

VILLAGE OF MARSHALL  
ORDINANCE 2021-10

AN ORDINANCE ADOPTING MUNICIPAL CODE TITLE 9, CHAPTER 5,  
SECTIONS 1-13  
WIRELESS COMMUNICATIONS FACILITIES IN THE RIGHT-OF-WAY

Introduction

The Ordinance addresses a recently enacted Wisconsin Statute, Wis. Stat. 66.0414 (Small Wireless Statute), which limits the scope of municipal regulation of small wireless facilities in the public Right-of-Way (ROW).

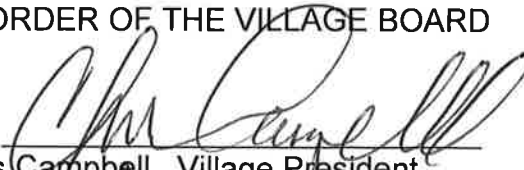
Attached, you will find a memorandum from Boardman & Clark, LLP explaining Small Wireless Statutes as well as the newly proposed ordinance.

NOW, THEREFORE, the Village Board of the Village of Marshall, Dane County, Wisconsin, does hereby ordain as follows:

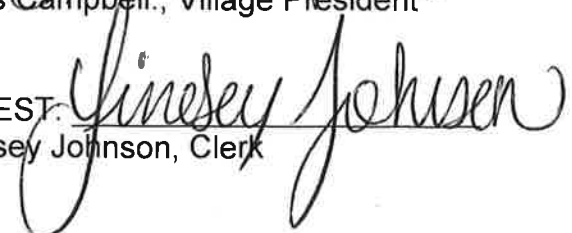
Adopted by a vote of (7) for, (0) against, (0) abstaining, and (0) absent this 9th day of November 2021

BY ORDER OF THE VILLAGE BOARD

BY:

  
Chris Campbell, Village President

ATTEST:

  
Lindsey Johnson, Clerk

## CHAPTER 5

### Wireless Communications Facilities in the Right-of-Way

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#### SEC. 9-5-1 DEFINITIONS

**"Administrator"** means the Director of Public Works 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 wireless permit.

**"Applicant"** means a person or entity filing an application for a wireless permit under this chapter.

**"Base Station"** consistent with 47 C.F.R. 1.6100(b)(1), means a structure or wireless 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 or any equipment associated with a tower.

**"Eligible Facilities Request"** consistent with 47 C.F.R. 1.6100(b)(3), means 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: (1) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

**"FCC"** means the Federal Communications Commission

**"Governmental Pole"** consistent with Wis. Stat. 66.0414(1)(n), means a utility pole that is owned or operated by the Village in the right-of-way.

**"Historic District"** consistent with Wis. Stat. 66.0414(3)(c)5, means an area designated as historic by the Village, listed on the national register of historic places in Wisconsin, or listed on the state register of historic places.

**"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, public sidewalk, or public utility easement over which the Village exercises any rights of management and control or in which the Village has an interest.

**"Small Wireless Facility"** consistent with 47 C.F.R. 1.6002(1), means a facility that meets each of the the following conditions:

1. The structure on which antenna facilities are mounted, measured from ground level:
  1. is 50 feet or less in height, or
  2. is no more than 10 percent taller than other adjacent structures, or
  3. 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 under 47 C.F.R part 17;
5. The facility is not located on Tribal land as defined in 36 C.F.R 800.16(x); 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 in the right-of-way (other than an electric transmission structure) capable of supporting wireless equipment, including a utility pole, a wireless support structure as defined in Wis. Stat. 66.0414(1)(zp), or a base station.

**"Tower"** consistent with 47 C.F.R 1.6100 (b)(9), means 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.

**"Transmission Equipment"** consistent with 47 C.F.R 1.6100(b)(9) means equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with 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.

**"Underground District"** consistent with Wis. State. 66.0414(3)(c)5, means an area designated by the Village in which all pipes, pipelines, ducts, wires, lines, conduits, or other equipment, which are used for the transmission, distribution, or delivery of electrical power, heat, water, gas, sewer, or telecommunications equipment, are to be located underground.

**"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 an electric transmission structure.

**"Utility Pole for Designated Services"** means a utility pole owned or operated in a right-of-way by the Village that is designated to, or used to, carry electric distribution lines, or cables or wires for telecommunications, cable, or electric service.

**"Wireless Equipment"** means an antenna facility at a fixed location that enables wireless services between user equipment and a communications network, and includes all of the following: (a) equipment associated with wireless services; (b) radio transceivers, antennas, or coaxial, metallic, or fiber-optic cable located on, in, under, or otherwise adjacent to a support structure; (c) regular and backup power supplies; (d) equipment that is comparable to equipment specified in this definition regardless of technical configuration. "Wireless Equipment" does not include (a) the structure or improvements on, under, or within which the equipment is collocated; (b) wireline backhaul facilities; or (c) coaxial, metallic, or fiber-optic cable that is between utility poles or wireless support structures or that is not adjacent to a particular antenna. The definition of "wireless facility" in Wis. Stat. 66.0414(1)(z).

**"Wireless Facility" or "Facility"** means an installation at a fixed location in the right-of-way consisting of wireless equipment and the support structure, if any, associated with the wireless equipment.

**"Wireless Infrastructure Provider"** means any person or entity, other than a wireless services provider, that builds or installs wireless communications transmission equipment, antenna equipment, or wireless support structures.

**"Wireless Permit" or "Permit"** means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless 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 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 Chapter.

**"Wireless Services"** means any service using licensed or unlicensed wireless spectrum, including the use of a Wi-Fi network, whether at a fixed location or by means of a mobile device.

**"Wireless Service Provider"** means a person or entity that provides wireless services.

Definitions in this Section may contain quotations or citation to 47 C.F.R. 1.6100 and 1.6002 and Wis. Stat. 66.0414. In the event that any referenced section is amended, creating a conflict between the definition as set forth in this Chapter and the amended language of the referenced section, the definition in the referenced section, as amended, shall control.

## **SEC. 9-5-2 PURPOSE**

In the exercise of its police powers, the Village has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the Village with a process for managing, and uniform standards for acting upon, requests for the placement of wireless 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 wireless facilities. The Village recognizes the importance of wireless 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 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, Wis. Stat. 196.58 and Wis. Stat. 66.0414, as amended, and this Chapter shall be interpreted consistent with those provisions.

## **SEC. 9-5-3 SCOPE**

- a) **Applicability.** Unless exempted by Section 3(b), below, every person who wishes to place a wireless facility in the right-of-way or modify an existing wireless facility in the right-of-way must obtain a wireless permit under this Chapter.
- b) **Exempt Facilities.** The provisions of this Chapter (other than Sections 10-13) shall not be applied to applications for the following:
  1. Installation, maintenance, operation, or replacement of a small wireless facility strung on cables between two existing utility poles in compliance with the National Electrical Safety Code, provided that the small wireless facility does not exceed 24 inches in length, 15 inches in width, and 12 inches in height and has no exterior antenna longer than 11 inches.
  2. Installation of a mobile cell facility (commonly referred to as a "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 facility by Village staff or any person performing work under contract with the Village.

4. The replacement of an existing small wireless facility with a small wireless facility that is substantially similar to, or the same size or smaller than, the existing small wireless facility, provided that there is no change to the support structure on which the small wireless facility is placed.
  5. Routine maintenance of a wireless facility
- c) **Placement on Village-Owned or Controlled Support Structures.** Any applicant who wishes to place wireless equipment on a support structure owned or controlled by the Village, including governmental poles and utility poles for designated services, must obtain a wireless permit under this Chapter and enter into an agreement with the Village. The agreement shall include provisions regarding make-ready work and specify the compensation to be paid to the Village for use of the support structure in accordance with the standards set out in Wis. Stat. 66.0414(4) as amended. Unless prohibited by state or federal law, the person or entity seeking the agreement shall reimburse the Village for all costs the Village incurs in connection with its review of an action upon the request for an agreement.

#### **SEC. 9-5-4                      NONDISCRIMINATION**

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

#### **SEC. 9-5-5                      ADMINISTRATION**

- a) **Administrator.** The administrator is responsible for administering this Chapter.
- b) **Powers.** As part of the administration of this Chapter, the administrator may:
  1. Adopt wireless regulations governing the placement and modification of wireless facilities in addition to but consistent with the requirements of this Chapter, including regulations governing collocation, the resolution of conflicting applications for placement of wireless facilities, and aesthetic standards. The regulations must be published in advance of their enforcement.
  2. Interpret the provisions of the Chapter and the wireless regulations.
  3. Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.
  4. Collect any fee required by this Chapter.
  5. Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations
  6. Issue notices of incompleteness or requests for information in connection with any wireless permit application

7. Select and retain an independent consultant or attorney with expertise in telecommunications to review any issue that involves specialized or expert knowledge in connection with any permit application.
8. Coordinate and consult with other Village staff, committees, and governing bodies to ensure timely action on all other required permits under Section 6(b)(11) of this Chapter.
9. Negotiate attachment agreements for the placement of wireless equipment on governmental poles or utility poles for designation.
10. Subject to appeal as provided in Section 8(d) of this Chapter, 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 wireless permit applications, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

## SEC. 9-5-6

### 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 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 the wireless agreement
  2. A completed application cover sheet signed by an authorized representative of the applicant.
  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 and of all duly authorized representatives and consultants acting on behalf of the applicant with respect to the filing of the application. 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 facility must also be provided.
  4. A statement of which state or federal deadline(s) apply to the application
  5. A separate and complete description of each proposed wireless 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 equipment at the site before and after installation or modification and identifying the owners of such preexisting structures and equipment; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each facility.
  6. A certification by the applicant that the wireless facility will not materially interfere with the safe operation of traffic control equipment or sight lines or clear zones for transportation of pedestrians, and will fully comply with the

federal Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.

7. A certification by the applicant that the wireless facility will comply with relevant FCC regulations concerning radio frequency emissions from radio transmitters and unacceptable interference with public safety spectrum, including compliance with the abatement and resolution procedures for interference with public safety spectrum established by the FCC set forth in 47 C.F.R. 22.97 to 22.973 and 47 C.F.R. 90.672 to 90.675.
  8. A statement that the wireless facility will comply with the state electrical wiring code, as defined in Wis. Stat. 101.80(4), as amended; the state plumbing code specified in Wis. Stat. 145.13, as amended; the Wisconsin commercial building code under Wis. Admin. Code SPS .30 to .33, as amended; the Wisconsin uniform dwelling code under Wis. Admin. Code SPS 320 to 325, as amended; and all local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.
  9. A structural report performed by a professional engineer registered in the State of Wisconsin evidencing that the support structure on which the wireless equipment will be mounted will structurally support the equipment, or that the structure may and will be modified to meet structural requirements, in accordance with applicable codes, including the National Electric Safety Code and the National Electric Code.
  10. If the support structure on which the wireless equipment will be mounted is owned by a third party, a certification that the applicant has permission from the owner to mount its equipment on the structure. This is not required if the support structure is a governmental pole or a utility pole for designated services, as permission will be evidenced by the executed attachment agreement reference in Section 3(c)
  11. 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 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.
  12. Payment of all required fees.
- c) **Waivers.** Requests for waivers from any requirement of this Section 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) **Eligible Facilities Request.** If the applicant asserts in writing that its application is an eligible facilities request, the Village will only require the applicant to provide that information set forth in subsection (b) to the extent reasonably related to determining whether the request meets the definition of "eligible facilities request" under 47 C.F.R. 1.6100(b)(3). The applicant will be required to submit evidence



that the application related 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 demonstration that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

- e) **Fees.** Applicant must pay an application fee in an amount set by the Village board to allow recovery of the Village's direct costs of processing the application, subject to the limits contained in state and federal law, including Wis. Stat. 660414(3)(d), as amended.
- f) **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 record laws and the Administrator's determination that the applicant's request for confidential or propriety treatment of the application material is reasonable. The Village shall not be required to incur any costs to protect the application from disclosure.

## SEC. 9-5-7

## GENERAL STANDARDS

- a) **Generally.** Wireless facilities shall meet the minimum requirements set forth in this Chapter and the wireless regulations, in addition to the requirements of any other applicable law or regulation.
- b) **Regulations.** The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of telecommunications or personal wireless services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.
- c) **Standards.**
  - 1. Wireless facilities shall be installed and modified in a manner that:
    - 1. Minimizes risks to public safety;
    - 2. Ensures that placement of wireless equipment on existing support structures is within the tolerance of those structures;
    - 3. Ensures that new support structures will not be installed with the applicant has the right to place its wireless facility on an existing structure on reasonable terms and conditions and placement in that location is technically feasible and not materially more expensive;
    - 4. Avoids installation or modification of a utility pole that would exceed the height limits set forth in Wis. Stat. 66.0414(2)(e)2, as amended;
    - 5. Avoids placement of aboveground wireless facilities in historic districts and underground districts (except for placing equipment on

or replacing pre-existing support structures, so long as the collocation or replacement reasonably conforms to the design aesthetics of the original support structure);

6. Avoids placement of wireless facilities in residential areas when commercial or industrial areas are reasonably available;
  7. Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;
  8. Ensures that the Village bears no risk or liability as a result of the installations; and
  9. Ensures that applicant's use does not obstruct or hinder travel, drainage, maintenance, or the public health, safety, and general welfare; inconvenience the public; interfere with the primary uses of the right-of-way; or hinder the ability of the Village or other governmental 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. 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 Condition** All wireless permits, whether granted under this Chapter or deemed granted by operation of state or federal law, 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. **Construction Deadline.** The permit holder shall commence the activity authorized by the permit no later than 365 days after the permit is granted and shall pursue work on the activity until completion.
  3. **Contact Information.** The permit holder shall at all times maintain with the Village accurate contact information for the permitholder and all wireless service providers making use of the facility, which shall include a phone number, mailing address, and email address for at least one natural person.
  4. **Emergencies.** The Village shall have the right to support, repair, disable, or remove any elements of the facilities in emergencies or when the facility threatens imminent harm to persons or property.
  5. **Indemnification.** The permit holder, by accepting a permit under this Chapter, agrees to indemnify and hold harmless the Village, its elected and appointed officials, officers, employees, agents, representative, and volunteers (collectively, the "indemnified Parties") from and against any and all liability and loss from personal injury or property damage resulting from or arising out of, in whole or in part, the use or occupancy of right-of-way by the permit holder or anyone acting under its direction or control or on its behalf arising out of the rights and privileges granted under this Chapter, even in liability is also sought to be imposed on one or more of the

Indemnified Parties. The obligation to indemnify and hold harmless the Indemnified Parties shall be applicable even if the liability results 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 sole negligence or willful misconduct of an Indemnified Party.

6. **Adverse Impacts on Adjacent Properties.** The permit holder shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, or removal of the facility.
7. **General Maintenance.** The wireless facility and any associated structures shall be maintained in a neat and clean manner and in accordance with all approved plans and conditions of approval.
8. **Graffiti Removal.** All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the Village.
9. **Relocation.** At the request of the Village pursuant to section 10 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate its wireless facility in the right-of-way.
10. **Abandonment.** The permit holder shall promptly notify the Village whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section 11 of this Chapter.
11. **Restoration.** A permit holder who removes or relocates a facility from the right-of-way or otherwise causes any damage to the right-of-way in connection with its activities under this Chapter must restore the right-of-way in accordance with Section 12 of this Chapter.
12. **Record Retention.** The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the Village cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.
13. **Radio Frequency Emissions.** Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emissions, and failure to comply with such regulations shall be treated as a material violation of the terms of the permit.
14. **Certificate of Insurance.** A certificate of insurance sufficient to demonstrate to the satisfaction of the Administrator that the applicant has the capability to cover any liability that might arise out of the presence of the facility in the right-of-way.

**SEC. 9-5-8**

**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) and Wis. Stat. 66.0414(3)(c), as amended.
- b) **Processing Timeline.** Wireless permit applications (including applications for other permits under Section 6(b)(11) necessary to place or modify the facility) and appeals will be processed in conformity with the deadlines set forth in state, local, and federal law, as amended, unless the applicant and the Village agree to an extension.
- 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. If the permit is for a small wireless facility, the applicant may cure the deficiencies identified in the written decision denying the permit and re-submit the application no later than 30 days after receipt without being required to pay an additional application fee.
- 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 wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless facility. 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 documentation accompanying the appeal must include that contention and provide all evidence on which the applicant relies in support of that claim.
- 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 Section 8(e)(1), above, must be filed within seven 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 deadline.

**SEC. 9-5-9**

**REVOCAION**

- a) **Revocation for Breach.** A wireless permit may be revoked for failure to comply with the conditions of the permit or applicable federal, state, or local laws, rules or regulations. Upon revocation, the facilities for which the permit has been revoked 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.

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

#### **SEC. 9-5-10 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 and as directed by the Village, permanently remove and relocate any of its wireless facilities in the right-of-way whenever such relocation is necessary to prevent the wireless 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.

#### **SEC 9-5-11 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 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 Chapter 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 Section 11(a)(2), the Village may, at its option:
    1. Accept the dedication for all or a portion of the facilities;
    2. Require the permit holder, at its own expense, to remove the facilities and perform the required restoration under Section 12; or
    3. Require the permit holder to post a bond or provide payment sufficient to reimburse the Village for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under section 12.
  3. Remove its facilities from the right-of-way within one year and perform the required restoration under Section 12, unless the Administrator waives this requirement or provides a later deadline.

- b) **Abandoned Facilities.** Facilities of a permit holder who fails to comply with Section 11(a) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or in equity, the Village may, at its option:
1. Abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;
  2. take possession of the facilities; and/or
  3. require removal of the facilities by the permit holder or the permit holder's successor in interest.

**SEC. 9-5-12 RESTORATION**

In the event that a permit holder removes or is required to remove a wireless facility from the right-of-way under this Chapter (or relocate it pursuant to section 10), or otherwise causes any damage to the right-of-way in connection with its activities under this Chapter, 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 after providing 15 days' written notice to the permit holder. 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.

**SEC. 9-5-13 SEVERABILITY**

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