

CHAPTER 7

PUBLIC WORKS

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7.01 STREETS AND PUBLIC LANDS.

(1) Alteration Prohibited. No person shall effect access, block or barricade, work in, or undertake any act to the effect the existing street, alley, alleyway, public ground or any part thereof in the Village of North Bay by any means whatsoever unless authorized by permit issued by the Director of Public Works.

(2) Private Streets and Roadways. No Person shall effect access, block or barricade, work in, or undertake any act to effect any private street or roadway.

(3) Penalty. The penalty for violation of any provisions of this section shall be a penalty as provided in Section 19.04 of this Code.

7.02 DRIVEWAYS.

(1) Approval Required. No person shall construct or maintain any driveway which intersects any public or private road or roadway, without first obtaining a permit from the Director of Public Works.

(2) Specifications for Driveway Construction.

(a) Width. No driveway shall exceed twenty-four feet in width at the outer or street edge unless special permission is obtained from the Village Board.

(b) Interference with Intersections Prohibited. At street intersections a driveway shall not provide direct ingress or egress to or from the street intersection area and shall not occupy areas of the roadway deemed necessary by the Village Board for effective traffic control or for highway signs or signals.

(c) Interference with Street. No driveway apron shall extend out into the street further than the face of the curb and under no circumstances shall such

driveway apron extend into the gutter area. All driveway entrances and approaches shall be so constructed that they shall not interfere with the drainage of the streets, side ditches or roadside areas or with any existing structure on the right of way. When required by the Director of Public Works to provide for adequate surface water drainage along the street, the property owner shall, at his own expense, provide any necessary culvert or pipe that may be necessary to permit the free flowage of surface water.

(d) **Number of Approaches Limited.** No more than one driveway entrance and approach shall be constructed for any lot or premises except where deemed necessary and feasible without undue impairment of safety, convenience and utility of the street by the Director of Public Works. Any two approaches shall be at least ten feet apart.

(e) **Permittee Liable for Damage or Injury.** The permittee shall assume all responsibility for any injury or damage to persons or property resulting directly or indirectly during construction or repair of driveway approaches or entrances. When a road or roadway is intersected, the new connection shall be constructed in a manner acceptable as determined by the Director of Public Works. The Director of Public Works shall consider the quality of workmanship and materials, effect on drainage, and all issues relating to health and safety in reviewing and approving such construction.

(f) A cash bond in the amount of \$1,500.00 shall be filed with the Village Clerk. Such cash bond shall be held by the Village to guarantee the conditions of the permit. The deposit (or such amount that was unused to correct any errors) shall be returned to the property owner upon passage of inspection. (Added by Ord. 2013-05 on 10/15/13)

(3) **Penalty.** The penalty for violation of any provision of this section shall be a penalty as provided in Section 19.04 of this Code.

7.03 STREET EXCAVATIONS AND OPENINGS.

(1) **Permit Required.** No person shall make or cause to be made any excavation or opening in any street, alley, highway or other public or private road or roadway within the Village of North Bay without first obtaining a permit therefor from the Director of Public Works.

(a) Issuance of this permit does not constitute authority for any interference with traffic. A minimum of one lane of traffic shall be open at all times. Whenever the contractor's operations obstruct or endanger a traffic lane and no market detour has been provided, the contractor shall furnish a flagman to direct traffic through or around the congested area. The Village shall have the right to require additional flagmen as it shall deem necessary. (Added by Ord. 2013-05 on 10-15-13)

(b) Any damage or maintenance due to settlement of any other causes occurring within the street right-of-way, as a result of the issuing or exercising of this permit, must be corrected by the Permittee, or his agent, successors or assigns, in the time and manner designated by the Village Director of Public Works or an authorized representative, for a period of two (2) years from the date of the issuance of this permit.(Added by Ord. 2013-05 on 10/15/13)

(2) Fee. The fee for a street opening permit shall be \$250.00 or as subsequently determined from time to time by the Village Board of Trustees and shall be paid to the Village Treasurer who shall issue his receipt therefor.

(3) Bond. Before a permit for excavating or opening any street or public way may be issued, the applicant must execute and deposit with the Village Clerk an indemnity bond, approved by the Village President, in the sum of not less than \$1,000,000.00 or such other amount as determined by the Village Board of Trustees from time to time conditioned that permittee will warrant, indemnify and hold harmless and defend the Village of North Bay, its officials, agents, attorneys and assigns from all liability including, but not limited to, bodily injury, personal injury, or property damages, whether occurring to public or private property, to Village officers, officials, employees, agents or private individuals as a result of any work covered under his permit, and that he will fill such excavation and opening in such a manner as to restore the street to its prior condition and in such a manner to keep and maintain the same in such condition, normal wear and tear, accepted to the satisfaction of the Director of Public Works, and that he will pay all fines imposed upon him for any violation of any rule, regulation or Ordinance governing street openings or drain laying adopted by the Village Board, and will repair any damage done to existing improvements during the progress of the excavation in accordance with the Ordinances, rules and regulations of the Village. Such bond shall also guarantee that if the Village shall elect to make the street repair, the person opening the street will pay all costs of making such repair and of maintaining the same for one year.

The amount of the bond may be increased in specific cases upon determination by the Village Board of Trustees. Upon recovery under such bond, to the extent the work continues additional bonding shall be required, so that at all times the bond shall remain in full force and in effect in the amount and with the conditions aforesaid.

An annual bond may be given under this section covering all excavation work done by the principal for one year beginning January 1, which shall be conditioned as specified above and in the amount determined by the Village Board as necessary to adequately protect the public and the Village.

(4) Insurance. Prior to commencement of excavation work, a permittee must furnish the Director of Public Works satisfactory written evidence that he has in force and will maintain during the life of the permit and the period of excavation, public liability insurance of not less than that required by the Village Board of Trustees.

(5) Regulations Governing Street Openings.

(a) Frozen Ground. No opening in the streets for any purpose shall be permitted when the ground is frozen, except where necessary as determined by the Director of Public Works.

(b) Removal of Paving. In opening any street or other public way, all paving or ballasting materials shall be removed with the least possible loss or injury to surfacing material and together with the excavated material from trenches shall be so placed as to cause the least practicable inconvenience to the public and permit free flow of water along gutters.

(c) Protection of Public. Every person shall enclose with sufficient barriers, each opening which he may make in the streets or public ways of the Village. All machinery and equipment shall be locked or otherwise effectively safeguarded from unauthorized use when not being used by the permittee, his agents or employees. Warning lights shall be kept burning from sunset to sunrise, sufficient in number and properly spaced to give adequate warning. Except by special permission from the Director of Public Works, no trench shall be excavated more than two hundred fifty feet in advance of pipe laying nor left unfilled more than five hundred feet where pipe has been laid. All necessary precautions shall be taken to guard the public effectually from accidents or damage to persons or property through the period of the work. Each person making such opening shall be held liable for all damages, including costs incurred by the Village in defending any action brought against it for damages, as well as cost of any appeal, that may result from the neglect by such person or his employees of any necessary precaution against injury or damage to persons, vehicles, or property of any kind.

(d) Replacing Street Surface. In opening any street, the paving materials, sand, gravel and earth or other material moved or penetrated and all surface monuments or hubs must be removed and replaced as nearly as possible in their original condition or position and the same relation to the remainder as before. Any excavation material which, in the opinion of the Director of Public Works, is not suitable for refilling shall be replaced with approved backfill material. All rubbish shall be immediately removed, leaving the street in perfect repair, the same to be so maintained for a period of one year. In refilling the opening, the earth must be puddled or laid in layers not more than six inches in depth and each layer rammed, tamped or flushed to prevent after-settling. When the sides of the trench will not stand perpendicular, sheathing and braces must be used to prevent caving. No timber, bracing, lagging, sheathing or other lumber shall be left in any trench. The Village may elect to have the Village make the pavement repair for any street opening, in which case the cost of making such repair and of maintaining it for one year shall be charged to the person making the street opening.

(6) Excavation in New Streets Limited. Whenever the Village Board determines to provide for the permanent improvement or repaving of any street, such determination shall be made not less than thirty days before the work of improvement or repaving shall begin. Immediately after such determination by the Village Board, the Director of Public Works shall notify in writing each person, utility, Village department or other agency owning or controlling any sewer, water main, conduit or other utility in or under said street or any real property abutting said street, that all such excavation work in such street must be completed within thirty days. After such permanent improvement or repaving, no permit shall be issued to open, cut or excavate said street for a period of five years after the date of improvement or repaving unless in the opinion of the Director of Public Works an emergency exists which makes it absolutely essential that the permit be issued.

(7) Emergency Excavations Authorized. In the event of an emergency any person owning or controlling any sewer, water main, conduit or utility in or under any street and his agents or employees may take immediate proper emergency measures to remedy dangerous conditions for the protection of property, life, health or safety without obtaining an excavation permit; provided that such person shall apply for an excavation permit not later than the end of the next succeeding business day and shall not make any permanent repairs without first obtaining an excavation permit hereunder.

(8) Village Work Excluded. The provisions of this section shall not apply to excavation work under the direction of the Director of Public Works by employees or contractors performing work under contract with the Village necessitating opening or excavations in Village streets.

(9) Penalty. The penalty for violation of any provision of this section shall be a penalty as provided in Section 19.04 of this Code.

7.04 ENCROACHMENTS ON PUBLIC PROPERTY

(Added by Ord. 2012-02 on 08-13-12)

(1) Policy: It is the policy of the Village of North Bay that no person shall make unauthorized use of public lands. Any encroachment on, to under, or over, or modification of Village owned, managed, maintained or leased lands including park, natural area or open space property, public buildings or rights-of-way will be deemed trespassing regardless of when the property was initially encroached upon. The violator(s) of such encroachment shall be notified and directed to remove any and all encroachments to the land not previously approved in writing by the Village, to restore the land to its original condition.

It is the policy of the Village of North Bay to resolve all encroachments in a fair and equitable manner, in the manner most beneficial, and to work with and assist encroaching parties to remove the encroachment(s).

(2) Definitions:

Easements - A limited right to make use of a property owned by another, such as a right-of-way across the property.

Encroachment - An incursion onto public lands including, but not limited to, clearing, grading, gardening, landscaping, installing structures, constructing, storing, placing, dumping, maintaining, cutting, overhanging, excavating, parking, diverting, destabilizing, draining onto, defacing, damaging, mutilating, removing, and limiting access onto.

Encroachment Violation Notice - A letter prepared by the Public Works Trustee and addressed to the property owner who encroaches upon public lands or public right-of-way that defines the encroachment and stipulates the conditions and requirements for removing the encroachment.

Lien Against Property - A claim or charge made against property.

Public Lands - Property owned by the Village of North Bay and property in which North Bay has an easement or interest. Examples include parks, natural areas, fire, village hall, sidewalks and roadways, to the full extent of the public right-of-way, whether improved or unimproved.

Unauthorized Use - A use not permitted by the Village of North Bay.

(3) Procedure:

(a) Identification of Encroachments:

1. Upon discovery that an unauthorized encroachment has occurred, Village staff shall attempt to contact, in person, the property owner encroaching upon public property, identify the encroachment and work with that owner to have the encroachment removed and the area restored.

2. If the encroachment is not successfully removed, Village staff shall review the encroachment with the Village Attorney before recommending an appropriate action to the Village President or his/her designee.

3. Removal of Encroachment Notification. If it is determined that an encroachment requires removal and restoration, the encroaching party shall be mailed an Encroachment Violation Notice that identifies and directs removal and restoration of the unauthorized encroachment within thirty (30) days, unless circumstances warrant a more immediate removal or restoration.

(b) Failure to Comply:

1. If the encroaching party fails to comply with the written notice, the Village may remove the unauthorized encroachment and restore the property to its original condition. The cost of such action may be charged to the encroaching party.

(4) Appeals.

Individuals may appeal an Encroachment Violation Notice to the Village Board, who will issue a written decision based on the Village file and the contents of the appeal. Any appeal must be received within thirty (30) days of receipt of the Encroachment Violation Notice. Encroaching party(s) may, at their own expense, have legal representation at any appeal hearing.

(5) Boundary Disputes.

In the event that the property boundary is disputed, the property owner may, at the owner's expense, commission a boundary survey by a licensed and qualified surveyor. If there is a bona fide dispute as to the boundary, the Village shall wait a reasonable time for the survey to be completed.

(6) Costs to Resolve, Remove or Correct.

Costs to resolve or correct unauthorized encroachments will be charged to the party encroaching upon public lands. Such costs may include, but are not limited to, boundary surveys, construction permit fees, engineering or architectural fees, contracts, Village staff time, demolition, lien applications, removal, restoration, maintenance costs, legal fees and accrued interest if payment is not received within (30) days of invoicing. Such costs shall be levied and collected as a special charge against the encroaching property, as provided in 66.0627. Wisconsin Statutes.

(7) Damages and Value of Use.

In addition to the costs to resolve or correct the encroachment, the encroaching party shall be liable for any damage to Village property and shall be liable for the value of the use of the Village property encroached upon, at the rate of one percent (1%) per month of the fair market value of the encroached property or fifty (\$50) per month, whichever is greater.

(8) Public Property Use Permit.

When not prohibited by grant funding conditions tied to acquisition, restrictive covenants or applicable law, rules and regulations, and upon a finding that the Village has no foreseeable use or need for the property encroached upon, the encroaching party, or other interested applicants, may make application for a revocable permit to use

and occupy the public property. The application for the permit must be made to the Village President or his/her designee, legally describing the property to be used and the purpose of such use. The minimum permit requirements will be determined by the Village Board on a case-by-case basis. The permit shall contain such conditions, including reasonable time limits, as the Board deems appropriate.

(9) Nuisance. Any encroachment on Village property is hereby declared a nuisance, which can be abated by court order, or under Village of North Bay Ordinances, Chapter 19, Section 19.04.

(10) Infraction and Penalty. After receipt of an Encroachment Violation Notice, one who continues, intensifies, or expands such encroachment shall be issued a Notice of Infraction. In addition to, or in lieu of, any other remedies available under this section, any violation of this section may be enforced pursuant to the general penalty section of VNB Code of Ordinances, Chapter 19, Section 19.04.

(11) Street Privilege Permit. (Added by Ord. 2013-5 on 10-15-13)

(a) When Required. Permits for the use of the streets, alleys or other public ways or places of the Village may be granted to applicants by the Director of Public Works for the purpose of building or remodeling any structure or of encumbering the street, alley or way with materials necessary in and about the construction or demolition of any building or structure, provided such applicant has complied with the other requirements of this subsection and has obtained a building permit if required by Section 10.01 of this Code.

(b) Bond. No street privilege permit shall be issued until the applicant shall execute and file with the Village Clerk a bond in an amount determined by the Director of Public Works, conditioned that the applicant will indemnify and save harmless the Village of North Bay from all liability for accidents or damage caused by reason of operations under said permit and will remove such encumbrance upon termination of the operations and will leave the vacated premises in a clean and sanitary condition and repair any and all damage to the streets, alleys or public property of the Village resulting from such building or remodeling or demolition.

(c) Fee. The fee for a street privilege permit shall be \$65.00.

(d) Conditions of Occupancy. The permission to occupy or obstruct the streets, alleys or public grounds is intended only for use in connection with the actual erection, alteration, repair or removal of buildings or structures and shall be given upon the following terms and conditions and subject to revocation without notice by the Director of Public Works for violation thereof;

Such temporary obstruction shall cover not more than one-third in width of any street or alley;

Obstructions shall be sufficiently lighted at night so as to be in full view of the public from all directions;

No building or structure shall be allowed to remain over night on any street crossing or intersection or so near thereto as to prevent easy access to any fire hydrant;

Upon termination of the work necessitating such obstruction, all parts of the streets, alleys or public grounds occupied under the permit shall be vacated, cleaned of all rubbish and obstructions and placed in a safe condition for public travel at the expense of the permittee.

(e) Termination. All street privilege permits shall automatically terminate at the end of three months from the date of issuance unless an earlier termination date is specified thereon at the direction of the Director of Public Works.

7.05 TREE TRIMMING AND ENCROACHMENT.

(1) Hazardous and Infected Trees. Any tree or part thereof, whether alive or dead, which the Director of Public Works or the contractor engaged by the Village as provided in subsection (1) of this section, shall find to be hazardous or a nuisance so as to endanger the public or other trees, plants or shrubs growing within the Village, or to be injurious to sewers or other public improvements, whether growing upon private premises, shall be treated, pruned, removed or trimmed by the owner of the property upon which such tree or part thereof is located. The Director of Public Works shall give written notice to said owner to remedy the situation which shall be served personally or posted upon the affected tree. Such notice shall specifically state the period of time within which the action must be taken, which shall be within not less than twenty-four hours nor more than fourteen days, as determined by the Director of Public Works on the basis of the seriousness of the condition of the tree or danger to the public. If the owner shall fail to treat, prune, remove or trim said tree within the time limited, the Director of Public Works shall cause the tree to be treated, pruned, removed or trimmed and shall report the full cost thereof to the Village Clerk who shall thereupon enter such cost as a special charge against the property.

(2) Cottonwood and Box Elder Trees Prohibited. No person shall plant or maintain within the Village of North Bay any female tree of the species *Populus Deltoides*, commonly called the "Cottonwood", or any tree commonly called the seed-bearing Box Elder or *Acer Negundo*, which may now, or hereafter become infested with Box Elder bugs, and such trees are hereby declared a nuisance. Any person having any such trees on his premises shall cause the same to be removed. If any owner shall fail to remove any such tree within thirty days after receiving written notice from the Director of Public Works, the Director shall cause the removal of such tree and report the full

cost thereof to the Village Clerk who shall place such charge upon the next tax roll as a special charge against the premises.

(3) Planting of Certain Trees Restricted. No person shall hereafter plant any Catalpa, Chinese Elm, White Poplar, Lombardy Poplar, Willow or any fruit or nut tree in or upon any public street, parkway, boulevard or other public place within the Village of North Bay unless he shall first secure written permission from the Director of Public Works, who shall not approve any such planting if, in his opinion, said tree will constitute a nuisance to the public or adjoining property owners or interfere with the safety of the public or the operation of any sewer or water system. The Director of Public Works shall cause the removal of any tree planted in violation of this subsection.

7.06 SEWER USE (Added by Ord. 2016-04 on 10-10-16)

(1) Adoption; Incorporation of City of Racine Sewer Use Ordinance. Wastewater services are provided to the Village of North Bay by the City of Racine. The sections and subsections of the City of Racine (“city”) ordinances set forth below relating to “Utilities”, and any amendments thereto, are hereby adopted, and may be enforced by the Village. References in such provisions to the “wastewater utility” or the “utility”, or to the “general manager” or the “manager”, or to the “board of standards” or to the “board”, or to the “wastewater commission” or the “commission” or to the “common council” or to the “council”, or to the “city” are, for purposes of this section, references instead to the Village Board or its designee(s), to the maximum extent permitted under applicable law. Nothing herein shall be interpreted or construed as indicating that the Village is a party to the 2002 Racine Area Intergovernmental Sanitary Sewer Service, Revenue-Sharing, Cooperation and Settlement Agreement.

(2) Sewer Use Ordinance Sections Adopted By Reference. The following sections of the City of Racine Municipal Code, as may be amended from time to time, are adopted by the Village and may be enforced by the Village within its jurisdiction:

- (a) Wastewater policy; purposes (Sec. 98-3 of the Racine Municipal Code).
- (b) Definitions (Sec. 98-4 of the Racine Municipal Code).
- (c) Approval of sewer plans; construction of projects (Sec. 98-114 of the Racine Municipal Code).
- (d) Right of inspection and survey; action for injunctive relief for violation of restrictions on use of system.(Sec. 98-115 of the Racine Municipal Code).
- (e) Definitions (Sec. 98-124 of the Racine Municipal Code)

- (f) Discharge of unpolluted waters (Sec. 98-125 of the Racine Municipal Code)
- (g) Storm sewers (Sec. 98-126 of the Racine Municipal Code)
- (h) Prohibited waste discharges (Sec. 98-127 of the Racine Municipal Code)
- (i) Wastewater discharges controlled (Sec. 98-128 of the Racine Municipal Code)
- (j) Discharge of sewage by agreement (Sec. 98-129 of the Racine Municipal Code)
- (k) Preliminary treatment facilities (Sec. 98-130 of the Racine Municipal Code)
- (l) Control manhole (Sec. 98-131 of the Racine Municipal Code)
- (m) Measurements and tests (Sec. 98-132 of the Racine Municipal Code)
- (n) Board of Standards; appeals (Sec. 98-133 of the Racine Municipal Code)
- (o) New connections prohibited (Sec. 98-134 of the Racine Municipal Code)
- (p) WPDES permit (Sec. 98-135 of the Racine Municipal Code)
- (q) DNR NR 101 requirements (Sec. 98-135 of the Racine Municipal Code)
- (r) Authority to inspect (Sec. 98-137 of the Racine Municipal Code)
- (s) Board of Standards: Appeals and Decision of Board (Sec. 98-143(4) and (5) of the Racine Municipal Code)
- (t) Pretreatment regulations – general provisions (Sec. 98-150 of the Racine Municipal Code)
- (u) General sewer use requirements (Sec. 98-151 of the Racine Municipal Code)
- (v) Pretreatment of wastewater (Sec. 98-152 of the Racine Municipal Code)

- (w) Administration (Sec. 98-153 of the Racine Municipal Code)
 - (x) Fees (Sec. 98-154 of the Racine Municipal Code)
 - (y) Enforcement (Sec. 98-155 of the Racine Municipal Code)
 - (z) Penalty; Costs and Actions (sec. 98-156 of the Racine Municipal Code)
- (3) Penalty. The penalty for violation of any provision of this section shall be a penalty as provided in Section 19.04 of this Code.

7.07 LOCATION OF PUBLIC UTILITY EQUIPMENT AND WIRELESS FACILITIES IN PUBLIC LANDS AND RIGHTS-OF-WAY. (Added by Ord. 2019-01 on 03-11-19).

(1) Definitions.

For the purposes of this Section, the terms below shall have the following meanings*

“Administrator” means the Village President 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 for a permit under this Section.

“Applicant” means a person filing an application for placement or modification of public utility equipment or the 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

* 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 Section and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

“FCC” means the Federal Communications Commission.

“Public Lands” means any Village-owned land other than right-of-way.

“Public Utility” has the meaning provided in Wis. Stats. 196.01(5).

“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 exercises any rights of management and control or in which the Village has an interest.

“Shot clock” means any controlling time limit for the review of and action on the placement of wireless telecommunications facilities in local right-of-way that is imposed by federal or state law.

“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 public utility distribution lines and associated equipment. A tower is not a utility pole.

“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” generally, means a permit required by this Section and, specifically with respect to wireless telecommunications facilities, a permit 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 and Utility Equipment Regulations” means any regulations adopted by the Village pursuant to subsection (5)(b)1 to implement the provisions of this Section.

“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/Facilities” generally means the proposed public utility equipment to be located and, specifically with respect to wireless telecommunications equipment, a wireless communications 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.

(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 Section is to provide the Village with a process for managing, and uniform standards for acting upon, requests for the placement of public utility equipment and 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 incommoded by the use of the right-of-way for the placement of public utility equipment or wireless telecommunications facilities. The Village recognizes the importance of public utility service, and 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 Section shall be interpreted consistent with those provisions.

(3) Scope.

(a) Applicability. Unless exempted by subsection (3)(b), below, every person who, after the effective date of this Section, wishes to place public utility equipment or a wireless telecommunications facility in the right-of-way or other public lands or to modify existing public utility equipment or an existing wireless telecommunications facility in the right-of-way or other public lands must obtain a permit under this Section.

(b) Exempt Facilities. The provisions of this Section shall not be applied to applications for the following:

1. Installation of a small wireless facility on the strand between two existing 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.

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

4. Modification of existing public utility equipment or 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 public utility equipment or the wireless telecommunications facility.

(4) Nondiscrimination.

In establishing the rights, obligations, and conditions set forth in this Section, 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.

(5) Administration.

(a) Administrator. The Administrator is responsible for administering this Section.

(b) Powers. As part of the administration of this Section, the Administrator may:

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

2. Interpret the provisions of the Section and any wireless and utility equipment regulations.

3. Develop and, if developed, require the exclusive use of forms and procedures for submission of applications for permits consistent with this Section.

4. Collect any fee required by this Section.

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 public utility equipment or a wireless telecommunications facility that is the subject of the 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 permit application.

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

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

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

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

(6) Application.

(a) Format. Unless the wireless and utility equipment regulations or approved forms or procedures 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 Administrator. An application is not complete until both the paper and electronic copies are received by the Administrator.

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

1. All information required pursuant to applicable wireless and utility equipment regulations and/or approved forms or procedures.

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 the proposed facility, including 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 facility a notice that the applicant is submitting an application to the Village for placement or modification of a 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. With respect to a wireless telecommunications facility, 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 permit application establishes a deadline for action on any other permit that may be required in connection with the 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 public utility equipment or 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” under 47 C.F.R. § 1.6100(b)(3), the application must contain information sufficient to show that the application qualifies as an eligible facilities request, 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 subsection (6) shall be made in writing to the Administrator. The Administrator 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.

(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. The application fee shall be \$500 for up to the first five distinct facilities covered by the application, plus \$100 per each additional facility, and the annual right-of-way/public lands access fee shall be \$270 per distinct permitted facility. 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 Section.

(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 and federal public records law and the Administrator’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.

(7) General Standards.

(a) Generally. Public utility equipment and wireless telecommunications facilities shall meet the minimum requirements set forth in this

Section and any wireless and utility equipment regulations, in addition to the requirements of any other applicable law or regulation.

(b) Regulations. Any wireless and utility equipment regulations and decisions on permits shall, at a minimum, ensure that the requirements of this Section 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 Section and the wireless and utility equipment regulations may be waived, but only to the extent required to avoid the prohibition.

(c) Standards.

1. Public utility equipment and wireless telecommunications facilities shall be installed and modified in a manner to:

a. Minimize risks to public safety. Facilities shall be located at least 5 feet from the nearest edge of the road or at the outer limit of the right-of-way, if less than 5 feet;

b. Ensure that placement of facilities on existing towers or utility poles is within the tolerance of those structures. New towers or utility poles may not exceed the greater of 40 feet above grade, or the maximum height of the tallest structure then existing in the Village, and any protrusion therefrom shall be a minimum of 10 feet above grade or such greater height as is necessary to render safe nearby vehicle, bicycle or pedestrian traffic;

c. To the maximum extent consistent with the proper operation of the proposed public utility equipment or wireless communications facilities, new facilities, or at a minimum the ground-mounted/equipment cabinet portions thereof, shall be located underground. Those portions of equipment or facilities that cannot be located underground and still function for the intended purpose shall be placed in self-contained and weather-resistant enclosures, shall be colored or powder-coated in muted Earth tones and/or consistent with nearby coloring, and may, at the reasonable discretion of the Village Board, be required to be screened by appropriate landscaping, which shall be maintained by the applicant;

d. To the maximum extent practicable, new public utility equipment and/or wireless communications facilities shall be located on existing towers or utility poles, unless the Village Board determines in advance, and for specific reasons stated, that the installation of new towers or utility poles would be preferable to the addition of such facilities to existing structures. All new towers and utility poles shall be the same height as, and shall be aligned with, existing structures along the same right-of-way, and may be located no closer than 125 feet from the nearest facility;

e. Maintain, to the maximum extent possible, the integrity and character of the neighborhoods and corridors in which the facilities are located, and shall minimize visual impact. New public utility equipment or wireless communication facilities may not be placed in any location that would interrupt the public vista of Lake Michigan;

f. Ensure that installations are subject to periodic review to minimize the intrusion on the right-of-way;

g. Ensure that the Village bears no risk or liability as a result of the installations; and

h. Ensure 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 permit shall be issued unless (i) the public utility operator or wireless service provider applicant has immediate plans to use the proposed facility or (ii) the applicant has a contract with a public utility or 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.

(d) Standard Permit Conditions. All permits under this Section 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 permits shall be valid for a period of five years from the date of issuance unless revoked pursuant to subsection (9)(b) of this Section.

3. Contact Information. The permit holder shall at all times maintain with the Village accurate contact information for the permit holder and all public utility or 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 Section, 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 public utility equipment and/or 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 subsection 10 of this Section, the permit holder shall promptly, and at its own expense, permanently remove and relocate any 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 subsection 11 of this Section.

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 subsection 12 of this Section.

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, indicating the Village has been named as an additional insured thereto, 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.

(8) Application Processing and Appeal.

(a) Rejection for Incompleteness. Notices of incompleteness shall be provided in conformity with state, local, and federal law, including, with respect to wireless communication facilities, 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. All other permit applications shall be processed within a reasonable time or as otherwise required by state or local law.

(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 Administrator 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 Administrator may appeal that decision to the Village Board, which may decide the issues *de novo*, and whose written decision will be the final decision of the Village. An appeal by a infrastructure provider applicant must be taken jointly with the public utility or the wireless service provider that intends to use the facility.

(e) Deadline to Appeal.

1. Appeals that involve "eligible facilities requests" must be filed within three business days of the written decision of the Administrator.

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

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

(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 permits shall be valid for a period of five years from the date of issuance. Upon expiration of the permit, the permit holder must either:

1. Remove the 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 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 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 subsection (3)(b) of this Section, a facility installed without a 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 facility. Notwithstanding the above, if a facility that was installed prior to Village approval is subsequently applied for and approved, such facility shall be subject to double applicable the permit application fee(s).

(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 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.

(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 Administrator that the permit holder's obligations for its facilities under this Section have been lawfully assumed by another permit holder.

2. Submit to the Administrator a proposal and instruments for dedication of the facilities to the Village. If a permit holder proceeds under this subsection (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 subsection 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 12.

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

(b) Abandoned Facilities. Facilities of a permit holder who fails to comply with subsection (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, dispose of them as the Village sees fit, and retain any proceeds from such disposal to defray the Village's costs under this Section; and/or
3. require removal of the facilities by the permit holder or the permit holder's successor in interest.

(12) Restoration.

In the event that a permit holder removes or is required to remove a facility from the right-of-way under this Section (or to relocate it pursuant to subsection (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 subsection 12, the Village at its option may do such work. In that event, the permit holder shall pay to the Village, within 30 days of billing therefor, the cost of restoring the right-of-way.

(13) Placement on Village-Owned or Village-Controlled Structures.

The Village may negotiate agreements for placement of public utility equipment or wireless telecommunications facilities on Village-owned or -controlled structures, including those on public lands or in the public 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.

(14) Severability.

If any section, subsection, clause, phrase, or portion of this Section 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 Section, which shall remain in full force and effect.