



# Broadband Forward! Community Model Ordinance



Public Service Commission of Wisconsin  
610 North Whitney Way  
Madison, WI 53705

## **BROADBAND FORWARD! COMMUNITY MODEL ORDINANCE**

### Introduction

Broadband access is increasingly important to our economy, education and daily life. The state as a whole—citizens, governments, providers, schools and businesses—have an interest in expanding broadband access and usage in underserved areas of the state. The Public Service Commission of Wisconsin (Commission) has been authorized to certify communities as being “broadband ready” by issuing a Broadband Forward! Certification that signals a local unit of government has taken steps to reduce obstacles to broadband infrastructure investment.

Under Wis. Stat. § 196.504(4) a city, village town or county may apply to the Commission for certification as a Broadband Forward! Community. The Commission has prepared this Broadband Forward! Community Model Ordinance and application form to facilitate certification and statewide consistency. If a political subdivision adopts this model ordinance, or enacts its own ordinance and submits a certification that its ordinance meets the statutory criteria in Wis. Stat. § 196.504(5), it is eligible for Broadband Forward! Certification.

Enacting the Broadband Forward! Community Model Ordinance and obtaining Broadband Forward! Certification ensures the local unit of government has streamlined its administrative procedures by appointing a single point of contact for all matters relating to a broadband network project, adhering to a timely approval process, charging only reasonable fees for reviewing applications and issuing permits, imposing only reasonable conditions on a permit and not discriminating between telecommunications service providers.

The Commission also encourages communities seeking Broadband Forward! Certification to apply for Broadband Expansion Grants that are awarded annually. Further information about the Broadband Expansion Grant Program, including application materials, is available at: <http://psc.wi.gov/utilityinfo/tele/broadband/grants/bbGrantApplicationPage.htm>.

For further information about the application process for Broadband Forward! Certification or for any questions about the Broadband Forward! Community Model Ordinance, please contact Angie Dickison at [Angie.Dickison@wisconsin.gov](mailto:Angie.Dickison@wisconsin.gov) or (608) 267-9138.

## BROADBAND FORWARD! COMMUNITY ORDINANCE

ORDINANCE NO. [ ]

An ordinance to create Chapter [ ]; relating to approval of broadband network projects.

*The [political subdivision] does enact as follows:*

### 1 **Chapter 1. Broadband Network Project Applications**

#### 2 **SECTION 1. GENERAL PROVISIONS.**

3 **1.1 Purpose and policy.** The purpose of this chapter is to encourage the development of  
4 broadband access in the [political subdivision] by reducing administrative obstacles to broadband  
5 service providers and coordinating the review of applications to ensure such applications are  
6 timely processed. This chapter shall at all times be construed consistent with the aforesaid  
7 purpose.

8 **1.2 Definitions.** In this chapter:

9 (1) “Applicant” means a person applying for a permit for a broadband network project.

10 (2) “Broadband network project” means the construction or deployment of wireline or  
11 wireless communications facilities to provide broadband communications services in the  
12 [political subdivision].

13 (3) “Permit” means any local permit, license, certificate, approval, registration, or similar  
14 form of approval required by policy, administrative rule, regulation, ordinance, or resolution with  
15 respect to a broadband network project.

16 (4) “Written” or “in writing” means information that is inscribed on a tangible medium or  
17 that is stored in an electronic or other intangible medium and is retrievable in perceivable form.

18 **1.3 Point of contact.** The [political subdivision] shall appoint a single point of contact for all  
19 matters related to a broadband network project. The [political subdivision] shall provide on its

1 public website the contact information, including the email address, for the point of contact  
2 authorized to receive a broadband network project application.

3 **SECTION 2. ELECTRONIC SUBMISSION OF APPLICATIONS.** An applicant may sign and file all  
4 forms, applications and documentation related to a broadband network project electronically.

5 **SECTION 3. REVIEW OF APPLICATIONS.** Notwithstanding any other provision in the [political  
6 subdivision's] ordinances, resolutions, regulations, policies or practices, the following process  
7 shall apply upon receiving a broadband network project application:

8 **3.1 Completeness review.** Upon receiving a broadband network project application the  
9 [political subdivision] shall:

10 (1) Determine whether an application is complete and notify the applicant of the  
11 determination by the [political subdivision] in writing within 10 days of receiving an application.  
12 If the [political subdivision] does not notify the applicant in writing of its completeness  
13 determination within 10 days of receiving the application, the application shall be considered  
14 complete.

15 (2) If the [political subdivision] determines that an application is not complete, the  
16 written notification to the applicant shall specify in detail the required information that is not  
17 complete. The applicant may resubmit an application as often as necessary until the application  
18 is complete.

19 **3.2 Approval or denial of complete applications.**

20 (1) Within 60 days of receiving an application is that is complete, or considered complete  
21 under sub. (1), the [political subdivision] shall approve or deny the application and provide the  
22 applicant written notification of the approval or denial. If the [political subdivision] does not

1 notify the applicant of its approval or denial within 60 days of receiving a complete application,  
2 the application shall be considered approved and any required permit shall be considered issued.

3 (2) If the [political subdivision] denies an application, the written notification of the  
4 denial under sub. (1) shall include evidence that the denial is not arbitrary and capricious.

5 **SECTION 4. FEES.** Any fee imposed by the [political subdivision] to review an application, issue  
6 a permit, or perform any other activity related to a broadband network project shall be  
7 reasonable. An application fee that exceeds \$100 is unreasonable.

8 **SECTION 5. INITIAL APPLICABILITY.** The treatment of this ordinance first applies to applications  
9 received by the [political subdivision] on or after the effective date of this ordinance.

10 **SECTION 6. EFFECTIVE DATE.** This ordinance takes effect on the day after publication.

(7) **INTERLATA CERTIFICATION.** (a) This subsection applies to any telecommunications utility that is restricted under federal law or under any consent decree approved by a federal district court.

(b) Upon application by a telecommunications utility subject to this subsection for a certificate to provide interlata services, the commission shall consider all of the following factors in determining whether to grant a certificate of authority:

1. Whether granting the certificate is in the public interest.
2. Whether the utility will provide interconnection to its local exchange network under reasonable terms and conditions.
3. Whether the utility will permit appropriate resale and sharing of its services.
4. Whether the utility will provide unbundled services under reasonable terms and conditions.
5. Whether the utility provides its services in compliance with s. 196.204.

6. Whether competition in the interlata marketplace will be enhanced or hindered by granting the certificate.

(c) The commission may impose terms and conditions upon the grant of a certificate under par. (b) that are necessary to protect the public interest and promote competition.

(d) The commission, after providing notice and opportunity for hearing, shall issue its decision on the application within 180 days after the filing. The time period may be extended upon agreement of the commission and the applicant.

(e) An applicant may not be authorized to provide interlata service before the availability of dial-1 presubscription on an intralata basis in all of its exchanges except where it is technically infeasible to offer intralata dial-1 presubscription due to the action or inaction of a switch vendor.

**History:** 1977 c. 418; 1983 a. 53; 1985 a. 297 ss. 52 to 54, 76; 1993 a. 496; 1995 a. 409; 1999 a. 150 s. 672; 2005 a. 441; 2007 a. 42; 2011 a. 22, 155; 2013 a. 125, 300.

**Cross-reference:** For division of service between competing utilities, see s. 197.01 (4).

**196.503 Telecommunications provider of last-resort obligations.** (1) **DEFINITIONS.** In this section, “basic voice service” means the provision to residential customers of 2-way voice communication within a local calling area. “Basic voice service” includes extended community calling and extended area service. “Basic voice service” does not include the offering of Internet access service or any discretionary or optional services that are provided to a residential customer, even if provided in a bundle or package with basic voice service.

(2) **INCUMBENT LOCAL EXCHANGE CARRIER OBLIGATIONS.** (a) Notwithstanding any other provision in this chapter, and except as provided in sub. (3), an incumbent local exchange carrier shall make basic voice service available to all residential customers within a local exchange area in which it operates as an incumbent local exchange carrier.

(b) An incumbent local exchange carrier may satisfy its obligations under par. (a) through an affiliate and through the use of any available technology or mode.

(3) **WAIVERS.** (a) An incumbent local exchange carrier may apply to the commission for a waiver from compliance with sub. (2) (a) in a local exchange area.

(b) The commission shall grant a waiver requested under par. (a) for a local exchange area if any of the following is satisfied:

1. The commission finds that the incumbent local exchange carrier demonstrates that the waiver is in the public interest or that effective competition exists for basic voice service in the local exchange.

2. The commission has made a previous finding of effective competition under s. 196.195 (2), 2009 stats., for basic local exchange service in the local exchange. The commission may not grant a waiver under this subdivision until after June 1, 2012.

(c) The commission’s review of a waiver requested under par. (a) shall be strictly limited to determining whether any of the criteria specified in par. (b) 1. or 2. is satisfied.

(d) 1. Within 120 days of the filing of a waiver request based on par. (b) 1., the commission shall grant or deny the request and, if denied, the commission shall issue a written decision identifying the reasons for its denial. If the commission fails to grant or deny the waiver request within 120 days of its filing, the waiver request is considered granted by operation of law.

2. The commission shall grant a waiver based on par. (b) 2. as soon as the commission verifies that the commission has previously made the finding specified in par. (b) 2., but no later than 20 days after the filing of the waiver request. If the commission fails to grant a waiver request based on par. (b) 2. within 20 days of its filing, the waiver request is considered granted by operation of law. If the commission denies a waiver based on par. (b) 2., the commission shall issue a written decision identifying the reasons for its denial.

(4) **EFFECT ON OTHER REQUIREMENTS.** (a) Notwithstanding any other provision of this chapter, a commission decision prior to June 9, 2011, eliminating an incumbent local exchange carrier’s provider of last-resort obligations, by operation of law or otherwise, remains in force and in effect as to the elimination of those obligations.

(b) Except to enforce this section, nothing in this section provides the commission with any authority to regulate, or any jurisdiction over, incumbent local exchange carriers and the rates, terms, and conditions of their services that the commission does not otherwise have under this chapter.

(5) **SUNSET.** This section does not apply after April 30, 2013.  
**History:** 2011 a. 22.

**196.504 Broadband expansion grant program; Broadband Forward! community certification.** (1) In this section:

(a) “Eligible applicant” means any of the following:

1. An organization operated for profit or not for profit, including a cooperative.
2. A telecommunications utility.
3. A political subdivision that submits an application in partnership with an eligible applicant under subd. 1. or 2.

(ae) “Political subdivision” means a city, village, town, or county.

(am) “Scalable” means, with respect to a project for a broadband network, that the broadband network has the ability to maintain the quality of its service while increasing parameters relating to the size of the network, such as the number of users, the number of network nodes, the number of services provided, or the network’s geographic spread.

(b) “Underserved” means served by fewer than 2 broadband service providers.

(2) The commission shall administer the broadband expansion program and shall have the following powers:

(a) To make broadband expansion grants to eligible applicants for the purpose of constructing broadband infrastructure in underserved areas designated under par. (d). Grants awarded under this section shall be paid from the appropriation under s. 20.155 (3) (r). In each fiscal year, the total amount of the grants may not exceed \$1,500,000.

(b) To prescribe the form, nature, and extent of the information that shall be contained in an application for a grant under this section. The application shall require the applicant to identify the area of the state that will be affected by the proposed project and explain how the proposed project will increase broadband access.

(c) To establish criteria for evaluating applications and awarding grants under this section. The criteria shall prohibit grants that have the effect of subsidizing the expenses of a provider of telecommunications service, as defined in s. 182.017 (1g) (cq), or the monthly bills of customers of those providers. The criteria shall give priority to projects that include matching funds, that involve public-private partnerships, that affect areas with no broadband service providers, that are scalable, that promote economic devel-

opment, or that affect a large geographic area or a large number of underserved individuals or communities.

(d) To designate areas of the state that are underserved as underserved areas.

(3) The commission shall encourage the development of broadband infrastructure in underserved areas of the state and do all of the following:

(a) Provide comprehensive information concerning permits required for broadband network projects and related business activities in the state and make this information available to any person.

(b) Work with other state and local government offices, departments, and administrative entities to encourage timely and efficient issuance of permits and resolution of related issues.

(c) Encourage local and federal government agencies to coordinate activities related to approving applications and issuing permits related to broadband network projects.

(4) A political subdivision may apply to the commission for certification as a Broadband Forward! community. The commission shall prescribe the form and manner for making an application. The commission shall prescribe a process for public notice and comment on an application for a period of at least 30 days after the application is received, except that the process does not apply to an application by a political subdivision that enacts a model ordinance developed under sub. (9) (a) or submits a written statement under sub. (9) (b). The commission shall approve an application and certify a political subdivision as a Broadband Forward! community if the commission determines that the political subdivision has enacted an ordinance that complies with sub. (5). If the process for public notice and comment applies to an application, the commission shall, before approving the application, consider any public comments made regarding the application.

(5) A political subdivision may not be certified as a Broadband Forward! community under sub. (4) unless the political subdivision enacts an ordinance for reviewing applications and issuing permits related to broadband network projects that provides for all of the following:

(a) Appointing a single point of contact for all matters related to a broadband network project.

(b) Requiring the political subdivision to determine whether an application is complete and notifying the applicant about the determination in writing within 10 days of receiving the application.

(c) If the political subdivision does not believe that an application is complete, requiring the written notification under par. (b) to specify in detail the required information that is incomplete.

(d) If the political subdivision does not make the written notification required under par. (b), requiring the political subdivision to consider an application to be complete.

(e) Allowing an applicant to resubmit an application as often as necessary until the application is complete.

(f) Within 60 days of receiving an application that is complete, requiring the political subdivision to approve or deny the application and provide the applicant written notification of the approval or denial.

(g) If the political subdivision denies an application, requiring the political subdivision to include in the written notification under par. (f) evidence that the denial is not arbitrary and capricious.

(h) Requiring that an application is considered approved and any required permit is issued if the political subdivision does not provide the written notification under par. (f).

(i) Providing that any fee imposed by the political subdivision to review an application, issue a permit, or perform any other activity related to a broadband network project is reasonable.

(k) Allowing all forms, applications, and documentation related to a broadband network project to be filed and signed by electronic or another means authorized by the commission.

(6) A political subdivision that the commission has certified as a Broadband Forward! community under sub. (4) may not do any of the following:

(a) Require an applicant to designate a final contractor to complete a broadband network project.

(b) Impose an unreasonable fee to review an application or issue a permit for a broadband network project application. Any application fee that exceeds \$100 is considered unreasonable.

(c) Impose a moratorium of any kind on the approval of applications and issuance of permits for broadband network projects or on construction related to broadband network projects.

(d) Discriminate among providers of telecommunications service, as defined in s. 182.017 (1g) (cq), or public utilities with respect to any action described in this section or otherwise related to a broadband network project, including granting access to public rights-of-way, infrastructure and poles, river and bridge crossings, or any other physical assets owned or controlled by the political subdivision.

(e) As a condition for approving an application or issuing a permit for a broadband network project or for any other purpose, require the applicant to do any of the following:

1. Provide any service or make available any part of the broadband network project to the political subdivision.

2. Except for reasonable fees allowed under sub. (5) (i), make any payment to or on behalf of the political subdivision.

(7) Upon the request of a broadband service provider, the commission may decertify a political subdivision as a Broadband Forward! community if the political subdivision fails to comply with or modifies the ordinance required for certification under sub. (4) or violates sub. (6).

(8) Upon a complaint that an application fee under an ordinance required for certification under sub. (4) is unreasonable, the commission shall determine whether the fee is reasonable. In the proceeding for making that determination, the political subdivision has the burden of proving the reasonableness of any function undertaken by the political subdivision as part of the application process and the reasonableness of the costs of those functions.

(9) (a) The commission may develop a model ordinance that complies with sub. (5) for a political subdivision to review applications and issue permits related to broadband network projects.

(b) If the commission develops a model ordinance under par. (a) and a political subdivision enacts a different ordinance that complies with sub. (5), the political subdivision shall, when applying for certification under sub. (4), provide the commission with a written statement that describes the ordinance and how the ordinance differs from the model ordinance.

**History:** 2013 a. 20; 2015 a. 55, 278.

**196.505 Construction of chapter.** (1) Nothing in this chapter may be construed to deny a foreign corporation the privilege of offering telecommunications services in this state if it has received a certificate of authority under ch. 180 and any other authorization from the commission required under this chapter.

(2) Nothing in this chapter may be construed to permit chapter 184 or this chapter to apply differently to a foreign corporation which offers telecommunications services in this state than to a similarly situated domestic corporation which offers telecommunications services in this state.

**History:** 1985 a. 297; 1993 a. 496.

**196.51 Prior permits and franchises validated.** Any license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power in any municipality is valid and shall not be affected by s. 196.50 (1), if the license, permit or franchise was granted prior to April 3, 1911, to any public utility or was under consideration prior to April 3, 1911, in the governing body of any municipality at the time another public

properly chargeable in a special proceeding. Upon such filing, such property may be conveyed or mortgaged with the same right and authority as if such sale or mortgaging had been authorized by a sufficient affirmative vote of all members of said corporation.

**182.0135 Public utility corporation directors; not to delegate duty to manage; removal by commission.**

(1) The directors of corporations which are public utilities shall not, directly or indirectly, delegate or in any manner, temporarily or permanently, relinquish or surrender their duty to manage and direct the stock, property, affairs and business of such corporation.

(2) Any director violating the provisions of this section may be removed by the public service commission, after notice and hearing. If a director of a public utility is removed by the commission, the director shall be ineligible for a period of 2 years to serve as a director of said public utility.

(3) This section does not apply to a telecommunications utility, as defined in s. 196.01 (10).

History: 1993 a. 482, 496.

**182.016 River improvement corporations may flow lands.**

Any domestic corporation created in whole or in part for the purpose of improving any stream and driving, holding or handling logs therein, and any corporation owning or controlling dams, booms or improvements designed to accomplish any of said purposes, or any municipality or any domestic corporation organized for the purpose of furnishing electric current for public purposes, shall have the power to acquire all such lands as shall be necessary for its use for ponds and reservoir purposes. Nothing in this section shall be construed as repealing any provision of s. 31.30.

**182.017 Transmission lines; privileges; damages.**

(1g) DEFINITIONS. In this section:

(a) "Commission" means the public service commission.

(b) "Company" means any of the following:

1. A corporation, limited liability company, partnership, or other business entity organized to furnish telegraph or telecommunications service or transmit heat, power, or electric current to the public or for public purposes.

2. An independent system operator, as defined in s. 196.485 (1) (d).

3. An independent transmission owner, as defined in s. 196.485 (1) (dm).

4. A cooperative association organized under ch. 185 or 193 to furnish telegraph or telecommunications service.

5. A cooperative association organized under ch. 185 to transmit heat, power, or electric current to its members.

6. An interim cable operator, as defined in s. 66.0420 (2) (n).

7. A video service provider, as defined in s. 66.0420 (2) (zg).

(bm) "Municipal regulation" means any contract, ordinance, resolution, order, or other regulation entered into, enacted, or issued by a municipality before, on, or after July 2, 2013.

(c) "Municipality" means a city, village, or town.

(cq) "Telecommunications service" means the offering for sale of the conveyance of voice, data, or other information, including the sale of service for collection, storage, forwarding, switching, and delivery incidental to such communication regardless of the technology or mode used to make such offering.

(ct) "Urban rail transit system" means a system, either publicly or privately owned, which provides transportation by rail in a municipality to the public on a regular and continuing basis and which begins service on or after July 2, 2013.

(d) "Video service network" has the meaning given in s. 66.0420 (2) (zb).

(1r) RIGHT-OF-WAY FOR. Any company may, subject to ss. 30.44 (3m), 30.45, 86.16, and 196.491 (3) (d) 3m. and to reasonable regulations made by any municipality through which its

transmission lines or systems may pass, construct and maintain such lines or systems with all necessary appurtenances in, across or beneath any public highway or bridge or any stream or body of water, or upon any lands of any owner consenting thereto, and for such purpose may acquire lands or the necessary easements; and may connect and operate its lines or system with other lines or systems devoted to like business, within or without this state, and charge reasonable rates for the transmission and delivery of messages or the furnishing of heat, power, or electric light.

(2) NOT TO OBSTRUCT PUBLIC USE. But no such line or system or any appurtenance thereto shall at any time obstruct or incommode the public use of any highway, bridge, stream or body of water.

(3) ABANDONED LINES REMOVED. The commission after a public hearing as provided in s. 196.26, and subject to the right of review as provided in ch. 227, may declare any line to have been abandoned or discontinued, if the facts warrant such finding. Whenever such a finding shall have been made the company shall remove such line, and on failure for 3 months after such finding of abandonment or discontinuance, any person owning land over, through or upon which such line shall pass, may remove the same, or the supervisors of any town within which said lines may be situated, may remove the said lines from the limits of its highways, and such person or supervisors shall be entitled to recover from the company owning the lines the expense for labor involved in removing the property.

(4) LOCATION OF POLES. In case of dispute as to the location of poles, pipes or conduits, the commissioners appointed in condemnation proceedings under ch. 32 may determine the location. In no case, except where the owner consents, shall poles be set in front of or upon any residence property, or in front of a building occupied for business purposes, unless the commissioners find that the same is necessary and the court may review the finding.

(5) TREE TRIMMING. Any company which shall in any manner destroy, trim or injure any shade or ornamental trees along any such lines or systems, or, in the course of tree trimming or removal, cause any damage to buildings, fences, crops, livestock or other property, except by the consent of the owner, or after the right so to do has been acquired, shall be liable to the person aggrieved in 3 times the actual damage sustained, besides costs.

(6) MUNICIPAL FRANCHISE REQUIRED. No lighting or heating corporation or lighting or heating cooperative association shall have any right hereunder in any municipality until it has obtained a franchise or written consent for the erection or installation of its lines from such municipality.

(7) HIGH-VOLTAGE TRANSMISSION LINES. Any easement for rights-of-way for high-voltage transmission lines as defined under s. 196.491 (1) (f) shall be subject to all of the following conditions and limitations:

(a) The conveyance under ch. 706 and, if applicable, the petition under s. 32.06 (7), shall describe the interest transferred by specifying, in addition to the length and width of the right-of-way, the number, type and maximum height of all structures to be erected thereon, the minimum height of the transmission lines above the landscape, and the number and maximum voltage of the lines to be constructed and operated thereon.

(b) In determining just compensation for the interest under s. 32.09, damages shall include losses caused by placement of the line and associated facilities near fences or natural barriers such that lands not taken are rendered less readily accessible to vehicles, agricultural implements and aircraft used in crop work, as well as damages resulting from ozone effects and other physical phenomena associated with such lines, including but not limited to interference with telephone, television and radio communication.

(c) In constructing and maintaining high-voltage transmission lines on the property covered by the easement the utility shall:

1. If excavation is necessary, ensure that the top soil is stripped, piled and replaced upon completion of the operation.

2. Restore to its original condition any slope, terrace, or waterway which is disturbed by the construction or maintenance.

3. Insofar as is practicable and when the landowner requests, schedule any construction work in an area used for agricultural production at times when the ground is frozen in order to prevent or reduce soil compaction.

4. Clear all debris and remove all stones and rocks resulting from construction activity upon completion of construction.

5. Satisfactorily repair to its original condition any fence damaged as a result of construction or maintenance operations. If cutting a fence is necessary, a temporary gate shall be installed. Any such gate shall be left in place at the landowner's request.

6. Repair any drainage tile line within the easement damaged by such construction or maintenance.

7. Pay for any crop damage caused by such construction or maintenance.

8. Supply and install any necessary grounding of a landowner's fences, machinery or buildings.

(d) The utility shall control weeds and brush around the transmission line facilities. No herbicidal chemicals may be used for weed and brush control without the express written consent of the landowner. If weed and brush control is undertaken by the landowner under an agreement with the utility, the landowner shall receive from the utility a reasonable amount for such services.

(e) The landowner shall be afforded a reasonable time prior to commencement of construction to harvest any trees located within the easement boundaries, and if the landowner fails to do so, the landowner shall nevertheless retain title to all trees cut by the utility.

(f) The landowner shall not be responsible for any injury to persons or property caused by the design, construction or upkeep of the high-voltage transmission lines or towers.

(g) The utility shall employ all reasonable measures to ensure that the landowner's television and radio reception is not adversely affected by the high-voltage transmission lines.

(h) The utility may not use any lands beyond the boundaries of the easement for any purpose, including ingress to and egress from the right-of-way, without the written consent of the landowner.

(i) The rights conferred under pars. (c) to (h) may be specifically waived by the landowner in an easement conveyance which contains such paragraphs verbatim.

**(8) COMMISSION REVIEW.** (a) Upon complaint by a company that a regulation by a municipality under sub. (1r) is unreasonable, the commission shall set a hearing and, if the commission finds that the regulation is unreasonable, the regulation shall be void. Subject to pars. (am) to (c), if the commission determines that a municipal regulation that was in effect on January 1, 2007, and immediately prior to January 9, 2008, or that a community standard, as demonstrated through consistent practice and custom in the municipality, that was in effect on January 1, 2007, and immediately prior to January 9, 2008, is substantially the same as the municipal regulation complained of, there is a rebuttable presumption that the latter regulation is reasonable.

(am) A municipal regulation is unreasonable if it has the effect of creating a moratorium on the placement of company lines or systems under sub. (1r) or on the entrance into the municipality of a video service provider, as defined in s. 66.0420 (2) (zg), or is inconsistent with the purposes of s. 66.0420.

(as) Notwithstanding sub. (2), a municipal regulation is unreasonable if it requires a company to pay any part of the cost to modify or relocate the company's facilities to accommodate an urban rail transit system.

(b) A municipal regulation is unreasonable if it requires a company to pay more than the actual cost of functions undertaken by the municipality to manage company access to and use of municipi-

pal rights-of-way. These management functions include all of the following:

1. Registering companies, including the gathering and recording of information necessary to conduct business with a company.

2. Except as provided in provided in par. (c), issuing, processing, and verifying excavation or other company permit applications, including supplemental applications.

3. Inspecting company job sites and restoration projects.

4. Maintaining, supporting, protecting, or moving company equipment during work in municipal rights-of-way.

5. Undertaking restoration work inadequately performed by a company after providing notice and the opportunity to correct the work.

6. Revoking company permits.

7. Maintenance of databases.

8. Scheduling and coordinating highway, street, and right-of-way work relevant to a company permit.

(c) A municipal regulation is unreasonable if it requires a company to be responsible for fees under s. 182.0175 (1m) (bm) that may be assessed to a municipality as a member of the one-call system under s. 182.0175.

(d) It is reasonable for a municipal regulation to provide for the recovery of costs incurred under par. (b) 1., 2., 3., and 7. through a preexcavation permit fee.

(e) It is reasonable for a municipal regulation to provide for the recovery of costs incurred under par. (b) 4., 5., and 6. only from the company that is responsible for causing the municipality to incur the costs.

**(9) TIME LIMIT FOR PERMITS.** If a municipality establishes a permit process under sub. (1r), the municipality shall approve or deny a permit application no later than 60 days after receipt of the application, and, if the municipality fails to do so, the municipality shall be considered to have approved the application and granted the permit. If a municipality denies a permit application, the municipality shall provide the applicant a written explanation of the reasons for the denial at the time that the municipality denies the application.

**History:** 1971 c. 40; 1975 c. 68, 199; 1979 c. 34, 323; 1985 a. 297 s. 76; 1989 a. 31; 1993 a. 213, 246, 371; 1997 a. 204; 2005 a. 441; 2007 a. 42; 2011 a. 22; 2013 a. 20 s. 1564m, 1978d to 1978t; 2013 a. 165, 168; 2015 a. 195 s. 82.

Sub. (2) is a safety statute, the violation of which constitutes negligence per se. An allegation that a power pole located within 4 feet of the traveled portion of a roadway violated this provision stated a cause of action. *Weiss v. Holman*, 58 Wis. 2d 608, 207 N.W.2d 660 (1973).

Sub. (5) is limited to damages arising from the construction, maintenance, or abandonment of facilities within a right-of-way. *Vogel v. Grant-Lafayette Electric Cooperative*, 195 Wis. 2d 198, 536 N.W.2d 140 (Ct. App. 1995), 94-0822.

Sub. (7) (a) governs what must be specified in a conveyance of an easement. Because the easements here were conveyed prior to the enactment of the statute, the conveyances were not subject to the statute's requirements. The circuit court's conclusion that the utility was required to obtain new easements complying with sub. (7) (a) was premised on its erroneous conclusion that the utility's easement rights were limited by the easements' current use. *Wisconsin Public Service Corporation v. Andrews*, 2009 WI App 30, 316 Wis. 2d 734, 766 N.W.2d 232, 07-2673.

**182.0175 Damage to transmission facilities. (1) DEFINITIONS.** In this section:

(am) "Emergency" means a condition that poses a clear and immediate danger to life or health, or a significant loss of property.

(b) "Excavation" means any operation in which earth, rock or other material in or on the ground is moved, removed or otherwise displaced by means of any tools, equipment or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing and driving and means any operation by which a structure or mass of material is wrecked, razed, rended, moved or removed.

(bm) "Excavator" means a person who engages in excavation.

(bt) "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special pur-

**66.0404 Mobile tower siting regulations. (1) DEFINITIONS.** In this section:

(a) “Antenna” means communications equipment that transmits and receives electromagnetic radio signals and is used in the provision of mobile services.

(b) “Application” means an application for a permit under this section to engage in an activity specified in sub. (2) (a) or a class 2 collocation.

(c) “Building permit” means a permit issued by a political subdivision that authorizes an applicant to conduct construction activity that is consistent with the political subdivision’s building code.

(d) “Class 1 collocation” means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility but does need to engage in substantial modification.

(e) “Class 2 collocation” means the placement of a new mobile service facility on an existing support structure such that the owner of the facility does not need to construct a free standing support structure for the facility or engage in substantial modification.

(f) “Collocation” means class 1 or class 2 collocation or both.

(g) “Distributed antenna system” means a network of spatially separated antenna nodes that is connected to a common source via a transport medium and that provides mobile service within a geographic area or structure.

(h) “Equipment compound” means an area surrounding or adjacent to the base of an existing support structure within which is located mobile service facilities.

(i) “Existing structure” means a support structure that exists at the time a request for permission to place mobile service facilities on a support structure is filed with a political subdivision.

(j) “Fall zone” means the area over which a mobile support structure is designed to collapse.

(k) “Mobile service” has the meaning given in 47 USC 153 (33).

(l) “Mobile service facility” means the set of equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment, that is necessary to provide mobile service to a discrete geographic area, but does not include the underlying support structure.

(m) “Mobile service provider” means a person who provides mobile service.

(n) “Mobile service support structure” means a freestanding structure that is designed to support a mobile service facility.

(o) “Permit” means a permit, other than a building permit, or approval issued by a political subdivision which authorizes any of the following activities by an applicant:

1. A class 1 collocation.
2. A class 2 collocation.
3. The construction of a mobile service support structure.

(p) “Political subdivision” means a city, village, town, or county.

(q) “Public utility” has the meaning given in s. 196.01 (5).

(r) “Search ring” means a shape drawn on a map to indicate the general area within which a mobile service support structure should be located to meet radio frequency engineering requirements, taking into account other factors including topography and the demographics of the service area.

(s) “Substantial modification” means the modification of a mobile service support structure, including the mounting of an antenna on such a structure, that does any of the following:

1. For structures with an overall height of 200 feet or less, increases the overall height of the structure by more than 20 feet.
2. For structures with an overall height of more than 200 feet, increases the overall height of the structure by 10 percent or more.

3. Measured at the level of the appurtenance added to the structure as a result of the modification, increases the width of the support structure by 20 feet or more, unless a larger area is necessary for collocation.

4. Increases the square footage of an existing equipment compound to a total area of more than 2,500 square feet.

(t) “Support structure” means an existing or new structure that supports or can support a mobile service facility, including a mobile service support structure, utility pole, water tower, building, or other structure.

(u) “Utility pole” means a structure owned or operated by an alternative telecommunications utility, as defined in s. 196.01 (1d); public utility, as defined in s. 196.01 (5); telecommunications utility, as defined in s. 196.01 (10); political subdivision; or cooperative association organized under ch. 185; and that is designed specifically for and used to carry lines, cables, or wires for telecommunications service, as defined in s. 182.017 (1g) (cq); for video service, as defined in s. 66.0420 (2) (y); for electricity; or to provide light.

**(2) NEW CONSTRUCTION OR SUBSTANTIAL MODIFICATION OF FACILITIES AND SUPPORT STRUCTURES.** (a) Subject to the provisions and limitations of this section, a political subdivision may enact a zoning ordinance under s. 59.69, 60.61, or 62.23 to regulate any of the following activities:

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

2. With regard to a class 1 collocation, the substantial modification of an existing support structure and mobile service facilities.

(b) If a political subdivision regulates an activity described under par. (a), the regulation shall prescribe the application process which a person must complete to engage in the siting, construction, or modification activities described in par. (a). The application shall be in writing and shall contain all of the following information:

1. The name and business address of, and the contact individual for, the applicant.
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) If an applicant submits to a political subdivision an application for a permit to engage in an activity described under par. (a), which contains all of the information required under par. (b), the political subdivision shall consider the application complete. If the political subdivision does not believe that the application is complete, the political subdivision shall notify the applicant in writing, within 10 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An appli-

cant may resubmit an application as often as necessary until it is complete.

(d) Within 90 days of its receipt of a complete application, a political subdivision shall complete all of the following or the applicant may consider the application approved, except that the applicant and the political subdivision may agree in writing to an extension of the 90 day period:

1. Review the application to determine whether it complies with all applicable aspects of the political subdivision's building code and, subject to the limitations in this section, zoning ordinances.

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.

(e) A political subdivision 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 par. (b) 6.

(f) A party who is aggrieved by the final decision of a political subdivision under par. (d) 2. may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

(g) If an applicant provides a political subdivision 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 ordinance does not apply to such a structure unless the political subdivision provides the applicant with substantial evidence that the engineering certification is flawed.

(h) A political subdivision may regulate the activities described under par. (a) only as provided in this section.

(i) If a political subdivision has in effect on July 2, 2013, an ordinance that applies to the activities described under par. (a) and the ordinance is inconsistent with this section, the ordinance does not apply to, and may not be enforced against, the activity.

**(3) COLLOCATION ON EXISTING SUPPORT STRUCTURES.** (a) 1. A class 2 collocation is a permitted use under ss. 59.69, 60.61, and 62.23.

2. If a political subdivision has in effect on July 2, 2013, an ordinance that applies to a class 2 collocation and the ordinance is inconsistent with this section, the ordinance does not apply to, and may not be enforced against, the class 2 collocation.

3. A political subdivision may regulate a class 2 collocation only as provided in this section.

4. A class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject.

(b) If an applicant submits to a political subdivision an application for a permit to engage in a class 2 collocation, the application shall contain all of the information required under sub. (2) (b) 1. to 3., in which case the political subdivision shall consider the application complete. If any of the required information is not in the application, the political subdivision shall notify the applicant in writing, within 5 days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

(c) Within 45 days of its receipt of a complete application, a political subdivision shall complete all of the following or the applicant may consider the application approved, except that the applicant and the political subdivision may agree in writing to an extension of the 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.

(d) A party who is aggrieved by the final decision of a political subdivision under par. (c) 1. may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

**(4) LIMITATIONS.** With regard to an activity described in sub. (2) (a) or a class 2 collocation, a political subdivision may not do any of the following:

(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 an ordinance imposing a moratorium on the permitting, construction, or approval of any such activities.

(c) Enact an ordinance prohibiting the placement of a mobile service support structure in particular locations within the political subdivision.

(d) Charge a mobile radio service provider a fee in excess of one of the following amounts:

1. For a permit for a class 2 collocation, the lesser of \$500 or the amount charged by a political subdivision for a building permit for any other type of commercial development or land use development.

2. For a permit for an activity described in sub. (2) (a), \$3,000.

(e) Charge a mobile radio service provider any recurring fee for an activity described in sub. (2) (a) or a class 2 collocation.

(f) Permit 3rd party consultants to charge the applicant for any travel expenses incurred in the consultant's review of mobile service permits or applications.

(g) Disapprove an application to conduct an activity described under sub. (2) (a) based solely on aesthetic concerns.

(gm) Disapprove an application to conduct a class 2 collocation on aesthetic concerns.

(h) Enact or enforce an ordinance related to radio frequency signal strength or the adequacy of mobile service quality.

(i) 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 political subdivision which fall into disuse. There is a rebuttable presumption that a surety requirement of \$20,000 or less complies with this paragraph.

(j) Prohibit the placement of emergency power systems.

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

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

(m) 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 political subdivision at less than the market rate, or to provide the political subdivision other services via the structure or facilities at less than the market rate.

(n) Limit the duration of any permit that is granted.

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

(p) Disapprove an application based on an assessment by the political subdivision of the suitability of other locations for conducting the activity.

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

(r) 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.

(s) Consider an activity a substantial modification under sub. (1) (s) 1. or 2. if a greater height is necessary to avoid interference with an existing antenna.

(t) Consider an activity a substantial modification under sub. (1) (s) 3. if a greater protrusion is necessary to shelter the antenna from inclement weather or to connect the antenna to the existing structure by cable.

(u) Limit the height of a mobile service support structure to under 200 feet.

(v) Condition the approval of an application on, or otherwise require, the applicant's agreement to indemnify or insure the political subdivision in connection with the political subdivision's exercise of its authority to approve the application.

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

**(5) APPLICABILITY.** If a county enacts an ordinance as described under sub. (2) the ordinance applies only in the unincorporated parts of the county, except that if a town enacts an ordinance as described under sub. (2) after a county has so acted, the county ordinance does not apply, and may not be enforced, in the town, except that if the town later repeals its ordinance, the county ordinance applies in that town.

*History:* 2013 a. 20, 173.

**66.0405 Removal of rubbish.** Cities, villages and towns may remove ashes, garbage, and rubbish from such classes of places in the city, village or town as the board or council directs. The removal may be from all of the places or from those whose owners or occupants desire the service. Districts may be created and removal provided for certain districts only, and different regulations may be applied to each removal district or class of property. The cost of removal may be funded by special assessment against the property served, by general tax upon the property of the respective districts, or by general tax upon the property of the city, village or town. If a city, village or town contracts for ash, garbage or rubbish removal service, it may contract with one or more service providers.

*History:* 1993 a. 246; 1999 a. 150 s. 119; Stats. 1999 s. 66.0405.

**66.0406 Radio broadcast service facility regulations.**

**(1) DEFINITIONS.** In this section:

(a) "Political subdivision" means any city, village, town, or county.

(b) "Radio broadcast services" means the regular provision of a commercial or noncommercial service involving the transmission, emission, or reception of radio waves for the transmission of sound or images in which the transmissions are intended for direct reception by the general public.

(c) "Radio broadcast service facilities" means commercial or noncommercial facilities, including antennas and antenna support structures, intended for the provision of radio broadcast services.

**(2) LIMITATIONS ON LOCAL REGULATION.** Beginning on May 1, 2013, if a political subdivision enacts an ordinance, adopts a resolution, or takes any other action that affects the placement, construction, or modification of radio broadcast service facilities, the

ordinance, resolution, or other action may not take effect unless all of the following apply:

(a) The ordinance, resolution, or other action has a reasonable and clearly defined public health or safety objective, and reflects the minimum practical regulation that is necessary to accomplish that objective.

(b) The ordinance, resolution, or other action reasonably accommodates radio broadcast services and does not prohibit, or have the effect of prohibiting, the provision of such services in the political subdivision.

**(3) CONTINUED APPLICATION OF EXISTING REGULATIONS.** If a political subdivision has in effect on May 1, 2013, an ordinance or resolution that is inconsistent with the requirements that are specified in sub. (2) for an ordinance, resolution, or other action to take effect, the existing ordinance or resolution does not apply, and may not be enforced, to the extent that it is inconsistent with the requirements that are specified in sub. (2).

**(4) DENIAL OF PLACEMENT, CONSTRUCTION, OR MODIFICATION OF FACILITIES.** If a political subdivision denies a request by any person to place, construct, or modify radio broadcast service facilities in the political subdivision, the denial may be based only on the political subdivision's public health or safety concerns. The political subdivision must provide the requester with a written denial of the requester's request, and the political subdivision must provide the requester with substantial written evidence which supports the reasons for the political subdivision's action.

*History:* 2013 a. 20; 2013 a. 173 s. 33.

**66.0407 Noxious weeds.** **(1)** In this section:

(a) "Destroy" means the complete killing of weeds or the killing of weed plants above the surface of the ground by the use of chemicals, cutting, tillage, cropping system, pasturing livestock, or any or all of these in effective combination, at a time and in a manner as will effectually prevent the weed plants from maturing to the bloom or flower stage.

(b) "Noxious weed" means Canada thistle, leafy spurge, field bindweed, any weed designated as a noxious weed by the department of natural resources by rule, and any other weed the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

**(3)** A person owning, occupying or controlling land shall destroy all noxious weeds on the land. The person having immediate charge of any public lands shall destroy all noxious weeds on the lands. The highway patrolman on all federal, state or county trunk highways shall destroy all noxious weeds on that portion of the highway which that highway patrolman patrols. The town board is responsible for the destruction of all noxious weeds on the town highways.

**(4)** The chairperson of each town, the president of each village and the mayor or manager of each city may annually on or before May 15 publish a class 2 notice, under ch. 985, that every person is required by law to destroy all noxious weeds, as defined in this section, on lands in the municipality which the person owns, occupies or controls. A town, village or city which has designated as its official newspaper or which uses for its official notices the same newspaper as any other town, village or city may publish the notice under this subsection in combination with the other town, village or city.

**(5)** This section does not apply to Canada thistle or annual noxious weeds that are located on land that the department of natural resources owns, occupies or controls and that is maintained in whole or in part as habitat for wild birds by the department of natural resources.

*History:* 1975 c. 394 s. 12; 1975 c. 421; Stats. 1975 s. 66.96; 1983 a. 112, 189; 1989 a. 56 s. 258; 1991 a. 39, 316; 1997 a. 287; 1999 a. 150 ss. 617 to 619; Stats. 1999 s. 66.0407; 2009 a. 55.

**MINUTES**  
**ENVIRONMENTAL SERVICES COMMITTEE**  
Government Center County Board Room  
Balsam Lake, WI 54810  
Wednesday, August 3, 2016

**Call to Order**

Meeting called to order by Chairman O'Connell at 9:00 a.m.

Members present: Supervisors O'Connell, Moriak, W. Nelson, Edgell, Olson and Citizen Member, Dale Wood.

Others present: County Clerk, Andrea Jerrick, Jason Kjeseth, Corporation Counsel, Fuge and Administrator Frey and the press.

**Approval Agenda/Minutes**

Chairman called for a motion to approve the agenda. Motion (Wood/Olson) to approve the agenda. Motion to approve agenda carried by unanimous voice vote.

Chairman called for a motion to approve the minutes of the July 20, 2016 Environmental Services meeting. Motion (Nelson/Wood) to approve the minutes. Motion to approve minutes carried by unanimous voice vote.

Time was given for Public Comment, none offered

**Action Items**

Chair called on Administrator Frey to go over the proposed Fee Schedule for those departments under the direction of the ES Committee. Committee asked Administrator Frey to look at the proposed fees of the Land and Water Department as they relate to Nonmetallic Mining Reclamation.

Chairman O'Connell called for a 10 minute break.

Chair called on Corporation Counsel, Jeff Fuge for a review of the proposed Broadband Ordinance. Committee took no action on the proposed ordinance but will take another look at it during their September meeting.

Chairman called on Zoning Administrator, Jason Kjeseth for receipt of updated Amended Shoreland and Comprehensive Land Use Ordinances. Jason presented final proposed amended ordinances to the committee. Committee reviewed final changes.

Motion (Nelson/Edgell) to approve the Proposed Amended Polk County Shoreland Protection Zoning Ordinance and send to full County Board. Motion carried by unanimous voice vote.

Motion (Edgell/Olson) to approve the Amended Polk County Comprehensive Land Use Ordinance and send to full County Board. Motion carried by unanimous voice vote.

Committee received handout from Jason Kjeseth, regarding Conservation Design Development Standards for review and discussion at a future date.

**Closing Matters**

Committee received copies of annual reports

**Future Agenda Items**

2<sup>nd</sup> monthly meeting date of August 17<sup>th</sup> to be used for Manure Tour. Committee to depart the government Center at 9:00 a.m. for tour.

Next meeting scheduled for September 7, 2016. Future agenda items to include receipt and review of monthly & annual reports, another look at the Broadband Ordinance, Discussion of Polk County Fair Park and Budget Review.

**Adjourn**

Motion (Nelson/Moriak) to adjourn. Motion carried unanimously. Meeting adjourned 11:55 a.m.