VILLAGE OF ELM GROVE
13600 Juneau Boulevard
Elm Grove, WI  53122

LEGISLATIVE COMMITTEE
Thursday, August 15, 2019  *  7:00 PM  *  Parkview Room

AGENDA

1. Bring meeting to order and roll call

2. Review and act on minutes
   Documents:
   LC032119md.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 draft.pdf
   Attachment B - Small Cell.pdf
   Attachment C - Small Cell.pdf

4. Review and act on Chapter 335-22 - B1 Local Business District
   Documents:
   335-22 B-1 Local Business District ordinance amendment (HdIm 02 13 19).pdf

5. Other Business

6. 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.

1. Call meeting to order
Chairman Domaszek brought the meeting to order at 7:00 p.m. Mary S Stredni took the roll. Consensus for President Palmer to Chair meeting as Domaszek was present by phone.

2. Minutes
Domaszek and Haas moved and seconded to approve the January 17, 2019 minutes. Motion carried.

3. Review §335-86 (I) Short-term Rentals
Trustees Haas and Domaszek moved and seconded to make recommendation for approval to the Board of Trustees with the following changes:
    Line 34 – Definition of Residential Property: remove the word residential and change the p in property to lower case.
    Lines 104 – 106 – Include requirement for person renting to add cell phone number and e-mail address. In last sentence after ‘the monetary amount’ add ‘ a description of value’.
    Line 110 – (a) change to ‘For a short-term rental the application shall contain the following information:
    Line 114 – Include cell phone number of home owner.
    Lines 164 and 166 – change ‘local’ to ‘Village’.
Motion carried.

4. Review of existing and potential conditional use zoning provisions
Consensus to move to next meeting for review.

5. Review and act on model ordinance for siting of Wireless Facilities in Local Rights-of-Way
The League of Wisconsin Municipalities has provided a model ordinance regarding Wireless facilities in local right-of-ways. De Angelis noted that a carrier will not be able to remove a Village pole but they can put up their own. The Village will no longer be able to regulate aesthetics.
Discussion regarding adding a fee section. ‘Administrator’ should be defined as the Village Manager or his or her designee.
In Section 12 – Restoration – the required annual right-of-way permit should be made out to the actual entity - for example We Energies.
Discussion to find a better wording for ‘applicant’.
Throughout the document Village should be Village of Elm Grove.
The model ordinance will be formatted to Village Ordinance standards and will be brought back to the Legislative Committee.

6. Review Shoreland and Wetland Ordinance
The DNR has reviewed the Village of Elm Grove Shoreland-Wetland and Shoreland Ordinance and is requiring modifications in order to be in compliance with State law. The Village Ordinance does not include any language regarding annexed land, but at this time it is not possible for the Village to annex any land.
Harrigan will make changes to the existing ordinance in order to be in compliance and send to the DNR for review. Once the DNR has approved the changes, the amended ordinance will come back to the Legislative Committee.
7. **Other business**

Domaszek noted that in a portion of the north-western part of the Village there are some very small lots which limit what homeowners are able to do to make improvements. Discussion regarding what changes can be made to the zoning code to allow property owners the ability to make improvements. Staff will look into possibility of creation of PUD and other options for future discussions.

8. **Adjourn**

Haas and Domaszek moved and seconded to adjourn at 8:07 p.m. Motion carried.

Respectfully submitted,

Mary S Stredni, Village Clerk
THE VILLAGE BOARD OF THE VILLAGE OF ELM GROVE DO ORDAIN AS FOLLOWS:

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

Section 1: Definitions

For the purposes of this Chapter, the terms below shall have the following meanings:

“Administrator” means the Village Manager or his or her designee.

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

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

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

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

“FCC” means the Federal Communications Commission.

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

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

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

   i. is 50 feet or less in height, or

   ii. is no more than 10 percent taller than other adjacent structures, or
iii. is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities;

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

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

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

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

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

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

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

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

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

Village means Village of Elm Grove.

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

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

“Wireless Regulations” means those regulations adopted pursuant to Section 5(b)(1) to implement the provisions of this Chapter.
“Wireless Service Provider” means an entity that provides wireless services to end users.

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

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

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

Section 2: Purpose

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

Section 3: Scope

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

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

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

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

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

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

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

**Section 4: Nondiscrimination**

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

**Section 5: Administration**

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

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

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

2. Interpret the provisions of the Chapter and the wireless regulations.

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

4. Collect any fee required by this Chapter.

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

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

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

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

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

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

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

Section 6: Application

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

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

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

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

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

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

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

(6) Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the Village for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include (i) the proposed location of the facility, (ii) a
description and scale image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

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

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

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

(10) Payment of all required fees.

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

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

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

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

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

Section 7: General Standards

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

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

(c) Standards.²

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

(A) Minimizes risks to public safety;

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

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

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

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

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

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

(2) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a 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
(3) In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic and at all times must comply with the requirements of the Americans with Disabilities Act of 1990.

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

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

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

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

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

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

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

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

(8) **Graffiti Removal.** All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the Village.
(9) **Relocation.** At the request of the Village pursuant to Section 10 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.

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

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

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

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

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

**Section 8: Application Processing and Appeal**

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

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

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

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

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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.”
(e) **Deadline to Appeal.**

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

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

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

**Section 9: Expiration and Revocation**

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

1. Remove the wireless telecommunications facility; or,

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

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

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

**Section 10: Relocation**

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

Section 11: Abandonment

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

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

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

   A. Accept the dedication for all or a portion of the facilities;

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

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

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

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

1. Abate the nuisance and recover the cost from the permit holder or the permit holder’s successor in interest;

2. Take possession of the facilities; and/or

3. Require removal of the facilities by the permit holder or the permit holder’s successor in interest.

Section 12: Restoration

In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Section 10), the permit holder must restore the right-of-way to its prior condition in accordance with Village specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restorations required by this Section 12, the Village at its option may do such work. In that event, the permit holder shall pay to Village, within 30 days of billing therefor, the cost of restoring the right-of-way.
Section 13: Placement on Village Owned or Controlled Structures

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

Section 14: Severability

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

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

VILLAGE OF ELM GROVE

Dated this

______________________________
Neil H. Palmer, Village President

______________________________
Mary S Stredni, Village Clerk
COMMENT: Section 6(b) of the Model Ordinance sets out the basic content of the wireless permit application. This Application Checklist (“Checklist”) is to assist the municipality in developing a comprehensive application form based on the Model Ordinance, which grants the Administrator the authority to develop the application form. See Model Ordinance Section 5(b)(3). The provisions included in this Checklist are a starting point for the municipality. The municipality should review its code of ordinances to determine if there are other necessary provisions to include in the application.

The application form must be consistent with the ordinance, and, consequently, whatever modifications the municipality makes regarding the content of the application should be reflected in the ordinance. Moreover, the municipality should be mindful that its application must be consistent with the limitations imposed by the 2018 Small Cell Order.

Once the municipality has developed its application form, it may wish to create its own simplified one-page checklist that clearly identifies all the materials the applicant must submit. This will help minimize the submission of incomplete applications. The simplified checklist will also aid the municipal reviewer in determining whether the application is complete and in timely processing the application within the short review period established by the state and federal shot clocks. See Memo Section B.2 for a discussion of shot clocks.

This Checklist assumes that the municipality will be using the application as the final permit.

General Application Content

☐ Copies and Format. Section 6(a) of the Model Ordinance requires the applicant to submit one paper copy and one electronic copy of the application unless otherwise provided in the municipality’s wireless regulations. However, the municipality can choose to receive applications by paper or electronic format only. The municipality’s ordinance or wireless regulations can establish the number of paper copies of the application and associated materials that the applicant must submit.

☐ Submission Information. The application should identify where the application must be submitted (e.g., street address for hand delivery, mailing address, email address) and which department may be contacted to answer any questions about the application.

Disclosures to Applicant

☐ Disclosures. The application should either restate or refer to all municipal disclosures required in the municipality’s ordinance, including the following Sections of the Model Ordinance:
  ○ 6(a): Application format and standards for completion;
- 6(c): Waiver request requirements and standards;
- 6(d): Applicable fees; and,
- 6(e): Public record law compliance.

**Cover Sheet with Standard Permit Conditions.** Section 6(b)(2) of the Model Ordinance requires the municipality to provide an application cover sheet, listing all standard permit conditions (as provided in Section 7(d) of the Model Ordinance). As discussed below, the standard permit conditions include indemnification and insurance provisions and, consequently, the cover sheet must be signed by an authorized representative of the applicant. Therefore, it is preferable to restate the standard permit conditions from the municipality’s ordinance in their entirety, rather than simply citing the relevant ordinance provisions.

**Required Information Provided by Applicants - As Provided in Section 6(b) of the Model Ordinance**

- **Wireless Regulations.** All information required pursuant to the wireless regulations adopted by the municipality.
  
  **Comment:** This will likely include evidence that the project will comply with any applicable aesthetic or other standards included in the wireless regulations. The required photo simulations and design or engineering plans to be submitted with the application may provide sufficient evidence to demonstrate that the standards will be met, although the municipality could also require the applicant to provide one or more written narratives explaining project compliance. Any request under Section (6)(c) of the Model Ordinance for a waiver of an application requirement should be supported with sufficient evidence for the municipality to determine whether such a waiver is warranted.

- **Signed Cover Sheet.** A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.
  
  **Comment:** A signed cover sheet ensures that the applicant has agreed, in writing, to the standard permit conditions provided in Section 7(d) of the Model Ordinance. These standard permit conditions include, but are not limited to, the permit term, indemnification, and insurance requirements.

- **Contact Information.** The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.
  
  **Comment:** Section 6(b)(3) of the Model Ordinance requires the applicant to identify a local representative for the applicant and wireless service provider (if different). The
municipality may also wish to request secondary contact information if the primary contact is unavailable in the case of an emergency.

☐ **Shot Clock.** A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.

*Comment:* The municipality should require the applicant to identify which shot clock(s) apply. One way to accomplish this is to have the applicant “check the box” to choose the appropriate shot clock, as illustrated below. This prevents the municipality from making incorrect assumptions and missing essential deadlines. See Memo Section B.2 for further discussion of state and federal shot clocks.

<table>
<thead>
<tr>
<th>IDENTIFY APPLICABLE SHOT CLOCK(S)</th>
<th>DEADLINE (calendar days)</th>
<th>TYPE OF APPLICATION</th>
<th>FEDERAL OR STATE AUTHORITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>☐</td>
<td>60 days</td>
<td>Application to collocate <strong>SWF</strong> on an existing structure (including non-telecommunications structures)</td>
<td>47 CFR § 1.6003(c)(1)(i)</td>
</tr>
<tr>
<td>☐</td>
<td>90 days</td>
<td>Application for <strong>SWF</strong> involving construction of a new structure</td>
<td>47 CFR § 1.6003(c)(1)(iii)</td>
</tr>
<tr>
<td>☐</td>
<td>90 days</td>
<td>Application to collocate <strong>non-SWF</strong> facility on an existing structure</td>
<td>47 CFR § 1.6003(c)(1)(ii)</td>
</tr>
<tr>
<td>☐</td>
<td>150 days</td>
<td>Application for a <strong>non-SWF</strong> facility involving construction of a new structure</td>
<td>47 CFR § 1.6003(c)(1)(iv)</td>
</tr>
<tr>
<td>☐</td>
<td>60 days</td>
<td>Eligible Facilities Request to add, remove, or replace equipment on an existing tower or base station that doesn’t substantially change the physical dimensions of the tower or base station</td>
<td>47 CFR § 1.6100(c)(2)</td>
</tr>
<tr>
<td>☐</td>
<td>60 days</td>
<td>Applications to place a <strong>wireless telecommunications facility</strong></td>
<td>Wis. Stat. § 182.017(9)</td>
</tr>
</tbody>
</table>

☐ **Description of Each Wireless Facility.** A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each site.
**Comment (Additional Information):** This provision is a starting point. The municipality should consult an engineer with the relevant telecommunications experience to determine what additional information may be necessary.

**Comment (Multiple Applications):** Where the municipality receives more than one application in a day, the applicant must provide the required description and photo simulation for each site, regardless of the similarities between the installations. An application that does not provide such site specific information is incomplete under the terms of the Model Ordinance.

**Comment (Collocation):** If the proposed facility is to be collocated on an existing support structure, the applicant must identify the owner of the support structure. If the municipality requires collocation, where possible, under its wireless regulations, then the municipality should consider requiring the applicant to identify nearby support structures that could potentially accommodate collocation and to explain the reasons collocation is not possible.

**Comment (Other Permits):** Under Section 6(b)(8) of the Model Ordinance, the applicant is required to submit complete applications for all other authorizations required for installation and operation of the facility in the ROW. To ensure all necessary applications have been submitted, the municipality may consider requiring the applicant to separately describe any excavation work, temporary closures of any public thoroughfares, traffic redirection plans, electric work, or modifications to public improvements necessary in the construction of the proposed facility.

☐ **Notice to Property Owners.** The applicant must submit proof that a notice has been mailed to all owners of property within 300 feet of the proposed installation site that the applicant is seeking to place or modify wireless facilities in the ROW. The notice must include: (i) the proposed location of the facility, (ii) a description and scaled image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.

**Comment (Notice):** The 2018 Order does not require the wireless provider to notify nearby property owners, nor does the order provide an objecting property owner with any recourse to stop or alter the project. However, the wireless provider may be willing to work with the municipality to address specific property owner concerns and the notice requirement in Section 6(b)(6) of the Model Ordinance may facilitate that process.

**Comment ( Applicant Q&A Session):** Depending on the size of the project, the municipality may consider requiring the applicant to hold a public question and answer session to address citizen concerns. If the municipality wants to reserve this option, the municipality’s ordinance or wireless regulations should reflect this.
☐ **FCC Compliance.** A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.

☐ **Complete Copies of Applications for Other Permits or Approvals.** To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.

*Comment:* The municipality should consider providing a checklist in the application of all applicable or potentially applicable permits. This may be part of the simplified checklist recommended above. See Memo Section B.2.c for a discussion of when filing an application for a wireless permit establishes a deadline for action on other municipal approvals.

☐ **Engineer Certification.** A certification by a registered and qualified engineer that the installation can be supported by and does not exceed the tolerances of the structure on which it will be mounted and that all elements of the wireless telecommunications facility comply with applicable safety standards.

☐ **Fee Payment.** Payment of all required fees.

*Comment:* This also includes any fees required for the other permits or approvals that the applicant must seek at the same time it submits the wireless permit application.

☐ **“Effective Prohibition” Statement.** If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the municipality from complying with any deadline for action on an application.

*Comment:* An applicant may claim that it cannot comply with one or more of the requirements in the municipality’s ordinance or wireless regulations and that denial of its application on that basis effectively prohibits its provision of service in violation of federal law. If the applicant wishes to make such a claim, it must submit detailed evidence to support the claim. Receiving this evidence with the application may allow a mutually agreeable process to resolve disputes short of a lawsuit. If the municipality finds the evidence convincing, it may consider waiving the relevant ordinance provisions or wireless regulations. See Section 6(c) of the Model Ordinance, which authorizes the Administrator to grant waivers from the requirements of the ordinance or the wireless regulations.
Eligible Facilities Request. If making an eligible facilities request, the applicant must submit information sufficient to show that the application qualifies as an eligible facilities request under 47 C.F.R. § 1.6100(b)(3), including evidence that the application relates to an existing tower or base station that has been approved by the municipality. Before and after 360-degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.
COMMENT: In adopting its new effective prohibition standard, the FCC makes clear that the standard applies to both fees and non-fee legal requirements, including aesthetic, undergrounding, and minimum spacing requirements.\(^1\) The FCC states that complying with aesthetic and other such requirements imposes costs on SWF providers that may impact their ability to provide service, just as fees may do. Aesthetic and other similar requirements, therefore, violate Sections 253(a) and 332(c)(7)(B)(i)(II) of the Act unless they are:

- reasonable,
- no more burdensome than those applied to other types of infrastructure deployments, and
- objective and published in advance.\(^2\)

For further discussion of the legal limitations on aesthetic standards, see Section B.4 of the Memo.

Section 7(c) of the Model Ordinance contains a number of general aesthetic standards. These standards were drafted with the expectation that the municipality would adapt the standards to its particular circumstances after developing a record to justify the standards based on health, safety, and public welfare considerations. The aesthetic standards can be incorporated into the municipality’s ordinance\(^3\) or into its wireless regulations. Incorporating the standards into the wireless regulations may provide greater flexibility for the municipality. Keep in mind that the standards must also be applied to other types of infrastructure deployments (e.g., electric and telephone poles) and that they cannot be applied unless they have been published in advance.

This document provides samples of aesthetic standards. In particular, many are from *Regulations for Wireless Facilities in Public Rights-of-Way*, Practical Law Government Practice (Practical Law Standard Document w-016-2287). Others have been taken from standards adopted by other communities around the country. While modified for clarity and, in some cases, to reflect the definitions in the Model Ordinance, these sample standards reflect considerations from diverse communities subject to varying state laws and come from ordinances and regulations adopted both before and after the *2018 Small Cell Order*. The municipality should not incorporate these examples verbatim, but instead should adapt them to address particular local circumstances.

\(^1\) *2018 Small Cell Order* at ¶ 82.
\(^2\) Id. at ¶ 86.
\(^3\) For example, starting at a new Section 7(c)(4).
LOCATION WITHIN DISTRICTS

This section provides examples of how municipalities regulate placement of wireless telecommunications facilities within districts. See Model Ordinance Section 7(c)(1)(C). Limitations placed on the general location of wireless telecommunications facilities within districts will be reviewed under the same standards as aesthetic standards.

EXAMPLE 1:

(a) Preferred Locations. The following locations, in the order listed from most to least preferred, are the preferred locations for installations of facilities in public rights-of-way, except for areas within [a historic district [or [OTHER DISTRICTS]]]:

(1) Industrial areas;

(2) Commercial areas; and

(3) [OTHER AREAS].

(b) Non-Preferred Locations. The applicant should avoid locating new support structures, towers, or utility poles within residential neighborhoods, designated open space, conservation areas, or historic districts. A facility may be permitted in a location other than a preferred location if the applicant provides evidence showing that:

(1) Adequate coverage can be maintained, existing services can be improved, or new services can be added only if facilities are placed in a non-preferred location; or

(2) The proposed facility will meet all applicable requirements for the non-preferred location and will complement the character of the surrounding area.

EXAMPLE 2:

The most desirable location for new 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

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4 The municipality may prefer to list specific zoning districts or provide additional preferences.
demonstrate to the satisfaction of the planning commission or zoning administrator 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 historically or architecturally significant structures unless visually and architecturally integrated with the structure and shall not interfere with prominent vistas or significant public view corridors.

**COLLOCATION**

The Model Ordinance establishes a presumption that collocation on existing support structures, towers, or utility poles—without regard to whether the owner of the structure is the municipality or a private entity—is preferable over installing new structures. See Model Ordinance Section 7(c)(1)(C). However, not all municipalities will prefer collocation in all cases. For example, collocation on decorative structures or where collocation would result in an overly bulky appearance may be less preferable than placement of a new support structure.

In addition, keep in mind that not all collocations are subject to the Model Ordinance. If an applicant proposes collocation on a structure owned or controlled by the municipality, that installation is exempt from permitting under the Model Ordinance and instead will be the subject to a negotiated agreement between the applicant and the municipality. See Model Ordinance Sections 3(b)(3) and 13.

**EXAMPLE 1:**

**Collocation Preference.** Collocation of facilities is generally preferred over new support structures if the collocation would satisfy applicable aesthetic and structural requirements.

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5 See also Wis. Stat. § 196.04, requiring owners of “transmission equipment and property” to allow collocation by “any public utility, video service provider, or telecommunications provider” under certain circumstances.
EXAMPLE 2:

(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 [CITY/VILLAGE] is subject to the following:

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

   (A) The applicant submits substantial evidence supporting the unsuitability of the collocation;
   
   (B) The owner of the existing facility or support structure is unwilling to accommodate the applicant’s equipment and cannot be required to cooperate; or
   
   (C) The [director of the [DEPARTMENT NAME] department]/[VILLAGE ADMINISTRATOR]/[CITY MANAGER]/[BOARD NAME] determines that installing a new support structure or collocation with a [CITY/VILLAGE] facility is preferable to collocation with another facility or support structure.

(2) Authorization for collocation on a facility or support structure owned by a party other than the [CITY/VILLAGE] will be voided if the facility or support structure is destroyed, removed, relocated, or replaced, unless:

   (A) The owner of the collocated facility obtains a new right-of-way use permit; or
   
   (B) The facility or support structure accommodating the collocation is replaced with a facility or support structure comparable in size, mass, appearance, and placement, as determined by the [director of the [DEPARTMENT NAME] department]/[VILLAGE ADMINISTRATOR]/[CITY MANAGER]/[BOARD NAME].

GENERAL LOCATION RESTRICTIONS

In addition to regulating location among districts, municipalities may establish site-specific restrictions and requirements.

EXAMPLES:

- Obstruction of Traffic. Facilities and support structures, towers, and utility poles must be at least [NUMBER OF FEET] feet from the curb or nearest traffic lane to reduce the risk of being struck by a motor vehicle or bicycle.
• **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not obstruct, impede, or hinder vehicular, pedestrian, or bicycle travel or public safety within the right-of-way, except for authorized temporary lane or sidewalk closures.

• **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not be located within sight triangles at street intersections [established pursuant to/set forth in] [CITY/VILLAGE] [ORDINANCE/CODE] [CITATION].

• **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not be located within any area that will create traffic visibility loss to drivers, pedestrians, or bicyclists.

• **Obstruction.** To the extent possible, a facility, support structure, tower, or utility pole should be located and designed so as to avoid interference with right-of-way maintenance activities, such as:
  1. Grass mowing, brush collection, tree trimming, and landscaping maintenance;
  2. Trash collection;
  3. Maintenance of streets, pavement, sidewalks, and bicycle lanes; and

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

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

• **Spacing.** A support structure, tower, or utility pole for a wireless facility must be at least [NUMBER] feet from any other support structure in a public right-of-way.

• **Spacing.** Facilities and support structures, towers, and utility poles must be located equal distance between trees when possible, and no closer than [NUMBER OF FEET] feet to a tree to avoid a tree’s critical root zone.

• **Frontage.** Facilities and support structures, towers, and utility poles must not be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.

• **Frontage.** New facilities and support structures, towers, and utility poles must not be located directly in front of any existing residential, commercial, or industrial structure.

• **Frontage.** To the extent possible, new facilities and support structures, towers, and utility poles must be located in line with existing lot lines, but in areas where multiple structures abut each other or where no side lot setback requirement exists,
structures must not be located directly in front of an entrance or window of any existing structure.

- **Use of Lighting Elements.** A combination support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a new location where the [CITY/VILLAGE] has identified that a streetlight is necessary.

**HEIGHT RESTRICTIONS AND REQUIREMENTS**

The following example maximum height requirement is taken from the small cell legislation proposed, but not adopted, in Wisconsin's last legislative session. A municipality may have district-specific height restrictions. In addition, minimum height requirements for mounted equipment protect the public from hazards. The height restrictions and requirements must be applied to all structures within the ROW.

**EXAMPLE 1 (maximum height):**

(a) **Support Structures, Towers, and Utility Poles.** The height of a support structure, tower, or utility pole in the right-of-way may not exceed the greater of 50 feet above ground level or ten feet above the tallest existing support structure, tower, or utility pole that is in place on the effective date of this ordinance and that is located in the same right-of-way and within 500 feet of the facility that is the subject of the application.

(b) **Small Wireless Facility.** The height of a small wireless facility in the right-of-way may not exceed the greater of 50 feet above ground level or ten feet above the tallest existing support structure, tower, or utility pole that is in place on the effective date of this ordinance and that is located in the same right-of-way.

**EXAMPLE 2 (minimum height):**

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

**UNDERGROUNDING**

The 2018 Small Cell Order limits regulation of undergrounding requirements. Any undergrounding requirement cannot require “that all wireless facilities be deployed underground” as this “would amount to an effective prohibition given the propagation
characteristics of wireless signals.”6 However, these sample standards take an aggressive approach and require undergrounding when possible.

**EXAMPLE 1:**

(a) **Underground Areas.** Ground-mounted equipment associated with facilities must be placed underground in underground areas.

(b) **Other Areas.** In all other areas, ground-mounted equipment must be placed underground to the extent feasible.

(c) **Prohibition.** Ground-mounted equipment must be placed underground in connection with a street light, traffic signal, or other similar infrastructure in the ROW.

**EXAMPLE 2:**

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

b. **Ground-Mounted Equipment.** To the extent that the equipment cannot be placed underground as required, applicants shall install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The [CITY/VILLAGE] may require landscaping as a condition of approval to conceal ground-mounted equipment. Ground-mounted equipment shall not be permitted in connection with a street light, traffic signal, utility pole or other similar infrastructure in the public right-of-way. In the event that the City approves ground-mounted equipment, the applicant shall conform to the following requirements:

   (1) **Self-Contained Cabinet or Shroud.** The equipment shroud or cabinet shall contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment shall be concealed from view.

   (2) **Concealment.** The [CITY/VILLAGE] may require the applicant to incorporate concealment elements into the proposed design, including but not limited to public art displayed on the cabinet, strategic placement in less obtrusive locations and placement within existing or replacement street furniture.

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6 2018 Small Cell Order at ¶ 90.
GENERAL AESTHETIC STANDARDS

The following examples demonstrate some of the general aesthetic standards that municipalities impose on ROW infrastructure. They are grouped roughly in relation to the purpose of the standard or restriction.

**EXAMPLE 1 (concealment):**

(1) Each new or modified facility must be compatible in size, mass, and color to similar facilities in the immediate area, with a goal of minimizing the physical and visual impact on the area.

(2) New support structures, towers, and utility poles must be no more than [NUMBER] inches in diameter with a surface that is powder-coated and [COLOR] in color, unless another color would blend better with the surrounding area.

(3) Notwithstanding paragraphs (1) and (2) above, a new facility or support structure, tower, or utility pole must be designed using camouflaging techniques that make it as unobtrusive as possible if:
   
   (A) It is not possible or desirable to match the design and color of a new facility or support structure, tower, or utility pole with the similar structures in the immediate area; or

   (B) Existing structures in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the [CITY/VILLAGE].

**EXAMPLE 2 (concealment):**

Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts, and design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive, or placement is required under applicable law:

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

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

(3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the utility pole. Unless the radio units or equipment

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7 This example incorporates other requirements, such as undergrounding, into a single “concealment” regulation.
cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.

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

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

(6) No support structures, towers, or utility poles shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted above-ground, in underground areas; provided that the city may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility.

(9) Unless appropriately placed, and concealed, so that the size of the facility cannot be increased except with the discretionary approval of the [CITY/VILLAGE], no wireless telecommunications facility is permitted in rights-of-way in alleys.

(10) No wireless telecommunications facility is permitted in any local historic district without the approval of the [MUNICIPAL BODY RESPONSIBLE FOR REGULATING HISTORIC DISTRICTS].

**EXAMPLE 3 (concealment):**

(1) New support structures, towers, and utility poles must not be made of wood.8

(2) Ground level equipment must not be higher, wider, or deeper than [NUMBER] feet.

(3) Ground level equipment cabinets and shelters must be:

   (A) Secured to prevent public safety risks and unauthorized access to equipment and wiring; and

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8 If wood utility poles are allowed within areas of the municipality, this restriction may be considered more burdensome than restrictions on similar facilities. The municipality should consider limiting this restriction to specific areas of the municipality where all utilities are underground or metal poles are required.
(B) Screened with landscaping or other means, maintained by the owner of the facility; or designed to blend with and match the character of the surrounding area.

(4) Antennas located at the top of support structures must be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure.

(5) Wiring and cabling must be neat and concealed within or flush to the support structure.

**EXAMPLE 4 (additional concealment examples):**

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

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

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

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

- **Definitions Used in Concealment Ordinances.**
  - *Camouflaged or Concealed* means designed to mask or blend with the surrounding environment in such a manner to render it generally unnoticeable to the casual observer. By way of example, a wireless communication facility may be camouflaged in a faux tree, faux bush, flagpole, or otherwise designed in a manner to be compatible with the appurtenant architecture, building, or natural surroundings.
  - *Stealth* means concealment techniques that completely screen all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that the observer does not recognize the structure as a wireless facility.

  - Examples include, but are not limited to: (1) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (2) new architectural features that match the underlying structure in architectural style, physical proportion and construction-materials.
quality; (3) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

**EXAMPLE 5 (noise examples):**

- **Noise.** Facilities must be constructed and operated in a manner that minimizes noise that is audible as provided in [CODE OF ORDINANCES].

- **Noise.** A wireless facility and all equipment associated with a wireless facility shall not generate noise that exceeds the applicable ambient noise limit in the zone where the wireless facility is located. The [CITY/VILLAGE] may require the applicant to install noise attenuating or baffling materials and/or other measures, including but not limited to walls or landscape features, as the approval authority deems necessary or appropriate to ensure compliance with the applicable ambient noise limit.

**EXAMPLE 6 (lighting):**

Facilities must not be illuminated, except in accordance with state or federal regulations or if incorporated as part of a street light pole.

**EXAMPLE 7 (signage examples):**

- **Signage Prohibited.** Signage is not permitted except to comply with FCC or Wisconsin regulations to provide safety warnings.

- **Signage; Prohibition and Requirements.** No facility may display any signage or advertisements unless expressly allowed by the [CITY/VILLAGE] in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner’s unique site number, and also provides a local or toll-free telephone number to contact the facility owner’s operations center.

- **Signage Required.** The owner and/or operator must post an identification sign at each facility, including owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the [CITY/VILLAGE]. If at any time a new owner or operator provider takes over operation of an existing personal wireless service facility, the new personal wireless service provider shall notify the [CITY/VILLAGE] of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new wireless service provider. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size.
EXAMPLE 8 (trees):\(^9\)

Tree “topping” or the improper pruning of trees is prohibited. Any proposed pruning of trees, shrubs, or other landscaping already existing in the right-of-way must be noted in the application and approved by the [CITY/VILLAGE].

\(^9\) See also, the General Location Restrictions above for alignment with trees.
STATE OF WISCONSIN        WAUKESHA COUNTY        VILLAGE OF ELM GROVE
1

ORDINANCE NO._____________

AN ORDINANCE AMENDING SECTION 335-22
OF THE VILLAGE OF ELM GROVE CODE OF ORDINANCES

THE BOARD OF TRUSTEES OF THE VILLAGE OF ELM GROVE DO ORDAIN AS
FOLLOWS:

SECTION 1: Section 335-22 of the CODE OF ORDINANCES OF THE VILLAGE OF ELM
GROVE is hereby amended by the addition of underlined text and the deletion of text as follows:

§ 335-22 B-1 Local Business District.

The B-1 Business District is intended to provide for individual or small groups of retail and
customer service establishments serving primarily the convenience of the village residents. The
character, appearance and operation of local centers shall be compatible with the character of
the surrounding area.

A. Permitted uses.

(1) Antique, collectors and furniture consignment stores.

(2) Appliance stores.

(3) Art shops.

(4) Bakeries.

(5) Banks, credit unions, savings and loan associations and other financial services or institutions.

(6) Barbershops and beauty parlors.

(7) Books, newspapers and magazines or stationery stores.
Brokerages (stock, mortgage), accounting and similar financial services.

Business offices.

Camera and photographic or imaging supply stores.

Tailor or dressmaker or apparel stores.

Standalone convenience or full scale grocery or food store.

Confectioneries.

Delicatessens.

Drugstores.

Electronic devices stores.

Florist shops.

Furriers and fur apparel.

Furniture or household goods or home décor stores.

Gift stores.
Hardware stores.
Hobby and craft shops.
Insurance sales offices and real estate offices.
Interior decorator.
Jewelry stores.
Laundries and dry-cleaning establishments.
Household goods repair stores.
Meat or fish markets.
Music stores.
Office supplies and equipment and computer stores.
Packaged beverage stores.
Paint, glass and wallpaper stores.
Parking lots and parking structures serving businesses in the district.
Photographer.

Pet or pet supplies store.

Professional offices.

Equipment rental stores.

Real estate offices.

Self-service laundry and dry-cleaning establishments.

Shoe stores and leather goods stores, sales and repairs.

Tobacco shops.

Permitted accessory uses.
Garages for storage of vehicles used in conjunction with the operation of business or owned or used by tenants residing within quarters located in the same structure as the business.

(2)

Off-street parking and loading areas.

(3)

Residential quarters for the owner or proprietor or any rental tenant located in the same structure as the business, provided such living accommodations satisfy all applicable health, safety and current building code provisions and such use is accurately reflected in a current plan of operation which identifies the number and location of all residential occupants in such structure in accordance with § 335-22 of the Code of the Village of Elm Grove.

C.

Conditional uses. All conditional uses shall require the issuance of a condition use permit in accordance with §335-86 of the Code of the Village of Elm Grove.

(1)

Cocktail, or wine or beer bars or taverns.

(2)

Building maintenance and supply stores.

(3)

Drive-in banks.

(4)

(5)

Online retailers’ delivery drop-off or item return sites

(6)

Funeral homes.

(7)

Garden supply stores.

(8)

Gasoline service stations and car wash establishments, provided that all pumps and service islands meet the setback and yard requirements.

Medical, dental clinics or optical stores.
Physical culture facilities, such as fitness centers, massage parlors, tanning parlors and body-piercing establishments as defined by Wis. Admin. Code § HFS 173.03(8) and tattoo parlors.

Power equipment centers, sales, service and storage.

(a) Restaurants with drive-through windows with take-away service. Only property which has frontage along, and vehicular ingress and egress access to, Bluemound Road may be considered for such a use.

(b) Restaurants, without drive-through windows with take-away service.

Utilities.

Lodges and clubs.

Wireless communication antennas.

Multifamily residential units as part of a Mixed Compatible Residential Planned Development Overlay District project under § 335-30. Densities of up to 12 dwelling units per net acre may potentially be granted subject to the adjustments provided for in § 335-30F(3) and (4).

Parking lots, driveways, walkways or other hardscape constructed using a permeable surface to exceed the allowable percentage of maximum impervious surface area as defined within this chapter.

Other unspecified uses which are found to be similar in character to those principal uses conditionally permitted by the Plan Commission.

Lot area and width. Lots shall be a minimum of 7,200 square feet in area and shall be not less than 60 feet in width at the front building line.
Building height. No structure or parts thereof shall exceed ??? feet in building height, or ???
stories, whichever is less. No accessory structure shall exceed ??? feet in building height.

F.

Yards (principal and/or accessory structures).

(1).

There shall be a minimum building setback of ??? feet from each abutting street right-of-way.

(2).

There shall be no required side yard.

(3).

There shall be a rear yard setback of not less than ??? feet.

G.

Yards within the Downtown Design Overlay District (principal and/or accessory structures).

(1).

Subject to the provisions of § 335-22G(2), the Plan Commission may approve deviations from
any of the yard requirements specified in § 335-22F.

(2).

Notwithstanding the provisions of § 335-22F(1), (2) and (3), an applicant shall propose, and the
Plan Commission shall review and approve, the proposed side, front and rear yard setbacks for
structures to be developed or redeveloped within the boundaries of the Downtown Design
Overlay District as established by § 335-12G(3). Before determining appropriate setbacks, the
Plan Commission shall first make a final determination that due consideration has been given to
the existing conditions of adjacent properties when establishing side, front and rear yard
setbacks, so as to provide a suitable, streamlined and compatible transition between structures.

The following criteria shall be considered by the Plan Commission in determining front, side and
rear yard setbacks:

(a).

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

(b).

Whether the proposed new or modified structure fosters a harmonious relationship to adjacent
structures;

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

(d).

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

(e).

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

[2]

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

I. Maximum building footprint area ??? % of lot area.

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

SECTION 2: If any section, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remainder of such ordinance.

SECTION 3: This ordinance shall take effect and be in full force from and after its passage and publication by posting commencing on ________________, 2019.

Passed and approved this ____ day of ____________, 2019.

VILLAGE OF ELM GROVE

__________________________
Neil H. Palmer, Village President

__________________________
Mary S. Stredni, Village Clerk
§ 335-86 Conditional use permit.

A. Conditional use permits. The Village Board may authorize the Zoning Administrator to issue a conditional use permit for conditional uses after review and a public hearing, provided that such conditional uses and structures are in accordance with the purpose and intent of this chapter and are found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the value of the neighborhood or community.

B. Application. Applications for conditional use permits shall be made in duplicate to the Zoning Administrator on forms furnished by the Zoning Administrator and shall include the following information:

1. Names and addresses of the applicant, owner of the site, architect, professional engineer and/or contractor, and all opposite and abutting property owners of record.
2. Description of the subject site by lot, block and recorded subdivision or by metes and bounds; address of the subject site; type of structure; proposed operation or use of the structure or site; number of employees; and the zoning district within which the subject site is located.
3. Survey prepared by a registered land surveyor showing the location, property boundaries, dimensions, uses and size of the following: subject site; existing and proposed structures; existing and proposed easements, streets and other public ways; off-street parking, loading areas and driveways; existing highway access restrictions; existing and proposed street, side and rear yards; and areas subject to inundation by floodwaters. The survey shall also show the location, elevation and uses of any abutting lands and their structures that are located within 40 feet of the subject site; soil mapping unit lines, types and slopes; ground surface elevations; mean and historic high-water lines on or within 40 feet of the subject premises; and existing and proposed landscaping when so required by the Plan Commission.
4. In areas subject to inundation by floodwaters, the survey provided by the applicant shall also include first floor elevations, utility elevations, historic and probable future floodwater elevations, depth of inundation, floodproofing measures and plans for proposed structures with dimensions and elevations pertinent to the determination of the hydraulic capacity of the structures or their effect on flood flows. Where floodproofing is required, the applicant shall submit a plan or document certified by a licensed professional engineer or architect attesting to the adequacy of the floodproofing measures to withstand flood forces and velocities associated with a one-hundred-year recurrence interval flood. Prior to the issuance of a certificate of compliance, the applicant shall also submit a certification by the licensed professional engineer that the finished floodproofing measures were accomplished in compliance with the provisions of this chapter.
5. Additional information as may be required by the Village Board, Village Plan Commission, Village Engineer or the Zoning Administrator.

C. Plan Commission review.

(1) The Village Plan Commission shall review all applications for conditional use permits. The Plan Commission shall review and consider the site, existing and proposed structures, architectural plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and
circulation, drainage, sound and vibration generation, sewerage and water systems, aesthetic and
conditional use compatibility with the then character of the neighborhood and the proposed plan of
operation for compliance with the Code of Ordinances and the purpose and intent of this chapter.

(2) Conditions such as landscaping, architectural design, type of construction, construction
commencement and completion dates, sureties, lighting, fencing, planting screens, operational
control, hours of operation, traffic, deed restrictions, increased yards or parking requirements, and
potential negative impact on neighboring properties may be considered by the Plan commission
upon its finding that these are necessary to fulfill the propose and intent of this Chapter.

(3) The Plan Commission shall report its findings to the Village Board within 60 days and may
recommend conditions, such as landscaping, architectural design, type of construction, construction
commencement and completion dates, sureties, lighting, fencing, drainage, sound and
vibration generation reduction or elimination, planting screens, operational control, hours of
operation, improved traffic circulation, deed restrictions, highway access restrictions, increased
yards and parking requirements, or any other condition the Plan Commission deems necessary in
order to ensure that the proposed use complies with the intent and character of the surrounding
properties and where such conditions are deemed necessary to fulfill the purpose and intent of this
chapter.

D. Public hearing. The Village Board shall hold a public hearing upon each application after receiving
the recommendation from the Plan Commission. A notice shall be via class 2 notice prior to the
public hearing giving the time and place for the hearing, and due notice shall be given to the parties
in interest. At the hearing, the applicant may appear in person or by his or her agent or attorney.

[Amended 4-22-2008]

E. Village Board action. Following the public hearing, and after consideration of the Plan
Commission's recommendations, the Village Board shall exercise its own independent judgment in
evaluating all data and information received or absent from the record of the application, including
testimony or public comments which it deems to constitute substantial evidence under Wis. Stat.§
62.23 (7)(de)b. and the recommendation of the Plan Commission in determining whether to grant
the conditional use permit as applied for, grant the conditional use permit with conditions deemed
appropriate by the Board, impose conditions such as the permit's duration, transfer, or renewal, in
addition to any other conditions specified in the village’s zoning ordinances or as recommended by
the Plan Commission, or deny the permit In which case, such decision may be appealed to the
circuit court under the procedures contained in Wis. Stat § 62.23(7)(e)10. In addition:

(1) Compliance with all other provisions of this chapter, such as lot width and area, yards, height,
parking, loading, traffic and highway access shall be required of all conditional uses unless a
variance has been granted under Article IX of this chapter; provided, however, that the Village
Board may, with the recommendation of the Plan Commission, authorize the reconstruction of a
lawful pre-existing detached garage at its current location and in its current dimensions,
notwithstanding noncompliance with the setback and minimum square footage requirements of this
chapter.

(2) Amendments. Changes subsequent to the initial issuance of a conditional use permit that result in
a need to change the initial conditions shall require an amendment to the conditional use permit.
Enlargement of a conditional use shall be considered an amendment. The process for amending a
permit shall generally follow the procedures for the initial granting of a conditional use permit.

(3)
Revocation of conditional use permit. In the event an applicant or its successors or assigns, where
such transfer is allowed, fail to comply with the conditions of the conditional use permit, or if the
use, or characteristics of the use, is changed without prior approval by the Plan Commission, the
conditional use permit may be revoked by the Village Board of Trustees. The process for revoking
a permit shall generally follow the procedures for granting a permit.

F. Existing conditional uses. Lawful uses existing at the effective date of this chapter that would be
classified as a conditional use in the particular district concerned if they were established after the
effective date of this chapter shall be considered legal conditional uses without further action of the
Village. Changes to or substitution of such conditional uses shall be subject to review and approval
by the Village Board of Trustees in accordance with this section.

G. Notice to Department of Natural Resources. The Zoning Administrator shall transmit a copy of each
application for a conditional floodland use or shoreland W-1 District conditional use to the
Wisconsin Department of Natural Resources (DNR) for its review and comment. Action on such
applications shall not be taken for 30 days or until the DNR has made its recommendation,
whichever occurs first. A copy of floodland conditional use permits and shoreland W-1 District
conditional use permits shall be transmitted to the DNR within 10 days of the effective date of such
permit.

H. Conditional use review of communication structures. The following procedures and standards are
applicable to proposed communication structures identified as conditional uses within this chapter.
Terms within this section shall have the meanings found in § 335-50.1 and § 335-94.
[Added 10-13-1997; amended 8-25-2014]

1. Application and review. The Village Manager shall determine an application to be complete and
eligible for formal presentation to the Plan Commission and establishment of public hearing date
only after the applicant has submitted information as required under this chapter.

2. Fees and deposits. The Village Manager shall identify and estimate the need of the Village to
engage expertise to assist the Village staff, the Plan Commission and the Board of Trustees in
reviewing the application. Per the requirements set forth in § 30-3, the Village Manager shall inform
the applicant of these requirements, and the amounts that the applicant will be required to pay shall
be confirmed by the Plan Commission at its initial formal review and may be modified by the Plan
Commission if additional expertise needs to be engaged. These amounts shall be due and payable
by the applicant to the Village within the timetable established by the Village per § 30-3.

3. Application documentation. The applicant shall submit in writing as part of its application the
following documentation:

(a) The name and business address of, and the contact individual for, the applicant.

(b) Construction plan showing the location of the proposed or affected wireless Tower; and renderings
showing site and structural features, including network components, Wireless Communication
Antennas, transmitters, receivers, base stations, power supplies, cabling and any other associated
equipment that is necessary to provide wireless communication service.

(c) If the application is a substantial modification of an existing Tower or Mobile Service Facility, the
applicant shall submit a construction plan which describes the proposed modifications, including
equipment and network components, antennas, transmitters, receivers, base stations, power
supplies, cabling and related equipment associated with the proposed modifications.

(d).
If the application is to construct a new Tower and/or a New Mobile Service Facility, a construction plan which describes the proposed structure and the equipment and network components, including antennas, transmitters, receiver's base stations, power supplies, cabling and related equipment to be placed on or around the new wireless tower.

(4)

Co-location preference; public site preference.

(a)
As a matter of municipal policy, the Village of Elm Grove strongly supports co-location (single locations accommodating multiple Wireless Communication Antennas and related facilities on a single Mobile Service Support Structure or groupings of Mobile Service Support Structures) and location of facilities on public property. Applicants proposing locations not conforming with these policy preferences shall have the burden of demonstrating the necessity of location on private property and/or as single-use or single-system Mobile Service Facilities. Sites and Mobile Service Facilities proposed for approval shall generally be sized and designed to allow flexibility for addition of more facilities by the same applicant entity or other entities, and the Village may negotiate terms and conditions facilitating co-location. Once approved, additional antennas and accessory facilities may be added to a site in accordance with the sharing conditions of the conditional use approval.

(b)
Permittees shall exercise good faith in co-locating and/or clustering with other communication companies and sharing the permitted site, provided such shared use does not give rise to a substantial technical level or quality-of-service impairment of the permitted use (as opposed to a competitive conflict or financial burden). In the event a dispute arises as to whether the permittee has exercised good faith in accommodating other users, the Village may require a third-party technical study at the expense of either or both the applicant and complaining user.

(c)
If an application seeks to construct a new Tower and Mobile Service Facility the applicant shall provide a written explanation, in addition to the other required submittal materials, as to the reason for the proposed location instead of co-location with an existing Mobile Service Facility. This explanation shall include a sworn statement by the individual who has the responsibility over the placement of the wireless Tower attesting that co-location is not possible due to the following factors;

[1] Co-location would not result in the same communication service functionality, coverage and capacity;

[2] Co-location is technologically infeasible; and

[3] Co-location creates an unreasonable economic burden to the wireless communication service provider.


(a)
All changes made to towers exceeding what was requested in the original application or otherwise legally existing at the date of adoption of this subsection, including, but not limited to, adding microwave dishes, or increasing the height, or profile, shall require review and approval by the Plan Commission.

(b)
All towers and sites shall be properly maintained and shall be kept in a condition as not to become a public nuisance or eyesore. Proper maintenance shall include, but not be limited to, regular lawn and landscaping care, painting of an accessory building, fences, and tower. Additionally, the site shall be kept clear of junk and trash.

(c)
Landscaping requirements.

[1] For all commercial towers over 50 feet in height, the tower base, accessory building, anchor points, and parking area shall be screened with a four-foot-tall (at time of planting) evergreen hedge consistent with the landscaping requirements for nonresidential properties.

[2] For towers of 180 feet or greater, at least one row of deciduous trees not less than a caliper of 2 1/2 inches' diameter at breast height (dbh) shall be planted between the tower and public rights-of-way and residential properties. The type and amount of required landscaping shall be determined by the Plan Commission on a case-by-case basis.

[3] The Plan Commission may allow an alternative landscaping or screening plan or waive the landscape requirements if it is determined that the landscaping will not serve a functional value based on existing topography or surrounding land uses.

(d) Every three years, beginning with the adoption of this subsection or following completion of construction of a tower, whichever is later, the owner of the tower shall submit to the Village Engineer a report from a structural engineer or other expert acceptable to the Village Engineer reflecting the fact that such tower is structurally sound and does not pose any threat to life or property.

(e) No apparatus shall be attached to any tower except as approved by the Plan Commission. Apparatus attached legally to existing towers prior to enactment of this subsection may remain but not be increased in any way except with approval of the Plan Commission. Approval of the Plan Commission for additional apparatus will be granted only after the applicant demonstrates a need for additional apparatus.

(f) Prior to final approval for new towers or within one year of the date of adoption of this subsection for existing towers, the tower owner shall furnish a financial guarantee, in the form of a letter of credit, to the Village in the amount of $20,000. The amount of such financial guarantee may be reviewed by the Plan Commission at any time to determine the sufficiency of such amount to remove the tower and restore the site upon which it is located. Funds from the financial guarantee letter of credit may be used by the Village to pay any professional fees associated with the removal of the tower and/or restoration of the site upon which it is located.

(g) Prior to final approval for new towers or within one year of the date of adoption of this subsection for existing towers, the owners shall furnish proof of liability insurance which protects against losses due to personal injury or property damage resulting from the construction, operation or collapse of the tower, antennas or accessory building in a form satisfactory to the Village Attorney.

(h) This subsection applies to both towers existing at the time of adoption of this subsection and those constructed thereafter.

(6) Conditions. Conditional use approvals shall contain conditions addressing issues such as maintenance, including allocation of responsibilities and costs for maintenance in co-location situations, mandatory removal of towers upon termination of their use, security features and provisions allowing municipal access for inspection purposes, and related issues.

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