

4 **CHAPTER 335-50.2**

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

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 Chapter, the terms below shall have the following meanings:

10 “Administrator” 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 person filing an application for placement or modification of a wireless
14 telecommunications facility in the right-of-way.

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

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

24 “FCC” means the Federal Communications Commission.

25 “Right-of-way” means the surface of, and the space above and below the entire width of an improved or
26 unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and
27 public sidewalk over which the Village of Elm Grove exercises any rights of management and control or
28 in which the Village of Elm Grove has an interest.

29 “Small Wireless Facility,” consistent with 47 C.F.R. § 1.6002(I), means a facility that meets each of the
30 following conditions:

31 (1) The structure on which antenna facilities are mounted:

32 i. is 50 feet or less in height, or

33 ii. is no more than 10 percent taller than other adjacent structures, or

34 iii. is not extended to a height of more than 50 feet or by more than 10 percent above
35 its preexisting height, whichever is greater, as a result of the collocation of new antenna
36 facilities;

37 (2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in
38 volume;

39 (3) All other wireless equipment associated with the structure, including the wireless equipment
40 associated with the antenna and any pre-existing associated equipment on the structure, is
41 cumulatively no more than 28 cubic feet in volume;

42 (4) The facility does not require antenna structure registration;

43 (5) The facility is not located on Tribal lands; and

44 (6) The facility does not result in human exposure to radiofrequency radiation in excess of the
45 applicable safety standards specified by federal law.

46 “Support Structure” means any structure capable of supporting wireless telecommunications
47 equipment.

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

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

60 “Utility Pole” means a structure in the right-of-way designed to support electric, telephone, and similar
61 utility distribution lines and associated equipment. A tower is not a utility pole.

62 Village means Village of Elm Grove.

63 “Wireless Infrastructure Provider” means a person that owns, controls, operates, or manages a wireless
64 telecommunications facility or portion thereof within the right-of-way.

65 “Wireless Permit” or “Permit” means a permit issued pursuant to this Chapter and authorizing the
66 placement or modification of a wireless telecommunications facility of a design specified in the permit at
67 a particular location within the right-of-way, and the modification of any existing support structure to
68 which the wireless telecommunications facility is proposed to be attached.

69 “Wireless Regulations” means those regulations adopted pursuant to Section 5(b)(1) to implement the
70 provisions of this Chapter.

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

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

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

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

82 **Section 2: Purpose**

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

96 **Section 3: Scope**

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

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

102 (1) Installation of a small wireless facility on the strand between two utility poles, provided that
103 the cumulative volume of all wireless facilities on the strand shall not exceed 1 cubic foot, and
104 provided further that the installation does not require replacement of the strand, or excavation,
105 modification, or replacement of either of the utility poles.

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

110 (3) Placement or modification of a wireless telecommunications facility on structures owned by
111 or under the control of the Village. See Section 13 of this Chapter.

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

114 (5) Modification of an existing wireless telecommunications facility that makes no material
115 change to the footprint of a facility or to the surface or subsurface of a public street if the
116 activity does not disrupt or impede traffic in the traveled portion of a street, and if the work
117 does not change the visual or audible characteristics of the wireless telecommunications facility.

118 **Section 4: Nondiscrimination**

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

123 **Section 5: Administration**

124 (a) **Village Manager.** The Village Manager is responsible for administering this Chapter.

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

126 (1) Adopt wireless regulations governing the placement and modification of wireless
127 telecommunications facilities in addition to but consistent with the requirements of this
128 Chapter, including regulations governing collocation, the resolution of conflicting applications
129 for placement of wireless telecommunications facilities, and aesthetic standards.¹

130 (2) Interpret the provisions of the Chapter and the wireless regulations.

131 (3) Develop forms and procedures for submission of applications for wireless permits consistent
132 with this Chapter.

133 (4) Collect any fee required by this Chapter.

134 (5) Require, as a condition of completeness of any application, notice to members of the public
135 that may be affected by the placement or modification of the wireless telecommunications
136 facility that is the subject of the wireless permit application.

137 (6) Establish deadlines for submission of information related to an application, and extend or
138 shorten deadlines where appropriate and consistent with federal laws and regulations.

139 (7) Issue notices of incompleteness or requests for information in connection with any wireless
140 permit application.

¹ Adoption of wireless regulations is optional, but advisable. The regulations can contain more detailed technical specifications, vary the general standards set forth in the ordinance based on the character of a particular neighborhood or corridor, and set more detailed aesthetic requirements. **See Attachment C**

141 (8) Select and retain an independent consultant or attorney with expertise in
142 telecommunications to review any issue that involves specialized or expert knowledge in
143 connection with any permit application.

144 (9) Coordinate and consult with other Village staff, committees, and governing bodies to ensure
145 timely action on all other required permits under Section 6(b)(8) of this Chapter.

146 (10) Subject to appeal as provided in Section 8(d) of this Chapter, determine whether to grant,
147 grant subject to conditions, or deny an application.

148 (11) Take such other steps as may be required to timely act upon wireless permit applications,
149 including issuing written decisions and entering into agreements to mutually extend the time for
150 action on an application.

151 **Section 6: Application**

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

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

158 (1) All information required pursuant to the wireless regulations.

159 (2) A completed application cover sheet signed by an authorized representative of the applicant,
160 listing all standard permit conditions.

161 (3) The name of the applicant (including any corporate or trade name), and the name, address,
162 email address, and telephone number of a local representative. If the applicant is a wireless
163 infrastructure provider, the name and contact information for the wireless service provider(s)
164 that will be using the wireless telecommunications facility must also be provided.

165 (4) A statement of which shot clock or shot clocks apply to the application and the reasons the
166 chosen shot clocks apply.

167 (5) A separate and complete description of each proposed wireless telecommunications facility
168 and the work that will be required to install or modify it, including but not limited to detail
169 regarding proposed excavations, if any; detailed site plans showing the location of the facility
170 and technical specifications for each element of the facility, clearly describing the site and all
171 structures and facilities at the site before and after installation or modification and identifying
172 the owners of such preexisting structures and facilities; and describing the distance to the
173 nearest residential dwelling unit. Before and after 360-degree photo simulations must be
174 provided for each facility.

175 (6) Proof that the applicant has mailed to the owners of all property within 300 feet of the
176 proposed wireless telecommunications facility a notice that the applicant is submitting an
177 application to the Village for placement or modification of a wireless telecommunications facility
178 in the right-of-way, which notice must include (i) the proposed location of the facility, (ii) a

179 description and scale image of the proposed facility, and (iii) an email address and phone
180 number for a representative of the applicant who will be available to answer questions from
181 members of the public about the proposed project.

182 (7) A copy of the FCC license for the facility or a sworn written statement from the applicant
183 attesting that the facility will comply with current FCC regulations.

184 (8) To the extent that filing of the wireless permit application establishes a deadline for action
185 on any other permit that may be required in connection with the wireless telecommunications
186 facility, the application must include complete copies of applications for every required permit
187 (including without limitation electrical permits, building permits, traffic control permits, and
188 excavation permits), with all engineering completed and with all fees associated with each
189 permit.

190 (9) A certification by a registered and qualified engineer that the installation can be supported
191 by and does not exceed the tolerances of the structure on which it will be mounted and that all
192 elements of the wireless telecommunications facility comply with applicable safety standards.

193 (10) Payment of all required fees.

194 (11) If an applicant contends that denial of the application would prohibit or effectively prohibit
195 the provision of service in violation of federal law, or otherwise violate applicable law, the
196 application must provide all evidence on which the applicant relies in support of that claim.
197 Applicants are not permitted to supplement this evidence if doing so would prevent the Village
198 from complying with any deadline for action on an application.

199 (12) If the application is an eligible facilities request, the application must contain information
200 sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R.
201 § 1.6100(b)(3), including evidence that the application relates to an existing tower or base
202 station that has been approved by the Village. Before and after 360-degree photo simulations
203 must be provided with detailed specifications demonstrating that the modification does not
204 substantially change the physical dimensions of the existing approved tower or base station.

205 (c) **Waivers.** Requests for waivers from any requirement of this Section 6 shall be made in writing to the
206 Village Manager. The Village Manager may grant a request for waiver if it is demonstrated that,
207 notwithstanding the issuance of the waiver, the Village will be provided with all information necessary
208 to understand the nature of the construction or other activity to be conducted pursuant to the wireless
209 permit sought.

210 (d) **Fees.** Applicant must provide an application fee and shall be required to pay all costs reasonably
211 incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees
212 shall be reviewed periodically and raised or lowered based on the costs the Village expects to incur, with
213 a review commencing by the first anniversary of the effective date of this Chapter.

214 (e) **Public Records.** Applications are public records that may be made publicly available pursuant to
215 state and federal public records law. Notwithstanding the foregoing, the applicant may designate
216 portions of the application materials that it reasonably believes contain proprietary or confidential
217 information by clearly marking each portion of such materials accordingly, and the Village shall

218 endeavor to treat the information as proprietary and confidential, subject to applicable state and
219 federal public records law and the Village Manager’s determination that the applicant’s request for
220 confidential or proprietary treatment of the application materials is reasonable. The Village shall not be
221 required to incur any costs to protect the application from disclosure.

222 **Section 7: General Standards**

223 (a) **Generally.** Wireless telecommunications facilities shall meet the minimum requirements set forth in
224 this Chapter and the wireless regulations, in addition to the requirements of any other applicable law or
225 regulation.

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

232 (c) **Standards.**²

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

234 (A) Minimizes risks to public safety;

235 (B) Ensures that placement of facilities on existing structures is within the tolerance of
236 those structures;

237 (C) Avoids placement of aboveground facilities in underground areas, installation of new
238 support structures or equipment cabinets in the public right-of-way, or placement in
239 residential areas when commercial areas are reasonably available;

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

242 (E) Ensures that installations are subject to periodic review to minimize the intrusion on
243 the right-of-way;

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

245 (G) Ensures that applicant’s use does not inconvenience the public, interfere with the
246 primary uses of the right-of-way, or hinder the ability of the Village or other government
247 entities to improve, modify, relocate, abandon, or vacate the right-of-way or any
248 portion thereof, or to cause the improvement, modification, relocation, vacation, or
249 abandonment of facilities in the right-of-way.

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

² If a municipality chooses to incorporate aesthetic standards into the ordinance, rather than in its wireless regulations, they should be added to this Section 7(c). See **Attachment C**

253 (3) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic
254 and at all times must comply with the requirements of the Americans with Disabilities Act of
255 1990.

256 (d) **Standard Permit Conditions.** All wireless permits under this Chapter are issued subject to the
257 following minimum conditions:

258 (1) **Compliance.** The permit holder shall at all times maintain compliance with all applicable
259 Federal, State, and local laws, regulations, and other rules.

260 (2) **Term.** A wireless permit issued pursuant to an eligible facilities request shall expire at the
261 same time the permit for the underlying existing wireless telecommunications facility expires.
262 All other wireless permits shall be valid for a period of five years from the date of issuance
263 unless revoked pursuant to Section 9(b) of this Chapter.

264 (3) **Contact Information.** The permit holder shall at all times maintain with the Village accurate
265 contact information for the permit holder and all wireless service providers making use of the
266 facility, which shall include a phone number, mailing address, and email address for at least one
267 natural person.

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

271 (5) **Indemnities.** The permit holder, by accepting a permit under this Chapter, agrees to
272 indemnify, defend, and hold harmless the Village, its elected and appointed officials, officers,
273 employees, agents, representatives, and volunteers (collectively, the "Indemnified Parties")
274 from and against any and all suits, actions, legal or administrative proceedings, claims, demands,
275 damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature
276 in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason
277 of any act, omission, fault, or negligence, whether active or passive, of the permit holder or
278 anyone acting under its direction or control or on its behalf, even if liability is also sought to be
279 imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and
280 hold harmless the Indemnified Parties shall be applicable even if the liability results from an act
281 or failure to act on the part of one or more of the Indemnified Parties. However, the obligation
282 does not apply if the liability results from the willful misconduct of an Indemnified Party.

283 (6) **Adverse Impacts on Adjacent Properties.** The permit holder shall undertake all reasonable
284 efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from
285 the construction, operation, maintenance, modification, or removal of the facility.

286 (7) **General maintenance.** The wireless communications facility and any associated structures
287 shall be maintained in a neat and clean manner and in accordance with all approved plans and
288 conditions of approval.

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

291 (9) **Relocation.** At the request of the Village pursuant to Section 10 of this Chapter, the permit
292 holder shall promptly and at its own expense permanently remove and relocate any wireless
293 telecommunications facility in the right-of-way.

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

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

299 (12) **Record Retention.** The permit holder shall retain full and complete copies of all permits
300 and other regulatory approvals issued in connection with the facility, which includes without
301 limitation all conditions of approval, approved plans, resolutions, and other documentation
302 associated with the permit or regulatory approval. In the event the Village cannot locate any
303 such full and complete permits or other regulatory approvals in its official records, and the
304 permit holder fails to retain full and complete records in the permit holder’s files, any
305 ambiguities or uncertainties that would be resolved through an examination of the missing
306 documents will be conclusively resolved against the permit holder.

307 (13) **Radio Frequency Emissions.** Every wireless facility shall at all times comply with applicable
308 FCC regulations governing radio frequency emissions, and failure to comply with such
309 regulations shall be treated as a material violation of the terms of the permit.

310 (14) **Certificate of Insurance.** A certificate of insurance sufficient to demonstrate to the
311 satisfaction of the Administrator that the applicant has the capability to cover any liability that
312 might arise out of the presence of the facility in the right-of-way.

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

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

316 (b) **Processing Timeline.** Wireless permit applications (including applications for other permits under
317 Section 6(b)(8) necessary to place or modify the facility) and appeals will be processed in conformity
318 with the shot clocks set forth in state, local, and federal law, as amended.

319 (c) **Written Decision.**³ In the event that an application is denied (or approved with conditions beyond
320 the standard permit conditions set forth in Section 7(d)), the Village Manager shall issue a written
321 decision with the reasons therefor, supported by substantial evidence contained in a written record.

322 (d) **Appeal to Village Board.** Any person adversely affected by the decision of the Village Manager
323 issues *de novo*, and whose written decision will be the final decision of the Village. An appeal by a
324 wireless infrastructure provider must be taken jointly with the wireless service provider that intends to
325 use the wireless telecommunications facility.

³ If a municipality denies an application, 47 U.S.C. § 332(c)(7)(B)(iii) requires the decision be “in writing and supported by substantial evidence contained in a written record” while Wis. Stat. § 182.017(9) requires that the municipality “provide the applicant a written explanation of the reasons for the denial at the time that the municipality denies the application.”

326 (e) **Deadline to Appeal.**

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

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

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

335 **Section 9: Expiration and Revocation**

336 (a) **Expiration.** A wireless permit issued pursuant to an eligible facilities request shall expire at the same
337 time the permit for the underlying existing wireless telecommunications facility expires. All other
338 wireless permits shall be valid for a period of five years from the date of issuance. Upon expiration of
339 the wireless permit, the permit holder must either:

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

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

344 (b) **Revocation for Breach.** A wireless permit may be revoked for failure to comply with the conditions
345 of the permit or applicable federal, state, or local laws, rules, or regulations. Upon revocation, the
346 wireless telecommunications facility must be removed within 30 days of receipt of written notice from
347 the Village. All costs incurred by the Village in connection with the revocation, removal, and right-of-
348 way restoration shall be paid by the permit holder.

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

354 **Section 10: Relocation**

355 Except as otherwise prohibited by state or federal law, a permit holder must promptly and at its own
356 expense, with due regard for seasonal working conditions, permanently remove and relocate any of its
357 wireless telecommunications facilities in the right-of-way whenever the Village requests such removal
358 and relocation. The Village may make such a request to prevent the facility from interfering with a
359 present or future Village use of the right-of-way; a public improvement undertaken by the Village; an
360 economic development project in which the Village has an interest or investment; when the public
361 health, safety, or welfare require it; or when necessary to prevent interference with the safety and
362 convenience of ordinary travel over the right-of-way. Notwithstanding the foregoing, a permit holder
363 shall not be required to remove or relocate its facilities from any right-of-way that has been vacated in

364 favor of a non-governmental entity unless and until that entity pays the reasonable costs of removal or
365 relocation to the permit holder.

366 **Section 11: Abandonment**

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

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

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

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

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

377 (C) Require the permit holder to post a bond or provide payment sufficient to reimburse
378 the Village for reasonably anticipated costs to be incurred in removing the facilities and
379 undertaking restoration under Section 12.

380 (3) Remove its facilities from the right-of-way within one year and perform the required
381 restoration under Section 12, unless the Village Manager waives this requirement or provides a
382 later deadline.

383 (b) **Abandoned Facilities.** Facilities of a permit holder who fails to comply with Section 11(a) and which,
384 for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be
385 a nuisance. In addition to any remedies or rights it has at law or in equity, the Village may, at its option:

386 (1) abate the nuisance and recover the cost from the permit holder or the permit holder's
387 successor in interest;

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

389 (3) require removal of the facilities by the permit holder or the permit holder's successor in
390 interest.

391 **Section 12: Restoration**

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

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

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

406 **Section 14: Severability**

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

411

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

413

414 VILLAGE OF ELM GROVE

415 Dated this

416

417 _____

418 Neil H. Palmer, Village President

419

420 _____

421 Mary S Stredni, Village Clerk