AGENDA

1. Call meeting to order

2. Review and act on Minutes

   Documents:

   LC081519md.pdf

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

   Documents:

   335-50.2 Wireless Facilities TRACK draft 9-4-19.pdf
   Permit Small Wireless Facilities - draft 091919.pdf

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

   Documents:

   B-1 Local Business District - draft 092019.pdf

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

   Documents:

   B-2 Office Business District - draft 092019.pdf

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

   Documents:

   B-3 Mid-Rise Office and Professional District - draft 092019.pdf

7. Other Business

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

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice.
VILLAGE OF ELM GROVE
LEGISLATIVE COMMITTEE MINUTES
Thursday, August 15, 2019

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

1. **Call meeting to order**
   Mary Stredni brought the meeting to order at 7:00 p.m. President Palmer and Book moved and seconded to appoint Trustee Haas to Chair meeting. Motion carried.

2. **Minutes**
   Palmer and Haas moved and seconded to approve the March 21, 2019 minutes. Motion carried.

   Attorney de la mora reviewed the amendments and changes to State Law. The maximum fee allowed by State law is $257 per permit. Can also recover costs incurred by Village such as legal and engineering fees – should be included in the ordinance.

   In Section 7d – between #10 and #11 add language regarding replacement of Village owned structures to be at the permit holder’s expense. Also add reference to Application Checklist and Sample Aesthetic Standards. Both items will be separate from the ordinance. Staff will prepare an application form.

   Consensus of Committee to move forward with discussed changes. The amendments will be reviewed at the next meeting.

4. **Review §335-22 – B-1 Local Business District**
   Attorney de la mora reviewed the change in State Law regarding conditional use permits. Consensus to consolidate listed items under the permitted uses as possible. Consensus to have staff review what similar municipalities have done after the change in State Law.

   At next meeting, will review B-1, B-2, and B-3.

8. **Adjourn**
   Jodie and Palmer moved and seconded to adjourn at 8:30 p.m. Motion carried.

Respectfully submitted,

Mary S Stredni
Village Clerk
STATE OF WISCONSIN  
WAUKESHA COUNTY  
VILLAGE OF ELM GROVE  

ORDINANCE 335-50.2  

WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY  

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 Ordinance, 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 wireless provider that submits an application.

“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.

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

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

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

1. The wireless facility satisfies any of the following:

a. The wireless facility is mounted on a structure 50 feet or less in height including any antenna.
b. The wireless facility is mounted on a structure no more than 10 percent taller than any other adjacent structure.

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

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

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

4. The wireless facility does not require registration as an antenna structure under 47 CFR part 17.

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

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

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

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

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

“Village” means Village of Elm Grove.
“Wireless Infrastructure Provider” means any person, other than a wireless services provider, that builds or installs wireless communication transmission equipment, antenna equipment, or wireless support structures.

“Wireless Permit” or “Permit” means a written authorization issued pursuant to this Ordinance allowing 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 Provider” means a wireless infrastructure provider or a wireless services provider.

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

“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 Ordinance 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 Ordinance 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 incommode 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 Ordinance 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 Ordinance (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 two utility poles linked by the strand.

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.

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

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

5. 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 either vehicular or pedestrian 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 Ordinance, 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 Ordinance.

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

1. Adopt and amend wireless regulations and fees schedules governing the placement and modification of wireless telecommunications facilities, which shall be deemed ratified by the Village Board thirty (30) days after notification by the Village Manager of the adoption of any amendments thereto if no trustee requests that any part of an amendment be reconsidered by the entire Board, in addition to but consistent with the requirements of this Ordinance,
including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.

(2) Interpret the provisions of the Ordinance and the wireless regulations.

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

(4) Establish and update fees which encompass all direct and indirect costs and expenses attributable to the evaluation, monitoring and administration of the placement of a Small Wireless Facility including but not limited to any related permit or fee associated with its placement or installation within any Right-of-Way.

(5) Collect any fees associated with the administration of any applicable Village Ordinance or regulation.

(6) Require, as a condition of completeness of any application, notice to members of the public, at the sole expense of the applicant, that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.

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

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

(9) Select and retain, at the sole expense of the applicant, independent consultant(s) or attorney(s) with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.

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

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

(12) 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 this and other relevant ordinances, the wireless regulations and forms and procedures applicable thereto.

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

(3) The complete legal name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of the main office of the applicant and of a local representative including his/her cell phone number. If the applicant is a wireless infrastructure provider, the name, address, email address, and telephone number of the main office 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) At least four (4) photographs taken of each site, support structure, tower or utility pole that is proposed to be used by the applicant showing a view of same from a North, South, East and West perspective.

(7) 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.

(8) 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.

(9) 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 or interruption permits, and excavation permits), with all engineering completed and with all fees associated with each permit.
(10) A certification for each support structure 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 the specific place on the support structure where the wireless telecommunications facility is intended to be placed or mounted is in a suitable condition for such purpose and that all elements of the wireless telecommunications facility comply with applicable safety standards.

(11) Payment of all required fees.

(12) If an applicant should contend 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 may not supplement submitted evidence if doing so would prevent the Village from complying with any deadline for action on an application.

(13) 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.

(c) 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, (1) 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; and (2) the Village will be able to conclude that the Village’s obligation to promote the public health, safety and welfare is not compromised by the granting of a waiver.

(d) 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 adjusted based on the costs the Village expects to incur, with a review commencing by the first anniversary of the effective date of this Ordinance.

(e) 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 endeavor to treat the information as proprietary and confidential, subject to applicable state (Wis. Stat. § 19.31 – 19.39) and federal public records law and the Village Manager’s determination that the applicant’s request for confidential or proprietary treatment of the application materials is reasonable. The Village shall not be required to incur any costs to protect the application from disclosure but can tender the defense of any public records complaint/action to the applicant.
Section 7: General Standards

(a) Generally. Wireless telecommunications facilities shall meet the minimum requirements set forth in this Ordinance 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 Ordinance 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 Ordinance and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.

(c) Standards.¹

(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 and suitability of those structures in consideration of all other fixtures planned for or existing thereon;

(C) Avoids, where technically feasible, placement of facilities in aboveground 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 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.

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

(d) **Standard Permit Conditions.** All wireless permits under this Ordinance 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 Village ordinances and regulations, and other rules. Violation of such provisions may result in forfeitures under Village of Elm Grove Ordinance § 1-16.

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. Otherwise, wireless permits shall be valid for a period of five (5) years from the date of issuance unless revoked pursuant to Section 9(b) of this Ordinance.

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 an office and cell phone number, mailing address, and email address for at least one natural person and his or her backup who shall be available 24/7 in the event of any emergency.

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 Ordinance, 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 or in part 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 any wireless facility, support structure or wireless telecommunications equipment.

7. **General maintenance.** The wireless communications facility or equipment 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 Ordinance, the permit holder shall promptly and at its own expense without right of reimbursement 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 Ordinance.

(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 Ordinance.

(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 a permit issued pursuant to this Ordinance.

(14) **Certificate of Insurance.** A certificate of insurance (except an Accord 25) and all necessary endorsements demonstrating to the satisfaction of the Village Attorney that the applicant has named the Village, its officers, agents and employees as an additional insured on a primary and contributing basis for general liability in an amount of not less than One (1) Million Dollars and has provided statutory workers compensation coverage for 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)(9) 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 evidence contained in a written record.

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

(e) **Deadline for Appeal.**

1. Appeals that involve eligible facilities requests must be filed within three (3) 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 (10) 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. Otherwise, wireless permits shall be valid for a period of five (5) 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 ninety (90) days prior to its expiration. The facility may 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, County or Village Ordinance or regulations or rules. Upon revocation, the wireless telecommunications facility must be removed within thirty (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 Ordinance, a wireless telecommunications facility installed without a wireless permit must be removed within thirty (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 shall promptly and at its own sole expense without right of any reimbursement, 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 or on a utility pole for designated services per Wis. Stat. § 66.0414 (1) (y); 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 except an abutting property owner, 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 sixty (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 Ordinance 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 letter of credit 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 six (6) months of notifying the Village of non-use for sixty (60) days 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 six (6) months, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a public nuisance. In addition to any remedies or rights it has at law or in equity, the Village may, at its option:

1. Abate the public 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
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 Ordinance (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 Ordinance 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 Ordinance, 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 _____ day of October, 2019

______________________________
Neil H. Palmer, Village President

______________________________
Mary S. Stredni, Village Clerk
ATTACHMENT C
AESTHETIC STANDARDS

LOCATION WITHIN DISTRICTS

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

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

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

3. *Avoid Residential and Open Space Areas.* New support structures, towers, and utility poles shall not be located within residential, designated open space or conservation areas unless sufficient technical and other information is provided to demonstrate to the satisfaction of the planning commission that location in such areas is appropriate, subject to the following findings:
   
   a. The location of the proposed facility site is essential to meet the service demands of the carrier and no other alternative co-location, existing development or utility facility site, or type of support structure is feasible. This shall be documented by the applicant providing a list of the locations of preferred technically feasible sites, the good faith efforts and measures taken by the applicant to secure these preferred sites, and the specific reasons why these efforts and measures were unsuccessful.
   
   b. The use of a new support structure, tower, or utility pole for the proposed facility by itself or in combination with other existing, approved, and proposed facilities will avoid or minimize adverse effects related to land use compatibility, visual resources, and public safety.

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

COLLOCATION

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

(b) *Collocation with non-municipal facilities.* Collocation on facilities or support structures owned by parties other than the VILLAGE is subject to the following:
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 Village Manager determines that installing a new support structure or collocation within or on a Village facility is preferable to collocation with another facility or support structure.

Authorization for collocation on a facility or support structure owned by a party other than the Village shall 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 Village Manager.

GENERAL LOCATION RESTRICTIONS

Obstruction of Traffic.

(a) 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 pathway closures.

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

(c) 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.

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

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

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.** 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.** 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.

### HEIGHT RESTRICTIONS AND REQUIREMENTS

(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 at least 10 feet above any pedestrian or bicycle thoroughfare and a minimum of [NUMBER OF FEET] feet above any traffic lane.

### UNDERGROUNDING

(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 technically 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.

(a) **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 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 Village approves ground-mounted equipment, the applicant shall conform to the following requirements:

1. **Self-Contained Cabinet or Enclosure.** The equipment enclosure or cabinet, which should be of a color tone compatible with the area surrounding its placement, 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 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.
GENERAL AESTHETIC STANDARDS

Permits for wireless telecommunications facilities shall incorporate specific concealment elements to minimize visual impacts. 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 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 or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.

- **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 as Used in Aesthetic Standards.**
  - **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.

o **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.

- **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 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 Village Manager concludes is necessary or appropriate to ensure compliance with the applicable ambient noise limit.

- **Lighting Prohibited.** All wireless facilities must not be illuminated, except in accordance with state or federal regulations or if incorporated as part of a street light pole.

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

- **Trees.** 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 VILLAGE.
Administrative Process for Small Wireless Facilities

Section 1 – Application and Fees

(A) Permitted Use: In accordance with applicable law, wireless providers shall have the right to collocate small wireless facilities and construct, modify, maintain, and replace its own utility poles, or, with the permission of the owner, a 3rd party’s utility pole, that supports small wireless facilities along, across, upon, and under a right-of-way. Collocation of a small wireless facility or a new or modified utility pole or wireless support structure for the collocation of a small wireless facility shall be a permitted use not requiring discretionary zoning approvals, subject to the restrictions in Section 3.

(B) Permit Required. No person shall place a small wireless facility in the rights-of-way, without first obtaining a building/work permit therefore, except as otherwise provided in this ___________________ Administrative Process for Small Wireless Facilities.

(C) Permit Application. All applications for building/work permits shall be on a form, paper or electronic, provided by the Village of Elm Grove.

(D) Application Requirements. The building/work permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

(1) The applicant’s name, address, telephone number, and e-mail address;
(2) The names, addresses, telephone numbers, and e-mail addresses of all duly authorized representatives and consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
(3) A general description of the proposed work and the purpose of the work proposed. The scope and detail of such description shall be appropriate to the nature and character of the work to be performed, with special emphasis on those matters likely to be affected or impacted by the physical work proposed.
(4) Site plans and detailed construction drawings to scale that identify the proposed small wireless facility and the proposed use of the right-of-way.
(5) To the extent the proposed facility involves collocation on a new utility pole, existing utility pole, or existing wireless support structure, a structural report performed by a duly licensed engineer evidencing that the utility pole or wireless support structure will structurally support the collocation, or that the utility pole or wireless support structure may and will be modified to meet structural requirements, in accordance with applicable codes.
(6) If the small wireless facility will be collocated on a utility pole or wireless support structure owned by a 3rd party, other than a governmental pole or a utility pole for designated services, a certification that the wireless provider has permission from the owner to collocate on the utility pole or wireless support structure.
(7) Certification by the wireless provider that the small wireless facility will comply with relevant federal communications commission regulations concerning 1) radio
frequency emissions from radio transmitters and 2) unacceptable interference with public safety spectrum, including compliance with the abatement and resolution procedures for interference with public safety spectrum established by the federal communications commission set forth in 47 CFR 22.970 to 22.973 and 47 CFR 90.672 to 90.675.

(8) Certification by the wireless provider that the small wireless facility will not materially interfere with any of the following: 1) the safe operation of traffic control equipment; 2) sight lines or clear zones for transportation or pedestrians; and 3) the federal Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

(9) A statement that the small wireless facility shall comply with all applicable codes.

(10) Any other information required under applicable law.

(E) **Routine Maintenance and Replacement.** An application shall not be required for: (i) routine maintenance; and (ii) the replacement or upgrade of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height at the same location.

(F) **Information Updates.** Any amendment to information contained in a building/work permit application shall be submitted in writing to the Village of Elm Grove within thirty (30) days after the change necessitating the amendment.

(G) **Application Fees.** Unless otherwise provided by law, all applications for building/work permits shall be accompanied by a generally applicable fee representing a reasonable approximation of the Village of Elm Grove’s costs reasonably incurred as a direct result of the application, but shall not exceed $500 each for up to five small wireless facilities addressed in the application and $100 for each additional small wireless facility, or $1,000 each for applications involving installation or replacement of a new pole.

Section 2 – Action on Permit Applications

(A) **Review of Small Wireless Facility Applications.**

(1) The Village of Elm Grove shall review the application for a building/work permit in light of its conformity with applicable regulations of this Administrative Process for Small Wireless Facilities and all applicable building and safety codes, and shall issue a building/work permit on uniform terms and conditions subject to the following requirements:

(a) Within 10 days of receiving an application, the Village of Elm Grove must determine and notify the Applicant whether the application is complete; or, if an Application is incomplete, the Village of Elm Grove must specifically identify the missing information.

(b) Determine whether the application meets the requirements in Section 2(A)(1) above and issue an approval or denial within sixty (60) days for collocation on an existing
structure and ninety (90) days for new or replacement poles. The applicable time periods will commence upon application submission except that, in the event Village of Elm Grove provides notice within 10 days of submission that an application is materially incomplete, the applicable time period will commence upon re-submission.

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

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

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

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

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

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

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

(1) Each new or modified utility pole or wireless telecommunication support structure installed in the rights-of-way shall not exceed the greater of:
A height that is 10 percent taller than the tallest existing utility pole located within 500 feet of the new pole in the same right-of-way; or

(b) Fifty (50) feet above ground level.

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

(a) A height that is 10 percent taller than the existing utility pole or Wireless Support Structure on which the small wireless facility is located; or

(b) 50 feet above ground level.

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

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

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

Section 4 – Effect of Permit

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

(B) Duration. Activity authorized by a building/work permit must be commence no later than 365 after its receipt and be diligently pursued thereafter.
Section 5 – Removal, Relocation or Modification of Small wireless facility in the ROW

(A) Notice. Within ninety (90) days following written notice from the Village of Elm Grove, wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the Village of Elm Grove has determined that such removal, relocation, change or alteration, is necessary for the construction, repair, maintenance, or installation of any Village of Elm Grove improvement in or upon, or the operations of the Village of Elm Grove in or upon, the rights-of-way.

(B) Emergency Removal or Relocation of Facilities. The Village of Elm Grove retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the Village of Elm Grove, as the Village of Elm Grove may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Village of Elm Grove shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.

(C) Abandonment of Facilities. Upon abandonment of a small wireless facility within the rights-of-way of the Village of Elm Grove, the wireless provider shall notify the Village of Elm Grove within ninety (90) days. Following receipt of such notice the Village of Elm Grove may direct the wireless provider to remove all or any portion of the small wireless facility if the Village of Elm Grove, or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare.

Section 6 –Rates

(A) ROW Administration Rate. A wireless provider authorized to place small wireless facilities (including new utility poles or other Wireless Support Structures) in the rights-of-way shall pay to the Village of Elm Grove the rate of $20 annually per small wireless facility.

(B) Attachment Rate. The rate to place a small wireless facility on a Village of Elm Grove - owned pole in the right-of-way shall be $250 per year per Village of Elm Grove - owned pole. Such compensation together with the application fee and the ROW Administration Rate specified in this __________________ Administrative Process for Small Wireless Facilities shall be the sole recurring compensation that the wireless provider shall be required to pay the Village of Elm Grove.

(C) Cease Payment. A wireless provider is authorized to remove its facilities at any time from a Village of Elm Grove - owned pole in the rights-of-way and cease paying the annual rate to the Village of Elm Grove.

(D) Make-Ready. For Village of Elm Grove - owned utility poles in the rights-of-way, the Village of Elm Grove shall provide a good faith description of any make-ready work necessary to
enable the pole to support the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed application. Any make-ready work, including pole replacements, shall be performed by the provider or its qualified contractor.

(E) Rates. The rates described in this Section are intended to compensate the Village of Elm Grove for the Wireless Provider’s use of the ROW. In no event shall the rates in this Section (1) exceed the direct and actual cost of managing the ROW; (2) result in a double recovery by the Village of Elm Grove if existing fees, rates, or taxes imposed by the Village of Elm Grove on the wireless provider already recover the direct and actual cost of managing the ROW; or (3) exceed the rates charged to other users of the ROW.

(F) Rate Increase. The Village of Elm Grove may adjust the rates described in Sections 1(G), 6(A), and 6(B) of this Administrative Process for Small Wireless Facilities by 10 percent as of July 10, 2024 and every fifth anniversary thereafter, rounded to the nearest multiple of $5.
The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 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 local neighborhood. The setting is that of a shopping center with adequate off-street parking. The character, appearance and operation of local centers shall be compatible with the character of the surrounding area.

A. Permitted uses.

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

2. Retail Trade
   2a. Furniture and home furnishing stores
   2b. Appliances, electronics, camera, and office supply stores
   2c. Home improvement and hardware stores
   2d. Grocery, convenience, and specialty food stores/markets
   2e. Liquor/packaged beverage and tobacco stores
   2f. Pharmacy, drug, and medical supply stores
   2g. Clothing, shoes, jewelry, luggage/leather goods, formal wear/costume stores
   2h. Entertainment stores such as books, music, sporting goods, hobby, and video tape/disk/game rental
   2i. Gift shops, florists, variety stores, antiques
   2j. Building supply stores and general sales of industrial products, such as building materials, electrical supplies, heating supplies, lighting supplies, paint and painting supplies, plumbing supplies, roofing supplies, wallpaper and wallpaper supplies, and windows and doors

3. Department stores

4. General Services
   4a. Barber, beauty, and nail salons
   4b. Dry cleaning and laundry services (non-industrial)
   4c. Interior Decorator
29 (d) Photographer

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

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

37 (6) Information Services

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

39 (b) Motion picture theaters excluding drive-in

40 Interior decorator.

41 Janitorial supplies.

42 (9) Lodges and clubs.

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

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

46 B. Permitted accessory uses.

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

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

50 (3) Residential quarters for the owner or proprietor or any rental tenant located in the same structure as the 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. [Amended 4-23-2002]

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

56 (1) Automotive and marine sales and service.

57 (2) Building maintenance and supply stores.

58 (3) Drive-in banks.
59  (4) Equipment rental stores.
60  (5) Fuel oil, bottled gas, salt and ice dealers.
61  (6) Funeral homes.
62  (7) Garden supply stores.
63  (8) Gasoline service stations and car wash establishments, provided that all pumps and service islands meet the setback and yard requirements.
64  (9) Grain processing and storage.
65  (10) 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.
66  (11) Power equipment centers, sales, service and storage.
67  (12) 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. [Added 11-22-2011]
68  (13) Utilities.
69  (14) Video arcades.
70  (15) Video tape sales and rental.
71  (16) Wireless communication antennas.
72  (17) 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). [Added 5-25-2004]
73  (18) 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. [Added 3-24-2014]
74  (19) Other unspecified uses which are found to be similar in character to those principal uses conditionally permitted by the Plan Commission. [Added 3-24-2014]
75  
76  D. 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.
77  E. Building height. No structure or parts thereof shall exceed 35 feet in building height, or two stories, whichever is less. No accessory structure shall exceed 10 feet in building height.
78  F. Yards (principal and/or accessory structures).
(1) There shall be a minimum building setback of 20 feet from each abutting street right-of-way.

(2) There shall be no required side yard; however, when a side yard is provided, there shall be a minimum of 10 feet from the lot line.

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

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

(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; and

(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.

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

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

J. Plan of operation required. (Refer to § 335-85.)
§ 335-23 B-2 Office Business District.
The B-2 Business District is intended to provide for individual or limited office and special service uses where the office activity would be compatible with other neighborhood uses and not exhibit the intense activity of other business districts.

A. Permitted uses.

(1) Advertising agency.
(2) Barbershops.
(3) Beauty shops.
(4) Bookstores (except those regulated by Chapter 87).
(5) Brokerages (stock, mortgage, and other financial services).
(6) Clothing resale shops.
(7) Corporate business offices.
(8) Day-care centers.
(9) Interior decorator.
(10) Business offices, defined as follows. A business office is use of a tenant space or building solely for administrative functions of an organizations, with no retail or wholesale sales or services on site
(11) Studios for photography, painting, music, sculpture, dance or other recognized fine art.
(12) Travel agents.
(13) Other unspecified uses which are found to be similar in character to those principal uses permitted by the Plan Commission.

B. Permitted accessory uses.

(1) Accessory garages for storage of vehicles used in conjunction with the operation of the business or for occupants of the premises.
(2) Off-street parking areas.
(3) Restaurants and delicatessens accessory to a permitted use intended to serve office employees.


(1) Retail Trade
(a) Furniture and home furnishing stores
(b) Appliances, electronics, camera, and office supply stores
(c) Grocery, convenience, and specialty food stores/markets
(d) Pharmacy, drug, and medical supply stores
(e) Clothing, shoes, jewelry, luggage/leather goods stores
(f) Entertainment stores such as music, sporting goods, and hobby.
(g) Gift shops, florists, variety stores, antiques
(h) Department stores

(2) Information Services

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

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

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

Utilities.

(8) 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.

[Amended 3-24-2014]

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

D. 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.

E. Building height. No principal structure or parts of a principal structure shall exceed 35 feet in height, or two stories, whichever is less. No accessory structure shall exceed 10 feet in height.

F. Yards (principal and/or accessory structures).

(1) There shall be a minimum building setback of 20 feet from each abutting street right-of-way.

(2) There shall be no required side yard; however, when a side yard is provided, there shall be a
minimum of 10 feet from the lot line.

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

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

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

(2) Notwithstanding the provisions of § 335-23F(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; and

(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.

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

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

J. Plan of operation required. (Refer to § 335-85.)
The B-3 Business District is intended to provide for office, professional and special service uses in a more intense, urban setting.

A. Permitted uses.

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

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

(3) Barbershops and beauty shops.

(4) Fitness centers.

(5) Gift shops and boutiques.

(6) Hotels and motels.

(7) Interior decorator.

(9) Retail stores.

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

B. Permitted accessory uses.

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

(2) Off-street parking areas.

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

(1) Convention centers.

(2) Radio and television broadcast studios.

(3) Restaurants and specialty food stores/ markets.

(4) 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. [Added 11-22-2011]
(5) Automotive parking on a short-term basis related to businesses on adjacent properties.

(6) Wireless communication antennas.

(7) 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). [Added 5-25-2004]

(8) 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. [Added 3-24-2014]

(9) Other unspecified uses which are found to be similar in character to those principal uses conditionally permitted by the Plan Commission. [Added 3-24-2014]

D. Lot area and width. Lots shall have a minimum area of 40,000 square feet and shall be not less than 100 feet in width at the front building line.

E. Building height.

(1) Principal structures in the B-3 Business District shall not be less than three, nor more than five, stories in height. No accessory structure shall exceed 10 feet in building height.

(2) No principal structure or parts of a principal structure shall exceed 65 feet in height. Accessory structures shall not exceed 10 feet in height.

F. Yards (principal and/or accessory structures).

(1) There shall be a minimum setback of 50 feet from each abutting street right-of-way for structures not exceeding 35 feet in height.

(2) There shall be a side yard setback on each side of all buildings not less than 25 feet in width for structures not exceeding 35 feet in height.

(3) There shall be a rear yard setback of not less than 25 feet for structures not exceeding 35 feet in height.

(4) The setback requirements in all yards shall be increased one foot for each two feet the structure exceeds 35 feet in height.

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

H. Maximum building footprint area: 60% of lot area.

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