

STATE OF WISCONSIN WAUKESHA COUNTY VILLAGE OF HARTLAND

ORDINANCE NO. 887-24

AN ORDINANCE CREATING §78-9
OF THE VILLAGE OF HARTLAND CODE OF ORDINANCES
REGULATING WIRELESS TELECOMMUNICATIONS FACILITIES
IN PUBLIC RIGHT-OF-WAY

THE VILLAGE BOARD OF THE VILLAGE OF HARTLAND DOES ORDAIN AS FOLLOWS:

SECTION 1: §78-9 of the CODE OF ORDINANCES OF THE VILLAGE OF HARTLAND is hereby created as follows:

1. Finding and Intent

This section of the Village of Hartland Ordinances is a regulatory measure that provides the Village of Hartland (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 ordinance shall be interpreted consistent with those provisions.

Villages have long had police power authority to regulate local rights of way. That authority is found in their statutory home rule powers – Wis. Stat. § 61.34 – and Wis. Stat. §§ 182.017 and 196.58. Wis. Stat. § 61.34 authorizes the village to enact legislation for the health, safety, and welfare of the public. In addition, Wis. Stat. § 61.34(5) notes that the powers, rights, and privileges accorded to villages under said statute are to be liberally construed in order to promote the general welfare, peace, good order, and prosperity of the village. In addition, Wis. Stat. §§ 182.017 and 196.58 authorize municipalities to regulate wireless infrastructure in the right of way. Such local regulation must be reasonable and defensible on public health, safety, and welfare grounds.

It is directed that the codified version of this ordinance include the Findings and Intent section which is made a part of and incorporated in this ordinance.

2. Definitions

The following words, terms, and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except when the context clearly indicates a different meaning:

38 *Administrator* shall mean the Village Manager or his or her designee.

39 *Application* shall mean a formal request, including all required and requested documentation and
40 information, submitted by an applicant to the Village for a wireless permit.

41 *Applicant* shall mean a person or entity filing an application for a wireless permit under this
42 ordinance.

43 *Base Station*, consistent with 47 C.F.R. § 1.6100(b)(1), shall mean a structure or wireless
44 equipment at a fixed location that enables FCC-licensed or authorized wireless communications
45 between user equipment and a communications network. This definition does not include towers
46 or any equipment associated with a tower.

47 *Eligible Facilities Request*, consistent with 47 C.F.R. § 1.6100(b)(3), shall mean any request for
48 modification of an existing tower or base station that does not substantially change the physical
49 dimensions of such tower or base station, involving (i) collocation of new transmission equipment,
50 (ii) removal of transmission equipment, or (iii) replacement of transmission equipment.

51 *FCC* shall mean the Federal Communications Commission.

52 *Governmental Pole*, consistent with Wis. Stat. § 66.0414(1)(n), shall mean a utility pole that is
53 owned or operated by the Village in the right of way.

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

57 *Right of Way* shall mean the surface of, and the space above and below, the entire width of an
58 improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace,
59 shoulder, side slope, public sidewalk, or public utility easement over which the Village exercises
60 any rights of management and control or in which the Village has an interest.

61 *Small Wireless Facility*, consistent with 47 C.F.R. § 1.6002(1), shall mean a facility that meets
62 each of the following conditions:

63 (a) The structure on which antenna facilities are mounted, measured from ground level:

64 (1) Is 50 feet or less in height; or

65 (2) Is no more than ten (10) percent taller than other adjacent structures; or

66 (3) Is not extended to a height of more than 50 feet or by more than ten (10) percent above
67 its preexisting height, whichever is greater, as a result of the 67 of new antenna facilities;

68 (4) The structure is self-supporting without the use of guy-wires and shall be certified as
69 suitable for the placement of the antenna facilities proposed to be mounted by a structural
70 profession engineer licensed in the State of Wisconsin.

(b) Each antenna (excluding associated antenna equipment) is no more than three (3) cubic feet in volume;

(c) 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;

(d) The facility does not require antenna structure registration under 47 C.F.R. part 17;

(e) The facility is not located on Tribal land, as defined in 36 C.F.R. § 800.16(x); and

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

Support Structure shall mean 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), shall mean any structure built for the sole or primary purpose of supporting any 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), shall mean 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. Stat. § 66.0414(3)(c)(5), shall mean an area designated by the Village in which all pipes, 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 shall mean 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 shall mean a utility pole owned or operated in a right of way by the Village that is designed to, or used to, carry electric distribution lines, or cables or wires for telecommunications, cable, or electric service.

Wireless Equipment shall mean an antenna facility at a fixed location that enables wireless services between user equipment and a communications network, and includes all of the following:

108 (a) Equipment associated with wireless services;

109 (b) Radio transceivers, antennas, or coaxial, metallic, or fiber-optic cable located on, in, under,
110 or otherwise adjacent to a support structure;

111 (c) Regular and backup power supplies; and

112 (d) Equipment that is comparable to equipment specified in this definition, regardless of
113 technical configuration.

114 *Wireless Equipment* does not include:

115 (a) The structure or improvements on, under, or within which the equipment is collocated;

116 (b) Wireline backhaul facilities; or

117 (c) Coaxial, metallic, or fiber-optic cable that is between utility poles or wireless support
118 structures or that is not adjacent to a particular antenna. The definition of *Wireless Equipment*
119 in this ordinance is consistent with the definition of “wireless facility” in Wis. Stat. §
120 66.0414(1)(z).

121 *Wireless Facility* or *Facility* shall mean an installation at a fixed location in the right of way
122 consisting of wireless equipment and the support structure, if any, associated with the wireless
123 equipment.

124 *Wireless Infrastructure Provider* shall mean any person or entity, other than a wireless services
125 provider, that builds or installs wireless communications transmissions equipment, antenna
126 equipment, or wireless support structures.

127 *Wireless Permit* or *Permit* shall mean a permit issued pursuant to this ordinance and authorizing
128 the placement or modification of a wireless facility of a design specified in the permit at a particular
129 location within the right of way, and the modification of any existing support structure to which
130 the wireless facility is proposed to be attached.

131 *Wireless Provider* shall mean a wireless infrastructure provider or a wireless services provider.

132 *Wireless Regulations* shall mean those regulations adopted pursuant to Section 5(b)(1) of this
133 ordinance to implement the provisions of this ordinance.

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

136 *Wireless Services Provider* shall mean a person or entity that provides wireless services.

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

141 3. Scope

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

145 (b) *Exempt Facilities*. The provisions of this ordinance shall be applied to applications for the
146 following:

147 (1) Installation, maintenance, operation, or replacement of small wireless facility strung
148 on cables between two (2) existing utility poles in compliance with the National Electrical
149 Safety Code, provided that the small wireless facility does not exceed 24 inches in length,
150 15 inches in width, and 12 inches in height and has no exterior antenna longer than 11
151 inches.

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

156 (3) Placement or modification of a wireless facility by Village staff or any person
157 performing work under contract with the Village.

158 (4) The replacement of an existing small wireless facility with a small wireless facility that
159 is substantially similar to, or the same size or smaller than, the existing small wireless
160 facility, provided that there is no change to the support structure on which the small
161 wireless facility is placed.

162 (5) Routine maintenance of a wireless facility.

163 (c) *Placement on Village-owned or Village-controlled Support Structures*. Any applicant who
164 wishes to place wireless equipment on a support structure owned or controlled by the Village,
165 including governmental poles and utility poles for designated services, must obtain a wireless
166 permit under this ordinance and enter into an attachment agreement with the Village. The
167 agreement shall include provisions regarding make-ready work¹ and specify the compensation
168 to be paid to the Village for use of the support structure in accordance with the standards set
169 out in Wis. Stat. § 66.0414(4), as amended. Unless prohibited by federal or state law, the
170 person or entity seeking the agreement shall reimburse the Village for all costs the Village
171 incurs in connection with its review of and action upon the request for an agreement.

172 (1) At the time of submission of the application, the applicant must submit proof that it has
173 mailed to the owners of all property within 300 feet of the proposed small wireless facility

¹ Make-Ready Work means administrative, engineering, or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities.

a notice that the applicant is submitting an application for the placement or modification of a small wireless facility in the right of way, which notice must include the following:

a. The proposed location of the facility.

b. A description and scale image of the proposed small wireless facility.

c. An e-mail address and phone number for a representative of the applicant who will be available to answer questions from members of the public about each proposed small wireless facility installation.

4. Nondiscrimination

In establishing the rights, obligations, and conditions set forth in this ordinance, it is the intent of the Village to treat each applicant and right of way use 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 ordinance and shall be the Village Manager or his designee.

(b) *Powers*. As part of the administration of this ordinance, 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 ordinance, 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 ordinance and the wireless regulations.

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

(4) Collect any fee required by this ordinance.

(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) Subject to the approval of Village Manager, 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.

206 (8) Coordinate and consult with other Village staff, committees, and governing bodies to
207 ensure timely action on all other required permits under Section 6(b)(11) of this ordinance.

208 (9) Negotiate attachment agreements for the placement of wireless equipment on
209 governmental poles or utility poles for designation.

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

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

215 6. Application

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

221 (b) *Content*. To be considered complete, an application must contain:

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

223 (2) A completed application cover sheet signed by an authorized representative of the
224 applicant who has authority to make binding commitments on behalf of the applicant
225 beyond merely being authorized to submit an application or to carry out the work which is
226 the subject of the application.

227 (3) The name of the applicant (including any corporate or trade name), and the name,
228 address, email address, and cell telephone number(s) of a local representative and of all
229 duly authorized representatives and consultants acting on behalf of the applicant with
230 respect to the filing of the application. If the applicant is a wireless infrastructure provider,
231 the name and contact information, including cell phone numbers for the wireless service
232 provider(s) that will be using the wireless facility must also be provided.

233 (4) A statement of which federal or state deadline(s) apply to the application.

234 (5) A separate and complete description of each proposed wireless facility and the work
235 that will be required to install or modify it, including, but not limited to, detail regarding
236 proposed excavations, if any, detailed site plans showing the location of the facility and
237 technical specifications for each element of the facility, clearly describing the site and all
238 structures and equipment at the site before and after installation or modification and
239 identifying the owners of such preexisting structures and equipment, and describing the
240 distance to the nearest residential dwelling unit. Before and after 360-degree photo
241 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 320 to 325, as amended; and all local amendments to those codes enacted solely to address probable threats of interference with or 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 designed services, as permission will be evidenced by the executed attachment agreement referenced in Section 3(c) of this ordinance.

(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 Requests.* 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 6(b) above 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 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.

(e) *Fees*. Applicant must pay an application fee in an amount set by the Village Board in Appendix A. of the Municipal Code and updated by resolution per Wis. Stat. § 66.0414(3)(d)2. & 3. to allow recovery of the Village’s direct costs of processing the application, subject to the limits contained in federal and state law, including Wis. Stat. § 66.0414(3)(d).

(f) *Public Records*. Applications are public records that may be made publicly available pursuant to federal and state public records law. Notwithstanding the foregoing, the applicant may identify 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 federal and state public records laws 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*. Wireless facilities shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law or regulation.

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

(c) *Standards*.

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

a. Minimizes risk to public safety;

b. Ensures that placement of wireless equipment on existing support structures is within the tolerance of those structures;

c. Ensures that new support structures will not be installed when the applicant has the alternative of placing its wireless facility on an existing structure on reasonable terms

319 and conditions and placement in that location is technically feasible and not materially
320 more expensive;

321 d. Avoids installation or modification of a utility pole that would exceed the height
322 limits set forth in Wis. Stat. § 66.0414(2)(e)2, as amended;

323 e. Avoids placement of aboveground wireless facilities in historic districts and
324 underground districts (except for placing equipment on or replacing preexisting support
325 structures, so long as the collocation or replacement reasonably conforms to the design
326 aesthetics of the original support structure);

327 f. Avoids placement of wireless facilities in residential areas when commercial or
328 industrial areas are reasonably available;

329 g. Maintains the integrity and character of the neighborhoods and corridors in which
330 the facilities are proposed to be located;

331 h. Ensures that the Village bears no risk or liability, as a result of the installations; and

332 i. Ensures that applicant's use does not obstruct or hinder travel, drainage, maintenance,
333 or the public health, safety, and general welfare, inconvenience the public, interfere
334 with the primary uses of the right of way, or hinders the ability of the Village or other
335 government entities to improve, modify, relocate, abandon, or vacate the right of way
336 or any portion thereof, including but not limited to the maintenance of a clearance of
337 not less than ten (10) feet from any kind of Village utility component, or to cause the
338 improvement, modification, relocation, vacation, or abandonment of facilities in the
339 right of way.

340 (2) In no event may ground-mounted equipment interfere with pedestrian or vehicular
341 traffic and at all times must comply with the requirements of the Americans with
342 Disabilities Act of 1990.

343 (d) *Standard Permit Conditions.* All wireless permits, whether granted under this ordinance
344 or deemed granted by operation of federal or state law, are issued subject to the following
345 minimum conditions:

346 (1) Compliance. The permit holder shall at all times maintain compliance with all
347 applicable federal, state, and local laws, regulations, and other rules, including the
348 limitation that all Village Department of Public Works permits are issued for a limited
349 period of ninety (90) days.

350 (2) Construction Deadline. The permit holder shall commence the activity authorized by
351 the permit no later than 365 days after the permit is granted and shall pursue work on the
352 activity until completion.

353 (3) Contact Information. The permit holder shall at all times maintain with the Village
354 accurate contact information for the permit holder and all wireless service providers

355 making use of the facility, which shall include a cell phone number, mailing address, and
356 email address for at least one (1) natural person.

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

360 (5) Indemnification. The permit holder, by accepting a permit under this ordinance, agrees
361 to indemnify and hold harmless the Village, its elected and appointed officials, officers,
362 employees, agents, representatives, and volunteers (collectively, the "Indemnified Parties")
363 from and against any and all liability and loss from personal injury or property damage
364 resulting from or arising out of, in whole or in part, the use or occupancy of right of way
365 by the permit holder or anyone acting under its discretion or control or as an independent
366 contractor(s) on behalf of the applicant or on its behalf arising out of the rights and
367 privileges granted under this ordinance, even if liability is also sought to be imposed on
368 one (1) or more of the Indemnified Parties. The obligation to indemnify and hold harmless
369 the Indemnified Parties shall be applicable even if the liability results in part from an act
370 or failure to act on the part of one (1) or more of the Indemnified Parties. However, the
371 obligation does not apply if the liability results from the sole negligence or willful
372 misconduct of the Indemnified Party.

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

377 (7) General Maintenance. The wireless facility and any associated structures shall be
378 maintained in a neat and clean manner and in strict accordance with all approved plans and
379 conditions of approval.

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

382 (9) Relocation. At the request of the Village pursuant to Section 10 of this ordinance, the
383 permit holder shall promptly and at its own expense permanently remove and relocate its
384 wireless facility in the right of way and restore the site of the removal to its original
385 conditions.

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

389 (11) Restoration. A permit holder who removes or relocates a facility from the right of
390 way or otherwise causes any damage to the right of way in connection with its activities
391 under this ordinance must restore the right of way in accordance with Section 12 of this
392 ordinance.

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

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

(14) Certificate of Insurance. Proof of the existence of insurance (other than with an ACORD 25 because of its disclaimers) sufficient to demonstrate to the satisfaction of the Administrator that the applicant has the capacity 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 federal, state, and local 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) of this ordinance necessary to place or modify the facility) and appeals will be processed in conformity with the deadlines set forth in federal, state, and local 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 attempt to cure the deficiencies identified in the written decision denying the permit one time 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 (3) 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 (3) 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.

9. Revocation

(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 ordinance, 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.

10. Relocation

Except as otherwise prohibited by federal or state 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 space on a utility pole or utility pole for designated services needed by the Village for a public purpose; 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 avoid or 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 ordinance 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:

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

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

c. Require the permit holder to post a cash deposit 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 of this ordinance.

(3) Remove its facilities from the right of way within one (1) year and perform the required restoration under Section 12 of this ordinance, 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) of this ordinance and which, for one (1) 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.

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 ordinance (or relocate it pursuant to Section 10 of this ordinance), or otherwise causes any damage to, or modification of the right of way in connection with its activities under this ordinance, 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 130 % of the cost of restoring the right-of-way.

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

SECTION 3: This ordinance shall take effect and be in full force from and after its passage and publication.

Passed and approved this 21st day of February, 2024.

VILLAGE OF HARTLAND

By: 
Jeffrey Pfannenstill, Village President

ATTEST:

Sandee Policello, Village Clerk

