

Unless specifically noticed otherwise, this meeting and all other meetings of this body are open to the public. Proper notice has been posted and given to the media in accordance with Wisconsin Statutes so that citizens may be aware of the time, place and purpose of the meeting.

MEETING NOTICE

Planning Commission Agenda

Thursday, May 23, 2019 – 5:00 PM

Council Chambers – New London Municipal Building

1. Call to Order
2. Adopt Agenda
3. Roll Call
4. Approval of the March 28, 2019 meeting minutes
5. Request for a garage exceeding 1100 sq. ft. in size / exceeding 15 feet in height – Rick Bohlmann
6. Small Cell Tower – Model Ordinance
7. Small Cell Tower – Supporting Documents
 - a. Application Check List
 - b. Aesthetic Standards
8. Other Matters
9. Adjournment

*Agenda items are listed so as to accurately describe the actions or issue being considered instead of simply the document listing title or the parties to a contract. This is done as such titles or a list of parties to a contract conveys insufficient information to the public on whether a topic or project they are interested in is being considered. It is the policy of the City of New London to comply in good faith with all applicable regulations, guidelines, etc. put forth in the Americans with Disabilities Act (ADA). To that end, it is the City's intent to provide equal opportunity for everyone to participate in all programs and/or services offered, to attend every public meeting scheduled, and to utilize all public facilities available. Any person(s) in need of an alternative format (i.e. larger print, audio tapes, Braille, readers, interpreters, amplifiers, transcription) regarding information disseminated by the City of New London should notify the City 48 hours prior to a meeting, etc., or allow 48 hours after a request for a copy of brochures, notices, etc. for delivery of that alternative format. Contact ADA Co-Coordinator Paul Hanlon or Chad Hoerth by telephone through: (Relay Wisconsin) – 920/ 982-8500 or (Voice) – 920/982-8500 and in person/letter at 215 N. Shawano Street, New London, WI 54961.

**City of New London
Planning Commission Minutes
March 28, 2019**

Call to Order:

The March 28, 2019 Planning Commission meeting was called to order by Chairman Steinhorst at 5:00 PM.

Adopt Agenda:

Motion by Gabert, second by Noel to adopt the agenda. Motion carried 7/0.

Roll Call:

Those in attendance were Steingraber, Goller, Spilman, Noel, Gabert, Henke, and Steinhorst. Thompson - excused.

Others in attendance: Paul Hanlon – Zoning Administrator, Scott Bellile – Press-Star and Deb Hurst.

Approval of the February 28, 2019 Planning Commission Minutes:

Motion by Henke, second by Goller to approve the February 28, 2019 meeting minutes as presented. Motion carried 7/0

Approval of Certified Survey Map – City of New London / Hilker Warehousing:

Henke explained the Certified Survey Map was basically for a land swap between the City of New London for property at the intersection of Mill Street and Wolf River Ave. Motion by Spilman, second by Gabert to approve the Certified Survey Map. Motion carried 7/0

Request for Re-Zoning Property at 117 E South Water Street from B-1 (Central Business District) to R-2 (One and Two Family):

Deb Hurst, property owner, requested the zoning change. There is an offer to purchase the property contingent upon the zoning change being completed. Hanlon explained this will need a Comprehensive Plan Amendment along with a re-zoning. This process could take up to 120 days. Motion by Goller, second by Gabert to recommend the zoning change. Motion carried 7/0

Annexation Ordinance:

The Planning Commission reviewed the Annexation Ordinance for the Romenesko Property in the Town of Mukwa. Motion by Goller, second by Spilman to recommend the ordinance to Council for approval. Motion carried. 7/0

Small Cell Towers in Right of Way:

Hanlon discussed a memorandum drafted by the League of Wisconsin Municipalities regarding the placement of Small Wireless Facilities (SWF) in the public right-of-way. This was drafted after the FCC released a document on September 27, 2018 limiting the control a municipality has over those facilities. This document does not allow municipalities to place a moratorium on the SWF and establishes a timeline for review and approval of the SWF sites along with fees that can be charged.

Henke also provided some insight on the requirements of the FCC ruling. The League of Wisconsin Municipalities drafted a model ordinance for these facilities and provided a copy that can be adopted.

Hanlon will bring a draft of the ordinance to the April meeting for consideration. No action taken.

Other Matters:

Hanlon updated the members on the current construction projects and some code enforcement actions he had taken during the week.

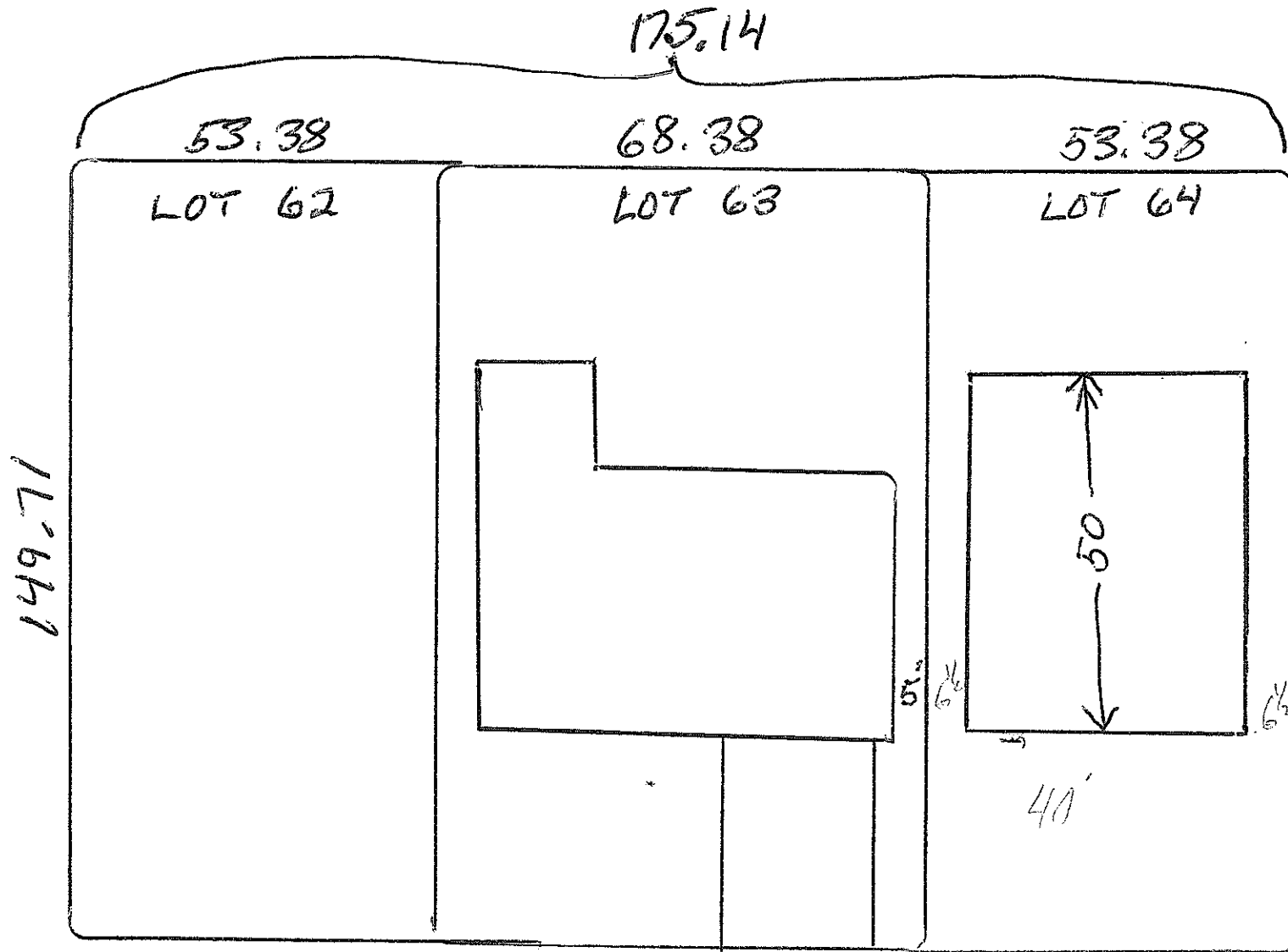
Henke talked about a recodification presentation by General Code that staff attended during the week. If approved it will take 12 -18 months for the process to be completed and the ordinances put in a new format on-line.

Next meeting will be April 25, 2019 at 5:00 pm.

Adjournment:

Motion by Goller and second by Gabert to adjourn. Meeting adjourned at 5:42 pm.

MAY 23RD PC

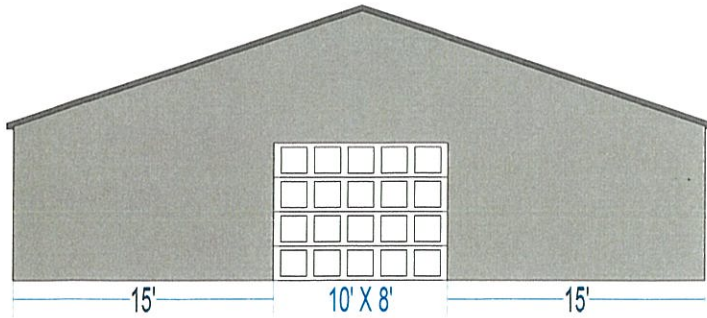


R BOHLMANN
920 538 3227

ALL THREE LOTS COMBINED
INTO ONE.

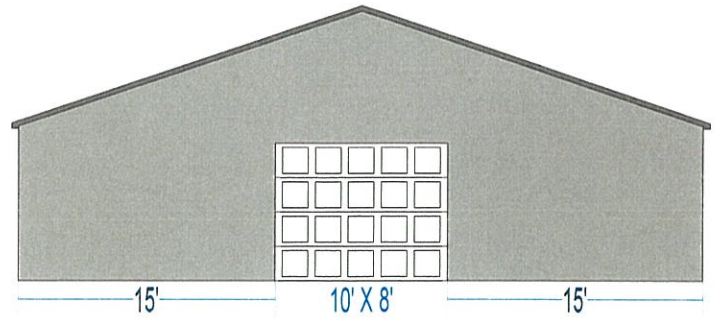
*** Here are the wall configurations for your design.

Illustration May Not Depict All Options Selected



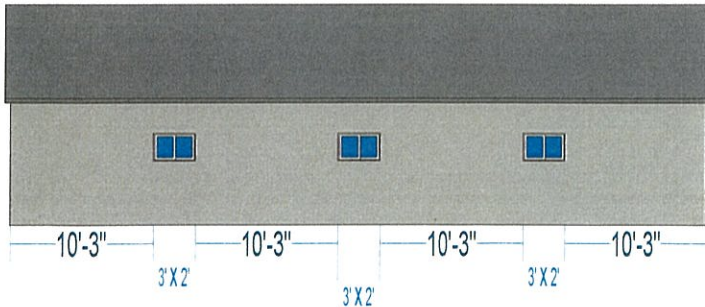
Gable Front View

(1) - GARAGE DOOR MDP38U 10X8 EZ-SET WHITE MDP38U INSUL



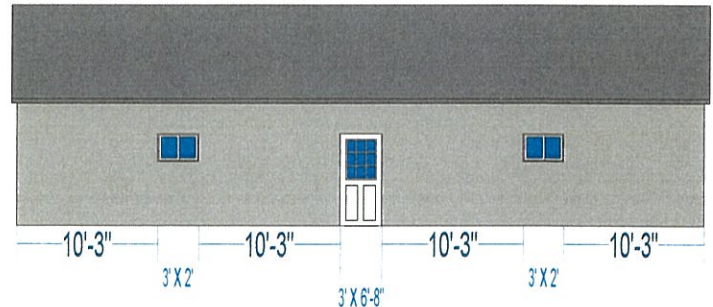
Gable Back View

(1) - GARAGE DOOR MDP38U 10X8 EZ-SET WHITE MDP38U INSUL



Eave Front View

(3) - SLIDER (GOOD) 36X24



Eave Back View

(1) - SLIDER (GOOD) 36X24
(1) - I-4 9-LITE TRAD 2-PNL PH 36X80 RH SN
(1) - SLIDER (GOOD) 36X24

10 FEET HIGH

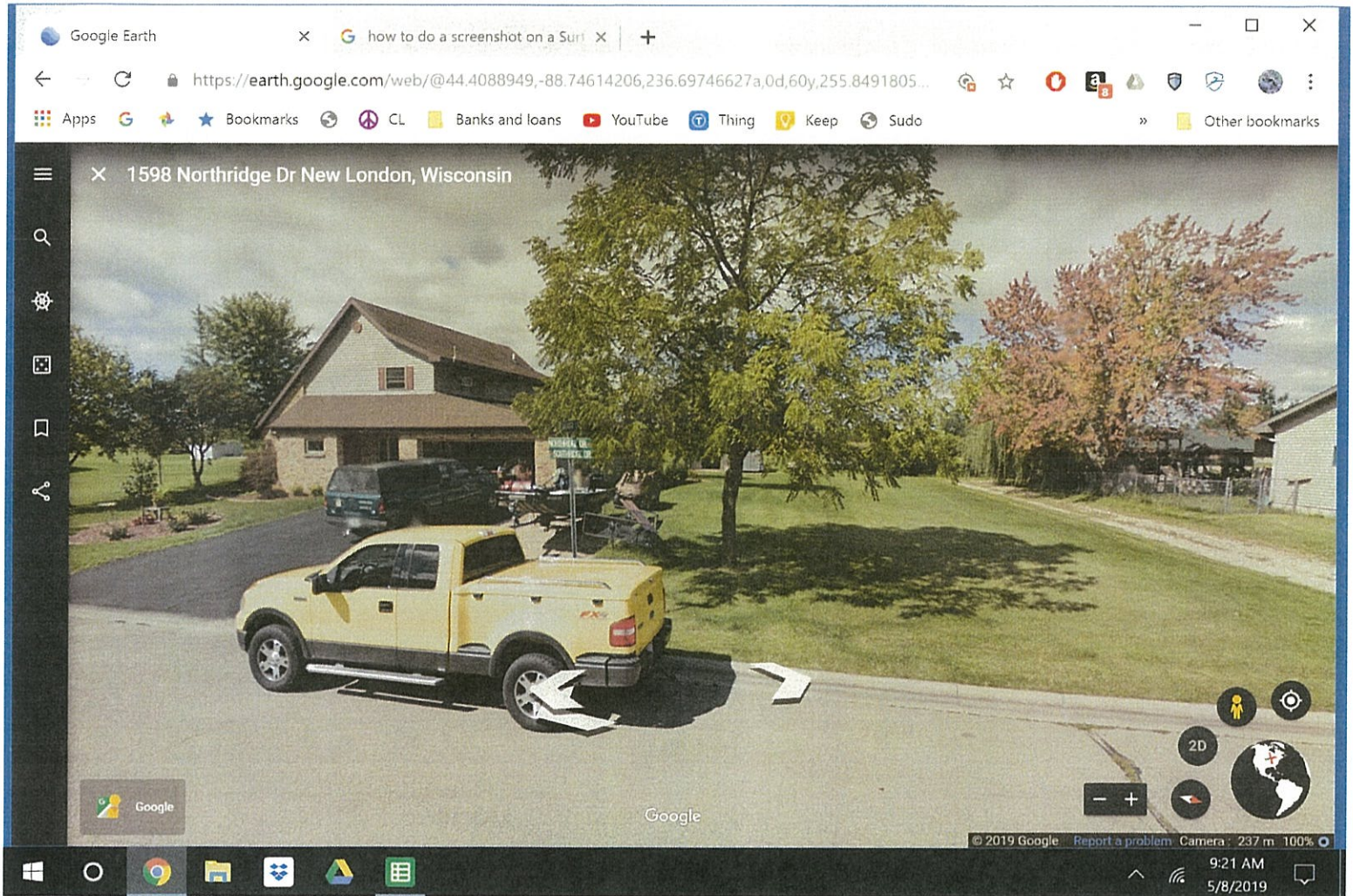
Building Size: 40 feet wide X 50 feet long X 9 feet high

Approximate Peak Height: 16 feet 3 inches (195 inches)

NOTE: Overhead doors may need to be "Wind Code Rated" depending on your building location.

Confirm the door requirements with your local zoning official before construction.

Menards-provided material estimates are intended as a general construction aid and have been calculated using typical construction methods. Because of the wide variability in codes and site restrictions, all final plans and material lists must be verified with your local zoning office. Menards is a supplier of construction materials and does not assume liability for design, engineering or the completeness of any material lists provided. Underground electrical, phone and gas lines should be located and marked before your building plans are finalized. Remember to use safety equipment including dust masks and sight and hearing protection during construction to ensure a positive building experience.



Draft Ordinance
Wireless Telecommunications Facilities in the Right-of-Way

Chapter [# TBD]:

Section 1: Definitions

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

“Administrator” means the Director of Public Works¹ or his or her designee.

“Application” means a formal request, including all required and requested documentation and information, submitted by an Applicant to the ***City of New London*** for a wireless permit.

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

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

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

“FCC” means the Federal Communications Commission.

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

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

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

- i. is 50 feet or less in height, or
- ii. is no more than 10 percent taller than other adjacent structures, or

¹ When choosing the appropriate person to administer the ordinance (e.g., Public Works Director, Engineer, Director of Planning and Zoning), it is wise to consider both the expertise and the workload of the employee appointed, given the short review timeline required by state and federal shot clocks. *See* Memo Section B.2.

iii. is not extended to a height of more than 50 feet or by more than 10 percent above its pre-existing height, whichever is greater, as a result of the collocation of new antenna facilities;

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

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

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

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

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

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

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

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

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

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

“Wireless Permit” or “Permit” means a permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way, and the

modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

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

“Wireless Service Provider” means an entity that provides wireless services to end users.

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

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

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

Section 2: Purpose

In the exercise of its police powers, the ***City of New London*** has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the ***City of New London*** with a process for managing, and uniform standards for acting upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the ***City of New London’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 telecommunications facilities. The ***City of New London*** recognizes the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the ***City of New London***. The ***City of New London*** also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitation, the Telecommunications Act of 1996 (47 U.S.C. § 151 et seq), Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Wis. Stat. § 182.017, and Wis. Stat. § 196.58, and this Chapter shall be interpreted consistent with those provisions.

Section 3: Scope

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

(b) **Exempt Facilities.**² The provisions of this Chapter (other than Sections 10-14) shall not be applied to applications for the following:

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

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

(3) Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the *City of New London*. See Section 13 of this Chapter.

(4) Placement or modification of a wireless telecommunications facility by *City of New London* staff or any person performing work under contract with the *City of New London*.

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

Section 4: Nondiscrimination

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

Section 5: Administration

(a) **Administrator.** The Administrator is responsible for administering this Chapter.

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

² None of these carve-outs are mandatory—they are included simply for practical reasons. The items listed in sections 3(b)(1), (2), and (5) are exempted from permitting because they are either temporary or quite simple and unobtrusive. Allowing telecommunications providers to make such installations without permitting may encourage them to choose these types of installations over others that the municipality finds less preferable. Items 3(b)(3) and (4) are exempted from permitting because the municipality has means other than permitting to control these types of installations.

- (1) Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this Chapter, including regulations governing collocation, the resolution of conflicting applications for placement of wireless telecommunications facilities, and aesthetic standards.³
- (2) Interpret the provisions of the Chapter and the wireless regulations.
- (3) Develop forms and procedures for submission of applications for wireless permits consistent with this Chapter.
- (4) Collect any fee required by this Chapter.
- (5) Require, as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility that is the subject of the wireless permit application.
- (6) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations.
- (7) Issue notices of incompleteness or requests for information in connection with any wireless permit application.
- (8) 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.
- (9) Coordinate and consult with other *City of New London* staff, committees, and governing bodies to ensure timely action on all other required permits under Section 6(b)(8) of this Chapter.
- (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.

Section 6: Application⁴

(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

³ Adoption of wireless regulations is optional, but advisable. The regulations can contain more detailed technical specifications, vary the general standards set forth in the ordinance based on the character of a particular neighborhood or corridor, and set more detailed aesthetic requirements. *See* Attachment C to Memo.

⁴ Each municipality should develop its own permit application form. *See* Attachment B to Memo.

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 regulations.
- (2) A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.
- (3) The name of the applicant (including any corporate or trade name), and the name, address, email address, and telephone number of a local representative. If the applicant is a wireless infrastructure provider, the name and contact information for the wireless service provider(s) that will be using the wireless telecommunications facility must also be provided.
- (4) A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.
- (5) A separate and complete description of each proposed wireless telecommunications facility and the work that will be required to install or modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specifications for each element of the facility, clearly describing the site and all structures and facilities at the site before and after installation or modification and identifying the owners of such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unit. Before and after 360-degree photo simulations must be provided for each facility.
- (6) Proof that the applicant has mailed to the owners of all property within 300 feet of the proposed wireless telecommunications facility a notice that the applicant is submitting an application to the **City of New London** for placement or modification of a wireless telecommunications facility in the right-of-way, which notice must include
 - (i) the proposed location of the facility, (ii) a description and scale image of the proposed facility, and (iii) an email address and phone number for a representative of the applicant who will be available to answer questions from members of the public about the proposed project.
- (7) A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.
- (8) To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility,⁵ the application must include complete copies of

⁵ See Memo Section B.2.c.

applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits),⁶ with all engineering completed and with all fees associated with each permit.

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

(10) Payment of all required fees.

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

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

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

(d) **Fees.**⁷ Applicant must provide an application fee and shall be required to pay all costs reasonably incurred in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically and raised or lowered based on the costs the Village expects to incur, with a review commencing by the first anniversary of the effective date of this Chapter.

(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

⁶ The municipality should review its code of ordinances to determine which other permits may be required and modify this list accordingly.

⁷ See Memo Section B.3.

contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the ***City of New London*** 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 ***City of New London*** shall not be required to incur any costs to protect the application from disclosure.

Section 7: General Standards

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

(b) **Regulations.** The wireless regulations and decisions on wireless permits shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless it is determined that the applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of a telecommunications or personal wireless services, or otherwise violate applicable laws or regulations.⁸ 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.**⁹

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

(A) Minimizes risks to public safety;

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

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

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

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

⁸ Before making such a determination, it is advisable to consult with the municipal attorney.

⁹ If a municipality chooses to incorporate aesthetic standards into the ordinance, rather than in its wireless regulations, they should be added to this Section 7(c). See Attachment C to Memo.

(F) Ensures that the ***City of New London*** bears no risk or liability as a result of the installations; and

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

(2) No wireless permit shall be issued unless (i) the wireless service provider applicant has immediate plans to use the proposed facility or (ii) the wireless infrastructure applicant has a contract with a wireless service provider that has immediate plans to use the proposed facility.

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

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

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

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

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

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

(5) **Indemnities.** The permit holder, by accepting a permit under this Chapter, agrees to indemnify, defend, and hold harmless the ***City of New London***, its elected and appointed officials, officers, employees, agents, representatives, and volunteers (collectively, the "Indemnified Parties") from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, interest, attorneys' fees, costs, and expenses of whatsoever kind or nature in any manner caused in whole or in part, or claimed to be caused in whole or in part, by reason of

any act, omission, fault, or negligence, whether active or passive, of the permit holder or anyone acting under its direction or control or on its behalf, even if liability is also sought to be imposed on one or more of the Indemnified Parties. The obligation to indemnify, defend, and hold harmless the Indemnified Parties shall be applicable even if the liability results from an act or failure to act on the part of one or more of the Indemnified Parties. However, the obligation does not apply if the liability results from the willful misconduct of an Indemnified Party.

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

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

(8) **Graffiti Removal.** All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the *City of New London*.

(9) **Relocation.** At the request of the *City of New London* pursuant to Section 10 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.

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

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

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

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

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

Section 8: Application Processing and Appeal

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

(b) **Processing Timeline.**¹⁰ Wireless permit applications (including applications for other permits under Section 6(b)(8) necessary to place or modify the facility) and appeals will be processed in conformity with the shot clocks set forth in state, local, and federal law, as amended.

(c) **Written Decision.**¹¹ 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 Board of Appeals.** Any person adversely affected by the decision of the Administrator may appeal that decision to the **Board of Appeals**, which may decide the issues *de novo*, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.

(e) **Deadline 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 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.

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

¹⁰ See Memo Section B.2.

¹¹ If a municipality denies an application, 47 U.S.C. § 332(c)(7)(B)(iii) requires the decision be “in writing and supported by substantial evidence contained in a written record” while Wis. Stat. § 182.017(9) requires that the municipality “provide the applicant a written explanation of the reasons for the denial at the time that the municipality denies the application.”

Section 9: Expiration and Revocation

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

- (1) Remove the wireless telecommunications facility; or,
- (2) Submit an application to renew the permit at least 90 days prior to its expiration. The facility must remain in place until the renewal application is acted on by the ***City of New London*** and any appeals from the ***Cities*** decision are exhausted.

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

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

Section 10: Relocation

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

Section 11: Abandonment

(a) **Cessation of Use.** In the event that a permitted facility within the right-of-way is not in use for a continuous period of 60 days or longer, the permit holder must promptly notify the ***City of New London*** 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 ***City of New London***. If a permit holder proceeds under this Section 11(a)(2), the ***City of New London*** may, at its option:

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

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

(C) Require the permit holder to post a bond or provide payment sufficient to reimburse the ***City of New London*** 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 ***City of New London*** may, at its option:

(1) abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;

(2) take possession of the facilities; and/or

(3) require removal of the facilities by the permit holder or the permit holder's successor in interest.

Section 12: Restoration

In the event that a permit holder removes or is required to remove a wireless telecommunications facility from the right-of-way under this Chapter (or relocate it pursuant to Section 10), the permit holder must restore the right-of-way to its prior condition in accordance with ***City of New London*** 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 ***City of New London*** at its option may do such work. In that event, the permit holder shall pay to the ***City of New London***, within 30 days of billing therefor, the cost of restoring the right-of-way.

Section 13: Placement on City - Owned or Controlled Structures

The ***City of New London*** may negotiate agreements for placement of wireless telecommunications facilities on ***City of New London*** -owned or -controlled structures in the right-of-way. The agreement shall specify the compensation to the ***City of New London*** for use of the structures.¹² The person or entity seeking the agreement shall reimburse the ***City of New London*** for all costs the ***City of New London*** incurs in connection with its review of and action upon the request for an agreement.

Section 14: Severability

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

¹² See Memo Section B.3.

ATTACHMENT B APPLICATION CHECKLIST

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

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

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

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

General Application Content

- ☐ **Copies and Format.** Section 6(a) of the Model Ordinance requires the applicant to submit one paper copy and one electronic copy of the application unless otherwise provided in the municipality’s wireless regulations. However, the municipality can choose to receive applications by paper or electronic format only. The municipality’s ordinance or wireless regulations can establish the number of paper copies of the application and associated materials that the applicant must submit.
- ☐ **Submission Information.** The application should identify where the application must be submitted (e.g., street address for hand delivery, mailing address, email address) and which department may be contacted to answer any questions about the application.

Disclosures to Applicant

- ☐ **Disclosures.** The application should either restate or refer to all municipal disclosures required in the municipality’s ordinance, including the following Sections of the Model Ordinance:
 - 6(a): Application format and standards for completion;

- 6(c): Waiver request requirements and standards;
 - 6(d): Applicable fees; and,
 - 6(e): Public record law compliance.
- ❑ **Cover Sheet with Standard Permit Conditions.** Section 6(b)(2) of the Model Ordinance requires the municipality to provide an application cover sheet, listing all standard permit conditions (as provided in Section 7(d) of the Model Ordinance). As discussed below, the standard permit conditions include indemnification and insurance provisions and, consequently, the cover sheet must be signed by an authorized representative of the applicant. Therefore, it is preferable to restate the standard permit conditions from the municipality's ordinance in their entirety, rather than simply citing the relevant ordinance provisions.

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

- ❑ **Wireless Regulations.** All information required pursuant to the wireless regulations adopted by the municipality.

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

- ❑ **Signed Cover Sheet.** A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.

Comment: A signed cover sheet ensures that the applicant has agreed, in writing, to the standard permit conditions provided in Section 7(d) of the Model Ordinance. These standard permit conditions include, but are not limited to, the permit term, indemnification, and insurance requirements.

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

Comment: Section 6(b)(3) of the Model Ordinance requires the applicant to identify a local representative for the applicant and wireless service provider (if different). The

municipality may also wish to request secondary contact information if the primary contact is unavailable in the case of an emergency.

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

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

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

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

Comment (Additional Information): This provision is a starting point. The municipality should consult an engineer with the relevant telecommunications experience to determine what additional information may be necessary.

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

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

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

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

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

Comment (Applicant Q&A Session): Depending on the size of the project, the municipality may consider requiring the applicant to hold a public question and answer session to address citizen concerns. If the municipality wants to reserve this option, the municipality's ordinance or wireless regulations should reflect this.

- ☐ **FCC Compliance.** A copy of the FCC license for the facility or a sworn written statement from the applicant attesting that the facility will comply with current FCC regulations.
- ☐ **Complete Copies of Applications for Other Permits or Approvals.** To the extent that filing of the wireless permit application establishes a deadline for action on any other permit that may be required in connection with the wireless telecommunications facility, the application must include complete copies of applications for every required permit (including without limitation electrical permits, building permits, traffic control permits, and excavation permits), with all engineering completed and with all fees associated with each permit.

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

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

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

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

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

Comment: An applicant may claim that it cannot comply with one or more of the requirements in the municipality’s ordinance or wireless regulations and that denial of its application on that basis effectively prohibits its provision of service in violation of federal law. If the applicant wishes to make such a claim, it must submit detailed evidence to support the claim. Receiving this evidence with the application may allow a mutually agreeable process to resolve disputes short of a lawsuit. If the municipality finds the evidence convincing, it may consider waiving the relevant ordinance provisions or wireless regulations. *See* Section 6(c) of the Model Ordinance, which authorizes the Administrator to grant waivers from the requirements of the ordinance or the wireless regulations.

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

ATTACHMENT C

SAMPLE AESTHETIC STANDARDS

COMMENT: In adopting its new effective prohibition standard, the FCC makes clear that the standard applies to both fees and non-fee legal requirements, including aesthetic, undergrounding, and minimum spacing requirements.¹ The FCC states that complying with aesthetic and other such requirements imposes costs on SWF providers that may impact their ability to provide service, just as fees may do. Aesthetic and other similar requirements, therefore, violate Sections 253(a) and 332(c)(7)(B)(i)(II) of the Act unless they are:

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

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

Section 7(c) of the Model Ordinance contains a number of general aesthetic standards. These standards were drafted with the expectation that the municipality would adapt the standards to its particular circumstances after developing a record to justify the standards based on health, safety, and public welfare considerations. The aesthetic standards can be incorporated into the municipality's ordinance³ or into its wireless regulations. Incorporating the standards into the wireless regulations may provide greater flexibility for the municipality. Keep in mind that the standards must also be applied to other types of infrastructure deployments (e.g., electric and telephone poles) and that they cannot be applied unless they have been published in advance.

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

¹ *2018 Small Cell Order* at ¶ 82.

² *Id.* at ¶ 86.

³ For example, starting at a new Section 7(c)(4).

LOCATION WITHIN DISTRICTS

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

EXAMPLE 1:

(a) **Preferred Locations.** The following locations, in the order listed from most to least preferred, are the preferred locations for installations of facilities in public rights-of-way[, except for areas within [a historic district [or [OTHER DISTRICTS]]]]:⁴

- (1) Industrial areas;
- (2) Commercial areas; and
- (3) [OTHER AREAS].

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

- (1) Adequate coverage can be maintained, existing services can be improved, or new services can be added only if facilities are placed in a non-preferred location; or
- (2) The proposed facility will meet all applicable requirements for the non-preferred location and will complement the character of the surrounding area.

EXAMPLE 2:

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

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

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

3. **Avoid Residential and Open Space Areas.** New support structures, towers, and utility poles shall not be located within residential, designated open space or conservation areas unless sufficient technical and other information is provided to

⁴The municipality may prefer to list specific zoning districts or provide additional preferences.

demonstrate to the satisfaction of the planning commission or zoning administrator that location in such areas is appropriate, subject to the following findings:

a. The location of the proposed facility site is essential to meet the service demands of the carrier and no other alternative co-location, existing development or utility facility site, or type of support structure is feasible. This shall be documented by the applicant providing a list of the locations of preferred technically feasible sites, the good faith efforts and measures taken by the applicant to secure these preferred sites, and the specific reasons why these efforts and measures were unsuccessful.

b. The use of a new support structure, tower, or utility pole for the proposed facility by itself or in combination with other existing, approved, and proposed facilities will avoid or minimize adverse effects related to land use compatibility, visual resources, and public safety.

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

COLLOCATION

The Model Ordinance establishes a presumption that collocation on existing support structures, towers, or utility poles—without regard to whether the owner of the structure is the municipality or a private entity—is preferable over installing new structures. *See* Model Ordinance Section 7(c)(1)(C).⁵ However, not all municipalities will prefer collocation in all cases. For example, collocation on decorative structures or where collocation would result in an overly bulky appearance may be less preferable than placement of a new support structure.

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

EXAMPLE 1:

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

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

EXAMPLE 2:

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

(b) **Collocation with non-municipal facilities.** Collocation on facilities or support structures owned by parties other than the [CITY/VILLAGE] is subject to the following:

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

(A) The applicant submits substantial evidence supporting the unsuitability of the collocation;

(B) The owner of the existing facility or support structure is unwilling to accommodate the applicant's equipment and cannot be required to cooperate; or

(C) The [director of the [DEPARTMENT NAME] department]/[VILLAGE ADMINISTRATOR]/[CITY MANAGER]/[BOARD NAME] determines that installing a new support structure or collocation with a [CITY/VILLAGE] facility is preferable to collocation with another facility or support structure.

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

(A) The owner of the collocated facility obtains a new right-of-way use permit; or

(B) The facility or support structure accommodating the collocation is replaced with a facility or support structure comparable in size, mass, appearance, and placement, as determined by the [director of the [DEPARTMENT NAME] department]/[VILLAGE ADMINISTRATOR]/[CITY MANAGER]/[BOARD NAME].

GENERAL LOCATION RESTRICTIONS

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

EXAMPLES:

- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must be at least [NUMBER OF FEET] feet from the curb or nearest traffic lane to reduce the risk of being struck by a motor vehicle or bicycle.

- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not obstruct, impede, or hinder vehicular, pedestrian, or bicycle travel or public safety within the right-of-way, except for authorized temporary lane or sidewalk closures.
- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not be located within sight triangles at street intersections [established pursuant to/set forth in] [CITY/VILLAGE] [ORDINANCE/CODE] [CITATION].
- **Obstruction of Traffic.** Facilities and support structures, towers, and utility poles must not be located within any area that will create traffic visibility loss to drivers, pedestrians, or bicyclists.
- **Obstruction.** To the extent possible, a facility, support structure, tower, or utility pole should be located and designed so as to avoid interference with right-of-way maintenance activities, such as:
 - (1) Grass mowing, brush collection, tree trimming, and landscaping maintenance;
 - (2) Trash collection;
 - (3) Maintenance of streets, pavement, sidewalks, and bicycle lanes; and
 - (4) Maintenance of other facilities in the rights-of-way.
- **ADA.** Facilities and support structures, towers, and utility poles at all times must comply with the requirements of the Americans with Disabilities Act of 1990.
- **Alignment.** Facilities and support structures, towers, and utility poles must be located in alignment with existing trees, facilities, support structures, towers, utility poles, and streetlights.
- **Spacing.** A support structure, tower, or utility pole for a wireless facility must be at least [NUMBER] feet from any other support structure in a public right-of-way.
- **Spacing.** Facilities and support structures, towers, and utility poles must be located equal distance between trees when possible, and no closer than [NUMBER OF FEET] feet to a tree to avoid a tree's critical rootzone.
- **Frontage.** Facilities and support structures, towers, and utility poles must not be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level.
- **Frontage.** New facilities and support structures, towers, and utility poles must not be located directly in front of any existing residential, commercial, or industrial structure.
- **Frontage.** To the extent possible, new facilities and support structures, towers, and utility poles must be located in line with existing lot lines, but in areas where multiple structures abut each other or where no side lot setback requirement exists,

structures must not be located directly in front of an entrance or window of any existing structure.

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

HEIGHT RESTRICTIONS AND REQUIREMENTS

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

EXAMPLE 1 (maximum height):

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

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

EXAMPLE 2 (minimum height):

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

UNDERGROUNDING

The *2018 Small Cell Order* limits regulation of undergrounding requirements. Any undergrounding requirement cannot require "that all wireless facilities be deployed underground" as this "would amount to an effective prohibition given the propagation

characteristics of wireless signals.”⁶ However, these sample standards take an aggressive approach and require undergrounding when possible.

EXAMPLE 1:

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

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

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

EXAMPLE 2:

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

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

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

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

⁶ 2018 Small Cell Order at ¶ 90.

GENERAL AESTHETIC STANDARDS

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

EXAMPLE 1 (concealment):

- (1) Each new or modified facility must be compatible in size, mass, and color to similar facilities in the immediate area, with a goal of minimizing the physical and visual impact on the area.
- (2) New support structures, towers, and utility poles must be no more than [NUMBER] inches in diameter with a surface that is powder-coated and [COLOR] in color, unless another color would blend better with the surrounding area.
- (3) Notwithstanding paragraphs (1) and (2) above, a new facility or support structure, tower, or utility pole must be designed using camouflaging techniques that make it as unobtrusive as possible if:
 - (A) It is not possible or desirable to match the design and color of a new facility or support structure, tower, or utility pole with the similar structures in the immediate area; or
 - (B) Existing structures in the area are out of character with a streetscape plan or other aesthetic plan that has been adopted by the [CITY/VILLAGE].

EXAMPLE 2 (concealment):⁷

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

- (1) Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;
- (2) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
- (3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, located to avoid interfering with, or creating any hazard to, any other use of the public rights of way, and located on one side of the utility pole. Unless the radio units or equipment

⁷ This example incorporates other requirements, such as undergrounding, into a single "concealment" regulation.

cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.

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

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

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

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

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

EXAMPLE 3 (concealment):

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

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

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

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

⁸ If wood utility poles are allowed within areas of the municipality, this restriction may be considered more burdensome than restrictions on similar facilities. The municipality should consider limiting this restriction to specific areas of the municipality where all utilities are underground or metal poles are required.

(B) Screened with landscaping or other means, maintained by the owner of the facility; or designed to blend with and match the character of the surrounding area.

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

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

EXAMPLE 4 (additional concealment examples):

- **Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
- **Colors and Materials.** All facilities shall have subdued colors and non-reflective materials that blend with the materials and colors of the surrounding area and structures.
- **Dimensions.** Small wireless facilities shall not exceed the width of an existing structure.
- **Visual Impact.** Wireless communication facilities must be designed to minimize visual impacts. When feasible, the facilities must be concealed or camouflaged. The facilities must have a non-reflective finish and be painted or otherwise treated to minimize visibility and the obstruction of views.
- **Definitions Used in Concealment Ordinances.**
 - *Camouflaged or Concealed* means designed to mask or blend with the surrounding environment in such a manner to render it generally unnoticeable to the casual observer. By way of example, a wireless communication facility may be camouflaged in a faux tree, faux bush, flagpole, or otherwise designed in a manner to be compatible with the appurtenant architecture, building, or natural surroundings.
 - *Stealth* means concealment techniques that completely screen all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that the observer does not recognize the structure as a wireless facility.
 - Examples include, but are not limited to: (1) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (2) new architectural features that match the underlying structure in architectural style, physical proportion and construction-materials

quality; (3) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

EXAMPLE 5 (noise examples):

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

EXAMPLE 6 (lighting):

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

EXAMPLE 7 (signage examples):

- **Signage Prohibited.** Signage is not permitted except to comply with FCC or Wisconsin regulations to provide safety warnings.
- **Signage; Prohibition and Requirements.** No facility may display any signage or advertisements unless expressly allowed by the [CITY/VILLAGE] in a written approval, recommended under FCC regulations or required by law or permit condition. Every facility shall at all times display signage that accurately identifies the facility owner and provides the facility owner's unique site number, and also provides a local or toll-free telephone number to contact the facility owner's operations center.
- **Signage Required.** The owner and/or operator must post an identification sign at each facility, including owner/operator emergency telephone numbers. The design, materials, colors, and location of the identification signs shall be subject to review and approval by the [CITY/VILLAGE]. If at any time a new owner or operator provider takes over operation of an existing personal wireless service facility, the new personal wireless service provider shall notify the [CITY/VILLAGE] of the change in operation within 30 days and the required and approved signs shall be updated within 30 days to reflect the name and phone number of the new wireless service provider. The colors, materials and design of the updated signs shall match those of the required and approved signs. No sign shall be greater than two square feet in size.

EXAMPLE 8 (trees):⁹

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

⁹See *also*, the General Location Restrictions above for alignment with trees.