



## MEMORANDUM

**TO:** Senator David Craig  
**FROM:** Jillian Slight, legislative analyst  
**DATE:** June 2, 2020  
**SUBJECT:** Local approval of cellular tower siting

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Per your request, this memorandum provides a brief overview of state laws relating to local approval of cellular tower siting.

### Overview

Wis. Stat. § [66.0404](#) relates to mobile tower siting regulations. This section of statutes was created under [section 1269i](#) of [2013 Wisconsin Act 20](#), the biennial budget act, and minor changes were subsequently made to it under [2019 Wisconsin Act 14](#).<sup>1</sup> Act 20 authorized political subdivisions to regulate mobile towers under zoning ordinances, placed certain limits on local regulation, and required political subdivisions to prescribe certain procedures related to zoning.

Current law distinguishes between new construction and collocation, i.e., the placement of a new mobile service facility on an existing support structure. Two different classes of collocation are defined under Wis. Stat. § [66.0404 \(1\) \(d\)](#) and [\(e\)](#): placements that require substantial modification to the existing structure (Class 1) and placements that do *not* require substantial modification to the existing structure (Class 2).

### Procedures—new construction and substantial modification

Under Wis. Stat. § [66.0404 \(2\) \(a\)](#), a political subdivision may enact a zoning ordinance to regulate the following:

- The siting and construction of a new mobile service support structure and facilities.
- The substantial modification of an existing support structure and mobile service facilities—i.e., a Class 1 collocation.

A political subdivision that enacts such a zoning ordinance must prescribe the application process that individuals must complete in order to site, construct, or modify mobile service

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<sup>1</sup> At the time of the enactment of Act 20, Legislative Council issued an [informational memorandum](#) summarizing the effect of provisions relating to mobile tower siting, which provides a helpful overview.

support structures and facilities, per Wis. Stat. § [66.0404 \(2\) \(b\)](#). The application must be in writing and include various information specified under this subsection.

Under Wis. Stat. § [66.0404 \(2\) \(d\)](#), a political subdivision must review and approve or deny any complete application within 90 days of receiving it. (Extensions are permissible under certain circumstances.) Within the same period, the political subdivision must notify the applicant of its decision, and include substantial evidence supporting a disapproval. If a political subdivision fails to complete these steps, the application is considered approved. Applicants who are “aggrieved” by a final determination by the political subdivision may file suit in the circuit court.

### **Procedures—other placements**

Under Wis. Stat. § [66.0404 \(3\)](#), a political subdivision may also regulate placements that do *not* require the substantial modification of an existing support structure or mobile service facilities—i.e., Class 2 collocations. For these placements, application procedures are generally the same as for new construction or Class 1 collocations. However, a political subdivision must approve or disapprove a complete application within 45 days of receiving it. (Extensions are permissible under certain circumstances.) As with other placements, a political subdivision must provide substantial evidence supporting a disapproval, an application is considered approved if a political subdivision fails to complete certain steps within a certain timeframe, and “aggrieved” applicants may file suit in the circuit court.

### **Limitations**

In addition to the procedures described above, political subdivisions regulating any new construction or collocation are subject to certain limitations set forth under Wis. Stat. § [66.0404 \(4\)](#). A political subdivision may not do the following:<sup>2</sup>

- Impose requirements relating to environmental testing or for radio frequency emissions.
- Enact an ordinance that imposes a moratorium on mobile phone tower siting, prohibits siting in particular locations, or relates to radio frequency signal strength or mobile service quality.
- Charge providers permit fees in excess of certain amounts, other recurring fees, or certain fees associated with a 3rd party consultant’s review of permits or applications.
- Disapprove an application for a Class 2 collocation based on aesthetic concerns.
- Disapprove any application based on the height of a service structure, its need for lighting, or the suitability of other locations.
- Impose certain surety requirements.
- Impose setback or fall zone requirements for service structures that differ from requirements imposed on other types of commercial structures.
- Prohibit the placement of emergency power systems.
- Require any of the following: that structures be placed on property owned by the political subdivision; that an applicant construct a distributed antenna system in place of constructing a

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<sup>2</sup> Please note that these prohibitions have been paraphrased for ease of understanding. For the full list of prohibitions, see Wis. Stat. § [66.0404 \(4\)](#).

new support structure or modifying an existing structure; that service structures or facilities be connected to backup battery power.

- Condition approval on any of the following: the applicant's provision of space on or near the structure for use by the political subdivision at less than market rate; the applicant's agreement to indemnify or insure the political subdivision in connection with its exercise of authority to approve the application; the applicant's agreement to allow the political subdivision to place or collocate mobile service facilities that it operates or in which it has an interest.
- Limit the duration of any permit that is granted.
- Limit the height of a mobile service support structure to under 200 feet.
- Consider certain activity "substantial modification" if certain heights or protrusions are necessary to avoid interference with an existing antenna or to shelter an antenna from inclement weather.

Please note that since the creation of this section, courts have weighed in on certain limitations set forth under subsection [\(4\)](#). In *Eco-Site, LLC v. Town of Cedarburg*, the Wisconsin Court of Appeals ruled that an ordinance prohibiting a mobile service support structure where the structure is not compatible with the adjacent land's current use does not violate [\(4\) \(c\)](#). In the same case, the court also ruled that denial of a conditional use permit on the basis of lost property values and the detrimental effect on public health and safety and general welfare did not equate to a denial based on aesthetic concerns, as prohibited under [\(4\) \(g\)](#).<sup>3</sup>

Finally, in addition to the limitations listed above, requirements relating to setbacks are established under Wis. Stat. § [66.0404 \(4e\)](#).

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<sup>3</sup> [Eco-Site, LLC v. Town of Cedarburg](#), 2019 WI App 42.