

# VILLAGE OF ELM GROVE

13600 Juneau Boulevard  
Elm Grove, WI 53122

LEGISLATIVE COMMITTEE

Tuesday, September 26, 2019 \* 7:00 PM \* Parkview Room

## AGENDA

**1. Call meeting to order**

**2. Review and act on Minutes**

*Documents:*

[LC081519md.pdf](#)

**3. Review and act on creation of Chapter 335-50.2 Wireless Telecommunications Facilities in the Right-of-Way**

*Documents:*

[335-50.2 Wireless Facilities TRACK draft 9-4-19.pdf](#)  
[Permit Small Wireless Facilities - draft 091919.pdf](#)

**4. Review and act on amendments to Chapter 335-22 B-1 Local Business District**

*Documents:*

[B-1 Local Business District - draft 092019.pdf](#)

**5. Review and act on amendment to Chapter 335-23 B2 Office Business District**

*Documents:*

[B-2 Office Business District - draft 092019.pdf](#)

**6. Review and act on amendment to Chapter 335-24 B-3 Mid-Rise Office and Professional District**

*Documents:*

[B-3 Mid-Rise Office and Professional District - draft 092019.pdf](#)

**7. Other Business**

**8. Adjourn**

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires that the meeting or materials for the meeting has to be in an accessible location or format must contact the Village Clerk, Mary S. Stredni, at 262-782-6700 or 13600 Juneau Boulevard by 3:00 PM Friday prior to the meeting so that any necessary arrangements can be made to accommodate your request.

**NOTICE:** It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice.

**VILLAGE OF ELM GROVE  
LEGISLATIVE COMMITTEE MINUTES  
Thursday, August 15, 2019**

Present: Trustee Haas, President Palmer, Barry Book, and Angie Jodie. Trustee Domaszek excused.  
David De Angelis Village Manager, Mary Stredni Village Clerk, Tom Harrigan Zoning Administrator, and Village Attorney Hector de la Mora.

1. Call meeting to order  
Mary Stredni brought the meeting to order at 7:00 p.m. President Palmer and Book moved and seconded to appoint Trustee Haas to Chair meeting. Motion carried.
2. Minutes  
Palmer and Haas moved and seconded to approve the March 21, 2019 minutes. Motion carried.
3. Review and act on creation of ordinance §335-50.2 Wireless Facilities in the Right-of-Way  
Attorney de la mora reviewed the amendments and changes to State Law. The maximum fee allowed by State law is \$257 per permit. Can also recover costs incurred by Village such as legal and engineering fees – should be included in the ordinance.  
  
In Section 7d – between #10 and #11 add language regarding replacement of Village owned structures to be at the permit holder's expense.  
Also add reference to Application Checklist and Sample Aesthetic Standards. Both items will be separate from the ordinance. Staff will prepare an application form.  
  
Consensus of Committee to move forward with discussed changes. The amendments will be reviewed at the next meeting.
4. Review §335-22 – B-1 Local Business District  
Attorney de la mora reviewed the change in State Law regarding conditional use permits. Consensus to consolidate listed items under the permitted uses as possible. Consensus to have staff review what similar municipalities have done after the change in State Law.  
  
At next meeting, will review B-1, B-2, and B-3.
8. Adjourn  
Jodie and Palmer moved and seconded to adjourn at 8:30 p.m. Motion carried.

Respectfully submitted,

Mary S Stredni  
Village Clerk

1     **STATE OF WISCONSIN**                      **WAUKESHA COUNTY**                      **VILLAGE OF ELM GROVE**

2  
3    **ORDINANCE 335-50.2**

4    **WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY**

5  
6     THE VILLAGE BOARD OF THE VILLAGE OF ELM GROVE DO ORDAIN AS FOLLOWS:

7     §335-50.2 Wireless Telecommunications Facilities in the Right-of-Way is hereby created as follows:

8     **Section 1: Definitions**

9     For the purposes of this Ordinance, the terms below shall have the following meanings: “Administrator”  
10     means the Village Manager or his or her designee.

11     “Application” means a formal request, including all required and requested documentation and  
12     information, submitted by an Applicant to the Village of Elm Grove for a wireless permit.

13     “Applicant” means a wireless provider that submits an application.

14     “Base Station” means the same as in 47 C.F.R. § 1.6100(b)(1), which defines the term to mean a  
15     structure or wireless telecommunications equipment at a fixed location that enables FCC-licensed or  
16     authorized wireless communications between user equipment and a communications network. This  
17     definition does not include towers.

18     “Collocate,” “collocate on,” or “collocation” means the placement, mounting, replacement,  
19     modification, operation, or maintenance of a small wireless facility on, or of ground-mounted antenna  
20     equipment adjacent to, a structure.

21     “Eligible Facilities Request” means the same as in 47 C.F.R. § 1.6100(b)(3), which defines the term to  
22     mean any request for modification of an existing tower or base station that does not substantially  
23     change the physical dimensions of such tower or base station, involving: (i) collocation of new  
24     transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission  
25     equipment.

26     “FCC” means the Federal Communications Commission.

27     “Right-of-way” means the area on, below, or above a highway, as defined in s. 340.01 (22), other than a  
28     federal interstate highway; sidewalk; utility easement, other than a utility easement for a cooperative  
29     association organized under ch. 185 for purposes of providing or furnishing heat, light, power, or water  
30     to its members only; or other similar property; including property owned or controlled by the  
31     department of transportation

32             “Small Wireless Facility,” means a wireless facility to which all of the following apply:

33             1. The wireless facility satisfies any of the following:

34                 a. The wireless facility is mounted on a structure 50 feet or less in height including any antenna.

35 b. The wireless facility is mounted on a structure no more than 10 percent taller than any other  
36 adjacent structure.

37 c. The wireless facility does not increase the height of an existing structure on which the wireless  
38 facility is located to a height of more than 50 feet or by 10 percent, whichever is greater.

39 2. Each antenna associated with the deployment of the wireless facility, excluding associated  
40 antenna equipment, is no more than 3 cubic feet in volume.

41 3. All other wireless equipment associated with the wireless facility specified in subd. 1., including  
42 the wireless equipment associated with the antenna and any preexisting associated equipment on the  
43 structure, is no more than 28 cubic feet in volume.

44 4. The wireless facility does not require registration as an antenna structure under [47 CFR part 17](#).

45 5. The wireless facility is not located on tribal land, as defined in [36 CFR 800.16 \(x\)](#).

46 6. The wireless facility does not result in human exposure to radio frequency in excess of the  
47 applicable safety standards specified in [47 CFR 1.1307](#).

48 “Support Structure” means any structure capable of supporting wireless telecommunications  
49 equipment.

50 “Technically feasible” means that by virtue of engineering or spectrum usage the proposed placement  
51 for a small or otherwise wireless facility, or its design, concealment measures, or site location can be  
52 implemented without a significant reduction in the functionality of same.

53 “Tower” means the same as in 47 C.F.R. § 1.6100(b)(9), which defines the term as any structure built for  
54 the sole or primary purpose of supporting any Federal Communication Commission (FCC) licensed or  
55 authorized antennas and their associated facilities, including structures that are constructed for wireless  
56 communications services including, but not limited to, private, broadcast, and public safety services, as  
57 well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the  
58 associated site. This definition does not include utility poles.

59 “Underground areas” means those areas where there are no electrical facilities or facilities of the  
60 incumbent local exchange carrier in the right of way; or where the wires associated with the same are or  
61 are required to be located underground; or where the same are scheduled to be converted from  
62 overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and  
63 do not include transmission facilities used or intended to be used to transmit electricity at nominal  
64 voltages more than 35,000 volts.

65 “Utility Pole” means a pole that is used in whole or in part by a communications service provider; used  
66 for electric distribution, lighting, traffic control, signage, or a similar function; or used for the collocation  
67 of small wireless facilities. “Utility pole” does not include a wireless support structure or electric  
68 transmission structure.

69 “Village” means Village of Elm Grove.

70 “Wireless Infrastructure Provider” means any person, other than a wireless services provider, that builds  
71 or installs wireless communication transmission equipment, antenna equipment, or wireless support  
72 structures.

73 “Wireless Permit” or “Permit” means a written authorization issued pursuant to this Ordinance allowing  
74 the placement or modification of a wireless telecommunications facility of a design specified in the  
75 permit at a particular location within the right-of-way, and the modification of any existing support  
76 structure to which the wireless telecommunications facility is proposed to be attached.

77 “Wireless Provider” means a wireless infrastructure provider or a wireless services provider.

78 “Wireless Regulations” means those regulations adopted pursuant to Section 5(b)(1) to implement the  
79 provisions of this Ordinance.

80 “Wireless Service Provider” means an entity that provides wireless services to end users.

81 “Wireless Telecommunications Equipment” means equipment at a fixed location that enables FCC-  
82 licensed or authorized wireless communications between user equipment and a communications  
83 network.

84 “Wireless Telecommunications Facility” or “Facility” means a facility at a fixed location in the right-of-  
85 way consisting of a base station, antennas and other accessory equipment, and a tower and  
86 underground wiring, if any, associated with the base station.

87 Definitions in this Section may contain quotations or citations to 47 C.F.R. §§ 1.6100 and 1.6002. In the  
88 event that any referenced section is amended, creating a conflict between the definition as set forth in  
89 this Ordinance and the amended language of the referenced section, the definition in the referenced  
90 section, as amended, shall control.

91 **Section 2: Purpose**

92 In the exercise of its police powers, the Village has priority over all other uses of the right-of-way. The  
93 purpose of this Ordinance is to provide the Village with a process for managing, and uniform standards  
94 for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-  
95 way consistent with the Village’s obligation to promote the public health, safety, and welfare; to  
96 manage the right-of-way; and to ensure that the public’s use is not obstructed or incomed by the  
97 use of the right-of-way for the placement of wireless telecommunications facilities. The Village  
98 recognizes the importance of wireless telecommunications facilities to provide high-quality  
99 communications and internet access services to residents and businesses within the Village. The Village  
100 also recognizes its obligation to comply with applicable Federal and State laws regarding the placement  
101 of wireless telecommunications facilities in the right-of-way including, without limitation, the  
102 Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief  
103 and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Ordinance shall be  
104 interpreted consistent with those provisions.

105 **Section 3: Scope**

106 (a) **Applicability.** Unless exempted by Section 3(b), below, every person who wishes to place a wireless  
107 telecommunications facility in the right-of-way or modify an existing wireless telecommunications  
108 facility in the right-of-way must obtain a wireless permit under this Chapter.

109 (b) **Exempt Facilities.** The provisions of this Ordinance (other than Sections 10-14) shall not be applied  
110 to applications for the following:

111 (1) Installation of a small wireless facility on the strand between two utility poles, provided that  
112 the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and  
113 provided further that the installation does not require replacement of the strand, or excavation,  
114 modification, or replacement of either of the two utility poles linked by the strand.

115 (2) Installation of a mobile cell facility (commonly referred to as “cell on wheels” or “cell on  
116 truck”) for a temporary period in connection with an emergency or event, but no longer than  
117 required for the emergency or event, provided that installation does not involve excavation,  
118 movement, or removal of existing facilities.

119 (3) Placement or modification of a wireless telecommunications facility on structures owned by  
120 or under the control of the Village.

121 (4) Placement or modification of a wireless telecommunications facility by Village staff or any  
122 person performing work under contract with the Village.

123 (5) Modification of an existing wireless telecommunications facility that makes no material  
124 change to the footprint of a facility or to the surface or subsurface of a public street if the  
125 activity does not disrupt or impede traffic either vehicular or pedestrian in the traveled portion  
126 of a street, and if the work does not change the visual or audible characteristics of the wireless  
127 telecommunications facility.

128 **Section 4: Nondiscrimination**

129 In establishing the rights, obligations, and conditions set forth in this Ordinance, it is the intent of the  
130 Village to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory  
131 manner, to the extent required by law, while taking into account the unique technologies, situation, and  
132 legal status of each applicant or request for use of the right-of-way.

133 **Section 5: Administration**

134 (a) **Village Manager.** The Village Manager is responsible for administering this Ordinance.

135 (b) **Powers.** As part of the administration of this Ordinance, the Village Manager may:

136 (1) Adopt and amend wireless regulations and fees schedules governing the placement and  
137 modification of wireless telecommunications facilities, which shall be deemed ratified by the  
138 Village Board thirty (30) days after notification by the Village Manager of the adoption of any  
139 amendments thereto if no trustee requests that any part of an amendment be reconsidered by  
140 the entire Board, in addition to but consistent with the requirements of this Ordinance,

- 141 including regulations governing collocation, the resolution of conflicting applications for  
142 placement of wireless telecommunications facilities, and aesthetic standards.
- 143 (2) Interpret the provisions of the Ordinance and the wireless regulations.
- 144 (3) Develop forms and procedures for submission of applications for wireless permits consistent  
145 with this Ordinance.
- 146 (4) Establish and update fees which encompass all direct and indirect costs and expenses  
147 attributable to the evaluation, monitoring and administration of the placement of a Small  
148 Wireless Facility including but not limited to any related permit or fee associated with its  
149 placement or installation within any Right-of-Way.
- 150 (5) Collect any fees associated with the administration of any applicable Village Ordinance or  
151 regulation.
- 152 (6) Require, as a condition of completeness of any application, notice to members of the public,  
153 at the sole expense of the applicant, that may be affected by the placement or modification of  
154 the wireless telecommunications facility that is the subject of the wireless permit application.
- 155 (7) Establish deadlines for submission of information related to an application, and extend or  
156 shorten deadlines where appropriate and consistent with federal laws and regulations.
- 157 (8) Issue notices of incompleteness or requests for information in connection with any wireless  
158 permit application.
- 159 (9) Select and retain, at the sole expense of the applicant, independent consultant(s) or  
160 attorney(s) with expertise in telecommunications to review any issue that involves specialized or  
161 expert knowledge in connection with any permit application.
- 162 (10) Coordinate and consult with other Village staff, committees, and governing bodies to  
163 ensure timely action on all other required permits under Section 6(b)(9) of this Ordinance.
- 164 (11) Subject to appeal as provided in Section 8(d) of this Ordinance, determine whether to grant,  
165 grant subject to conditions, or deny an application.
- 166 (12) Take such other steps as may be required to timely act upon wireless permit applications,  
167 including issuing written decisions and entering into agreements to mutually extend the time for  
168 action on an application.

169 **Section 6: Application**

170 (a) **Format.** Unless the wireless regulations provide otherwise, the applicant must submit both a paper  
171 copy and an electronic copy (in a searchable format) of any application, as well as any amendments or  
172 supplements to the application or responses to requests for information regarding an application, to the  
173 Village Manager. An application is not complete until both the paper and electronic copies are received  
174 by the Village Manager.

175 (b) **Content.** In order to be considered complete, an application must contain:



- 176 (1) All information required pursuant to this and other relevant ordinances, the wireless  
177 regulations and forms and procedures applicable thereto.
- 178 (2) A completed application cover sheet signed by an authorized representative of the applicant,  
179 agreeing to all necessary permit conditions.
- 180 (3) The complete legal name of the applicant (including any corporate or trade name), and the  
181 name, address, email address, and telephone number of the main office of the applicant and of  
182 a local representative including his/her cell phone number. If the applicant is a wireless  
183 infrastructure provider, the name, address, email address, and telephone number of the main  
184 office and contact information for the wireless service provider(s) that will be using the wireless  
185 telecommunications facility must also be provided.
- 186 (4) A statement of which shot clock or shot clocks apply to the application and the reasons the  
187 chosen shot clocks apply.
- 188 (5) A separate and complete description of each proposed wireless telecommunications facility  
189 and the work that will be required to install or modify it, including but not limited to detail  
190 regarding proposed excavations, if any; detailed site plans showing the location of the facility  
191 and technical specifications for each element of the facility, clearly describing the site and all  
192 structures and facilities at the site before and after installation or modification and identifying  
193 the owners of such preexisting structures and facilities; and describing the distance to the  
194 nearest residential dwelling unit. Before and after 360-degree photo simulations must be  
195 provided for each facility.
- 196 (6) At least four (4) photographs taken of each site, support structure, tower or utility pole that  
197 is proposed to be used by the applicant showing a view of same from a North, South, East and  
198 West perspective.
- 199 (7) Proof that the applicant has mailed to the owners of all property within 300 feet of the  
200 proposed wireless telecommunications facility a notice that the applicant is submitting an  
201 application to the Village for placement or modification of a wireless telecommunications facility  
202 in the right-of-way, which notice must include (i) the proposed location of the facility, (ii) a  
203 description and scale image of the proposed facility, and (iii) an email address and phone  
204 number for a representative of the applicant who will be available to answer questions from  
205 members of the public about the proposed project.
- 206 (8) A copy of the FCC license for the facility or a sworn written statement from the applicant  
207 attesting that the facility will comply with current FCC regulations.
- 208 (9) To the extent that filing of the wireless permit application establishes a deadline for action  
209 on any other permit that may be required in connection with the wireless telecommunications  
210 facility, the application must include complete copies of applications for every required permit  
211 (including without limitation electrical permits, building permits, traffic control or interruption  
212 permits, and excavation permits), with all engineering completed and with all fees associated  
213 with each permit.

214 (10) A certification for each support structure by a registered and qualified engineer that the  
215 installation can be supported by and does not exceed the tolerances of the structure on which it  
216 will be mounted and that the specific place on the support structure where the wireless  
217 telecommunications facility is intended to be placed or mounted is in a suitable condition for  
218 such purpose and that all elements of the wireless telecommunications facility comply with  
219 applicable safety standards.

220 (11) Payment of all required fees.

221 (12) If an applicant should contend that denial of the application would prohibit or effectively  
222 prohibit the provision of service in violation of federal law, or otherwise violate applicable law,  
223 the application must provide all evidence on which the applicant relies in support of that claim.  
224 Applicants may not supplement submitted evidence if doing so would prevent the Village from  
225 complying with any deadline for action on an application.

226 (13) If the application is an eligible facilities request, the application must contain information  
227 sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R.  
228 § 1.6100(b)(3), including evidence that the application relates to an existing tower or base  
229 station that has been approved by the Village. Before and after 360-degree photo simulations  
230 must be provided with detailed specifications demonstrating that the modification does not  
231 substantially change the physical dimensions of the existing approved tower or base station.

232 (c) **Waivers.** Requests for waivers from any requirement of this Section 6 shall be made in writing to the  
233 Village Manager. The Village Manager may grant a request for waiver if it is demonstrated that,  
234 notwithstanding the issuance of the waiver, (1) the Village will be provided with all information  
235 necessary to understand the nature of the construction or other activity to be conducted pursuant to  
236 the wireless permit sought; and (2) the Village will be able to conclude that the Village's obligation to  
237 promote the public health, safety and welfare is not compromised by the granting of a waiver.

238 (d) **Fees.** Applicant must provide an application fee and shall be required to pay all costs reasonably  
239 incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees  
240 shall be reviewed periodically and adjusted based on the costs the Village expects to incur, with a review  
241 commencing by the first anniversary of the effective date of this Ordinance.

242 (e) **Public Records.** Applications are public records that may be made publicly available pursuant to  
243 state and federal public records law. Notwithstanding the foregoing, the applicant may designate  
244 portions of the application materials that it reasonably believes contain proprietary or confidential  
245 information by clearly marking each portion of such materials accordingly, and the Village shall  
246 endeavor to treat the information as proprietary and confidential, subject to applicable state (Wis. Stat.  
247 § 19.31 – 19.39) and federal public records law and the Village Manager's determination that the  
248 applicant's request for confidential or proprietary treatment of the application materials is reasonable.  
249 The Village shall not be required to incur any costs to protect the application from disclosure but can  
250 tender the defense of any public records complaint/action to the applicant.

251 **Section 7: General Standards**

252 (a) **Generally.** Wireless telecommunications facilities shall meet the minimum requirements set forth in  
253 this Ordinance and the wireless regulations, in addition to the requirements of any other applicable law  
254 or regulation.

255 (b) **Regulations.** The wireless regulations and decisions on wireless permits shall, at a minimum, ensure  
256 that the requirements of this Ordinance are satisfied, unless it is determined that the applicant has  
257 established that denial of an application would, within the meaning of federal law, prohibit or effectively  
258 prohibit the provision of a telecommunications or personal wireless services, or otherwise violate  
259 applicable laws or regulations. If that determination is made, the requirements of this Ordinance and  
260 the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

261 (c) **Standards.**<sup>1</sup>

262

263 (1) Wireless telecommunications facilities shall be installed and modified in a manner that:

264 (A) Minimizes risks to public safety;

265 (B) Ensures that placement of facilities on existing structures is within the tolerance and  
266 suitability of those structures in consideration of all other fixtures planned for or existing  
267 thereon;

268 (C) Avoids, where technically feasible, placement of facilities in aboveground areas,  
269 installation of new support structures or equipment cabinets in the public right-of-way,  
270 or placement in residential areas when commercial areas are reasonably available;

271 (D) Maintains the integrity and character of the neighborhoods and corridors in which  
272 the facilities are located;

273 (E) Ensures that installations minimize the intrusion on the right-of-way;

274 (F) Ensures that the Village bears no risk or liability as a result of the installations; and

275 (G) Ensures that applicant's use does not inconvenience the public, interfere with the  
276 primary uses of the right-of-way, or hinder the ability of the Village or other government  
277 entities to improve, modify, relocate, abandon, or vacate the right-of-way or any  
278 portion thereof, or to cause the improvement, modification, relocation, vacation, or  
279 abandonment of facilities in the right-of-way.

280 (2) No wireless permit shall be issued unless (i) the wireless service provider applicant has  
281 immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a  
282 contract with a wireless service provider that has immediate plans to use the proposed facility.

283 (3) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic  
284 and at all times must comply with the requirements of the Americans with Disabilities Act of  
285 1990.

286 (4) Aesthetic standards. Attachment C attached hereto constitutes the aesthetic regulations  
287 adopted as part of this Ordinance subject to Section 5 (b) (1) of this Ordinance.

288 (d) **Standard Permit Conditions.** All wireless permits under this Ordinance are issued subject to the  
289 following minimum conditions:

290 (1) **Compliance.** The permit holder shall at all times maintain compliance with all applicable  
291 Federal, State, and Village ordinances and regulations, and other rules. Violation of such  
292 provisions may result in forfeitures under Village of Elm Grove Ordinance § 1-16.

293 (2) **Term.** A wireless permit issued pursuant to an eligible facilities request shall expire at the  
294 same time the permit for the underlying existing wireless telecommunications facility expires.  
295 Otherwise, wireless permits shall be valid for a period of five (5) years from the date of issuance  
296 unless revoked pursuant to Section 9(b) of this Ordinance.

297 (3) **Contact Information.** The permit holder shall at all times maintain with the Village accurate  
298 contact information for the permit holder and all wireless service providers making use of the  
299 facility, which shall include an office and cell phone number, mailing address, and email address  
300 for at least one natural person and his or her backup who shall be available 24/7 in the event of  
301 any emergency.

302 (4) **Emergencies.** The Village shall have the right to support, repair, disable, or remove any  
303 elements of the facilities in emergencies or when the facility threatens imminent harm to  
304 persons or property.

305 (5) **Indemnities.** The permit holder, by accepting a permit under this Ordinance, agrees to  
306 indemnify, defend, and hold harmless the Village, its elected and appointed officials, officers,  
307 employees, agents, representatives, and volunteers (collectively, the “Indemnified Parties”)  
308 from and against any and all suits, actions, legal or administrative proceedings, claims, demands,  
309 damages, liabilities, interest, attorneys’ fees, costs, and expenses of whatsoever kind or nature  
310 in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason  
311 of any act, omission, fault, or negligence, whether active or passive, of the permit holder or  
312 anyone acting under its direction or control or on its behalf, even if liability is also sought to be  
313 imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and  
314 hold harmless the Indemnified Parties shall be applicable even if the liability results from or in  
315 part from an act or failure to act on the part of one or more of the Indemnified Parties.  
316 However, the obligation does not apply if the liability results from the willful misconduct of an  
317 Indemnified Party.

318 (6) **Adverse Impacts on Adjacent Properties.** The permit holder shall undertake all reasonable  
319 efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from  
320 the construction, operation, maintenance, modification, or removal of any wireless facility,  
321 support structure or wireless telecommunications equipment.

322 (7) **General maintenance.** The wireless communications facility or equipment and any  
323 associated structures shall be maintained in a neat and clean manner and in accordance with all  
324 approved plans and conditions of approval.

325 (8) **Graffiti Removal.** All graffiti on facilities shall be removed at the sole expense of the permit  
326 holder within 48 hours after notification from the Village

327 (9) **Relocation.** At the request of the Village pursuant to Section 10 of this Ordinance, the  
328 permit holder shall promptly and at its own expense without right of reimbursement  
329 permanently remove and relocate any wireless telecommunications facility in the right-of-way.

330 (10) **Abandonment.** The permit holder shall promptly notify the Village whenever a facility has  
331 not been in use for a continuous period of 60 days or longer and must comply with Section 11 of  
332 this Ordinance.

333 (11) **Restoration.** A permit holder who removes or relocates a facility from the right-of-way  
334 must restore the right-of-way in accordance with Section 12 of this Ordinance.

335 (12) **Record Retention.** The permit holder shall retain full and complete copies of all permits  
336 and other regulatory approvals issued in connection with the facility, which includes without  
337 limitation all conditions of approval, approved plans, resolutions, and other documentation  
338 associated with the permit or regulatory approval. In the event the Village cannot locate any  
339 such full and complete permits or other regulatory approvals in its official records, and the  
340 permit holder fails to retain full and complete records in the permit holder's files, any  
341 ambiguities or uncertainties that would be resolved through an examination of the missing  
342 documents will be conclusively resolved against the permit holder.

343 (13) **Radio Frequency Emissions.** Every wireless facility shall at all times comply with applicable  
344 FCC regulations governing radio frequency emissions, and failure to comply with such  
345 regulations shall be treated as a material violation of the terms of a permit issued pursuant to  
346 this Ordinance.

347 (14) **Certificate of Insurance.** A certificate of insurance (except an Accord 25) and all necessary  
348 endorsements demonstrating to the satisfaction of the Village Attorney that the applicant has  
349 named the Village, its officers, agents and employees as an additional insured on a primary and  
350 contributing basis for general liability in an amount of not less than One (1) Million Dollars and  
351 has provided statutory workers compensation coverage for liability that might arise out of the  
352 presence of the facility in the right-of-way.

353 **Section 8: Application Processing and Appeal**

354 (a) **Rejection for Incompleteness.** Notices of incompleteness shall be provided in conformity with state,  
355 local, and federal law, including 47 C.F.R. § 1.6003(d), as amended.

356 (b) **Processing Timeline.** Wireless permit applications (including applications for other permits under  
357 Section 6(b)(9) necessary to place or modify the facility) and appeals will be processed in conformity  
358 with the shot clocks set forth in state, local, and federal law, as amended.

359 (c) **Written Decision.**<sup>1</sup> In the event that an application is denied (or approved with conditions beyond  
360 the standard permit conditions set forth in Section 7(d)), the Village Manager shall issue a written  
361 decision with the reasons therefor, supported by evidence contained in a written record.

362 (d) **Appeal to Village Board.** Any person adversely affected by the decision of the Village Manager may  
363 appeal to the Village Board of Trustees in writing detailing the basis for the appeal. An appeal by a  
364 wireless infrastructure provider must be taken jointly with the wireless service provider that intends to  
365 use the wireless telecommunications facility.

366 (e) **Deadline for Appeal.**

367 (1) Appeals that involve eligible facilities requests must be filed within three (3) business days of  
368 the written decision of the Village Manager.

369 (2) All other appeals not governed by Section 8(e)(1), above, must be filed within ten (10)  
370 business days of the written decision of the Village Manager, unless the Village Manager  
371 extends the time therefor. An extension may not be granted where extension would result in  
372 approval of the application by operation of law.

373 (d) **Decision Deadline.** All appeals shall be conducted so that a timely written decision may be issued in  
374 accordance with the applicable shot clock.

375 **Section 9: Expiration and Revocation**

376 (a) **Expiration.** A wireless permit issued pursuant to an eligible facilities request shall expire at the same  
377 time the permit for the underlying existing wireless telecommunications facility expires. Otherwise,  
378 wireless permits shall be valid for a period of five (5) years from the date of issuance. Upon expiration  
379 of the wireless permit, the permit holder must either:

380 (1) Remove the wireless telecommunications facility; or,

381 (2) Submit an application to renew the permit at least ninety (90) days prior to its expiration.  
382 The facility may remain in place until the renewal application is acted on by the Village and any  
383 appeals from the Village's decision are exhausted.

384 (b) **Revocation for Breach.** A wireless permit may be revoked for failure to comply with the conditions  
385 of the permit or applicable federal, state, County or Village Ordinance or regulations or rules. Upon  
386 revocation, the wireless telecommunications facility must be removed within thirty (30) days of receipt  
387 of written notice from the Village. All costs incurred by the Village in connection with the revocation,  
388 removal, and right-of-way restoration shall be paid by the permit holder.

389 (c) **Failure to Obtain Permit.** Unless exempted from permitting by Section 3(b) of this Ordinance, a  
390 wireless telecommunications facility installed without a wireless permit must be removed within thirty  
391 (30) days of receipt of written notice from the Village. All costs incurred by the Village in connection  
392 with the notice, removal, and right-of-way restoration shall be paid by entities who own or control any  
393 part of the wireless telecommunications facility.



394 **Section 10: Relocation**

395 Except as otherwise prohibited by state or federal law, a permit holder shall promptly and at its own  
396 sole expense without right of any reimbursement, with due regard for seasonal working conditions,  
397 permanently remove and relocate any of its wireless telecommunications facilities in the right-of-way  
398 whenever the Village requests such removal and relocation. The Village may make such a request to  
399 prevent the facility from interfering with a present or future Village use of the right-of-way or on a utility  
400 pole for designated services per Wis. Stat. § 66.0414 (1) (y); a public improvement undertaken by the  
401 Village; an economic development project in which the Village has an interest or investment; when the  
402 public health, safety, or welfare require it; or when necessary to prevent interference with the safety  
403 and convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit  
404 holder shall not be required to remove or relocate its facilities from any right-of-way that has been  
405 vacated in favor of a non-governmental entity except an abutting property owner, unless and until that  
406 entity pays the reasonable costs of removal or relocation to the permit holder.

407 **Section 11: Abandonment**

408 (a) **Cessation of Use.** In the event that a permitted facility within the right-of-way is not in use for a  
409 continuous period of sixty (60) days or longer, the permit holder must promptly notify the Village and do  
410 one of the following:

411 (1) Provide information satisfactory to the Village Manager that the permit holder's obligations  
412 for its facilities under this Ordinance have been lawfully assumed by another permit holder.

413 (2) Submit to the Village Manager a proposal and instruments for dedication of the facilities to  
414 the Village if a permit holder proceeds under this Section 11(a)(2), the Village may, at its option:

415 (A) Accept the dedication for all or a portion of the facilities;

416 (B) Require the permit holder, at its own expense, to remove the facilities and perform  
417 the required restoration under Section 12; or

418 (C) Require the permit holder to post a letter of credit or provide payment sufficient to  
419 reimburse the Village for reasonably anticipated costs to be incurred in removing the  
420 facilities and undertaking restoration under Section 12.

421 (3) Remove its facilities from the right-of-way within six (6) months of notifying the Village of  
422 non-use for sixty (60) days and perform the required restoration under Section 12, unless the  
423 Village Manager waives this requirement or provides a later deadline.

424 (b) **Abandoned Facilities.** Facilities of a permit holder who fails to comply with Section 11(a) and which,  
425 for six (6) months, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed  
426 to be a public nuisance. In addition to any remedies or rights it has at law or in equity, the Village may,  
427 at its option:

428 (1) abate the public nuisance and recover the cost from the permit holder or the permit holder's  
429 successor in interest;

430 (2) take possession of the facilities; and/or

431 (3) require removal of the facilities by the permit holder or the permit holder’s successor in  
432 interest.

433 **Section 12: Restoration**

434 In the event that a permit holder removes or is required to remove a wireless telecommunications  
435 facility from the right-of-way under this Ordinance (or relocate it pursuant to Section 10), the permit  
436 holder must restore the right-of-way to its prior condition in accordance with Village specifications.  
437 However, a support structure owned by another entity authorized to maintain that support structure in  
438 the right-of-way need not be removed but must instead be restored to its prior condition. If the permit  
439 holder fails to make the restorations required by this Section 12, the Village at its option may do such  
440 work. In that event, the permit holder shall pay to Village, within 30 days of billing therefor, the cost of  
441 restoring the right-of-way.

442 **Section 13: Placement on Village Owned or Controlled Structures**

443 The Village may negotiate agreements for placement of wireless telecommunications facilities on Village  
444 owned or controlled structures in the right-of-way. The agreement shall specify the compensation to  
445 the Village for use of the structures. The person or entity seeking the agreement shall reimburse the  
446 Village for all costs the Village incurs in connection with its review of and action upon the request for an  
447 agreement.

448 **Section 14: Severability**

449 If any section, subsection, clause, phrase, or portion of this Ordinance is for any reason held to be illegal  
450 or otherwise invalid by any court or administrative agency of competent jurisdiction, such illegal or  
451 invalid portion shall be severable and shall not affect or impair any remaining portion of this Ordinance,  
452 which shall remain in full force and effect.

453

454 This Ordinance shall take effect and be in full force from and after its passage and posting.

455

456 VILLAGE OF ELM GROVE

457 Dated this \_\_\_\_\_ day of October, 2019

458

459 \_\_\_\_\_

460 Neil H. Palmer, Village President

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462 \_\_\_\_\_

463 Mary S. Stredni, Village Clerk

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**ATTACHMENT C  
AESTHETIC STANDARDS**

**LOCATION WITHIN DISTRICTS**

The most desirable location for new telephone wireless telecommunications facilities is co-location on existing facilities. All wireless telecommunications facilities shall be sited to avoid or minimize land use conflicts in compliance with the following standards:

1. **Preferred Locations.** The following list of preferred locations for wireless telecommunications facilities is in order of preference from most to least preferred: Industrial, public or quasi-public, commercial and office zoning districts.

2. **Less Preferred Locations.** The following less preferred locations are listed in order of preference from most to least preferred: Parks or open space and residential zoning districts.

3. **Avoid Residential and Open Space Areas.** New support structures, towers, and utility poles shall not be located within residential, designated open space or conservation areas unless sufficient technical and other information is provided to demonstrate to the satisfaction of the planning commission that location in such areas is appropriate, subject to the following findings:

a. The location of the proposed facility site is essential to meet the service demands of the carrier and no other alternative co-location, existing development or utility facility site, or type of support structure is feasible. This shall be documented by the applicant providing a list of the locations of preferred technically feasible sites, the good faith efforts and measures taken by the applicant to secure these preferred sites, and the specific reasons why these efforts and measures were unsuccessful.

b. The use of a new support structure, tower, or utility pole for the proposed facility by itself or in combination with other existing, approved, and proposed facilities will avoid or minimize adverse effects related to land use compatibility, visual resources, and public safety.

4. **Avoid Significant Buildings and View Sheds.** Wireless communication facilities shall not be located on architecturally significant structures unless visually and architecturally integrated with the structure and shall not interfere with prominent vistas or significant public view corridors.

**COLLOCATION**

(a) **Collocation Generally.** Subject to the provisions of this section, collocation of facilities is generally preferred over new support structures if it can be accomplished in a way that better compliments the character of the surrounding area.

(b) **Collocation with non-municipal facilities.** Collocation on facilities or support structures owned by parties other than the VILLAGE is subject to the following:

500 (1) Where an existing facility or support structure can potentially accommodate collocation of a new  
501 wireless facility, collocation will be required unless:

502 (A) The applicant submits substantial evidence supporting the unsuitability of the collocation;

503 (B) The owner of the existing facility or support structure is unwilling to accommodate the  
504 applicant's equipment and cannot be required to cooperate; or

505 (C) The Village Manager determines that installing a new support structure or collocation within  
506 or on a Village facility is preferable to collocation with another facility or support structure.

507 (2) Authorization for collocation on a facility or support structure owned by a party other than the  
508 Village shall be voided if the facility or support structure is destroyed, removed, relocated, or  
509 replaced, unless:

510 (A) The owner of the collocated facility obtains a new right-of-way use permit; or

511 (B) The facility or support structure accommodating the collocation is replaced with a facility or  
512 support structure comparable in size, mass, appearance and placement, as determined by the  
513 Village Manager.

514 **GENERAL LOCATION RESTRICTIONS**

515 • **Obstruction of Traffic.**

516 (a) Facilities and support structures, towers, and utility poles must not obstruct, impede, or hinder  
517 vehicular, pedestrian, or bicycle travel or public safety within the right-of-way, except for  
518 authorized temporary lane or pathway closures.

519 (b) Facilities and support structures, towers, and utility poles must not be located within sight  
520 triangles at street intersections.

521 (c) Facilities and support structures, towers, and utility poles must not be located within any area  
522 that will create traffic visibility loss to drivers, pedestrians, or bicyclists.

523 (d) To the extent possible, a facility, support structure, tower, or utility pole should be located and  
524 designed so as to avoid interference with right-of-way maintenance activities, such as:

525 (1) Grass mowing, brush collection, tree trimming, and landscaping maintenance;

526 (2) Maintenance of streets, pavements, pathways, and bicycle lanes; and

527 (3) Maintenance of other facilities in the rights-of-way.

528 • **ADA.** Facilities and support structures, towers, and utility poles at all times must comply with the  
529 requirements of the Americans with Disabilities Act of 1990.

530 • **Alignment.** Facilities and support structures, towers, and utility poles must be located in alignment  
531 with existing trees, facilities, support structures, towers, utility poles, and streetlights.

- 532 • **Spacing.** Facilities and support structures, towers, and utility poles must be located equal distance  
533 between trees when possible, and no closer than [NUMBER OF FEET] feet to a tree to avoid a tree's  
534 critical root zone.
- 535 • **Frontage.** To the extent possible, new facilities and support structures, towers, and utility poles  
536 must be located in line with existing lot lines, but in areas where multiple structures abut each other  
537 or where no side lot setback requirement exists, structures must not be located directly in front of  
538 an entrance or window of any existing structure.

539 **HEIGHT RESTRICTIONS AND REQUIREMENTS**

- 540 (a) **Minimum Height of Wireless Communications Equipment.** Equipment mounted to support  
541 structures must not interfere with or create a hazard to pedestrian or vehicular traffic and must be a  
542 minimum of 10 feet above any pedestrian or bicycle thoroughfare and a minimum of [NUMBER OF FEET]  
543 feet above any traffic lane.

544 **UNDERGROUNDING**

- 545 (a) **Undergrounded Equipment.** To conceal the non-antenna equipment, applicants shall install all non-  
546 antenna equipment underground when proposed in an area where utilities or other equipment or in the  
547 right-of-way is primarily located underground. In all other areas, applicants shall underground its non-  
548 antenna equipment to the extent technically feasible. Additional expense to install and maintain an  
549 underground equipment enclosure does not exempt an applicant from this requirement, except where  
550 the applicant demonstrates by clear and convincing evidence that this requirement will effectively  
551 prohibit the provision of personal wireless services. Nothing in this subsection is intended to require the  
552 applicant to install any electric meter required by the applicant's electrical service provider  
553 underground.

- 554 (a) **Ground-Mounted Equipment.** To the extent that the equipment cannot be placed underground as  
555 required, applicants shall install ground-mounted equipment in the location so that it does not obstruct  
556 pedestrian or vehicular traffic. The Village may require landscaping as a condition of approval to conceal  
557 ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a  
558 street light, traffic signal, utility pole or other similar infrastructure in the public right-of-way. In the  
559 event that the Village approves ground-mounted equipment, the applicant shall conform to the  
560 following requirements:

- 561 (1) **Self-Contained Cabinet or Enclosure.** The equipment enclosure or cabinet, which should be of a  
562 color tone compatible with the area surrounding its placement, shall contain all the equipment  
563 associated with the facility other than the antenna. All cables and conduits associated with the  
564 equipment shall be concealed from view.

- 565 (2) **Concealment.** The Village may require the applicant to incorporate concealment elements into  
566 the proposed design, including but not limited to public art displayed on the cabinet, strategic  
567 placement in less obtrusive locations.

568

**GENERAL AESTHETIC STANDARDS**

569 Permits for wireless telecommunications facilities shall incorporate specific concealment elements to  
570 minimize visual impacts. Unless it is determined that another design is less intrusive, or placement is  
571 required under applicable law:

572 (1) Antennas located at the top of support structures shall be incorporated into the structure, or  
573 placed within shrouds of a size such that the antenna appears to be part of the support structure;

574 (2) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be  
575 designed and placed to minimize visual impacts.

576 (3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be  
577 placed as high as possible on a support structure, located to avoid interfering with, or creating any  
578 hazard to, any other use of the public rights of way, and located on one side of the utility pole.  
579 Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio  
580 units or equipment cabinets mounted below the communications space on utility poles shall be  
581 designed so that the largest dimension is vertical, and the width is such that the radio units or  
582 equipment cabinets are minimally visible from the opposite side of the support structure on which  
583 they are placed.

584 (4) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring  
585 concealment of these components to the greatest extent possible.

586 (5) Ground-mounted equipment associated with a wireless telecommunications facility shall be  
587 permitted only where consistent with the portion of the corridor in which it is to be placed, and may  
588 be required to be underground or otherwise shielded. In no event may ground-mounted equipment  
589 interfere with pedestrian or vehicular traffic.

590 • **Color and Materials.** A new wireless telecommunications facility must be constructed with materials  
591 and colors that match or blend with the surrounding natural or built environment, to the maximum  
592 extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be  
593 used.

594 • **Colors and Materials.** All facilities shall have subdued colors and non-reflective materials that blend  
595 with the materials and colors of the surrounding area and structures.

596 • **Dimensions.** Small wireless facilities shall not exceed the width of an existing structure.

597 • **Visual Impact.** Wireless communication facilities must be designed to minimize visual impacts.  
598 When feasible, the facilities must be concealed or camouflaged. The facilities must have a non-  
599 reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of  
600 views.

601 • **Definitions as Used in Aesthetic Standards.**

602 ○ *Camouflaged or Concealed* means designed to mask or blend with the surrounding environment  
603 in such a manner to render it generally unnoticeable to the casual observer. By way of example,  
604 a wireless communication facility may be camouflaged in a faux tree, faux bush, flagpole, or

- 605 otherwise designed in a manner to be compatible with the appurtenant architecture, building,  
606 or natural surroundings.
- 607 ○ *Stealth* means concealment techniques that completely screen all associated equipment from  
608 public view and are so integrated into the surrounding natural or manmade environment that  
609 the observer does not recognize the structure as a wireless facility.
- 610     ▪ Examples include, but are not limited to: (1) wireless equipment placed completely within  
611 existing architectural features such that the installation causes no visible change to the  
612 underlying structure; (2) new architectural features that match the underlying structure in  
613 architectural style, physical proportion and construction-materials quality; (3) flush-to-grade  
614 underground equipment vaults with flush-to-grade entry hatches, with wireless equipment  
615 placed completely within.
- 616 ● **Noise.** A wireless facility and all equipment associated with a wireless facility shall not generate  
617 noise that exceeds the applicable ambient noise limit in the zone where the wireless facility is  
618 located. The VILLAGE may require the applicant to install noise attenuating or baffling materials  
619 and/or other measures, including but not limited to walls or landscape features, as the Village  
620 Manager concludes is necessary or appropriate to ensure compliance with the applicable ambient  
621 noise limit.
- 622 ● **Lighting Prohibited.** All wireless facilities must not be illuminated, except in accordance with state  
623 or federal regulations or if incorporated as part of a street light pole.
- 624 ● **Signage Prohibited.** Signage on any wireless facility is not permitted except to comply with FCC or  
625 Wisconsin regulations to provide safety warnings.
- 626 ● **Trees.** Tree “topping” or the improper pruning of trees is prohibited. Any proposed pruning of trees,  
627 shrubs, or other landscaping already existing in the right-of-way must be noted in the application  
628 and approved by the VILLAGE.
- 629



## Administrative Process for Small Wireless Facilities

### Section 1 –Application and Fees

- (A) Permitted Use: In accordance with applicable law, wireless providers shall have the right to collocate small wireless facilities and construct, modify, maintain, and replace its own utility poles, or, with the permission of the owner, a 3rd party's utility pole, that supports small wireless facilities along, across, upon, and under a right-of-way. Collocation of a small wireless facility or a new or modified utility pole or wireless support structure for the collocation of a small wireless facility shall be a permitted use not requiring discretionary zoning approvals, subject to the restrictions in Section 3.
- (B) Permit Required. No person shall place a small wireless facility in the rights-of-way, without first obtaining a building/work permit therefore, except as otherwise provided in this \_\_\_\_\_ Administrative Process for Small Wireless Facilities.
- (C) Permit Application. All applications for building/work permits shall be on a form, paper or electronic, provided by the Village of Elm Grove.
- (D) Application Requirements. The building/work permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:
- (1) The applicant's name, address, telephone number, and e-mail address;
  - (2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
  - (3) A general description of the proposed work and the purpose of the work proposed. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
  - (4) Site plans and detailed construction drawings to scale that identify the proposed small wireless facility and the proposed use of the right-of-way.
  - (5) To the extent the proposed facility involves collocation on a new utility pole, existing utility pole, or existing wireless support structure, a structural report performed by a duly licensed engineer evidencing that the utility pole or wireless support structure will structurally support the collocation, or that the utility pole or wireless support structure may and will be modified to meet structural requirements, in accordance with applicable codes.
  - (6) If the small wireless facility will be collocated on a utility pole or wireless support structure owned by a 3rd party, other than a governmental pole or a utility pole for designated services, a certification that the wireless provider has permission from the owner to collocate on the utility pole or wireless support structure.
  - (7) Certification by the wireless provider that the small wireless facility will comply with relevant federal communications commission regulations concerning 1) radio



frequency emissions from radio transmitters and 2) unacceptable interference with public safety spectrum, including compliance with the abatement and resolution procedures for interference with public safety spectrum established by the federal communications commission set forth in 47 CFR 22.970 to 22.973 and 47 CFR 90.672 to 90.675.

- (8) Certification by the wireless provider that the small wireless facility will not materially interfere with any of the following: 1) the safe operation of traffic control equipment; 2) sight lines or clear zones for transportation or pedestrians; and 3) the federal Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - (9) A statement that the small wireless facility shall comply with all applicable codes.
  - (10) Any other information required under applicable law.
- (E) Routine Maintenance and Replacement. An application shall not be required for: (i) routine maintenance; and (ii) the replacement or upgrade of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height at the same location.
- (F) Information Updates. Any amendment to information contained in a building/work permit application shall be submitted in writing to the Village of Elm Grove within thirty (30) days after the change necessitating the amendment.
- (G) Application Fees. Unless otherwise provided by law, all applications for building/work permits shall be accompanied by a generally applicable fee representing a reasonable approximation of the Village of Elm Grove's costs reasonably incurred as a direct result of the application, but shall not exceed \$500 each for up to five small wireless facilities addressed in the application and \$100 for each additional small wireless facility, or \$1,000 each for applications involving installation or replacement of a new pole.

## **Section 2 – Action on Permit Applications**

- (A) Review of Small Wireless Facility Applications.
- (1) The Village of Elm Grove shall review the application for a building/work permit in light of its conformity with applicable regulations of this \_\_\_\_\_ Administrative Process for Small Wireless Facilities and all applicable building and safety codes, and shall issue a building/work permit on uniform terms and conditions subject to the following requirements:
    - (a) Within 10 days of receiving an application, the Village of Elm Grove must determine and notify the Applicant whether the application is complete; or, if an Application is incomplete, the Village of Elm Grove must specifically identify the missing information.
    - (b) Determine whether the application meets the requirements in Section 2(A)(1) above and issue an approval or denial within sixty (60) days for collocation on an existing





structure and ninety (90) days for new or replacement poles. The applicable time periods will commence upon application submission except that, in the event Village of Elm Grove provides notice within 10 days of submission that an application is materially incomplete, the applicable time period will commence upon re-submission.

(c) Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the Village of Elm Grove denies the application. The applicant may cure the deficiencies identified by the Village of Elm Grove and resubmit the application within 30 days of the denial without paying an additional application fee. The Village of Elm Grove shall approve or deny the revised application within 30 days of receipt of the amended application. The subsequent review by the Village of Elm Grove shall be limited to the deficiencies cited in the original denial.

(2) If the Village of Elm Grove fails to act on an application within the applicable review period set forth in this Section 2 of this \_\_\_\_\_ Administrative Process for Small Wireless Facilities, the applicant may provide notice that the time period for acting has lapsed and the application is then deemed approved.

(3) An applicant seeking to construct, modify or replace a network of small wireless facilities may, at the applicant's discretion, file a consolidated application and receive a single building/work permit for up to 30 small wireless facilities. Provided however, the Village of Elm Grove's denial of any site or sites within a single application shall not affect other sites submitted in the same application. The Village of Elm Grove shall grant a building/work permit for any and all sites in a single application that it does not deny subject to the requirements of this Section.

(B) Review of Eligible Facilities Requests. Notwithstanding any other provision of this \_\_\_\_\_ Administrative Process for Small Wireless Facilities, the Village of Elm Grove shall approve and may not deny applications for eligible facilities requests within sixty (60) days according to the procedures established under 47 CFR 1.40001(c).

(C) Non-discrimination and Laws. The Village of Elm Grove shall process applications in a non-discriminatory and competitively neutral manner and review applications consistent with applicable laws.

### **Section 3 – Small Wireless Facilities in the ROW; Maximum Height; Other Requirements**

(A) Maximum Size of Permitted Use. Small wireless facilities, and new or modified utility poles and Wireless Support Structures for the collocation of small wireless facilities may be placed in the rights-of-way as a permitted use subject to the following requirements:

(1) Each new or modified utility pole or wireless telecommunication support structure installed in the rights-of-way shall not exceed the greater of:





- (a) A height that is 10 percent taller than the tallest existing utility pole located within 500 feet of the new pole in the same right-of-way; or
- (b) Fifty (50) feet above ground level.

(2) New small wireless facilities in the rights-of-way shall not exceed the greater of:

- (a) A height that is 10 percent taller than the existing utility pole or Wireless Support Structure on which the small wireless facility is located; or
- (b) 50 feet above ground level.

(B) Design Requirements. Any specific requirements imposed by the Village of Elm Grove relating to design or placement of small wireless facilities will be (1) reasonable in that they are technically feasible and reasonably directed to avoiding or remedying unsightly or out-of-character deployments; (2) no more burdensome than those applied to other types of infrastructure deployments; and (3) objective and published in advance. Any design or concealment measures are not considered a part of the small wireless facility for purposes of the size parameters in the definition of a small wireless facility in accordance with applicable law.

(C) Zoning. Any wireless provider that seeks to construct or modify a utility pole, wireless support structure or wireless facility that exceeds the height or size limits contained in this Section, shall be subject to applicable zoning requirements. In all other instances, no discretionary zoning approvals shall be required for projects which comply with the terms of this \_\_\_\_\_ Administrative Process for Small Wireless Facilities and a building/work permit shall be issued.

(D) Historic and Underground Districts. Applicant shall comply with nondiscriminatory requirements that prohibit electric utilities, telecommunications or cable providers from installing structures in the rights-of-way without prior approval by Village of Elm Grove staff in historic or underground districts (as both terms are defined by 2019 Wisconsin Act 14), provided such requirements shall not prohibit collocations or the replacement of existing structures or result in an effective prohibition of service.

#### **Section 4 – Effect of Permit**

(A) Authority Granted; No Property Right or Other Interest Created. A building/work permit from the Village of Elm Grove authorizes an applicant to undertake the specified activities, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.

(B) Duration. Activity authorized by a building/work permit must be commence no later than 365 after its receipt and be diligently pursued thereafter.



## **Section 5 – Removal, Relocation or Modification of Small wireless facility in the ROW**

- (A) **Notice.** Within ninety (90) days following written notice from the Village of Elm Grove, wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the Village of Elm Grove has determined that such removal, relocation, change or alteration, is necessary for the construction, repair, maintenance, or installation of any Village of Elm Grove improvement in or upon, or the operations of the Village of Elm Grove in or upon, the rights-of-way.
- (B) **Emergency Removal or Relocation of Facilities.** The Village of Elm Grove retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the Village of Elm Grove, as the Village of Elm Grove may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Village of Elm Grove shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.
- (C) **Abandonment of Facilities.** Upon abandonment of a small wireless facility within the rights-of-way of the Village of Elm Grove, the wireless provider shall notify the Village of Elm Grove within ninety (90) days. Following receipt of such notice the Village of Elm Grove may direct the wireless provider to remove all or any portion of the small wireless facility if the Village of Elm Grove, or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare.

## **Section 6 –Rates**

- (A) **ROW Administration Rate.** A wireless provider authorized to place small wireless facilities (including new utility poles or other Wireless Support Structures) in the rights-of-way shall pay to the Village of Elm Grove the rate of \$20 annually per small wireless facility.
- (B) **Attachment Rate.** The rate to place a small wireless facility on a Village of Elm Grove - owned pole in the right-of-way shall be \$250 per year per Village of Elm Grove - owned pole. Such compensation together with the application fee and the ROW Administration Rate specified in this \_\_\_\_\_ Administrative Process for Small Wireless Facilities shall be the sole recurring compensation that the wireless provider shall be required to pay the Village of Elm Grove.
- (C) **Cease Payment.** A wireless provider is authorized to remove its facilities at any time from a Village of Elm Grove - owned pole in the rights-of-way and cease paying the annual rate to the Village of Elm Grove.
- (D) **Make-Ready.** For Village of Elm Grove - owned utility poles in the rights-of-way, the Village of Elm Grove shall provide a good faith description of any make-ready work necessary to



enable the pole to support the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed application. Any make-ready work, including pole replacements, shall be performed by the provider or its qualified contractor.

- (E) Rates. The rates described in this Section are intended to compensate the Village of Elm Grove for the Wireless Provider's use of the ROW. In no event shall the rates in this Section (1) exceed the direct and actual cost of managing the ROW; (2) result in a double recovery by the Village of Elm Grove if existing fees, rates, or taxes imposed by the Village of Elm Grove on the wireless provider already recover the direct and actual cost of managing the ROW; or (3) exceed the rates charged to other users of the ROW.
- (F) Rate Increase. The Village of Elm Grove may adjust the rates described in Sections 1(G), 6(A), and 6(B) of this \_\_\_\_\_ Administrative Process for Small Wireless Facilities by 10 percent as of July 10, 2024 and every fifth anniversary thereafter, rounded to the nearest multiple of \$5.

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2 *tool is only meant for editing.*

3 **§ 335-22 B-1 Local Business District.**

4 The B-1 Business District is intended to provide for individual or small groups of retail and customer service  
5 establishments serving primarily the convenience of the local neighborhood. The setting is that of a shopping  
6 center with adequate off-street parking. The character, appearance and operation of local centers shall be  
7 compatible with the character of the surrounding area.

8 A. Permitted uses.

9 (1) Business Offices, defined as follows. A business office is use of a tenant space or building solely for  
10 administrative functions of an organization with no retail or wholesale sales or services on site.

11 (2) Retail Trade

12 (a) Furniture and home furnishing stores

13 (b) Appliances, electronics, camera, and office supply stores

14 (c) Home improvement and hardware stores

15 (d) Grocery, convenience, and specialty food stores/ markets

16 (e) Liquor/ packaged beverage and tobacco stores

17 (f) Pharmacy, drug, and medical supply stores

18 (g) Clothing, shoes, jewelry, luggage/ leather goods, formal wear/ costume stores

19 (h) Entertainment stores such as books, music, sporting goods, hobby, and video tape/ disk/ game rental

20 (i) Gift shops, florists, variety stores, antiques

21 (j) Building supply stores and general sales of industrial products, such as building materials, electrical  
22 supplies, heating supplies, lighting supplies, paint and painting supplies, plubing supplies, roofing  
23 supplies, wallpaper and wallpaper supplies, and windows and doors

24 (k) Department stores

25 (3) General Services

26 (a) Barber, beauty, and nail salons

27 (b) Dry cleaning and laundry services (non-industrial)

28 (c) Interior Decorator

29 (d) Photographer

30 (4) Financial Service Institutions, defined as follows. Financial service institutions are banks, savings banks,  
31 savings and loan associations, credit unions, and trust companies, as further defined and regulated by  
32 Chapter 404, Wisconsin Statutes, titled “Uniform Commercial Code – Bank Deposits and  
33 Collections,” specifically excluding payday loan businesses, licensed lenders, pawnbrokers and  
34 community currency exchanges that are subject to licensure under § 138.09, 138.10 or 218.05, Wis.  
35 Stats., and institutions similar thereto

36 (5) Medical or dental clinics, but shall not include animal hospitals or clinics

37 (6) Information Services

38 (a) Radio/ TV/ cable network, stations, news syndicates, excluding towers and dishes

39 (b) Motion picture theaters excluding drive-in

40 Interior decorator.

41 Janitorial supplies.

42 (9) Lodges and clubs.

43 (10) Parking lots and parking structures serving groups of businesses in the district.

44 (11) Restaurants, except drive-in restaurants or restaurants with drive-through windows with take-away  
45 service. **[Amended 11-22-2011]**

46 B. Permitted accessory uses.

47 (1) Garages for storage of vehicles used in conjunction with the operation of business or owned or used by  
48 tenants residing within quarters located in the same structure as the business. **[Amended 4-23-2002]**

49 (2) Off-street parking and loading areas.

50 (3) Residential quarters for the owner or proprietor or any rental tenant located in the same structure as the  
51 business, provided such living accommodations satisfy all applicable health, safety and current building  
52 code provisions and such use is accurately reflected in a current plan of operation which identifies the  
53 number and location of all residential occupants in such structure in accordance with § **335-22** of the  
54 Code of the Village of Elm Grove. **[Amended 4-23-2002]**

55 C. Conditional uses. **[Amended 9-10-2001]**

56 (1) Automotive and marine sales and service.

57 (2) Building maintenance and supply stores.

58 (3) Drive-in banks.

- 59 (4) Equipment rental stores.
- 60 (5) Fuel oil, bottled gas, salt and ice dealers.
- 61 (6) Funeral homes.
- 62 (7) Garden supply stores.
- 63 (8) Gasoline service stations and car wash establishments, provided that all pumps and service islands meet  
64 the setback and yard requirements.
- 65 (9) Grain processing and storage.
- 66 (10) Physical culture facilities, such as fitness centers, massage parlors, tanning parlors and body-piercing  
67 establishments as defined by Wis. Admin. Code § HFS 173.03(8) and tattoo parlors.
- 68 (11) Power equipment centers, sales, service and storage.
- 69 (12) Restaurants with drive-through windows with take-away service. Only property which has frontage  
70 along, and vehicular ingress and egress access to, Bluemound Road may be considered for such a use.  
71 **[Added 11-22-2011]**
- 72 (13) Utilities.
- 73 (14) Video arcades.
- 74 (15) Video tape sales and rental.
- 75 (16) Wireless communication antennas.
- 76 (17) Multifamily residential units as part of a Mixed Compatible Residential Planned Development Overlay  
77 District project under § **335-30**. Densities of up to 12 dwelling units per net acre may potentially be  
78 granted subject to the adjustments provided for in § **335-30F(3)** and **(4)**. **[Added 5-25-2004]**
- 79 (18) Parking lots, driveways, walkways or other hardscape constructed using a permeable surface to exceed  
80 the allowable percentage of maximum impervious surface area as defined within this chapter. **[Added 3-**  
81 **24-2014]**
- 82 (19) Other unspecified uses which are found to be similar in character to those principal uses conditionally  
83 permitted by the Plan Commission. **[Added 3-24-2014]**
- 84 D. Lot area and width. Lots shall be a minimum of 7,200 square feet in area and shall be not less than 60  
85 feet in width at the front building line.
- 86 E. Building height. No structure or parts thereof shall exceed 35 feet in building height, or two stories,  
87 whichever is less. No accessory structure shall exceed 10 feet in building height.
- 88 F. Yards (principal and/or accessory structures).

- 89 (1) There shall be a minimum building setback of 20 feet from each abutting street right-of-way.
- 90 (2) There shall be no required side yard; however, when a side yard is provided, there shall be a minimum  
91 of 10 feet from the lot line.
- 92 (3) There shall be a rear yard setback of not less than 25 feet.
- 93 G. Yards within the Downtown Design Overlay District (principal and/or accessory structures). [**Added 8-**  
94 **22-2006**]
- 95 (1) Subject to the provisions of § **335-22G(2)**, the Plan Commission may approve deviations from any of  
96 the yard requirements specified in § **335-22F**.
- 97 (2) Notwithstanding the provisions of § **335-22F(1)**, **(2)** and **(3)**, an applicant shall propose, and the Plan  
98 Commission shall review and approve, the proposed side, front and rear yard setbacks for structures to  
99 be developed or redeveloped within the boundaries of the Downtown Design Overlay District as  
100 established by § **335-12G(3)**. Before determining appropriate setbacks, the Plan Commission shall first  
101 make a final determination that due consideration has been given to the existing conditions of adjacent  
102 properties when establishing side, front and rear yard setbacks, so as to provide a suitable, streamlined  
103 and compatible transition between structures. The following criteria shall be considered by the Plan  
104 Commission in determining front, side and rear yard setbacks:
- 105 (a) Whether the building setbacks of new or modified structures are compatible with those of existing,  
106 adjacent structures and are scaled at an appropriate distance based on massing and height characteristics  
107 to adjacent structures;
- 108 (b) Whether the proposed new or modified structure fosters a harmonious relationship to adjacent  
109 structures;
- 110 (c) Whether the proposed location of the new or modified structure is reasonably accessible to streets and  
111 public walkways, as contemplated in the Downtown District Site Design Guidelines;
- 112 (d) Whether the major facade and/or major entrance of the proposed new or modified structure is  
113 functionally linked to the primary pedestrian access as determined by the Plan Commission on a case-  
114 by-case basis; and
- 115 (e) Whether the proposed new or modified structure maintains an appropriate distance from any adjacent  
116 single- and/or multiple-family residentially zoned properties as determined by the Plan Commission on  
117 a case-by-case basis.
- 118 H. Maximum impervious surface: 80% of lot area.
- 119 I. Maximum building footprint area: 60% of lot area.
- 120 J. Plan of operation required. (Refer to § **335-85**.)

121

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3 **§ 335-23 B-2 Office Business District.**

4 The B-2 Business District is intended to provide for individual or limited office and special service uses  
5 where the office activity would be compatible with other neighborhood uses and not exhibit the intense  
6 activity of other business districts.

7 A. Permitted uses.

8 (1) Advertising agency.

9 (2) Barbershops.

10 (3) Beauty shops.

11 (4) Bookstores (except those regulated by Chapter **87**).

12 (5) Brokerages (stock, mortgage, and other financial services).

13 (6) Clothing resale shops.

14 (7) Corporate business offices.

15 (8) Day-care centers.

16 (9) Interior decorator.

17 (10) Business offices, defined as follows. A business office is use of a tenant space or building solely for  
18 administrative functions of an organizations, with no retail or wholesale sales or services on site

19 (11) Studios for photography, painting, music, sculpture, dance or other recognized fine art.

20 (12) Travel agents.

21 (13) Other unspecified uses which are found to be similar in character to those principal uses permitted  
22 by the Plan Commission.

23 B. Permitted accessory uses.

24 (1) Accessory garages for storage of vehicles used in conjunction with the operation of the business or  
25 for occupants of the premises.

26 (2) Off-street parking areas.

27 (3) Restaurants and delicatessens accessory to a permitted use intended to serve office employees.

28 C. Conditional uses. [**Amended 9-10-2001; 5-25-2004; 9-25-2007**]

29 (1) Retail Trade

30 (a) Furniture and home furnishing stores



- 31 (b) Appliances, electronics, camera, and office supply stores
- 32 (c) Grocery, convenience, and specialty food stores/ markets
- 33 (d) Pharmacy, drug, and medical supply stores
- 34 (e) Clothing, shoes, jewelry, luggage/leather goods stores
- 35 (f) Entertainment stores such as music, sporting goods, and hobby.
- 36 (g) Gift shops, florists, variety stores, antiques
- 37 (h) Department stores
- 38 (2) Information Services
- 39 (a) Radio/ TV/ Cable network, stations, news syndicates excluding towers and dishes
- 40 (3) Financial Service Institutions, defined as follows. Financial services institutions are banks, savings  
41 banks, savings and loan associations, credit unions, and trust companies, as further defined and regulated  
42 by Chapter 404, Wisconsin Statutes, titled “Uniform Commercial Code – Bank Deposits and Collections,;  
43 specifically excluding payday loan businesses, licensed lenders, pawnbrokers and community currency  
44 exchanges that are subject to licensure under § 138.09, 138.10 or 218.05, Wis. Stats., and institutions  
45 similar thereto.
- 46 (4) Medical or dental clinics, but shall not include animal hospitals or clinics
- 47 Utilities.
- 48 ) Multifamily residential units as part of a Mixed Compatible Residential Planned Development  
49 Overlay District project under § **335-30**. Densities of up to 12 dwelling units per net acre may  
50 potentially be granted subject to the adjustments provided for in § **335-30F(3)** and **(4)**.
- 51 Paint, glass and wallpaper stores.
- 52 (8) Parking lots, driveways, walkways or other hardscape constructed using a permeable surface to  
53 exceed the allowable percentage of maximum impervious surface area as defined within this chapter.  
54 **[Amended 3-24-2014]**
- 55 (9) Other unspecified uses which are found to be similar in character to those principal uses  
56 conditionally permitted by the Plan Commission.
- 57 D. Lot area and width. Lots shall be a minimum of 7,200 square feet in area and shall be not less than  
58 60 feet in width at the front building line.
- 59 E. Building height. No principal structure or parts of a principal structure shall exceed 35 feet in height,  
60 or two stories, whichever is less. No accessory structure shall exceed 10 feet in height.
- 61 F. Yards (principal and/or accessory structures).
- 62 (1) There shall be a minimum building setback of 20 feet from each abutting street right-of-way.
- 63 (2) There shall be no required side yard; however, when a side yard is provided, there shall be a

64 minimum of 10 feet from the lot line.

65 (3) There shall be a rear yard setback of not less than 25 feet.

66 G. Yards within the Downtown Design Overlay District (principal and/or accessory structures). [**Added**  
67 **8-22-2006**]

68 (1) Subject to the provisions of § **335-23G(2)**, the Plan Commission may approve deviations from any  
69 of the yard requirements specified in § **335-23F**.

70 (2) Notwithstanding the provisions of § **335-23F(1), (2) and (3)**, an applicant shall propose, and the Plan  
71 Commission shall review and approve, the proposed side, front and rear yard setbacks for structures  
72 to be developed or redeveloped within the boundaries of the Downtown Design Overlay District as  
73 established by § **335-12G(3)**. Before determining appropriate setbacks, the Plan Commission shall  
74 first make a final determination that due consideration has been given to the existing conditions of  
75 adjacent properties when establishing side, front and rear yard setbacks, so as to provide a suitable,  
76 streamlined and compatible transition between structures. The following criteria shall be considered  
77 by the Plan Commission in determining front, side and rear yard setbacks:

78 (a) Whether the building setbacks of new or modified structures are compatible with those of existing,  
79 adjacent structures and are scaled at an appropriate distance based on massing and height  
80 characteristics to adjacent structures;

81 (b) Whether the proposed new or modified structure fosters a harmonious relationship to adjacent  
82 structures;

83 (c) Whether the proposed location of the new or modified structure is reasonably accessible to streets  
84 and public walkways, as contemplated in the Downtown District Site Design Guidelines;

85 (d) Whether the major facade and/or major entrance of the proposed new or modified structure is  
86 functionally linked to the primary pedestrian access as determined by the Plan Commission on a  
87 case-by-case basis; and

88 (e) Whether the proposed new or modified structure maintains an appropriate distance from any  
89 adjacent single- and/or multiple-family residentially zoned properties as determined by the Plan  
90 Commission on a case-by-case basis.

91 H. Maximum impervious surface: 80% of lot area.

92 I. Maximum building footprint area: 60% of lot area.

93 J. Plan of operation required. (Refer to § **335-85**.)

94

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3 **§ 335-24 B-3 Mid-Rise Office and Professional District.**

4 The B-3 Business District is intended to provide for office, professional and special service uses in a more  
5 intense, urban setting.

6 A. Permitted uses.

- 7 (1) Business offices, defined as follows. A business office is use of a tenant space or building solely for  
8 administrative functions of an organization, with no retail or wholesale sales or services on site
- 9 (2) Financial service institutions, as defined as follows. Financial services institutions are banks, savings  
10 banks, savings and loan associations, credit unions, and trust companies, as further defined and  
11 regulated by Chapter 404, Wisconsin Statutes, titled “Uniform Commercial Code – Bank Deposits  
12 and Collections,” specifically excluding payday loan businesses, licensed lenders, pawnbrokers and  
13 community currency exchanges that are subject to licensure under § 138.09, 138.10 or 218.05, Wis  
14 Stats., and institutions similar thereto
- 15 (3) Barbershops and beauty shops.
- 16 (4) Fitness centers.
- 17 (5) Gift shops and boutiques.
- 18 (6) Hotels and motels.
- 19 (7) Interior decorator.
- 20
- 21 (9) Retail stores.
- 22 (10) Studios for photography, painting, music, sculpture, dance or other recognized fine art.

23 B. Permitted accessory uses.

- 24 (1) Accessory garages for storage of vehicles used in conjunction with the operation of the business or  
25 for occupants of the premises.
- 26 (2) Off-street parking areas.

27 C. Conditional uses. **[Amended 9-10-2001]**

- 28 (1) Convention centers.
- 29 (2) Radio and television broadcast studios.
- 30 (3) Restaurants and specialty food stores/ markets.
- 31 (4) Restaurants with drive-through windows with take-away service. Only property which has frontage  
32 along, and vehicular ingress and egress access to, Bluemound Road may be considered for such a  
33 use. **[Added 11-22-2011]**

- 34 (5) Automotive parking on a short-term basis related to businesses on adjacent properties.
- 35 (6) Wireless communication antennas.
- 36 (7) Multifamily residential units as part of a Mixed Compatible Residential Planned Development  
37 Overlay District project under § **335-30**. Densities of up to 12 dwelling units per net acre may  
38 potentially be granted subject to the adjustments provided for in § **335-30F(3)** and **(4)**. [**Added 5-25-**  
39 **2004**]
- 40 (8) Parking lots, driveways, walkways or other hardscape constructed using a permeable surface to  
41 exceed the allowable percentage of maximum impervious surface area as defined within this chapter.  
42 [**Added 3-24-2014**]
- 43 (9) Other unspecified uses which are found to be similar in character to those principal uses  
44 conditionally permitted by the Plan Commission. [**Added 3-24-2014**]
- 45 D. Lot area and width. Lots shall have a minimum area of 40,000 square feet and shall be not less than  
46 100 feet in width at the front building line.
- 47 E. Building height.
- 48 (1) Principal structures in the B-3 Business District shall not be less than three, nor more than five,  
49 stories in height. No accessory structure shall exceed 10 feet in building height.
- 50 (2) No principal structure or parts of a principal structure shall exceed 65 feet in height. Accessory  
51 structures shall not exceed 10 feet in height.
- 52 F. Yards (principal and/or accessory structures).
- 53 (1) There shall be a minimum setback of 50 feet from each abutting street right-of-way for structures not  
54 exceeding 35 feet in height.
- 55 (2) There shall be a side yard setback on each side of all buildings not less than 25 feet in width for  
56 structures not exceeding 35 feet in height.
- 57 (3) There shall be a rear yard setback of not less than 25 feet for structures not exceeding 35 feet in  
58 height.
- 59 (4) The setback requirements in all yards shall be increased one foot for each two feet the structure  
60 exceeds 35 feet in height.
- 61 G. Maximum impervious surface: 80% of lot area.
- 62 H. Maximum building footprint area: 60% of lot area.
- 63 I. Plan of operation required. (Refer to § **335-85**.)
- 64