

## LAND USE PLANNING AND ZONING COMMITTEE STAFF REPORT

PUBLIC HEARING

OCTOBER 6, 2016

### ITEM III: ORDINANCE AMENDMENT      Cell Tower Siting

**REQUEST:** The Green Lake County Land Use Planning and Zoning Department is requesting an amendment to the Code of Green Lake County, Chapter 350 of the Zoning Ordinance; more specifically to amend various sections within to be consistent with Section 66.0404 Wis. Stats.

**ADDITIONAL INFORMATION / ANALYSIS:** In the past, Green Lake County had the power to regulate where a mobile (cell) tower site could be located. As a result of 66.0404 Wis. Stats. a county's ability to regulate mobile tower siting has been greatly reduced. There are provisions in 66.0404 Wis. Stats that allow a county to regulate mobile tower siting to a lesser degree. These are as follows:

1. Limited ability to regulate siting of new mobile support structures and facilities as well as Class 1 collocations.
2. To adopt an application process which an applicant must complete to engage in the siting, construction or modification activity. The application process is also described in the law.
3. To require the applicant to submit an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation including a sworn statement attesting that collocation was not feasible.
4. To disapprove an application if the applicant refuses to evaluate the feasibility of collocation.
5. To require the applicant to provide an engineering certification showing that the mobile services support structure is designed to collapse within a smaller area than the setback or fall zone required in a zoning ordinance...
6. To require a land use permit for a Class 2 collocation, however there are zero regulatory standards to enforce here. GLC would just get a permit for reporting and tracking purposes.
7. To charge a mobile radio service provider a fee not to exceed \$500 for a Class 2 collocation, and up to \$3000 for a new tower or a Class 1 collocation.
8. To impose a surety requirement of up to \$20,000 if the tower falls into disuse.
9. To impose a fall zone area requirement for mobile support structures so long as there is no different requirement for other types of commercial structures.
10. To limit the height of a mobile support structure to no less than 200ft.

In order to protect private property and public infrastructure from being impacted by these mobile tower sites, the Land Use Planning & Zoning Department recommends that the following language be adopted. Attached is a copy of the proposed ordinance amendments.

**STAFF COMMENTS:** The Land Use Planning and Zoning Committee has several options in this regard and they are as follows:

- Forward onto the County Board with recommendation to adopt as proposed.
- Hold another public hearing to take additional public comment.
- \*Reject as proposed.

\* In the event that these amendments are not adopted, companies that construct new tower sites, or collocate on existing tower sites would not be legally obligated to meet required setbacks to public roads, private property or other infrastructure. Further, neighboring property owners would not be alerted of a tower siting project and would not be able to participate in a public hearing to voice their concerns. *Albeit, if the tower construction company has met the required standards, there is very little a disapproving neighbor can do.*

**ARTICLE III  
General Provisions**

- §350-11. Findings; abatement of nuisances.
- §350-12. Jurisdiction.
- §350-13. Compliance required; number of buildings per lot; existing construction.
- §350-14. Nonconforming uses, structures and lots.
- §350-15. Accessory building structures.
- §350-16. (Reserved)
- §350-17. Dwelling design and construction.
- §350-18. Area Regulations.
- §350-19. Height regulations.
- §350-20. Front, side and rear yard regulations.**

- A. There shall be a side yard on each side of a structure hereafter erected, moved or structurally altered.
- B. Except as otherwise provided in this Section, every structure hereafter erected, moved or structurally altered shall provide the minimum side and rear yards as required by the following table for the district in which such building is, or is to be, located:

<b>District</b>	<b>Each Side Yard (feet)</b>	<b>Rear Yard (feet)</b>
Residential	12	25
Recreational	12	25
Agricultural	12	25
Conservancy	20	25
*Commercial	12	25
*Industrial	20	25

\*Commercial and Industrial buildings are required to provide an additional setback 1.1 times their overall height.

- C. Except as otherwise provided in this Section, every structure hereafter erected, moved or structurally altered, shall be set back from the adjoining highway or highways as required by Article VI, Highway Setback Lines.
- D. Lots 85 feet in width and under shall have a side yard setback of 10 feet on both sides.
- E. Except as otherwise provided in this ordinance, No structure shall be erected or extended in a required yard, except the ordinary projections of sills, belt courses, cornices and ornamental features projecting not more than 12 inches.
- F. Reserved.

**ARTICLE V**  
**Nonbuilding Structures**

§ 350-43. Signs ...

**§ 350-44. Mobile tower siting regulations**

The purpose of this section is to regulate by land use permit the siting and construction of any new mobile service support structure and facilities, Class 1 collocations (the substantial modification of an existing support structure and mobile service facilities), and Class 2 collocations (collocations that do not require the substantial modification of an existing support structure and mobile service facilities).

DEFINITIONS: All definitions contained in s. 66.0404(1) Wis. Stats. are hereby incorporated by reference.

- A. Siting and construction of any new mobile service support structure and facilities and Class 1 collocations (substantial modifications to existing support structure and mobile support facilities)
  - (1) The siting and construction of any new mobile service support structure and facilities as well as for Class 1 collocations (substantial modifications to existing support structure and mobile support facilities) are conditional uses in the areas subject to the provisions of this ordinance (See ARTICLE VII. Conditional Use Permits). A land use permit is also required.
  - (2) A land use permit application must be completed by any applicant and submitted to the Land Use Planning & Zoning Department. The application must contain the following information:
    - (a) The name and business address of, and the contact individual for, the applicant.
    - (b) The location of the proposed or affected support structure.

- (c) The location of the proposed mobile service facility.
  - (d) If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
  - (e) If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
  - (f) If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.
- (3) The Land Use Planning & Zoning Department will provide a permit application to any applicant, upon request.
- (4) If an applicant submits an application for a land use permit to engage in an activity described in this section, which contains all of the information required under this ordinance, the Land Use Planning & Zoning Department shall consider the application complete. If the Land Use Planning & Zoning Department does not believe that the application is complete, the Land Use Planning & Zoning Department shall notify the applicant in writing within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (5) Within 90 days of its receipt of a complete application, the Land Use Planning & Zoning Department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Land Use Planning & Zoning Department may agree in writing to an extension of the 90 day period:
- (a) Review the application to determine whether it complies with all applicable ordinance standards.
  - (b) Make a final decision whether to approve or disapprove the application.

- (c) Notify the applicant, in writing, of its final decision.
  - (d) If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
- (6) The Land Use Planning & Zoning Department may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph (2)(f).
- (7) As required for all commercial structures (Section 350-20.B.), a setback 1.1 times the total height of the new mobile service support structure or any substantial modification (Class 1 collocation) shall be required.
- (8) If an applicant provides the Land Use Planning & Zoning Department with an engineering certification showing that a mobile service support structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in this ordinance, that zoning ordinance standards do not apply to such a structure unless the Land Use Planning & Zoning Department provides the applicant with substantial evidence that the engineering certification is flawed.
- (9) The fee for the land use permit is \$3000.

#### B. Class 2 Collocations

- (1) A land use permit is required for a Class 2 collocation. A Class 2 collocation is a permitted use in the areas subject to this chapter, but still requires the issuance of a land use permit.
- (2) A land use permit application must be completed by any applicant and submitted to the Land Use Planning & Zoning Department. The application must contain the following information:
- (a) The name and business address of, and the contact individual for, the applicant.
  - (b) The location of the proposed or affected support structure.
  - (c) The location of the proposed mobile service facility.
- (3) The Land Use Planning & Zoning Department will provide a land use permit application to any applicant upon request.
- (4) A Class 2 collocation is subject to the same requirements for the issuance of a land use permit to which any other type of commercial development or land use development is subject.

- (5) If an applicant submits a land use permit application to the Land Use Planning & Zoning Department for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the Land Use Planning & Zoning Department shall consider the application complete. If any of the required information is not in the application, the Land Use Planning & Zoning Department shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.
- (6) Within 45 days of its receipt of a complete application, the Land Use Planning & Zoning Department shall complete all of the following or the applicant may consider the application approved, except that the applicant and the Land Use Planning & Zoning Department 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.
7. The fee for the permit is \$500.

**Article XII  
Fee Schedule**

**§350-76. Fees [Amended 12-21-2004 by Ord. No. 822-04; 5-16-2006 by Ord. No. 861-06]**

The following fees shall be paid to the Green Lake County Land Use Planning and Zoning Department at the time of application for each service requested as listed below to defray the cost of administration, investigation, advertising and processing:

- A. Unless otherwise provided in this ordinance, the land use permit fee shall be based on cost of construction (labor included).
- (1) Fee.

(continued)