board 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 fall zone area required in this Subsection. Upon being provided with that engineering certification the setback requirement of this Subsection does not apply to such a structure unless the Town Board provides the applicant with substantial evidence that the engineering certification submitted by the applicant is flawed.. Here the height of the Tower includes any additional height of the structure attributable to any Antenna or anything else attached to the Tower. In the absence of an engineering certification, a variance from this setback requirement may be granted by the Town Board only under special circumstances posing no risk to public health, safety, general welfare or convenience and which don't unduly compromise the interests of the adjoining property owners or the landscaping requirements determined pursuant to Section 8.5 below.
- 8.5 Landscaping. Unless expressly waived by final determination of the Town Board, mobile service facilities shall be landscaped with a mixture of deciduous and evergreen trees and shrubs that effectively screen the view of the Improvements from adjacent residential properties. The standard buffer shall be a landscaped strip at least six (6) feet wide outside the perimeter of the mobile service facility. In locations where the visual impact of the Improvements would be minimal and as to access road or other Improvements, the landscaping requirement may be reduced or waived altogether. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, for example a large wooded lot, natural growth around the property perimeter may be sufficient buffer.
- 8.6 Maintenance/Repair. The permit holder shall be responsible for the maintenance, replacement and repair of all Towers, Antennas, Improvements and landscaping buffers related to the permitted mobile service facility. All Improvements shall be maintained and kept in reasonable condition. Ordinary wear and tear shall be timely addressed seasonally to maintain the facility in "like new" condition to the extent feasible. The Town Board may issue and deliver written maintenance or repair orders to the representative of the permit holder by regular mails as provided in Subsection 4.4.5.5 above. The maintenance or repair order shall be in the form of a Town Board resolution requiring that the maintenance or repair be completed within a stated

reasonable period of time. If the permit holder objects to the Town Board order, then the permit holder shall deliver written notice of such objection to the Town Clerk not later than ten (10) days after delivery of the Town Board's order. If the permit holder timely objects and requests that a hearing be held, then the Town Board shall schedule a public hearing regarding the matter and shall provide the permit holder with not less than ten (10) days prior written notice of the date, time and place for such hearing. If the permit holder fails to timely object or request a hearing, then the Town Board's order for repair or maintenance shall be timely complied with in accord with the time allotted in the Town Board's order. If during the permit term, federal or state regulations regarding Towers, Antennas or any Improvements are changed, and if failure to require adherence to those regulations present a clear and present threat to the health, safety, welfare or convenience of the public, then they may issue an order requiring compliance and the permit holder shall repair or replace the non-compliant aspects of any such Tower, Antenna or Improvement within six (6) months to bring the mobile service facility into compliance with the new federal and/or state regulation unless a more stringent compliance schedule is mandated by the federal or state authorities.

SECTION 9. PERMIT TERM & RESPONSIBLE PARTIES/PERMIT VIOLATION ACTIONS/REPORT EVENTS

- 9.1 All permits granted under Section 4 or Section 5 of this Ordinance have an indefinite term but are subject to compliance review by the Town Board. Responsible parties include the applicant, the applicant's heirs, successors and assigns, and the owner(s) of the property where the mobile service facility and/or mobile service support structure are located. All responsible parties are jointly and severally liable for the permit holder's obligations under this Ordinance.
- 9.2 Permits may be reviewed by the Town Board in the event that complaints concerning non-compliance with permit terms and conditions arise. Non-compliance with permit terms and conditions issued pursuant to this Ordinance, any provision of this Ordinance, or the requirements of any other Town ordinance, State or Federal law or permit may constitute grounds for permit actions including: revision, suspension or revocation.
 - 9.2.1 Upon any such review, permits issued pursuant to this Ordinance are subject to possible revision, suspension or revocation actions by the Town Board. The Town may enforce its other ordinances or prosecute violations of the terms and conditions of any permit issued pursuant to this Ordinance through citation forfeiture actions in the Brown County Joint Municipal Court.
 - 9.2.2 No action(s) shall be taken to revise, suspend or revoke any permit until not less than ten (10) days prior written notice of a hearing to consider such action has been delivered by regular mail to the permit holder's and other responsible parties identified in Section 9.1. Such written notice

shall be deemed delivered to the permit holder and other responsible parties on the third (3rd) day following deposit of such notice with the U.S. Postal Service.

- 9.3 Not later than December 15 of each calendar year, the permit holder shall deliver an annual report to the Town Clerk. The annual report shall provide updated information concerning: any previously undisclosed mobile service facility applied for or constructed by the permit holder in any town adjacent to the Town during the past year; information provided in the report shall include an update of the possible collocation Towers then currently located within one quarter mile of the Town; whether the permit holder, its affiliates, subsidiaries or related entities have plans in the works for seeking additional permits from the Town pursuant to this Ordinance during the upcoming calendar year; reporting any other local, state or federal government agency inquiries, complaints or adverse actions taken or threatened by the FCC or any other government agency relating to any relevant government permit or license during the reporting year and if so then providing information as to the status of any such FCC or other agency situation. Failure to provide an annual report or an accurate annual report may result in permit suspension or revocation.

SECTION 10. PERMIT FEES, CONSULTANT FEES AND PERMIT TRANSFERABILITY

10.1 Permit Fees.

10.1.1 SECTION 4 PERMIT: The fee for a Section 4 conditional use and building permit is \$3000.00 payable to the Clerk in two installments: a first installment payment of \$1500.00 upon filing of the application; and if the permit is granted then a second installment payment of \$1500.00 on or before the date set for the Town Board public hearing. If the permit is withdrawn prior to commencement of the public hearing then the first installment shall be retained by the Town, but the second installment is not due or payable.

10.1.2 SECTION 5 PERMIT: The fee for a Section 5 permit is \$500.00.

10.2 Reimbursement For Third Party Consultant Fees.

10.2.1 In addition to the permit fee required pursuant to Section 10.1 above, the applicant shall be required to reimburse the Town for any third party consultant fees the Town incurs in the course of reviewing the application, conducting the public hearing or issuing its final determination. All reimbursable consultant fees shall be timely paid to the Town upon the terms and conditions stated in Subsection 10.2.2 below. The Town shall only claim reimbursement for the third party consultant's service fees charged and payable by the Town. The Town shall not claim any reimbursement for any third party consultant travel expenses charged to the Town.

10.2.2 By resolution at any time following the filing of a Section 4 application, the Town Board may require an applicant to make an advance deposit based upon the third party consultant's reimbursable services fee estimate. Any such deposit shall be applied to reimburse the Town for the consultant's service fees as those fees become payable and have been paid by the Town. Any consultant fees not reimbursed by draw upon an advance deposit shall be due and paid in full to the Town within twenty (20) days of the date of the billing statement delivered by regular mail to the applicant and the applicant's representative at the mailing address provided in the application.

10.2.3 Upon any reimbursement payment default the Town may act by resolution to suspend its processing of the application or suspend the use of any permit issued until such time as the delinquent reimbursement amount owed to the Town has been paid in full. Any delinquent reimbursement amount owed to the Town may by further resolution of the Town Board be chargeable as and for an assessment against the property and shall be collectible and payable as a charge against the real property which shall be included in the current or next tax roll for collection and settlement under Chapter 74 Wis. Stats.

10.3 Permit Transferability. Any Section 4 conditional use permit granted is transferable to any subsequent owner of the mobile service facility or owner of the property occupied by the Facility provided that:

10.3.1 The permit is not suspended or revoked or subject to an ongoing hearing which could result in a suspension or revocation;

10.3.2 The transferee is qualified to hold the permit;

10.3.3 The transferee agrees to be bound and remains in compliance with the conditions contained in the permit and all regulations contained in this Ordinance or any other applicable law;

10.3.4 There shall be no cessation or gap as to the performance bond required pursuant to Section 8.3; and

10.3.5 Written notice of such transfer shall be delivered to the Town Clerk not less than twenty (20) days prior to any such transfer to enable the Town Board to conduct any investigation or hearing concerning such transfer the Town Board may deem necessary or appropriate under the circumstances.


SECTION 11. FINAL ADMINISTRATIVE APPEAL REQUIRED BEFORE COURT ACTION

- 11.1 State Law. Wisconsin Statutes §66.0404 provides that a party who is aggrieved by the final decision of the Town Board to disapprove of a Section 4 or Section 5 application 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. Wisconsin Statutes Chapter 68 authorizes the Town to create this administrative procedure Section which shall govern and determine both: what constitutes a “final decision” of the Town Board to deny in whole or in part any application for a Section 4 or Section 5 permit; and the administrative procedure the applicant who is aggrieved by any original written decision issued by the Town Board pursuant to Sections 4.4.3 or 5.5 must follow to obtain a final decision which is then actionable in the circuit court.
- 11.2 Final Decision. All initial written decisions issued by the Town Board denying an application pursuant to Section 4.4.5 or Section 5.5 shall be preliminary decisions not final decisions. A final decision denying an application pursuant to Section 4.4.5 or 5.5 can only be obtained by the applicant through the administrative procedure set forth at Section 11.3 below.
- 11.3 Administrative Procedure. To obtain a final decision denying an application under Section 4.4.5 or Section 5.5 the applicant shall:
- 11.3.1 Deliver a written Notice of Appeal to the Town Clerk by personal delivery or regular mail within thirty days of the applicant’s receipt of the Town Board’s written preliminary decision.
 - 11.3.2 The Notice of Appeal shall request a review hearing before the Town Board and shall state all of the particular elements of the preliminary decision which are in dispute and state the ground or grounds upon which the applicant contends that the decision should be modified or reversed.
 - 11.3.3 The Town Board shall conduct a public hearing on the applicant’s appeal within fifteen days of the Clerk’s receipt of the Notice of Appeal and shall deliver by regular mail written notice of the date, time and place for the public administrative appeal hearing not less than 10 days before such hearing.
 - 11.3.4 At the administrative appeal hearing, the appellant and the Town Board shall identify and then discuss each disputed matter and each shall be prepared to change adjust or compromise their position concerning each particular matter in dispute. The appellant and the Town may be represented by their respective attorneys at the administrative appeal hearing. The hearing may be conducted in a single or in multiple sessions as required to achieve a full review of all matters in dispute between the applicant and the Town.

11.3.5 At the conclusion of the discussion portion of the administrative appeal hearing the Town Board may go into closed session to deliberate and determine its final decision to deny or approve the application. Following deliberation the Town Board may affirm, reverse or modify the preliminary decision, but shall announce its final decision at the conclusion of the administrative appeal hearing and that final decision shall be reduced to writing and delivered to the applicant as required by this Ordinance at Section 4.4.5 or Section 5.5 within ten days of the close of the administrative appeal hearing.

11.3.6 The time limits set forth in Subsections 11.3.3 and 11.3.5 may be extended or revised by separate written agreement of the parties. The format of the public hearing and procedure for conducting the public hearing shall be discussed and determined by the parties prior to commencement of the hearing. The parties may also agree to enlist the services of a mediator or arbitrator to conduct the administrative review hearing.

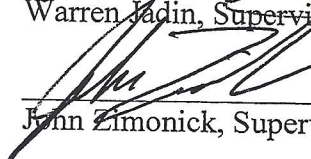
Adopted by the Town Board of the Town of Humboldt on the 6 day of January, 2014 by majority vote of the Town Board. This Ordinance shall be effective upon the day following its posting or publication as required by Wisconsin Statutes Section 60.80.



Steve Datt, Chairman

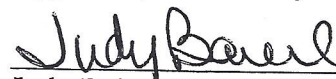


Warren Jadin, Supervisor



John Zimonick, Supervisor

Approved, Attested By:



Judy Baierl, Town Clerk