

**AN ORDINANCE TO REPEAL AND REPLACE CHAPTER 9.22 OF THE TOWN OF
LYNDON ZONING CODE**

WHEREAS, from time to time Town of Lyndon officials, in the due course of administering the Town's Zoning Ordinance and applying its standards, find opportunities to improve certain regulations in the Ordinance and to correct certain errors or omissions. Consequently, the following changes to the Ordinance have been recommended by the Plan Commission:

- 1) Section 9.22 is hereby repealed in its entirety.
- 2) Section 9.22 shall be replaced as shown on Exhibit A.

NOW, THEREFORE, the Town Board of the Town of Lyndon does amend its existing Zoning Ordinance to make the revisions described above.

Effective Date. The herein revisions to the Ordinance shall take effect immediately upon adoption and posting as provided by law.

Adopted this ____ day of January 2022.
The Town of Lyndon Board of Supervisors

David Roll, Chairperson

Kimberly Kuehl, Supervisor

Daniel Mayer, Supervisor

David Eisentraut, Supervisor

Patricia Roby, Supervisor

CERTIFICATE OF ADOPTION

This is to certify that the foregoing Ordinance was duly adopted by the Town Board of the Town of Lyndon on the ____ day of _____ 2022.

Rhonda Klatt, Clerk/Treasurer

Exhibit A

9.22 Mobile Tower Siting Regulations

A. **TITLE:**

This ordinance is entitled the Town of Lyndon Mobile Tower Siting Permit Ordinance.

B. **PURPOSE:**

The purpose of this ordinance 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; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

C. **AUTHORITY:**

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

D. **ADOPTION OF AN ORDINANCE:**

This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides for the regulation by zoning permit (1) the siting and construction of any new 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; and (3) with regard to a class 2 collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

E. **DEFINITIONS:**

1. "Antenna" means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.
2. "Application" means an application for a permit under this section to engage in an activity specified in sub. [\(2\) \(a\)](#) or a class 2 collocation.
3. "Building permit" means a permit issued by a political subdivision that authorizes an applicant to conduct construction activity that is consistent with the political subdivision's building code.
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.

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.
6. "Collocation" means class 1 or class 2 collocation or both.
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.
8. "Equipment compound" means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.
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 a political subdivision.
10. "Fall zone" means the area over which a mobile support structure is designed to collapse.
11. "Mobile service" has the meaning given in [47 USC 153](#) (33).
12. "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.
13. "Mobile service provider" means a person who provides mobile service.
14. "Mobile service support structure" means a freestanding structure that is designed to support a mobile service facility.
15. "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:
 - i. A class 1 collocation.
 - ii. A class 2 collocation.
 - iii. The construction of a mobile service support structure.
16. "Political subdivision" means a city, village, town, or county
17. "Public utility" has the meaning given in s. [196.01 \(5\)](#).
18. "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.
19. "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:
 - i. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.
 - ii. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.
 - iii. 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.
 - iv. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.
20. "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.
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.
22. "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.

F. SITING AND CONSTRUCTION OF ANY NEW MOBILE SERVICE SUPPORT STRUCTURE AND FACILITIES:

1. Application Process:
 - a. A town zoning 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.
2. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed 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. A permit application will be provided by the town upon request to any applicant.
4. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If 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.
5. Within 90 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 90 day period:

- a. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
 - b. Make a final decision whether to approve or disapprove the application.
 - c. Notify the applicant, in writing, of its final decision.
 - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
6. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.
 7. 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, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.
 8. The fee for the permit is \$3,000.

G. CLASS 1 COLLOCATION:

Application Process:

1. A town zoning permit is required for a class 1 collocation. A class 1 collocation is a conditional use in the town obtainable with this permit.
2. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information:
 - i. The name and business address of, and the contact individual for, the applicant.
 - ii. The location of the proposed or affected support structure.
 - iii. The location of the proposed mobile service facility.
 - iv. 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.
 - v. 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.
 - vi. 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. A permit application will be provided by the town upon request to any applicant.

4. If an applicant submits to the town an application for a permit to engage in an activity described in this ordinance, which contains all of the information required under this ordinance, the town shall consider the application complete. If 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.
5. 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:
 - i. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.
 - ii. Make a final decision whether to approve or disapprove the application.
 - iii. Notify the applicant, in writing, of its final decision.
 - iv. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision
6. The town may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described under paragraph 2.f.
7. 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, that zoning ordinance does not apply to such a structure unless the town provides the applicant with substantial evidence that the engineering certification is flawed.
8. The fee for the permit is \$3,000.

H. CLASS 2 COLLOCATION:

Application Process

1. A town zoning permit is required for a class 2 collocation. A class 2 collocation is a permitted use in the town but still requires the issuance of the town permit.
2. A written permit application must be completed by any applicant and submitted to the town. The application must contain the following information.
 - a. The name and business address of, and the contact individual for, the applicant.
 - b. The location of the proposed or affected support structure.
 - c. The location of the proposed mobile service facility.
3. A permit application will be provided by the town upon request to any applicant.
4. 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.

5. 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.
6. Within 45 days of its receipt of a complete application, the town shall complete all of the following or the applicant may consider the application approved, except that the applicant and the town may agree in writing to an extension of the 45 day period:
 - a. Make a final decision whether to approve or disapprove the application.
 - b. Notify the applicant, in writing, of its final decision.
 - c. If the application is approved, issue the applicant the relevant permit.
 - d. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.
7. The fee for the permit is \$500.

I. **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 \$1,000 nor more than \$6,000, 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.

J. **SEVERABILITY:**

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.