City of Abbotsford

PO Box 589, 203 N. First Street, Abbotsford, WI 54405

City Hall (715) 223-3444 Fax (715) 223-8891

AGENDA FOR
ABBOTSFORD LICENSE & ORDINANCE COMMITTEE
TO BE HELD MONDAY, JULY 27, 2015 6:00 P.M.
AT THE ABBOTSFORD COUNCIL CHAMBERS

1. Call meeting to order
2. Roll Call
3. Pledge of Allegience
4. Comments by the Chair
5. Comments from the public
6. Discuss/Recommend Discuss/approve Ordinance - An Ordinance Regarding Mobile Tower Siting at a fee of $3,000 (Page 22-32)
7. Discuss/approve Ordinance - An Ordinance Regarding Conditional Use Permits for Certain Mobile Telecommunications Facilities Uses; contingent upon Plan Commission approval (Page 33-53
8. Discuss/Recommend Building Permit code requirements
    i. Fees
    ii. Limit of building cost
    iii. Assessory Buildings
9. Discuss/Recommend filing with Public Service Commission to modify Tarriff to change language allowing municipality to NOT offer deferred payment agreeements to tenants if they have defaulted on such agreements within the past 12 months; or if they have a past due balance greater than $100 for more than 90 days on on monthly utilities
10. Adjourn

City Council members may attend the above committee meeting for information gathering purposes. If a quorum of Council members should appear at this Committee meeting, a regular Council meeting may take place for the purpose of gathering information on an item listed on this Committee agenda. If such a meeting should occur, the date, time, and location of the Council meeting will be that of this Committee as listed on the Committee agenda.

Requests from persons with disabilities who need assistance to participate in this meeting or hearing should be made to Clerk's Office at (715) 223-3444 with as much advance notice as possible.

ORDINANCE NO. _____

AN ORDINANCE REGARDING MOBILE TOWER SITING

The Common Council of the City of Abbotsford, Clark & Marathon Counties, Wisconsin, do ordain as follows:

SECTION I. REPEAL AND ADOPTION OF PROVISIONS.

Section 13-1-182 of the City of Abbotsford Code of Ordinances is repealed and recreated to read as follows:

Sec. 13-1-182 Mobile Tower Siting.

(a) **Title; Purpose; Authority.**

(1) ***Title.*** This Section is entitled the City of Abbotsford Mobile Tower Siting Ordinance.

(2) ***Purpose.*** The purpose of this Section is to regulate by zoning permit:

a. The siting and construction of any new mobile service support structure and facilities;

b. With regard to a Class I collocation, the substantial modification of an existing support structure and mobile service facilities; and

c. With regard to a Class II collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

(3) ***Authority.*** The City of Abbotsford Common Council has the specific authority under Secs. 62.23 and 66.0404, Wis. Stats., to adopt and enforce this Section.

(b) **Definitions.** The following definitions shall be applicable in this Section:

(1) ***Antenna.*** Communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

(2) ***Building Permit.*** A permit issued by the City that authorizes an applicant to conduct construction activity that is consistent with the City's Building Code [Title 15, Chapter 1 of the Code of Ordinances].

(3) ***Class 1 Collocation.*** 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.

(4) ***Class 2 Collocation.*** 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.

(5) ***Collocation.*** Class 1 or Class 2 collocation or both.

(6) ***Distributed Antenna System.*** 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.

(7) ***Equipment Compound.*** An area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

(8) ***Existing Structure.*** 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 City of Abbotsford.

(9) ***Fall Zone.*** The area over which a mobile support structure is designed to collapse.

(10) ***Mobile Service.*** Has the meaning given in 47 USC 153(33).

(11) ***Mobile Service Facility.*** 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 planned geographic area, but does not include the underlying support structure.

(12) ***Mobile Service Provider.*** A person who provides mobile service.

(13) ***Mobile Service Support Structure (Tower).*** A freestanding structure that is designed to support a mobile service facility.

(14) ***Permit.*** A permit, other than a building permit, or approval issued by the City of Abbotsford which authorizes any of the following activities by an applicant:

a. A Class 1 collocation.

b. A Class 2 collocation.

c. The construction of a mobile service support structure.

(15) ***Public Utility.*** Has the meaning given in Sec. 196.01(5), Wis. Stats.

(16) ***Search Ring.*** 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.

(17) ***Substantial Modification.*** The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

a. For structures with an overall height of two hundred (200) feet or less, increases the overall height of the structure by more than twenty (20) feet.

b. For structures with an overall height of more than two hundred (200) feet, increases the overall height of the structure by ten percent (10%) or more.

c. 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 twenty (20) feet or more, unless a larger area is necessary for collocation.

d. Increases the square footage of an existing equipment compound to a total area of more than two thousand five hundred (2,500) square feet.

(18) ***Support Structure.*** 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.

(19) ***Utility Pole.*** A structure owned or operated by an alternative telecommunications utility, as defined in Sec. 196.01(1d), Wis. Stats.; public utility, as defined in Sec. 196.01(5), Wis. Stats.; telecommunications utility, as defined in Sec. 196.01(10), Wis. Stats.; political subdivision; or cooperative association organized under Ch. 185, Wis. Stats.; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in Sec. 182.017(1g)(cq), Wis. Stats.; for video service, as defined in Sec. 66.0420(2)(y), Wis. Stats.; for electricity; or to provide light.

(c) **Siting and Construction of Any New Mobile Service Support Structure and Facilities; Regulation Limitations.**

(1) ***Application Process.***

a. A City zoning permit is required for the siting and construction of any new mobile service structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the City obtainable with this permit through the conditional use permit process.

b. A written permit application shall be completed by the applicant and submitted to the City Clerk-Treasurer. The application shall contain, at a minimum, the following information:

1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

c. A permit application will be provided by the City upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.

d. If an applicant submits to the City an application for conditional use and zoning permits to engage in an activity described in this Section, which contains all of the information required under this Section, the City shall consider the application complete. If the City determines that the application is incomplete, the City shall notify the applicant in writing, within ten (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 considered complete.

e. Within ninety (90) days of its receipt of a complete application, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the ninety (90) day period:
   1. Review the application to determine whether it complies with all applicable aspects of the City's Building Code and, subject to the limitations in this Section, provisions of this Zoning Code.
   2. Make a final decision whether to approve or disapprove the application.
   3. Notify the applicant, in writing, of its final decision.
   4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

f. The City 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 under Subsection (c)(1)b6.

g. If the applicant provides the City 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 the Zoning Code, that Zoning Code provision does not apply to such a structure unless the City provides the applicant with substantial evidence that the engineering certification is flawed.

h. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Three Thousand Dollars ($3,000.00) per Sec. 66.0404(4)(d), Wis. Stats.].

(2) ***Regulatory and Application Limitations.*** With regard to the siting and construction of a new mobile service support structure/facilities, the substantial modification of an existing support structure and mobile service facility as part of a Class 1 collocation, or a Class 2 collocation, the City, pursuant to Sec. 66.0404(4), Wis. Stats., shall not:

a. Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.

b. Enact a moratorium ordinance on the permitting, construction, or approval of any such activities.

c. Enact an ordinance regulation prohibiting the placement of a mobile service support structure in particular locations within the City.

d. Charge a mobile radio service provider a fee in excess on the amounts prescribed in Sec. 66.0404(4)(d), Wis. Stats.

e. Charge a mobile radio service provider any recurring fee for an activity described in Sec. 66.0404(2)(a), Wis. Stats., or a Class 2 collocation.

f. Permit third-party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.

g. Disapprove of an application to conduct an activity described in Sec. 66.0404(2)(a), Wis. Stats., based solely on aesthetic concerns.

h. Disapprove an application to conduct a Class 2 collocation on aesthetic concerns.

i. Enact or enforce a City ordinance related to radio frequency signal strength or the adequacy of mobile service quality.

j. Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the City which fall into disuse. [Note: Per Sec.

66.0404(4)(i), Wis. Stats., there is a rebuttable presumption that a surety requirement of Twenty Thousand Dollars ($20,000.00) or less complies with this Subsection.]

k. Prohibit the placement of emergency power systems.

l. Require that a mobile service support structure be placed on property owned by the political subdivision.

m. Disapprove an application based solely on the height of the mobile service support structure or on whether the structure requires lighting.

n. Condition approval of such activities on the agreement of the structure or mobile service facility owner to provide space on or near the structure for the use of or by the City at less than market rate, or provide the City other services via the structure or facilities at less than the market rate.

o. Limit the duration of any permit that is granted.

p. Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.

q. Disapprove an application based on an assessment by the City of the suitability of other locations for conducting the activity.

r. Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.

s. 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.

t. Consider an activity a substantial modification under Subsection (b)(17)a-b above if a greater height is necessary to avoid interference with an existing antenna.

u. Consider an activity a substantial modification under Subsection (b)(17)c above if a greater protrusion is necessary to shelter the antenna from increment weather or to connect the antenna to the existing structure by cable.

v. Limit the height of a mobile support structure to under two hundred (200) feet.

w. Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the City in connection with the City's exercise of its authority to approve the application.

x. Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the City 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, the City or an entity in which the City or other political subdivision has a governance, competititve, economic, financial or other interest.

(d) **Class 1 Collocation.**

(1) ***Application Process.***

a. A zoning permit is required for a Class 1 collocation. A Class 1 collocation is a conditional use in the City obtainable with this permit through the conditional use process of this Chapter.

b. A written permit application shall be completed by the applicant and submitted to the City. The application must contain, at a minimum, the following information:

1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

c. A permit application will be provided by the City upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.

d. If an applicant submits to the City an application for a permit to engage in an activity described in this Section, which contains all of the information required under this Section, the City shall consider the application complete. If the City does not believe that the application is complete, the City shall notify the applicant

in writing, within ten (10) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

e. Within ninety (90) days of its receipt of a complete application, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the ninety (90) day period:
   1. Review the application to determine whether it complies with all applicable aspects of the City's Building Code and, subject to the limitations of this Section, zoning ordinances.
   2. Make a final decision whether to approve or disapprove the application.
   3. Notify the applicant, in writing, of its final decision.
   4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

f. The City 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 (d)(1)b6.

g. If an applicant provides the City 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 a zoning ordinance, that Zoning Code provision does not apply to such a structure unless the City provides the applicant with substantial evidence that the engineering certification is flawed.

h. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Three Thousand Dollars ($3,000.00) per Sec. 66.0404(4)(d), Wis. Stats.].

(2) ***Regulatory and Application Limitations.*** The regulatory and application parameters and limitations prescribed in Subsection (c)(2) above shall be applicable.

(e) **Class 2 Collocation.**

(1) ***Application Process.***

a. A City zoning permit is required for a Class 2 collocation. A Class 2 collocation is a permitted use in the City but still requires the issuance of City building permits.

b. A written permit application shall be completed by the applicant and submitted to the City. The application must contain, at a minimum, the following information:

1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.

c. A permit application will be provided by the City upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.

d. Per Title 15, Chapter 1 of this Code of Ordinances, a Class 2 collocation is also subject to the same requirements for the issuance of a building permit to which any other type of commercial development/construction or land use development is subject.

e. If an applicant submits to the City an application for a permit to engage in an activity described in this Section, which contains all of the information required under this Section, the City shall consider the application complete. If any of the required information is not in the application, the City shall notify the applicant in writing, within five (5) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

f. Within forty-five (45) days of its receipt of a complete application, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the forty-five (45) day period:
1. Make a final decision whether to approve or disapprove the application.
2. Notify the applicant, in writing, of its final decision.
3. If the application is approved, issue the applicant the relevant permit.
4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

g. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Five Hundred Dollars ($500.00) or the commercial building permit fee equivalent, per Sec. 66.0404(4)(d)].

(2) ***Regulatory and Application Limitations.*** The regulatory and application parameters and limitations prescribed in Subsection (c)(2) above shall be applicable.

(f) **Penalty Provisions.** Any person, partnership, corporation or other legal entity that fails to comply with the provisions of this Section shall, upon conviction, be subject to the penalties and/or forfeitures prescribed in Section

13-1-226, plus applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this Section. In addition, the City of Abbotsford may seek injunctive relief from a court of record to enjoin further violations.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. CONFLICTING PROVISIONS REPEALED.

All Ordinances in conflict with any provision of this Ordinance are hereby repealed.

SECTION IV. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this _____ day of _____, 2015.

CITY OF ABBOTSFORD, WISCONSIN

_____
Mayor

_____
City Clerk-Treasurer

INTRODUCED: _____

ADOPTED: _____

PUBLISHED: _____

State of Wisconsin:
Counties of Clark & Marathon:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly enacted by the Abbotsford Common Council on the ____ day of _____, 2015 and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this ____day of _____, 2015

_____
Jennifer Lopez, City Clerk-Treasurer

ORDINANCE NO. _____

AN ORDINANCE REGARDING CONDITIONAL USE PERMITS FOR CERTAIN MOBILE TELECOMMUNICATIONS FACILITIES USES

The Common Council of the City of Abbotsford, Clark & Marathon Counties, Wisconsin, do ordain as follows:

SECTION I. AMENDMENT OF PROVISIONS.

The use listings of the following designated residential zoning districts of the City of Abbotsford Code of Ordinances [Title 13, Chapter 1, Article C] are amended by the addition of the following: R-1 Single-Family Residential District; R-2 Single-Family Residential District; R-3 Two-Family Residential District; R-4 Multi-Family Residential District; R-5 Residential Estate District; C-1 Conservancy District; B-1 Central Commercial District; B-2 Highway Commercial District; B-3 Business Park District; I-1Industrial District; A-1 Agricultural District; AEO Adult Entertainment Overlay District; E-1 Mineral Extraction or Landfill Overlay District; and WP Wellhead Protection Overlay District:

Permitted Uses:

( ) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.

Conditional Uses:

( ) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this _____ day of _____, 2015.

CITY OF ABBOTSFORD, WISCONSIN

_____
Mayor

_____
City Clerk-Treasurer

INTRODUCED: _____

ADOPTED: _____

PUBLISHED: _____

State of Wisconsin:
Counties of Clark & Marathon:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly enacted by the Abbotsford Common Council, following public hearing and recommendation by the Plan Commission, on the ___day of _____, 2015 and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this ____day of _____, 2015

_____
Jennifer Lopez, City Clerk-Treasurer

Community Code Service

ALAN J. HARVEY, ATTORNEY-AT-LAW
3900 VINBURN ROAD
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TELEPHONE (608) 846-5897
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June 26, 2015

Jennifer Lopez, Clerk-Treasurer
City of Abbotsford
203 N. First Street
Abbotsford, WI 54405

RE: Mobile Tower Siting Ordinance - Permit Fee Considerations

Dear Jeni & City Officials:

At the risk of overwhelming City officials with information regarding the new Mobile Tower Siting Ordinance sent to you under separate cover regulating new telecommunications towers and related facilities in a manner consistent with the latest statutory standards, I am writing to bring to your attention one additional administrative matter related to new Section 13-1-182.

Under Sec. 66.0404, Wis. Stats., and the City's new corresponding Section 13-1-182, the City is now authorized to charge a one-time permit fee of up to $3,000 for a new telecommunications tower conditional use permit application review and permit issuance. While some municipalities in the past with their earlier telecommunications facilities siting ordinances charged an initial permit fee with annual payments thereafter, the statute now only permits a one-time fee at time of application. With Abbotsford's fee schedule, to be incorporated in Sec. 1-3-1 of the new Code (for the City to be ready if a new cellphone tower application is applied for in the future), a new Mobile Tower Siting Application and Conditional Use Permit Fee ($2,000? $2,500? $3,000?) should be included. [Note: It is my observation that most municipalities are setting this fee close to the maximum permitted by law.] If this is not done, an applicant may argue that the only fee payable to the City is the nominal standard conditional use permit fee, or that the old fees are not valid due to statutory conflicts.

Because a municipality can authorize special charges for services per Sec. 66.0627, Wis. Stats., the City can still charge back to applicants, in addition to the application and permit fee discussed above, the City's costs for any retained professionals (ex.: engineers, lawyers, planners, etc.) incurred in reviewing an application on behalf of the City. "Reimbursement charges" are not the same thing as a permit fee, the latter being capped by statute.

Please feel free to contact me if you have any questions or if I can be of assistance.

Sincerely,
COMMUNITY CODE SERVICE

Alan J. Harvey

AJH:dsk

Community Code Service

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June 26, 2015

Jennifer Lopez, Clerk-Treasurer
City of Abbotsford
203 N. First Street
Abbotsford, WI 54405

RE: Mobile Tower Siting Ordinance – Administrative Considerations

Dear Jeni and City Officials:

It is Community Code Service's practice to keep you informed regarding evolving local government law issues, particularly those that involve the relationship between state law changes and local regulations. One such area is the change made last year in the Wisconsin Statutes regarding local regulation of telecommunications towers and associated support facilities.

In response to this major state law change, I have submitted to the City a detailed explanatory memorandum addressing the complex ramifications of the new state law and have enclosed a comprehensive ordinance repealing and recreating Sec. 13-1-182 to make your local regulations consistent with the much modified state standards.

As I hear from local officials around the state, however, I continue to be asked questions regarding implementation of the state law's requirements and administration of applications for new telecommunications towers and associated facilities, and minor and/or substantial modifications to those structures, as defined in the new state law and your local Mobile Tower Siting Ordinance ("Ordinance"). Your local officials will likely have some of the same questions. Thus, as a supplement to my explanatory memordandum, below you will find, in "question and answer" format, additional information which will hopefully be of assistance to your officials.

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1. Question – Building Code Compliance: Under both Sec. 13-1-182 ("Ordinance") and corresponding state law, Class 2 collocations (ones which do not result in substantial modifications) are permitted uses in zoning districts, while substantial modifications or the erection of a new tower are classified as conditional uses in zoning districts, each with numerous regulatory restrictions. Can a telecommunications applicant still be required to obtain a local building permit and satisfy any local site plan and related plan of operations requirements?

Answer: Yes – local governments still have authority to require compliance with, and enforcement of, municipal building codes and site plan review requirements. These local building code regulations are not zoning ordinances and are authorized by other statutory provisions. Sections 66.0404(1)(c) and 66.0404(1)(o), Wis. Stats., make this distinction. Under Section 66.0404(2)(d)(1), Wis. Stats., the building code review is to follow the same process as used under a zoning code review for substantial modifications and new structures. For modifications

that are not substantial, the Class 2 collocation is subject to the same requirements for the issuance of a building permit that would be applicable to other commercial development. [See Section 66.0404(3)(a)(4), Wis. Stats.]

2. Question – Substantial Modification Versus Minor Modification: Since most municipal officials do not work with telecommunications issues on a regular basis, how do officials distinguish between a Class 1 substantial modification and a Class 2 modification that is supposed to be much less substantial?

Answer: Both the state statute and the Ordinance treat these very differently. For example, the application and review process, particularly regarding information which must be provided, is very different for a Class 2 collocation compared to that of a Class 1 substantial modification or a new tower proposal. The first step should be to check the definitions in the Ordinances for guidance.

The second step is to review how the applicant describes their proposed activities. Whether a Class 2 or Class 1 modification (or new tower) is involved, the applicant is not exempt from filing a local application.

Third, if the applicant asserts that its proposed project is not a substantial modification, the burden still remains on the applicant to provide adequate information with their application which explains and clarifies that position. It is reasonable that municipal officials reviewing an application have sufficient information on which to base their determination as to whether the proposed project is a substantial modification or not – this should not be a "guessing game."

Finally, please note in new Sec. 13-1-182 that, per state law, the application requirements, and subsequent reviews, for a Class 2 collocation are substantially different from a Class 1 collocation or new tower. Proper classification at the outset is important. While the application information that is allowed for a Class 2 collocation under the statutes and Sec. 13-1-182 is very limited, the statute is silent on whether local officials can also require at least some additional information to verify that the applicant will actually be doing work which is properly a Class 2 collocation. Since the statutes do authorize an application system, it would seem to be a practical, common sense position that an applicant should be able to demonstrate to local officials that a project is a Class 2 versus a Class 1 project, that simply "trust us" may not be adequate.

Some push-back from applicants may be expected regarding this. However, when a regulatory provision can be subject to multiple interpretations, it is best to interpret it in a manner most favorable to the municipality. Technically, this is a matter of whether there is or is not express preemption by state law that is completely clear; "implied preemption" is quite different.

3. Question – Use of Municipal Property for Telecommunications Equipment: How are leases, licenses or rental agreements affected when municipal property is involved, such as a lease, license or agreement to allow placement of telecommunications equipment on a public water tower or fire department hose/training tower?

Answer: This has been a topic of considerable confusion since the enactment of the new state statute. In such situations, this is not a matter of zoning (the matter regulated by the state statute and reflected in the Ordinance) but rather is a matter of the municipality's property ownership

rights. If a municipality and a telecommunications company have entered into a lease/rental agreement which allows the placement of the company's telecommunications equipment on a municipal structure or on municipal property, the terms of the lease/license/agreement are unaffected by the state law changes governing zoning of mobile tower siting.

With these relationships, the municipality is functioning as a property owner and lessor, not in its regulatory capacity. Like any other property owner, these property agreements are voluntary associations and subject to the terms of the lease/license/agreement. Because of this, municipalities are under no obligation to approve additional equipment or uses on its municipal property because of the changes in the state telecommunications statute regarding zoning.

4. Question – Permit Fees Versus Reimbursement For Municipal Costs. In addition to permit fees allowed by the state statutes, can a municipality also require an applicant to reimburse the municipality for its professional services costs associated with the application?

Answer: Yes. Your City has ordinances/policies which authorize reimbursement for the cost of professional services necessary when reviewing applications. Furthermore, Section 66.0627, Wis. Stats. authorizes special charges for current services, and nothing in this statute defines reimbursement charges as a "permit fee." Section 66.0404, Wis. Stats., limiting permit fees for telecommunications applications contains no specific limits on the special charge powers of Section 66.0627, Wis. Stats. In many instances, a municipality will want to use the services of an engineer, attorney, planner or other professional to assist in reviewing telecommunications applications. As with other types of applications, the municipality can charge back to the applicant these professional costs, in addition to having a permit fee.

Technically, Section 66.0404, Wis. Stats., places limits on the amount of permit fees a municipality may charge for telecommunications permits: "A political subdivision may not . . . charge a mobile radio service provider a *fee* in excess of one of the following amounts . . . *for a permit* for a Class 2 collocation . . ." The statutory reference is only to a permit fee.

This statute later includes a reference to building permit fees: " . . . or the amount charged by the political subdivision for a building permit." In other words, the statute is saying that municipal practices for commercial developments/buildings should be the same for telecommunications projects. A building permit fee is required for commercial developments/buildings, plus there is a chargeback to the applicant for reimbursement of the municipality's professional assistance costs generated by the application. The statute requires that administrative policies be treated the same among such uses, which would be the case if the consistent municipal policy is that the telecommunications permit fee is charged along with professional services reimbursement and the same is done with other types of commercial developments/buildings applications.

Note that under the telecommunications statute a municipality cannot charge a permit fee for a Class 2 modification that is not substantial of more than $500.00 or the amount that is charged for the necessary building permit if that fee is less. For a Class 1 substantial modification or new tower/facility, the statute limits the permit fee to $3,000.00 or less. In my opinion, reimbursement for associated professional costs can also be charged back to the applicant as long as this is the practice with other types of commercial projects (this is consistency among projects that is at the heart of this statute). Be sure that the City's Fee Schedule in Sec. 1-3-1 reflects this.

5. Question – Use of Conditional Use Permits: Under the state telecommunications statute, can local governments still use conditional use permits?

Answer: Yes, under some circumstances. A municipality cannot require that a conditional use permit be obtained for Class 2 modifications (not substantial) to existing facilities. Under Section 66.0404(3)(a)(1), Wis. Stats., modifications that are not substantial must be considered as zoning permitted uses.

With Class 1 substantial modifications or new towers/facilities, a conditional use permit can be required for such projects. Note, however, that the statutes do limit many items as conditions.

6. Question – Zoning District Restrictions: Can local ordinances prohibit the placement of telecommunications towers/facilities in some zoning districts while requiring that such facilities be located only in other designated zoning districts?

Answer: Until we have a court decision providing better guidance on this question, I am of the opinion that a municipality cannot make such a designation. A municipality cannot list telecommunications towers/facilities as a prohibited use in any zoning district. Section 66.0404(4), Wis. Stats., states that municipalities are banned from having ordinances that prohibit the placement of telecommunications facilities in particular locations, and, per Section 66.0404(2)(h), Wis. Stats., local ordinances are preempted if they are inconsistent with this statute. While a question could technically be raised whether a "particular location" is the same thing as a "zoning district", I am of the opinion that the intent of the statute is reasonably clear and it would be unwise for your municipality to be a test case over if this distinction exists or not.

I hope that you find this information to be helpful. Please feel free to contact me if you have questions or if I can be of assistance.

Sincerely,
COMMUNITY CODE SERVICE

Alan J. Harvey

AJH:dsk

Jeni Lopez

From: Alan Harvey <alanjharvey@gmail.com>
Sent: Monday, June 29, 2015 5:06 PM
To: Jeni Lopez
Subject: Re: MOBILE TOWER

Basically correct, Jeni. However, the City can only have a one-time charge of up to $3,000 for the cellphone tower/facilities application and conditional use permit - not $3,000 for each.

I hope I did not overwhelm you with all the information I sent you - it is a terribly complicated area now.

Alan Harvey
Community Code Service

On Mon, Jun 29, 2015 at 2:57 PM, Jeni Lopez <j.lopez@ci.abbotsford.wi.us> wrote:

Hi Alan –

So am I understanding this correct! You would like the City to adopt the two proposed ordinances (An Ordinance Regarding Mobile Tower Siting and An Ordinance Regarding Conditional Use Permits for Certain Mobile Telecommunications Facilities Uses)? And to also address a one-time permit fee ($3,000) along with a Conditional Use Permit Fee of ($3,000)?

If this is correct – we will place this on our July Council agenda for discussion/approval.

Thanks –

Jeni

City of ABBOTSFORD
Wisconsin's First City
P.O. Box 589 | 203 N. First St. | Abbotsford, WI 54405
JENNIFER LOPEZ
CITY CLERK/TREASURER
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j.lopez@ci.abbotsford.wi.us
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Website: www.ci.abbotsford.wi.us

ORDINANCE NO. _____

AN ORDINANCE REGARDING MOBILE TOWER SITING

The Common Council of the City of Abbotsford, Clark & Marathon Counties, Wisconsin, do ordain as follows:

SECTION I. REPEAL AND ADOPTION OF PROVISIONS.

Section 13-1-182 of the City of Abbotsford Code of Ordinances is repealed and recreated to read as follows:

Sec. 13-1-182 Mobile Tower Siting.

(a) **Title; Purpose; Authority.**

(1) ***Title.*** This Section is entitled the City of Abbotsford Mobile Tower Siting Ordinance.

(2) ***Purpose.*** The purpose of this Section is to regulate by zoning permit:

a. The siting and construction of any new mobile service support structure and facilities;

b. With regard to a Class I collocation, the substantial modification of an existing support structure and mobile service facilities; and

c. With regard to a Class II collocation, collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.

(3) ***Authority.*** The City of Abbotsford Common Council has the specific authority under Secs. 62.23 and 66.0404, Wis. Stats., to adopt and enforce this Section.

(b) **Definitions.** The following definitions shall be applicable in this Section:

(1) ***Antenna.*** Communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

(2) ***Building Permit.*** A permit issued by the City that authorizes an applicant to conduct construction activity that is consistent with the City's Building Code [Title 15, Chapter 1 of the Code of Ordinances].

(3) ***Class 1 Collocation.*** 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.

(4) ***Class 2 Collocation.*** 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.

(5) ***Collocation.*** Class 1 or Class 2 collocation or both.

(6) ***Distributed Antenna System.*** 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.

(7) ***Equipment Compound.*** An area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

(8) ***Existing Structure.*** 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 City of Abbotsford.

(9) ***Fall Zone.*** The area over which a mobile support structure is designed to collapse.

(10) ***Mobile Service.*** Has the meaning given in 47 USC 153(33).

(11) ***Mobile Service Facility.*** 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 planned geographic area, but does not include the underlying support structure.

(12) ***Mobile Service Provider.*** A person who provides mobile service.

(13) ***Mobile Service Support Structure (Tower).*** A freestanding structure that is designed to support a mobile service facility.

(14) ***Permit.*** A permit, other than a building permit, or approval issued by the City of Abbotsford which authorizes any of the following activities by an applicant:

a. A Class 1 collocation.

b. A Class 2 collocation.

c. The construction of a mobile service support structure.

(15) ***Public Utility.*** Has the meaning given in Sec. 196.01(5), Wis. Stats.

(16) ***Search Ring.*** 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.

(17) ***Substantial Modification.*** The modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

a. For structures with an overall height of two hundred (200) feet or less, increases the overall height of the structure by more than twenty (20) feet.

b. For structures with an overall height of more than two hundred (200) feet, increases the overall height of the structure by ten percent (10%) or more.

c. 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 twenty (20) feet or more, unless a larger area is necessary for collocation.

d. Increases the square footage of an existing equipment compound to a total area of more than two thousand five hundred (2,500) square feet.

(18) ***Support Structure.*** 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.

(19) ***Utility Pole.*** A structure owned or operated by an alternative telecommunications utility, as defined in Sec. 196.01(1d), Wis. Stats.; public utility, as defined in Sec. 196.01(5), Wis. Stats.; telecommunications utility, as defined in Sec. 196.01(10), Wis. Stats.; political subdivision; or cooperative association organized under Ch. 185, Wis. Stats.; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in Sec. 182.017(1g)(cq), Wis. Stats.; for video service, as defined in Sec. 66.0420(2)(y), Wis. Stats.; for electricity; or to provide light.

(c) **Siting and Construction of Any New Mobile Service Support Structure and Facilities; Regulation Limitations.**

(1) ***Application Process.***

a. A City zoning permit is required for the siting and construction of any new mobile service structure and facilities. The siting and construction of any new mobile service support structure and facilities is a conditional use in the City obtainable with this permit through the conditional use permit process.

b. A written permit application shall be completed by the applicant and submitted to the City Clerk-Treasurer. The application shall contain, at a minimum, the following information:

1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.

5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

c. A permit application will be provided by the City upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.

d. If an applicant submits to the City an application for conditional use and zoning permits to engage in an activity described in this Section, which contains all of the information required under this Section, the City shall consider the application complete. If the City determines that the application is incomplete, the City shall notify the applicant in writing, within ten (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 considered complete.

e. Within ninety (90) days of its receipt of a complete application, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the ninety (90) day period:
   1. Review the application to determine whether it complies with all applicable aspects of the City's Building Code and, subject to the limitations in this Section, provisions of this Zoning Code.
   2. Make a final decision whether to approve or disapprove the application.
   3. Notify the applicant, in writing, of its final decision.
   4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

f. The City 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 under Subsection (c)(1)b6.

g. If the applicant provides the City 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 the Zoning Code, that Zoning Code provision does not apply to such a structure unless the City provides the applicant with substantial evidence that the engineering certification is flawed.

h. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Three Thousand Dollars ($3,000.00) per Sec. 66.0404(4)(d), Wis. Stats.].

(2) ***Regulatory and Application Limitations.*** With regard to the siting and construction of a new mobile service support structure/facilities, the substantial modification of an existing support structure and mobile service facility as part of a Class 1 collocation, or a Class 2 collocation, the City, pursuant to Sec. 66.0404(4), Wis. Stats., shall not:

a. Impose environmental testing, sampling, or monitoring requirements, or other compliance measures for radio frequency emissions, on mobile service facilities or mobile radio service providers.

b. Enact a moratorium ordinance on the permitting, construction, or approval of any such activities.

c. Enact an ordinance regulation prohibiting the placement of a mobile service support structure in particular locations within the City.

d. Charge a mobile radio service provider a fee in excess on the amounts prescribed in Sec. 66.0404(4)(d), Wis. Stats.

e. Charge a mobile radio service provider any recurring fee for an activity described in Sec. 66.0404(2)(a), Wis. Stats., or a Class 2 collocation.

f. Permit third-party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.

g. Disapprove of an application to conduct an activity described in Sec. 66.0404(2)(a), Wis. Stats., based solely on aesthetic concerns.

h. Disapprove an application to conduct a Class 2 collocation on aesthetic concerns.

i. Enact or enforce a City ordinance related to radio frequency signal strength or the adequacy of mobile service quality.

j. Impose a surety requirement, unless the requirement is competitively neutral, nondiscriminatory, and commensurate with the historical record for surety requirements for other facilities and structures in the City which fall into disuse. [Note: Per Sec.

66.0404(4)(i). Wis. Stats., there is a rebuttable presumption that a surety requirement of Twenty Thousand Dollars ($20,000.00) or less complies with this Subsection.]

k. Prohibit the placement of emergency power systems.

l. Require that a mobile service support structure be placed on property owned by the political subdivision.

m. Disapprove an application based solely on the height of the mobile service support structure or on whether the structure requires lighting.

n. Condition approval of such activities on the agreement of the structure or mobile service facility owner to provide space on or near the structure for the use of or by the City at less than market rate, or provide the City other services via the structure or facilities at less than the market rate.

o. Limit the duration of any permit that is granted.

p. Require an applicant to construct a distributed antenna system instead of either constructing a new mobile service support structure or engaging in collocation.

q. Disapprove an application based on an assessment by the City of the suitability of other locations for conducting the activity.

r. Require that a mobile service support structure, existing structure, or mobile service facilities have or be connected to backup battery power.

s. 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.

t. Consider an activity a substantial modification under Subsection (b)(17)a-b above if a greater height is necessary to avoid interference with an existing antenna.

u. Consider an activity a substantial modification under Subsection (b)(17)c above if a greater protrusion is necessary to shelter the antenna from increment weather or to connect the antenna to the existing structure by cable.

v. Limit the height of a mobile support structure to under two hundred (200) feet.

w. Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the City in connection with the City's exercise of its authority to approve the application.

x. Condition the approval of an application on, or otherwise require, the applicant's agreement to permit the City 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, the City or an entity in which the City or other political subdivision has a governance, competititve, economic, financial or other interest.

(d) **Class 1 Collocation.**

(1) ***Application Process.***

a. A zoning permit is required for a Class 1 collocation. A Class 1 collocation is a conditional use in the City obtainable with this permit through the conditional use process of this Chapter.

b. A written permit application shall be completed by the applicant and submitted to the City. The application must contain, at a minimum, the following information:

1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.
4. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
5. If the application is to construct a new mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment to be placed on or around the new mobile service support structure.
6. If an application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity; is technically infeasible; or is economically burdensome to the mobile service provider.

c. A permit application will be provided by the City upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.

d. If an applicant submits to the City an application for a permit to engage in an activity described in this Section, which contains all of the information required under this Section, the City shall consider the application complete. If the City does not believe that the application is complete, the City shall notify the applicant

in writing, within ten (10) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

e. Within ninety (90) days of its receipt of a complete application, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the ninety (90) day period:
   1. Review the application to determine whether it complies with all applicable aspects of the City's Building Code and, subject to the limitations of this Section, zoning ordinances.
   2. Make a final decision whether to approve or disapprove the application.
   3. Notify the applicant, in writing, of its final decision.
   4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

f. The City 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 (d)(1)b6.

g. If an applicant provides the City 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 a zoning ordinance, that Zoning Code provision does not apply to such a structure unless the City provides the applicant with substantial evidence that the engineering certification is flawed.

h. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Three Thousand Dollars ($3,000.00) per Sec. 66.0404(4)(d), Wis. Stats.].

(2) ***Regulatory and Application Limitations.*** The regulatory and application parameters and limitations prescribed in Subsection (c)(2) above shall be applicable.

(e) **Class 2 Collocation.**

(1) ***Application Process.***

a. A City zoning permit is required for a Class 2 collocation. A Class 2 collocation is a permitted use in the City but still requires the issuance of City building permits.

b. A written permit application shall be completed by the applicant and submitted to the City. The application must contain, at a minimum, the following information:

1. The name and business address of, and the contact individual for, the applicant; applicable telephone number(s), fax number, and email address shall be provided.
2. The location of the proposed or affected support structure.
3. The location of the proposed mobile service facility.

c. A permit application will be provided by the City upon request to any applicant, or, in the alternative, the applicant can provide the required information in the form of correspondence or report with supporting documentation.

d. Per Title 15, Chapter 1 of this Code of Ordinances, a Class 2 collocation is also subject to the same requirements for the issuance of a building permit to which any other type of commercial development/construction or land use development is subject.

e. If an applicant submits to the City an application for a permit to engage in an activity described in this Section, which contains all of the information required under this Section, the City shall consider the application complete. If any of the required information is not in the application, the City shall notify the applicant in writing, within five (5) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

f. Within forty-five (45) days of its receipt of a complete application, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the forty-five (45) day period:
1. Make a final decision whether to approve or disapprove the application.
2. Notify the applicant, in writing, of its final decision.
3. If the application is approved, issue the applicant the relevant permit.
4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

g. The fee for the permit shall be as provided in Section 1-3-1 [but may not exceed Five Hundred Dollars ($500.00) or the commercial building permit fee equivalent, per Sec. 66.0404(4)(d)].

(2) ***Regulatory and Application Limitations.*** The regulatory and application parameters and limitations prescribed in Subsection (c)(2) above shall be applicable.

(f) **Penalty Provisions.** Any person, partnership, corporation or other legal entity that fails to comply with the provisions of this Section shall, upon conviction, be subject to the penalties and/or forfeitures prescribed in Section

13-1-226, plus applicable surcharges, assessments, and costs for each violation. Each day a violation exists or continues constitutes a separate offense under this Section. In addition, the City of Abbotsford may seek injunctive relief from a court of record to enjoin further violations.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. CONFLICTING PROVISIONS REPEALED.

All Ordinances in conflict with any provision of this Ordinance are hereby repealed.

SECTION IV. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this _____ day of _____, 2015.

CITY OF ABBOTSFORD, WISCONSIN

_____
Mayor

_____
City Clerk-Treasurer

INTRODUCED: _____

ADOPTED: _____

PUBLISHED: _____

State of Wisconsin:
Counties of Clark & Marathon:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly enacted by the Abbotsford Common Council on the ____ day of _____, 2015 and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this ____day of _____, 2015

_____
Jennifer Lopez, City Clerk-Treasurer

ORDINANCE NO. _____

AN ORDINANCE REGARDING CONDITIONAL USE PERMITS FOR CERTAIN MOBILE TELECOMMUNICATIONS FACILITIES USES

The Common Council of the City of Abbotsford, Clark & Marathon Counties, Wisconsin, do ordain as follows:

SECTION I. AMENDMENT OF PROVISIONS.

The use listings of the following designated residential zoning districts of the City of Abbotsford Code of Ordinances [Title 13, Chapter 1, Article C] are amended by the addition of the following: R-1 Single-Family Residential District; R-2 Single-Family Residential District; R-3 Two-Family Residential District; R-4 Multi-Family Residential District; R-5 Residential Estate District; C-1 Conservancy District; B-1 Central Commercial District; B-2 Highway Commercial District; B-3 Business Park District; I-1Industrial District; A-1 Agricultural District; AEO Adult Entertainment Overlay District; E-1 Mineral Extraction or Landfill Overlay District; and WP Wellhead Protection Overlay District:

Permitted Uses:

( ) Class 2 collocation of a new mobile service facility on an existing support structure without substantial modification, per Section 13-1-182.

Conditional Uses:

( ) Siting and construction of any new mobile support structure and/or facility or a Class 1 collocation of a new mobile service facility on an existing support structure, per Section 13-1-182.

SECTION II. SEVERABILITY.

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

SECTION III. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this _____ day of _____, 2015.

CITY OF ABBOTSFORD, WISCONSIN

_____
Mayor

_____
City Clerk-Treasurer

INTRODUCED: _____

ADOPTED: _____

PUBLISHED: _____

State of Wisconsin:
Counties of Clark & Marathon:

I hereby certify that the foregoing ordinance is a true, correct, and complete copy of an ordinance duly and regularly enacted by the Abbotsford Common Council, following public hearing and recommendation by the Plan Commission, on the ___day of _____, 2015 and that said ordinance has not been repealed or amended and is now in full force and effect.

Dated this ____day of _____, 2015

_____
Jennifer Lopez, City Clerk-Treasurer

MEUW Municipal Electric Utilities of Wisconsin
725 Lois Drive
Sun Prairie, WI 53590
608-837-2263
www.meuw.org

WRWA Wisconsin Rural Water Association
350 Water Way
Plover, WI 54467
715-344-7778
www.wrwa.org

MEG Water Division
Municipal Environmental Group
P.O. Box 927
Madison, WI 53701
608-283-1788
www.megwater.or

League of Wisconsin Municipalities
122 W Washington Ave., Suite 300
Madison, WI 53703
www.lwm-info.org

2013 Wisconsin Act 274
Landlord-Tenant Delinquent Utility Bill Legislation
Frequently Asked Questions

Municipal Electric Utilities of Wisconsin, Wisconsin Rural Water Association, Municipal Environmental Group – Water Division, and the League of Wisconsin Municipalities consulted with the Public Service Commission of Wisconsin to prepare this frequently asked questions document to educate our members on the impacts of 2013 Wisconsin Act 274 (Act 274). Act 274 revises the law applicable to residential tenants' delinquent utility charges, and it applies to all municipal public utilities. Act 274 preserves a municipal utility's ability to use tax roll collection tools for delinquent residential tenant utility charges, but establishes a few new requirements to do so. The revisions primarily appear as amendments or additions to Wis. Stat. § 66.0809 which applies to municipal public utility charges.

Most of the new requirements in Act 274 do not apply until Jan. 1, 2015; however, a few provisions go into effect immediately. The following FAQs provide guidance for municipal utilities to implement Act 274.

Q-1. The current tax roll process is working well for our utility. Why did our utility association advocate for these changes?

Nearly every legislative session since the mid 1990s has included proposed legislation that would eliminate a municipal utility's ability to use the property tax roll to collect delinquent residential tenant utility bills from the property owner. Act 274 is compromise legislation between the Wisconsin Realtors Association and several municipal utility stakeholder groups (MEUW, WRWA, MEG-Water, and LWM) designed to protect a municipal utility's ability to use the property tax roll to collect delinquent utility bills while giving municipal utilities and property owners additional tools to help limit delinquent residential tenant utility charges in the first place. Ultimately, we hope the compromise legislation eliminates the perpetual debate over the legitimacy of the tax roll process.

Q-2. What provisions in Act 274 are effective immediately?

The following provisions of Act 274 go into effect immediately:

1. Upon a property owner's request, a municipal utility must disclose whether a prospective residential tenant has outstanding past-due charges in that tenant's name in the utility's service territory; Wis. Stat. § 66.0809 (8).

MEUW Municipal Electric Utilities of Wisconsin
725 Lois Drive
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League of Wisconsin Municipalities
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2. Utilities are no longer required to offer deferred payment agreements to customers who are residential tenants; Wis. Stat. § 66.0809 (9). See Q-9 and Q-10 for additional information.

3. Utilities may adopt application, deposit, disconnection, or collection rules that distinguish between whether a customer owns or leases a property; Wis. Stat. § 66.0809 (10). See Q-11 for additional information.

4. Utilities may, but do not have to, require an application for service from a prospective customer; Wis. Stat. § 66.0809 (7). This provision applies to residential and residential tenant customers. See Q-11 for additional information.

If you are a utility that does not collect residential tenant electric arrearages via the tax roll process, provision numbers two and three do not apply to your electric service business practices.

Q-3. Will Act 274 change my utility's current practice related to tax roll collection of delinquent residential tenant utility charges in 2014?

No. Act 274 does not require you to change your business practices related to the tax roll collection process in 2014. Your practices will change in fall 2015. We will provide specific guidance on changes to the tax roll process in summer 2015.

Q-4. What changes will be required in 2015?

Beginning in January 2015, if a landlord has notified the municipal utility that a residential tenant is responsible for the utility bill, a municipal utility will have to:

1. Send bills to the tenant in the tenant's own name and continue to send past-due notices if the landlord provides the municipal utility with the tenant's forwarding address within 21 days after the tenant leaves; Wis. Stat. § 66.0809 (5)(am).

2. Provide notice to the landlord of the residential tenant's past-due charges within 14 days after the charges become past due; Wis. Stat. § 66.0809(5)(b). A utility may comply with this 14-day notice electronically if the landlord has opted to receive electronic notices; Wis. Stat. § 66.0809(5)(c).

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3. Disconnect a residential tenant's electric service if requested by the property owner; Wis. Stat. § 66.0809(5)(bm). The disconnection request can only be made 14 days after notification of the arrears, and the disconnection must be made according to existing rules and procedures of the Public Service Commission of Wisconsin (PSC). This provision does not apply if you do not collect residential tenant electric arrearages via the tax roll process.

Q-5. Do these provisions apply to all residential customers?

No. All provisions of Act 274 apply to residential tenant customers only, with one exception. The option of requiring service applications from prospective customers applies to residential and residential tenant customers.

Also, certain provisions in Act 274 only apply if the landlord notifies the municipal utility that the residential tenant is responsible for the payment of utility bills, and provides the utility with both the landlord's and the responsible tenant's name and address.

Q-6. Can a landlord require a tenant to be responsible for utility bills?

This is generally a contract issue between the landlord and the tenant. However, state law requires that if gas, electric or water service is measured jointly for two or more rental dwelling units, the owner must maintain the utility account in the name of the owner or the property manager; Wis. Stat. § 196.643(2).

Q-7. How do I provide information to a property owner about a prospective residential tenant's outstanding past due charges if my utility tracks billing information by premise address rather than individual customer name?

You are only required to provide the owner of a rental dwelling unit with information that you have. If you do not have account information about a prospective residential tenant you have no information to provide to the property owner.

Q-8. Some of the provisions in the new law that allow us to distinguish between residential customers based on whether they own or lease seem discriminatory in nature. How is the utility protected from claims of discrimination?

Section 13 of Act 274 creates a new statute, Wis. Stat. §196.37 (5), that states "It is not unreasonable or unjustly discriminatory

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for a municipal public utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service."

These optional policies that distinguish between owners and renters are not discriminatory because the property owner bears the ultimate responsibility for residential tenant arrearages.

Q-9. Are we required to change our current practice of offering deferred payment agreements to residential tenants?

No. In fact, we encourage municipal utilities to continue the practice of offering deferred payment agreements to residential tenants that do not abuse the opportunity for deferred payment agreements.

Municipal utilities now have the option of discontinuing the practice of offering these agreements to residential tenants that take advantage of the system. However, as each utility's tariff on file with the PSC currently contains service rules that require the utility to offer deferred payment agreements to residential customers, the PSC has advised that a utility would need to amend the service rules in its tariff if it intends to cease offering such agreements. The PSC encourages changes to these rules be filed separately from a rate case and notes that any rules or practices that result in an increase in rates or a decrease in service may require a public hearing.

We recommend that any changes to your deferred payment agreement rules provide guidance as to when an agreement will be offered.

A municipal public utility must still offer DPAs to all other residential customers, as required by the PSC rules for water, electric, and natural gas service contained in Wis. Admin. Code §§ PSC 185.35, PSC 113.0404, and PSC 134.063.

Q-10. We have a number of deferred payment agreements in place with residential tenants. Can our utility rescind these agreements?

The new law does not address this issue. We do not recommend rescinding a deferred payment agreement that a residential tenant is complying with.

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Q-11. Are we required to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers that own or rent a property that is receiving service from our utility?

No. Each utility may adopt policies that distinguish between owners and renters. However, any new application, deposit, disconnection and collection rules or practices adopted by a municipal public utility must be approved by the PSC and included in the utility's tariff on file with the PSC before the rule or practice can take effect. The PSC encourages changes to these rules or practices be filed separately from a rate case and notes that any rules or practices that result in an increase in rates or a decrease in service may require a public hearing.

Some utilities may find it beneficial to adopt rules or practices for residential tenants so that they have greater flexibility to manage these accounts.

For example, utilities could require larger deposits from residential tenant's and require them to pay a larger portion of the past due balance to avoid disconnection. Any new rules or practices should ensure that all residential tenant customers are treated consistently.

Q-12. Does a municipal electric utility have to disconnect a tenant's electric service if the landlord asks us to?

Yes, starting April 16, 2015, in most cases. Wisconsin Stat. § 66.0809(5)(bm), as created by Act 274, requires a municipal public utility to disconnect a tenant's electric service if, no earlier than 14 days after receiving notice of the past-due balance, the owner of the rental dwelling unit requests that the electric service be disconnected and the past-due charges are not paid.

However, a municipal electric utility still must follow all Commission rules related to disconnections, and the requirement to disconnect service only applies if the municipal public utility uses the tax roll process to collect unpaid electric charges. While this provision takes effect on January 1, 2015, the winter moratorium, which prohibits the disconnection of electric service if the disconnection would affect the primary heat source, still applies. Consequently, in most cases, this provision cannot be applied before April 16, 2015, when the winter moratorium ends.

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Q-13. Must a municipal utility disconnect a tenant's water or gas service at the request of a landlord?

No. The landlord-requested disconnection provision does not apply to water or gas service. In fact, a utility may not disconnect water or gas service in order to knowingly assist a landlord in evicting a tenant. See Wis. Admin. Code §§ PSC 185.37(8)(g) and 134.062(6)(g).

Q-14. Can a property owner require us to disconnect their tenant's electric service if we have a valid deferred payment agreement in place and the tenant is complying with the agreement?

No. If your utility has a valid deferred payment agreement in place with a residential tenant and the tenant is compliant, you are not permitted to disconnect the electric service. Wis. Stat. § 66.0809 (5)(bm) specifically states the disconnection must be consistent with "rules of the Public Service Commission relating to disconnection of service and subject to the procedural requirements under those rules…"

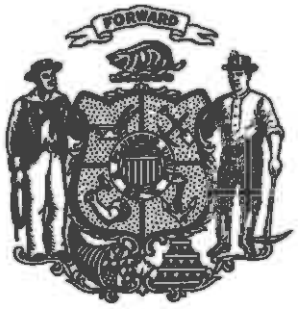
Q-15. Our utility does not collect residential tenant electric service arrearages via the tax roll process. Can a property owner require us to disconnect electric service?

No. A property owner cannot request disconnection of electric service if your utility does not place past-due electric balances on the tax roll.

ATTACHMENTS:

Act 274 Text
Act 274 Legislative Council Memo
PSC Memo – Act 274 Implementation

State of Wisconsin



Date of enactment: **April 16, 2014**
Date of publication*: **April 17, 2014**

2013 Senate Bill 517

2013 WISCONSIN ACT 274

AN ACT ***to repeal*** 62.69 (2) (g); ***to renumber and amend*** 66.0809 (3) and 66.0809 (5) (b) 1.; ***to consolidate, renumber and amend*** 66.0809 (5) (b) (intro.) and 2.; ***to amend*** 66.0809 (5) (c) and 66.0809 (5) (d); and ***to create*** 66.0809 (3m), 66.0809 (5) (bm), 66.0809 (7), 66.0809 (8), 66.0809 (9), 66.0809 (10) and 196.37 (5) of the statutes; **relating to:** collection of certain municipal utility arrearages and the provision of municipal utility service to tenants.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 62.69 (2) (g) of the statutes is repealed.

SECTION 2. 66.0809 (3) of the statutes is renumbered 66.0809 (3) (a) and amended to read:

66.0809 **(3)** (a) Except as provided in subs. (4) and (5), on October 15 in each year notice shall be given to the owner or occupant of ~~all~~ the lots or parcels of real estate to which utility service has been furnished prior to October 1 by a public utility operated by a town, city, or village and payment for which is owing and in arrears at the time of giving the notice. The department in charge of the utility shall furnish the treasurer with a list of the lots or parcels of real estate for which utility service charges are in arrears, and the notice shall be given by the treasurer, unless the governing body of the city, village, or town authorizes notice to be given directly by the department. The notice shall be in writing and shall state the amount of arrears, including any penalty assessed pursuant to the rules of the utility; that unless the amount is paid by November 1 a penalty of 10 percent of the amount of arrears will be added; and that unless the arrears, with any added penalty, are paid by November 15, the arrears and penalty will be levied as a tax against the lot or parcel of real estate to which utility service was furnished and for which payment is delinquent. The notice may be served by delivery to either the owner or occupant personally, or by letter addressed to the owner or occupant at the post-office address of the lot or parcel of real estate.

(b) On November 16, the officer or department issuing the notice shall certify and file with the clerk a list of all lots or parcels of real estate, giving the legal description, for which notice of arrears was given under par. (a) and for which arrears remain unpaid, stating the amount of arrears and penalty. Each delinquent amount, including the penalty, becomes a lien upon the lot or parcel of real estate to which the utility service was furnished and payment for which is delinquent, and the clerk shall insert the delinquent amount and penalty as a tax against the lot or parcel of real estate.

(c) All proceedings in relation to the collection of general property taxes and to the return and sale of property for delinquent taxes apply to the tax under par. (b) if it is not paid within the time required by law for payment of taxes upon real estate.

(d) Under this subsection, if an arrearage is for utility service furnished and metered by the utility directly to a manufactured home or mobile home unit in a licensed manufactured and mobile home community, the notice shall be given to the owner of the manufactured home or

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

mobile home unit and the delinquent amount becomes a lien on the manufactured home or mobile home unit rather than a lien on the parcel of real estate on which the manufactured home or mobile home unit is located. A lien on a manufactured home or mobile home unit may be enforced using the procedures under s. 779.48 (2).

(e) This subsection does not apply to arrearages collected using the procedure under s. 66.0627.

(f) In this subsection, "metered" means the use of any method to ascertain the amount of service used or the use of a flat rate billing method.

SECTION 3. 66.0809 (3m) of the statutes is created to read:

66.0809 **(3m)** (a) If sub. (5) applies and a notice of arrears under sub. (3) (a) is given or past–due charges are certified to the comptroller under s. 62.69 (2) (f), on the date the notice of arrears is given, or the past–due charges are certified under s. 62.69 (2) (f), the municipality has a lien upon the assets of each tenant of a rental dwelling unit who is responsible for arrears in the amount of the arrears, including any penalty assessed pursuant to the rules of the utility.

(b) The department in charge of the utility shall provide a notice to each tenant against whom the municipality has a lien. The notice shall be in writing and shall state the amount of arrears including any penalty assessed pursuant to the rules of the utility, that the tenant is subject to a lien upon his or her assets for arrears for which he or she is responsible, that the lien will transfer to the owner of the rental dwelling unit if the owner pays the arrears, and that the lien will be enforceable upon the filing of the lien with the clerk of courts.

(c) If par. (a) applies, prior to December 17, the municipality shall file with the clerk of courts a list of tenants of rental dwelling units responsible for arrears and against whom the municipality continues to have a lien. No action to enforce a lien under par. (a) may be maintained unless a notice of lien is filed under this paragraph.

(d) If par. (a) applies and the owner of the rental dwelling unit has paid the municipality the amount provided in the notice of arrears given under sub. (3) (a), or certified to the comptroller under s. 62.69 (2) (f), or the amount placed as tax against the real estate under sub. (3) (b) or s. 62.69 (2) (f), the lien under par. (a) transfers to the owner of the rental dwelling unit and the municipality no longer has a lien against the tenant.

(e) An owner of a rental dwelling unit who has a lien under par. (d) may file a notice of lien with the clerk of court of the county in which the rental dwelling unit is located not more than 6 months after the date the lien arose under par. (a). The clerk of courts shall file and enter the notice of lien in the judgment and lien docket. No action to enforce a lien under par. (d) may be maintained unless a notice of lien is filed under this paragraph.

(f) Within 7 days after a lien established and filed under this subsection is satisfied, the lienholder shall file with the clerk of courts a notice of lien satisfaction.

SECTION 4. 66.0809 (5) (b) (intro.) and 2. of the statutes are consolidated, renumbered 66.0809 (5) (b) and amended to read:

66.0809 **(5)** (b) ~~If this subsection applies, a~~ A municipal public utility may use sub. (3) or, if s. 62.69 applies, s. 62.69 (2) (f), to collect arrearages incurred after the owner of a rental dwelling unit has provided the utility with written notice under par. (a) ~~only~~ if ~~the municipality complies with at least one of the following: 2. In order to comply with this subdivision, if a customer who is a tenant has charges for water or electric service provided by the utility that are past due,~~ the municipal public utility ~~shall serve~~ serves notice of the past–due charges on the owner of the rental dwelling unit within 14 days of the date on which the tenant's charges became past due. The municipal public utility shall serve notice in the manner provided in s. 801.14 (2).

SECTION 5. 66.0809 (5) (b) 1. of the statutes is renumbered 66.0809 (5) (am) and amended to read:

66.0809 **(5)** (am) ~~In order to comply with this subdivision, a~~ A municipal public utility shall send bills for water or electric service to a customer who is a tenant in the tenant's own name. ~~Each time that a municipal public utility notifies a customer who is a tenant that charges for water or electric service provided by the utility to the customer are past due for more than one billing cycle, the utility shall also serve a copy of the notice on the owner of the rental dwelling unit in the manner provided in s. 801.14 (2).~~ If a customer who is a tenant vacates his or her rental dwelling unit, and the owner of the rental dwelling unit provides the municipal public utility, no later than 21 days after the date on which the tenant vacates the rental dwelling unit, with a written notice that contains a forwarding address for the tenant and the date that the tenant vacated the rental dwelling unit, the utility shall continue to send past–due notices to the customer at his or her forwarding address until the past–due charges are paid or until notice has been provided under sub. (3) (a) or the past–due charges have been certified to the comptroller under s. 62.69 (2) (f).

SECTION 6. 66.0809 (5) (bm) of the statutes is created to read:

66.0809 **(5)** (bm) No earlier than 14 days after receiving a notice under par. (b) of a tenant's past–due charges for electric service, the owner of a rental dwelling unit may request that the municipal public utility terminate electric service to the rental dwelling unit. Except as provided under rules of the public service commission relating to disconnection of service and subject to the procedural requirements under those rules, unless all past–due charges are paid, the municipal utility shall terminate

electric service to the rental dwelling unit upon receipt of a request under this paragraph. This paragraph does not apply if a municipal public utility does not use the procedures under sub. (3) to collect the past–due charges.

SECTION 7. 66.0809 (5) (c) of the statutes is amended to read:

66.0809 **(5)** (c) A municipal public utility may demonstrate compliance with the notice requirements of par. (b) ~~1. or 2.~~ by providing evidence of having sent the notice by U.S. mail or, if the person receiving the notice has consented to receive notice in an electronic format, by providing evidence of having sent the notice in an electronic format.

SECTION 8. 66.0809 (5) (d) of the statutes is amended to read:

66.0809 **(5)** (d) If this subsection applies and a municipal public utility ~~is permitted~~ elects to collect arrearages under sub. (3) or s. 62.69 (2) (f), the municipal public utility shall provide all notices under sub. (3) or s. 62.69 (2) (f) to the tenant and to the owner of the property or a person designated by the owner.

SECTION 9. 66.0809 (7) of the statutes is created to read:

66.0809 **(7)** A municipal utility may require a prospective customer to submit an application for water or electric service.

SECTION 10. 66.0809 (8) of the statutes is created to read:

66.0809 **(8)** A municipal public utility shall disclose to the owner of a rental dwelling unit, upon the owner's request, whether a new or prospective tenant has outstanding past–due charges for utility service to that municipal public utility in that tenant's name at a different address.

SECTION 11. 66.0809 (9) of the statutes is created to read:

66.0809 **(9)** A municipal utility is not required to offer a customer who is a tenant at a rental dwelling unit a deferred payment agreement.

SECTION 12. 66.0809 (10) of the statutes is created to read:

66.0809 **(10)** A municipal utility may adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.

SECTION 13. 196.37 (5) of the statutes is created to read:

196.37 **(5)** It is not unreasonable or unjustly discriminatory for a municipal public utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service where the possibility exists for any unpaid bills of a tenant to become a lien on the property that is receiving utility service.

SECTION 14. Initial applicability.

(1) The treatment of sections 62.69 (2) (g) and 66.0809 (3) and (5) (b) (intro.), 1., and 2. of the statutes first applies to arrearages incurred on the effective date of this subsection.

(2) The treatment of section 66.0809 (3m) of the statutes first applies to a notice of arrears given on the effective date of this subsection.

SECTION 15. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of sections 62.69 (2) (g) and 66.0809 (3), (3m), and (5) (b) (intro.), 1., and 2., (bm), (c), and (d) of the statutes and SECTION 14 (1) and (2) of this act take effect on the first day of the 9th month beginning after publication.

WISCONSIN LEGISLATIVE COUNCIL
INFORMATION MEMORANDUM

Municipal Utilities' Tax Lien Bill Collection Powers and Their Application to Rental Properties

Among other differences, municipal utilities differ from other public utilities in that they may collect unpaid bills for utility service through a tax lien on the property served. This can create special problems for the owners of rental property. In the case where a tenant fails to pay for municipal utility service, the amount due becomes a lien on the property and, thus, the responsibility of the landlord. The statutes include provisions designed to assist landlords to avoid this situation.

MUNICIPAL UTILITY COLLECTION OF UNPAID BILLS VIA TAX LIENS

Municipally owned public utilities are authorized to collect unpaid charges for utility service by placing the charges on the tax rolls, as a lien on the property served. [s. 66.0809 (3), Stats.] By cross-reference, the same power is given to public inland lake protection and rehabilitation districts, town sanitary districts, municipal sewerage systems (other than storm water and surface water sewerage systems), metropolitan sewerage districts, and municipalities that receive sewerage services from the Milwaukee Metropolitan Sewerage District under contract.[1]

The most common services to which this lien authority applies are municipal water and sewerage services, including storm water sewerage services. The power also applies to the 82 municipal electric utilities in Wisconsin, provided that two conditions are met: the municipality has enacted an ordinance authorizing the exercise of this power for the collection of unpaid municipal electric bills; and, in 1996, the municipality collected such bills as special charges, under the statutes that existed at that time.[2] It also applies to any municipal utility that provides natural gas or telecommunications service.

PROCEDURES

In order to have unpaid charges become a tax lien, a municipal utility must follow a procedure that begins with giving notice on October 15 of each year to the owner or occupant of each parcel of land to which service has been furnished and for which payment is in arrears. (This notice will be referred to in this Information Memorandum as "the October 15 notice".) The notice informs the owner or occupant

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[1] The specific references are as follows: public inland lake protection and rehabilitation districts, s. 33.22 (3) (a), Stats.; town sanitary districts, s. 60.77 (5) (e), Stats.; municipal sewerage systems, s. 66.0821 (4) (d), Stats.; metropolitan sewerage districts, s. 200.13 (13), Stats.; and municipalities that receive sewerage services from the Milwaukee Metropolitan Sewerage District under contract, s. 200.55 (5) (d) 2., Stats.

[2] Section 66.60 (16), 1993 Stats., subsequently amended and renumbered s. 66.0627, Stats.

of the amount of arrearage and the ability of the utility to assess penalties and to collect the arrearages and penalties through the property tax system if the arrearages and penalties are not paid by November 15. On November 16, any overdue payments that remain in arrears become a lien upon the property and are collected by the municipality in the same manner as property taxes.

The procedures for a water utility of a first class city (i.e., the Milwaukee Water Works) differ from the procedures for other municipal utilities primarily in that no notice to the owner or occupant of the property is required and the unpaid charges become a lien on November 1, rather than November 15. [s. 62.69 (2) (f), Stats.]

TREATMENT OF MOBILE HOMES

In general, a lien for the collection of unpaid municipal utility bills is placed on the lot or parcel of real estate to which the utility service was furnished. However, if the utility service is delivered and metered directly to a mobile home in a licensed mobile home park, the amount of the unpaid bills and penalties becomes a lien on the mobile home itself, rather than on the underlying real estate. If the mobile home park owner owns both the real estate and the mobile home, there is no practical effect of this distinction. In the common situation in which the resident owns the mobile home unit and rents the lot from the mobile home park owner, however, this results in leaving the responsibility for the unpaid bill with the tenant.

ADDITIONAL PROCEDURES A LANDLORD MAY INVOKE

The use of tax liens on property to collect unpaid municipal utility and sewerage service charges does not distinguish between charges incurred by an owner occupant and those incurred by a tenant. Consequently, bills for utility or sewerage service provided by a municipality and incurred by a tenant can become a lien on the property of the landlord if they remain unpaid at the time that the tenant vacates the rental property and if the landlord is unable to compel the tenant to pay the outstanding utility bill.

A landlord can invoke additional procedures applicable to specific rental residential properties that the landlord identifies. Some provisions are designed to alert a landlord when unpaid bills are accumulating and to avert the problem. Others give landlords tools to identify potential tenants with a history of unpaid utility bills. Once invoked, a municipal utility is prohibited from collecting arrearages for service to the specific properties if it fails to comply with these procedures. The procedures apply explicitly to water and electric utilities and not to other municipal utility services (i.e., natural gas or telecommunications services). The procedures do not apply to town sanitary districts or public inland lake protection and rehabilitation districts that have sewerage connections serving fewer than 700 service addresses.[3]

INITIATION OF ADDITIONAL PROCEDURES

To initiate the procedures, the owner of a rental dwelling unit notifies the utility, in writing, of the name and address of the owner of the dwelling and of the tenant who is responsible for the payment of charges for utility service. If requested by the utility, the owner also provides the utility with a copy of the rental or lease agreement in which the tenant assumes responsibility for the payment of the utility

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[3] It is not entirely clear whether these procedures apply to billing for sewerage service. As defined, "utility" does not include a municipality that provides sewerage service (except as a combined municipal water and sewerage utility). The cross-references identified in the first part of this memorandum clearly extend the lien procedure to charges for municipal sewerage service. They could be read to extend the additional procedures for rental residential property to charges for municipal sewerage service, too, but attorneys practicing in this area have expressed conflicting opinions on this question. In practice, most municipal sewerage services observe the procedures.

charges. Because the landlord's notification to the utility is specific to individual utility customers, the municipal utility's obligations that flow from it apply only to those customers.

NOTICE PROCEDURES

Notice Procedures Applicable Through 2014

Under legislation enacted in 1996 (1995 Wisconsin Act 419), which remains in effect through 2014, the utility must follow one of two alternative notice procedures regarding any unpaid charges for utility service to a specified rental dwelling. The choice of the procedure that will be used is left to the utility.

Under the first alternative procedure, the utility must send bills to the tenant, in the tenant's own name (as opposed to sending bills to a street address or to "occupant," as is sometimes done for water service). The utility must provide the landlord with copies of any past due notices provided to the tenant for charges that are more than one billing cycle past due. If a tenant vacates the dwelling while utility charges are in arrears and the landlord provides the utility with a written notice containing the date the tenant vacated the rental dwelling unit and the tenant's forwarding address, the utility must continue to send past due notices to the tenant at the forwarding address until either the charges have been paid or the utility has started the procedure for collecting the charges as a tax lien.

Under the second alternative procedure, the utility is required to notify the landlord whenever charges for utility service provided to the tenant are past due. The notice must be provided within 14 days of the charges becoming past due. Under this alternative, there is no specific requirement that the utility send bills to the tenant in the tenant's own name or that the utility pursue collection of the charges from the tenant after the tenant has vacated the dwelling.

The statutes include specific requirements regarding how notices are provided by municipal utilities and how landlords must notify the utility of the identity of tenants who are responsible for utility bills.

The treatment of the Milwaukee Water Works is substantially the same as other municipal utilities. It differs in requiring a landlord to provide a sworn affidavit to the utility including the date the tenant vacated the premises, the tenant's forwarding address, and a meter reading reflecting the service for which the tenant is responsible. (In other municipalities, the property owner needs only to provide a written notice containing the date the tenant vacated the premises and the tenant's forwarding address.)

Notice Procedures Applicable Beginning January 1, 2015

Legislation enacted in 2014 (2013 Wisconsin Act 274), which takes effect January 1, 2015, replaces the option of two different notice procedures with a single procedure, as follows:

- A municipal utility must send bills for service to a customer who is a tenant in the tenant's own name.

- A municipal utility must provide notice to a landlord of a tenant's arrears within 14 days of the charges becoming past due.

- If the landlord notifies the utility that a tenant has vacated the dwelling while utility charges are in arrears and, within 21 days of the tenant vacating the dwelling, the landlord has provided the utility with a forwarding address for the tenant, the utility must continue to send past-due notices to the tenant at the forwarding address until either the charges have been paid or the utility has started the procedure for collecting the charges as a tax lien.

- A municipal utility must send the October 15 notice of a tax lien to the tenant and to the owner.

The statutes include specific requirements regarding how notices are provided to municipal utilities and how landlords must notify a utility of the identity of tenants who are responsible for utility bills.

Again, the requirements applicable to the Milwaukee Water Works are substantially the same as the requirements applicable to other municipal utilities. Because there is no October 15 notice in the Milwaukee Water Works' procedure, the steps triggered by that notice for other municipal utilities are triggered for the Milwaukee Water Works by certification of a lien on the property served, which occurs on November 1.[4]

LIEN AGAINST THE TENANT'S ASSETS

When a municipal utility provides the October 15 notice to a landlord and tenant, the municipality has a lien on the assets of the tenant in the amount of the arrears. If the landlord pays the amount of the arrears to the municipality, the lien transfers to the landlord. The lienholder (the municipality or the landlord) must file a notice of the lien with the clerk of courts before it may commence an action to enforce the lien and must file a notice of lien satisfaction with the clerk of courts when the lien is satisfied. Also, once filed, a record of the lien will be publicly available on the Consolidated Court Automation Program (CCAP) Internet site.

When a municipal utility provides the October 15 notice to a landlord and tenant, it must also provide a written notice to the tenant explaining the lien that has arisen on the tenant's assets.

This provision takes effect on January 1, 2015.

DISCONNECTION OF ELECTRIC SERVICE

Beginning 14 days after receiving a notice of a tenant's past-due charges for electric service, a landlord may request a municipal utility to disconnect electric service from the rental dwelling unit. Except as provided in rules of the Public Service Commission (PSC), relating to disconnection of service[5], the municipal utility must then terminate electric service.

This provision also takes effect on January 1, 2015.

PROVISIONS APPLICABLE TO ALL RENTAL DWELLINGS

A number of other provisions of the statute governing municipal utility charges relate to municipal utility service to all rental dwellings and collection of unpaid bills for such service.

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[4] Prior to enactment of 2013 Wisconsin Act 274, the treatment of rental property by the Milwaukee Water Works was governed by a separate statute, s. 62.69 (2) (g). Act 274 repealed that paragraph, with the result that the Milwaukee Water Works is now governed by the same statute as other municipal utilities for this purpose.

[5] PSC rules prohibit disconnection of electric utility service, for example, during the winter months, during heat emergencies, if disconnection of service will aggravate an existing medical or protective services emergency, if the customer is in compliance with a deferred payment agreement, and while a dispute over the amount of arrears is under investigation by the PSC. Procedural requirements in these rules relate to matters such as ensuring that the customer has adequate notice and opportunity to respond prior to losing service. [See subchs. III and IV of ch. PSC 113, Wis. Adm. Code.]

DISCLOSURE OF OUTSTANDING PAST-DUE CHARGES

Upon request of the owner of rental residential property, a municipal utility is required to disclose whether a new or prospective tenant has outstanding past-due charges for service provided by the utility in that tenant's name at a different address.

DEFERRED PAYMENT AGREEMENTS

PSC rules require that, before disconnecting service, a public utility must offer a deferred payment agreement to a residential customer who is behind in paying for utility service. [s. PSC 113.0404, Wis. Adm. Code.] Section 66.0809, Stats., specifies that a municipal utility is not required to offer a customer who is a tenant at a rental dwelling a deferred payment agreement.

STANDARD OF "UNREASONABLE OR UNJUSTLY DISCRIMINATORY"

A standard requirement of utility service is that a public utility may not adopt or enforce rules or procedures that are unreasonable or unjustly discriminatory. This principle is articulated in s. 196.37, Stats. However, that section includes a statement that it is not unreasonable or unjustly discriminatory for a municipal utility to adopt application, deposit, disconnection, or collection rules and practices that distinguish between customers based on whether the customer owns or leases the property that is receiving utility service and subject to a lien for unpaid utility bills. In addition, s. 66.0809 includes explicit authority for a municipal utility to adopt such rules and practices.

This memorandum is not a policy statement of the Joint Legislative Council or its staff.

This memorandum was prepared by David L. Lovell, Principal Analyst, on May 5, 2014.

PUBLIC SERVICE COMMISSION OF WISCONSIN

Memorandum

May 6, 2014

TO: MEUW (Municipal Electric Utilities of Wisconsin)
Meg-Water (Municipal Environmental Group-Water Division)
WRWA (Wisconsin Rural Water Association)
LWM (League of Wisconsin Municipalities)

FROM: Cynthia Smith

RE: 2013 Wisconsin Act 274 Commission Implementation

The purpose of this memorandum is to briefly summarize how the Commission intends to implement the provisions of 2013 Wisconsin Act 274 (Act 274) that provide "[a] municipal utility may adopt application, deposit, disconnection or collection rules and practices that distinguish between customers based upon whether the customer owns or leases the property that is receiving utility service. . . ." Wis. Stat. § 66.0809(10).

Wisconsin Stat. § 196.19(2) provides that "[e]very public utility shall file with and as part of such schedule all rules and regulations that, in the judgment of the commission, in any manner affect the service or product." Wisconsin Stat. § 196.20(1) provides:

> The rate schedules of any public utility shall include all rules applicable to the rendition or discontinuance of the service to which the rates specified in the schedules are applicable. No change may be made by any public utility in its schedules except by filing the change as proposed with the commission. No change in any public utility rule which purports to curtail the obligation or undertaking of service of the public utility shall be effective without the written approval of the commission after hearing, except that the commission, by emergency order, may make the rule, as filed, effective from the date of the order, pending final approval of the rule after hearing.

Nothing in Act 274 changed these requirements.

Rules and practices that relate to applications, deposits, disconnection or collections affect the provision of utility service, and such rules and practices also curtail the obligation or

undertaking of service by the utility. These rules and practices are currently included in the tariffs utilities have filed with the Commission.

Utilities that decide to adopt new rules or practices, as now permitted under Act 274, will be required to file with and receive approval from the Commission for any new application, deposit, disconnection or collection rules and practices as part of the utility's tariff filed with the Commission. Because these changes "curtail the obligation or undertaking of service of the public utility," a hearing will be required before the Commission reviews and approves any proposed changes to these rules or practices.

Wisconsin Stat. § 196.03(1) requires that "a public utility shall furnish reasonably adequate service and facilities. The charge made by any public utility . . . or any service rendered or to be rendered in connection therewith shall be reasonable and just and every unjust or unreasonable charge for such service is prohibited and declared unlawful." Rules and practices related to the process or amount charged for an application, the amount of any deposits assessed, disconnection or reconnection charges, and any collection charges must therefore be reasonable and just. Upon application to the Commission for a change in rules or practices, the Commission will review the requested change to determine whether it is just and reasonable.

If you have further questions regarding the Commission's implementation of Act 274, please do not hesitate to contact me.

CS:00922936

Public Service Commission of Wisconsin

Phil Montgomery, Chairperson
Eric Callisto, Commissioner
Ellen Nowak, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

September 26, 2014

TO: All Electric, Natural Gas, and Water Utilities

FROM: Cynthia Smith, Chief Legal Counsel

RE: Deferred Payment Agreements Requirements 5-EI-152

During its open meeting on August 14, 2014, the Commission directed staff to remind utilities of the current requirements related to offering deferred payment agreements to residential customers. Specifically, the Commission was concerned that many utilities are refusing to offer deferred payment agreements to residential customers after the customer has been offered an alternative arrangement, such as a payment extension.

Current Commission rules require all utilities to offer a deferred payment agreement to residential customers, regardless of whether the utility is municipally-owned or investor-owned, or whether the customer is a tenant or owner of the property being provided with service. *See* Wis. Admin. Code §§ PSC 113.0404, PSC 134.063, and PSC 185.38.[1]

A deferred payment agreement consists of two distinct components: (1) payment of a reasonable amount of the outstanding bill; and (2) installments on the remaining outstanding balance. Payment of a reasonable amount of the outstanding bill is often referred to as a "down payment" to establish a deferred payment agreement. In many circumstances, 50 percent of the outstanding arrears balance has been considered a reasonable amount for a utility to request from a customer as a down payment.[2] A deferred payment agreement must include installments on the remaining outstanding balance, so an agreement consisting of only one installment would not be considered a deferred payment agreement.

If a customer pays the down payment, the customer is then required to pay both the current bill and the installment payments in full and on time per the terms of the deferred payment agreement. In circumstances where a payment is late or is not paid, the agreement defaults, and

[1] The Commission has opened a rulemaking docket to conform the provisions of Wis. Admin. Code chs. PSC 113, 134 and 185 to 2013 Wisconsin Act 274. *See* docket 1-AC-247.

[2] For purposes of determining a reasonable down payment and installments, the following factors are required to be considered:
(a) Size of the delinquent account.
(b) Customer's payment history.
(c) Time that the debt has been outstanding.
(d) Reasons why debt has been outstanding.
(e) Any other relevant factors concerning the circumstances of the customer, such as household size, income and expenses.

the utility is not required to offer a new agreement prior to disconnection, unless the customer has had a significant change in ability to pay since the agreement was negotiated (*e.g.*, a loss of employment). If the customer's service is disconnected, the utility must offer a new deferred payment agreement, but may require a new down payment to establish a deferred payment agreement prior to reconnecting service.

Unless specifically required by the Commission, deferred payment agreements are not required to be in writing, although some utilities have found written agreements to be useful in preventing misunderstandings by either the utility or the customer. However, a utility must send written confirmation of a deferred payment agreement upon customer request. In addition, if a deferred payment agreement cannot be reached because the customer's offer is unacceptable to the utility, the utility shall inform the customer in writing why the customer's offer was not acceptable and inform the customer of his or her right to contact the Public Service Commission.

Commission rules do not preclude utilities from offering other types of agreements, such as payment extensions, to customers. However, these types of agreements do not qualify as deferred payment agreements and do not negate a utility's obligation to offer a deferred payment agreement to residential customers.

Effective April 18, 2014, Wis. Stat. § 66.0809(9) creates differing standards for municipal utilities in providing service, by permitting municipal utilities to refuse to offer a deferred payment agreement to a residential customer who is a tenant. A municipal utility that decides to exercise its new authority under Wis. Stat. § 66.0809(9) is required to first file and receive Commission approval to modify its tariff to reflect this change in the law and to establish the criteria the municipal utility will use to determine whether a residential tenant will be granted or denied a deferred payment agreement. (PSC REF#: 215095.) Wisconsin Stat. § 196.20(1) also requires a hearing before the Commission may review and approve any proposed changes to the utility's tariff.

I hope this information is helpful to all utilities in understanding Commission rules in offering deferred payment agreements to residential customers.

If you have any questions regarding this information or if you would like to receive training from Commission staff to assist you in understanding and applying the laws described in this letter, please contact the Consumer Affairs division (PSCConsumerAffairsMail@wisconsin.gov) or Assistant Division Administrator Carrie Templeton at (608) 266-1267.

AC:bjs:DL:00944339

From: Wong, Peter - PSC
To: City of Abbotsford
Date: Monday, July 13, 2015 3:43:09 PM

2013 Wisconsin Act 274 - No Deferred Payment Agreements (DPA)
Utility will not offer a deferred payment agreement to a residential customer who is a tenant if any of the following criteria applies:

1. The residential tenant has greater than $100 of account arrearages that are more than 90 days past due for utilities that bill monthly; or for utilities that do not bill monthly, has greater than $100 of account arrearages that are past due for more than two billing cycles.

2. The tenant has defaulted on a deferred payment agreement in the past 12 months. This criterion only applies to deferred payment agreements and not to other types of payment extensions or agreements.

3. The residential tenant is responsible for account arrearages that were placed on any property owner's tax bill in the utility's service territory in the past 24 months.

4. The residential tenant has a balance that accrued during the winter moratorium that is more than 80 days past due.