

Article I: Signal Receiving Antennas; Wind Energy Systems;  
Wireless Telecommunications Systems

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**Sec. 13-1-130 Signal Receiving Antennas.**

- (a) **Purpose.** In order to secure uniformity and compliance with Federal Communications Commission rules (FCC 96-328) on over-the-air reception devices implementing Section 207 of the Telecommunications Act of 1996, this Section regulating the placement of signal receiving antennas and over-the-air reception devices is adopted to:
- (1) Provide uniform regulation where necessary of all signal receiving antenna devices;
  - (2) Secure placement of such antennas in an aesthetically sensitive manner while allowing users reasonable reception of signals;
  - (3) Preserve the integrity of historic preservation districts;
  - (4) Protect the public from injury from roof-mounted antennas that are inadequately mounted, unduly susceptible to wind pressure, improperly installed and wired, or are placed on structures insufficiently designed or constructed to safely support the roof-mounted antenna; and
  - (5) Provide for placement of such antennas in locations that preserve access to rear property areas by firefighting apparatus and emergency personnel.
- (b) **Definitions.**
- (1) For purposes of this Section, a "signal receiving antenna" is defined as any outdoor apparatus capable of receiving communications from a transmitter or a transmitter relay located in a planetary orbit. This definition includes all types of signal receiving antennas and over-the-air reception devices, including, without limitation, parabolic antennas, home earth stations, satellite television disks, UHF and VHF television antennas, and AM, FM, ham and short-wave radio antennas, regardless of the method of mounting.
  - (2) "Owner" means the holder of record of an estate in possession in fee simple, or for life, in land or real property, or a vendee of record under a land contract for the sale of an estate in possession in fee simple or for life but does not include the vendor under a land contract. A tenant in common or joint tenant shall be considered such owner to the extent of his/her interest. The personal representative of at least one (1) owner shall be considered an owner.
- (c) **Limited Permit Requirement.**
- (1) No owner shall, within the Village of Elmwood, build, construct, use or place any type of signal receiving antenna or over-the-air reception device that is roof-mounted or proposed to be located in a designated historic preservation district until a permit shall have first been obtained from the Zoning Administrator.
  - (2) Application for a signal receiving antenna permit when required under Subsection (c)(1) shall be made in writing to the Zoning Administrator. With such application, there shall be submitted a sufficient set of mounting plans and specifications to allow a determination to be made that the device can be safely roof-mounted, or, in the case

of a historic preservation district, can be located in such a manner as to not seriously detract from the historic character of the district. There is no fee for such permit. If such application meets the requirements of this Section, the application shall be approved.

- (d) **Main-Dish Exemption.** Signal receiving devices less than twenty-four (24) inches in diameter are exempt from the requirements of this Section, except for the requirements in Subsection (e)(1), (7), (9) and (12).
- (e) **Installation Standards.** Signal receiving antennas installed in any zoning district within the Village shall comply with the following provisions:
  - (1) **Setbacks.**
    - a. Any signal receiving antenna and its mounting post shall be located a minimum of five (5) feet from any side or rear property line. The purpose of setback regulations is to protect the aesthetics of the area and to preserve adequate access for emergency equipment and personnel.
    - b. Subject to the provisions herein, signal receiving antennas shall only be located in the rear yard of any lot. If reasonable reception of signals is not possible with a rear yard placement due to the physical characteristics of the lot and area, the signal receiving antenna shall be placed in the side yard of the lot. In the event that reasonable reception of signals is not possible by locating the signal receiving antenna on the rear or side yard of the property, such antenna may be placed in the front yard or on the roof of structures on the property following compliance with Subsection (c) above. For corner lots, a side yard is only a yard that does not face a street.
    - c. If side yard, front yard or roof mounting is requested, the Zoning Board of Appeals shall determine where reasonable reception is possible, based on evidence provided by the person seeking to erect or construct the antenna.
  - (2) **Mounting.** Signal receiving antennas attached to the roof of any principal or accessory structure shall be permitted only if the structure is properly constructed to carry all imposed loading and complies with applicable state and local building code requirements. The Zoning Administrator may require engineering calculations.
  - (3) **Diameter.** The diameter of the signal receiving antenna shall not exceed twelve (12) feet for the ground-mounted antenna and ten (10) feet for the roof-mounted antenna, except for stations used to provide community antenna television services.
  - (4) **Height.** A ground-mounted signal receiving antenna, including any platform or structure upon which said antenna is mounted or affixed, may not exceed fourteen (14) feet in height, as measured from the ground to the highest point of the dish.
  - (5) **Roof-Mounted Antennas.**
    - a. In all residential zoning districts, roof-mounted antennas shall only be permitted subject to the provisions contained herein:
      - 1. Earth station dish antennas exceeding thirty-six (36) inches in diameter shall not be permitted on the roof, unless allowed under Subsection (c)(2) above.

2. A roof-mounted dish antenna shall not extend higher than fifteen (15) feet above the highest point of the roof, unless allowed under Subsection (c)(2) above.
  - b. In the commercial and industrial zoning districts, earth station dish antennas shall not extend more than twenty (20) feet above the height limit established for the district in which the structure is located.
  - (6) **Wind Pressure.** All signal receiving antennas shall be permanently mounted in accordance with the manufacturer's specifications for installation. All such installations shall meet a minimum wind load design velocity of eighty (80) mph.
  - (7) **Electrical Installations.** To safeguard public safety, electrical installations in connection with signal receiving antennas, including grounding of the system, shall be in accordance with the National Electrical Safety Code, Wisconsin State Electrical Code and the instructions of the manufacturer. In cases of conflict, the stricter requirements shall govern. All cable used to conduct current or signals from the signal receiving antenna to the receivers shall be installed underground unless installation site conditions preclude underground. If a signal receiving antenna is to be used by two (2) or more residential property owners, all interconnecting electrical connections, cables and conduits must also be buried. The location of all such underground lines, cables and conduits shall be shown on the application for a permit. All signal receiving antennas shall be grounded against direct lightning strikes.
  - (8) **Temporary Placement.** No portable or trailer-mounted signal receiving antenna shall be allowed, except for temporary installation for on-site testing and demonstration purposes for periods not exceeding five (5) days. However, such trial placement shall be in accordance with all provisions of this Section.
  - (9) **Advertising.** No form of advertising or identification, sign or mural is allowed on the signal receiving antenna other than the customary manufacturer's identification plates.
  - (10) **Interference with Broadcasting.** Signal receiving antennas shall be filtered and/or shielded so as to prevent the emission or reflection of an electromagnetic radiation that would cause any harmful interference with the radio and/or television broadcasting or reception on adjacent properties. In the event that harmful interference is caused subsequent to its installation, the owner of the signal receiving antenna shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.
  - (11) **Compliance with Federal Regulations.** The installation and use of every signal receiving antenna shall be in conformity with the Federal Cable Communications Policy Act of 1984 and regulations adopted thereunder, including Federal Communications Commission rules.
  - (12) **Aesthetic Considerations.** Signal receiving antennas shall be located and designed to reasonably reduce visual impact from surrounding properties at street level.
- (f) **Enforcement.**
- (1) It shall be unlawful to construct, use, build or locate any signal receiving antenna in violation of any provisions of this Section. In the event of any violation, the Village Board, a Village enforcement official, or any property owner who would be specifi-

cally damaged by such violation may institute appropriate action or proceedings to enjoin a violation of this Section.

- (2) Any person, firm or corporation who fails to comply with the provisions of this Section shall, upon conviction, be subject to the general penalty found in Section 1-1-6.

### **Sec. 13-1-131 Conditional Use Permits Required—Wind Energy Systems.**

- (a) **Approval Required.** No owner shall, within the Village of Elmwood, build, construct, use or place any type or kind of wind energy system without holding the appropriate conditional use permit for said system.
- (b) **Separate Permit Required for Each System.** A separate conditional use permit shall be required for each system. Said permit shall be applicable solely to the systems, structures, use and property described in the permit.
- (c) **Basis of Approval.** The Village Board shall base its determinations on general considerations as to the effect of such grant on the health, general welfare, safety and economic prosperity of the Village and, specifically, of the immediate neighborhood in which such use would be located, including such considerations as the effect on the established character and quality of the area, its physical attractiveness, the movement of traffic, the demand for related services, the possible hazardous, harmful, noxious, offensive or nuisance effect as a result of noise, dust, smoke or odor and such other factors as would be appropriate to carry out the intent of the Zoning Code.
- (d) **Definitions.** "Wind energy systems" shall mean "windmills" which are used to produce electrical or mechanical power.

### **Sec. 13-1-132 Permit Procedure—Wind Energy Systems.**

- (a) **Application.** The permit application for a wind energy system shall be made to the Zoning Administrator on forms provided by the Village of Elmwood. The application shall include the following information:
  - (1) The name and address of the applicant.
  - (2) The address of the property on which the system will be located.
  - (3) Applications for the erection of a wind energy conversion system shall be accompanied by a plat or survey for the property to be served showing the location of the generating facility and the means by which the facility will provide power to structures. If the system is intended to provide power to more than one (1) premises, the plat or survey shall show all properties to be served and the means of connection to the wind energy conversion system. A copy of all agreements with system users off the premises shall accompany the application. The application shall further

indicate the level of noise to be generated by the system and provide assurances as to the safety features of the system. Energy easements shall accompany the application.

- (4) An accurate and complete written description of the use for which special grant is being requested, including pertinent statistics and operational characteristics.
  - (5) Plans and other drawings showing proposed development of the site and buildings, including landscape plans, location of parking and service areas, driveways, exterior lighting, type of building material, etc., if applicable.
  - (6) Any other information which the Zoning Administrator, Village Board or Building Inspector may deem to be necessary to the proper review of the application.
  - (7) The Zoning Administrator shall review the application and, if the application is complete and contains all required information, shall refer it to the Village Board.
- (b) **Hearing.** Upon referral of the application, the Village Board shall schedule a public hearing thereof following the procedures for conditional use permits in Article D.
- (c) **Determination.** Following public hearing and necessary study and investigation, the Village Board shall, as soon as practical, render its decision and a copy be made a permanent part of the Board's minutes. Such decision shall include an accurate description of the special use permitted, of the property on which permitted, and any and all conditions made applicable thereto, or, if disapproved, shall indicate the reasons for disapproval. The Village Board may impose any conditions or exemptions necessary to minimize any burden on the persons affected by granting the special use permit.
- (d) **Termination.** When a special use does not continue in conformity with the conditions of the original approval, or where a change in the character of the surrounding area or of the use itself cause it to be no longer compatible with surrounding areas, or for similar cause based upon consideration for the public welfare, the special grant may be terminated by action of the Village Board following a public hearing thereon.
- (e) **Changes.** Subsequent change or addition to the approved plans or use shall first be submitted for approval to the Village Board and if, in the opinion of the Village Board, such change or addition constitutes a substantial alteration, a public hearing before the Village Board shall be required and notice thereof be given.
- (f) **Approval Does Not Waive Permit Requirements.** The approval of a permit under this Article shall not be construed to waive the requirement to obtain electrical, building or plumbing permits prior to installation of any system.

### **Sec. 13-1-133 Specific Requirements Regarding Wind Energy Systems.**

- (a) **Additional Standards.** Wind energy conversion systems, commonly referred to as "windmills," which are used to produce electrical power, shall also satisfy the requirements of this Section in addition to those found elsewhere in this Article.
- (b) **Application.** Applications for the erection of a wind energy conversion system shall be accompanied by a plat or survey for the property to be served showing the location of the

generating facility and the means by which the facility will provide power to structures. If the system is intended to provide power to more than one (1) premises, the plat or survey shall show all properties to be served and the means of connection to the wind energy conversion system. A copy of all agreements with system users off the premises shall accompany the application. The application shall further indicate the level of noise to be generated by the system and provide assurances as to the safety features of the system. Energy easements shall accompany the application.

- (c) **Construction.** Wind energy conversion systems shall be constructed and anchored in such a manner to withstand wind pressure of not less than forty (40) pounds per square foot in area.
- (d) **Noise.** The maximum level of noise permitted to be generated by a wind energy conversion system shall be fifty (50) decibels, as measured on a dB(A) scale, measured at the lot line.
- (e) **Electro-magnetic Interference.** Wind energy conversion system generators and alternators shall be filtered and/or shielded so as to prevent the emission of radio-frequency energy that would cause any harmful interference with radio and/or television broadcasting or reception. In the event that harmful interference is caused subsequent to the granting of a conditional use permit, the operator of the wind energy conversion system shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.
- (f) **Location and Height.** Wind energy conversion systems shall be located in the rear yard only and shall meet all setback and yard requirements for the district in which they are located and, in addition, shall be located not closer to a property boundary than a distance equal to their height. Wind energy conversion systems are exempt from the height requirements of this Chapter; however, all such systems over seventy-five (75) feet in height shall submit plans to the Federal Aviation Administration (FAA) to determine whether the system is to be considered an object affecting navigable air space and subject to FAA restrictions. A copy of any FAA restrictions imposed shall be included as a part of the wind energy conversion system conditional use permit application.
- (g) **Fence Required.** All wind energy conversion systems shall be surrounded by a security fence not less than six (6) feet in height. A sign shall be posted on the fence warning of high voltages.
- (h) **Utility Company Notification.** The appropriate electric power company shall be notified, in writing, of any proposed interface with that company's grid prior to installing said interface. Copies of comments by the appropriate utility company shall accompany and be part of the application for a conditional use permit.

## **Sec. 13-1-134 Wireless Telecommunications Systems.**

- (a) **Definitions.** For the purpose of this Chapter and any permit issued in accordance herewith, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided for in this Chapter or unless the context

clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the Village of Elmwood:

- (1) **Antenna.** Any structure or device for the purpose of collecting or transmitting electromagnetic waves, including, but not limited to, directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.
- (2) **Village Engineer.** The Village Engineer of the Village of Elmwood.
- (3) **Entity.** Any individual, corporation, partnership, association or other legal entity which seeks to provide a Wireless Telecommunications System.
- (4) **FCC.** The Federal Communication Commission or its legally appointed successor.
- (5) **Permittee.** Any entity or its legal successor in interest who is issued a Wireless Telecommunications Permit and/or a Structure Location Permit in accordance with the provisions of this Chapter for the erection, construction, reconstruction, operation, dismantling, testing, use, maintenance, repair, rebuilding, or replacing of a Wireless Telecommunications System in the Village.
- (6) **Street.** Any area established for vehicular or public access use of the entire width between the property lines of every way publicly maintained when any part thereof is open for public purposes. "Street" includes, but is not limited to, a highway, avenue, road, alley, right-of-way, lane, boulevard, concourse, bridge, tunnel, parkways and waterways.
- (7) **Structure Location Permit.** A permit issued by the Zoning Administrator which authorizes the location of an Antenna or Tower at a particular geographic location.
- (8) **Total Gross Revenue.** All cash, credits or other property of any kind or nature reported as revenue items to the Permittee's audited financial statements arising from or attributable to the sale, lease, rental or exchange of Wireless Telecommunications Services or the equipment by the Permittee within the Village or in any way derived from the operation of its Wireless Telecommunications System, including, but not limited to, any interconnection between its system and the Village and any system whatsoever. This shall be the basis for computing the fee imposed pursuant to Subsection (b)(2). Such sum shall not include any bad debts, deposits, promotional or vendor discounts or credits or sales, service, occupation or other excise tax to the extent that such taxes are charged separately from normal services charges and are remitted by the Permittee directly to the taxing authority.
- (9) **Tower.** Any ground, building or roof-mounted pole, spire, structure, or combination thereof including supporting lines, cables, wires, braces, masts, intended primarily for the purpose of mounting an antenna.
- (10) **Wireless Telecommunications Permit.** The privilege granted by the Village by which it authorizes an entity to erect, construct, reconstruct, operate, dismantle, test, use, maintain, repair, build or replace a Wireless Telecommunications System. Any permit issued in accordance herewith shall be a non-exclusive permit.

(11) **Wireless Telecommunications Service.** A licensed commercial wireless telecommunications service including cellular, Personal Communication Services ("PCS"), Specialized Mobile Radio ("SMR"), Enhanced Specialized Mobilized Radio ("ESMR") paging, and similar services that are marketed to the general public.

(b) **License Requirements; Fees.**

- (1) No entity may construct, operate or continue to operate a Wireless Telecommunications System within the Village without having been issued a Wireless Telecommunications Permit by the Zoning Administrator.
- (2) It shall be a term and condition of any Wireless Telecommunications Permit issued in accordance herewith and part of the consideration supporting the issuance of such Wireless Telecommunications Permit that the Permittee shall pay to the Village the sum of five percent (5%) of all Total Gross Revenue derived from the operation of Wireless Telecommunications System. Such payments shall be made annually within one hundred twenty (120) days after the close of the calendar year. All fee payments shall be subject to audit by the Village and assessment or refund if the payment is found to be in error. In the event that an audit by the Village results in an assessment of an additional payment to the Village, such additional payment shall be subject to interest at the rate of one and one-half percent (1-1/2%) per month retroactive to the date such payment originally should have been made. Such payment shall be due and payable immediately and shall include the costs of conducting said audit.
- (3) **Structure Location Permit Fees.**
  - a. All applicants for a Structure Location Permit shall pay to the Village a permit request fee as prescribed in Section 1-3-1 per site.
  - b. Any entity operating a Wireless Telecommunications System shall pay to the Village an annual Structure Location Permit Fee as prescribed in Section 1-3-1 per site.
- (4) The request fee shall be paid to the Zoning Administrator at the time of making application for a Structure Location Permit. The annual Structure Location Permit Fee provided for in Subsection (c) above shall be paid to the Zoning Administrator annually on or before October 1 of each calendar year for the portion of the Wireless Telecommunications System within the Village right-of-way on January 1 of that year, and a prorated license fee, based upon the calendar quarter in which the application is filed, shall be paid at the time of the application for a Structure Location Permit. Such quarterly fees are due on January 1, April 1, July 1 and September 1.
- (5) Fees not paid within ten (10) days after the due date shall incur interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid.
- (6) The acceptance of any fee payment required hereunder by Village shall not be construed as an acknowledgment that the payment paid is the correct amount due, nor shall such acceptance of payment be construed as release of any claim which the Village may have for additional sums due and payable.



(c) **Conditions of Permit.**

- (1) Any Wireless Telecommunications Permit or Structure Location Permit issued by the Village shall be a non-exclusive permit for the use of those areas within the Village specified in the Wireless Telecommunications Permit or Structure Location Permit.
- (2) Any Wireless Telecommunications Permit or Structure Location Permit issued by the Village shall continue in full force and effect so long as the Permittee is in compliance with this Chapter, all applicable federal, state and local ordinances and regulations and the space occupied is not deemed to be needed by the Village for any other public purpose.
- (3) In the event any Wireless Telecommunications Permit or Structure Location Permit is revoked by the Village, the Wireless Telecommunications System shall, at the sole option of the Village, be removed within thirty (30) days at the sole expense of the Permittee.

(d) **Permit Locations and Conditions.** Antennas and towers authorized by a Structure Location Permit shall comply with the following requirements:

- (1) A proposal for a new antenna or tower shall not be approved unless the Village finds that the telecommunication equipment planned for a proposed antenna cannot be accommodated on an existing or approved tower within a one (1) mile radius of the proposed location due to one or more of the following reasons:
  - a. The planned equipment would exceed the structural capacity of the existing or approved tower, as documented by a qualified and licensed professional engineer, and the existing unit or approved tower cannot be reinforced, modified, or replaced to accommodate the planned or equivalent equipment at a reasonable cost.
  - b. The equipment would cause interference materially impacting the usability of other existing or approved equipment at the Tower as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.
  - c. Existing or approved towers within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by qualified and licensed professional engineer.
  - d. Other unforeseen reasons make it unfeasible to locate the planned telecommunication equipment upon an existing or approved tower.
- (2) Any proposed tower shall be designed in all respect to accommodate both the applicant's antennas and comparable antennas for at least two (2) additional users if the tower is over one hundred (100) feet in height and for at least one (1) additional user if the tower is sixty (60) to one hundred (100) feet in height. Towers must be designed to allow for future rearrangements of antennas upon the tower and to accept antennas mounted at varying heights. All towers shall be erected and constructed in such a manner as to comply with all applicable Village ordinances. All towers and antennas shall be designed to blend into the surrounding environment through the use

of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration. Towers shall not be illuminated by artificial means and shall not display strobe lights except if such lighting is specifically required by the Federal Aviation Administration or other state or federal authority. Any Permittee seeking to operate a Wireless Telecommunications Systems shall provide the Village with a letter of intent signed by the tower owner committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet objectively reasonable terms and conditions for share use.

(e) **Use of Streets and Pole Attachments.**

- (1) Before commencing construction of a Wireless Telecommunications System in, above, over, under, across, through or in any way connected with the streets, public ways or public places of the Village, the permittee shall first obtain the written approval of, and all other necessary permits from, all appropriate Village agencies, including, but not limited to, the Zoning Administrator and the Department of Public Works. Applicants for such approval shall be made in the form prescribed by the Village Engineer.
- (2) Upon obtaining such written approval, the Permittee shall give the Village Engineer and any other appropriate agency written notice within a reasonable time for proposed construction, but in no event shall such notice be given less than ten (10) days before commencement of such construction, except for emergency repairs of existing lines and cables.
- (3) Any entity that submits a request for a Wireless Telecommunications Permit in accordance herewith shall include therein proposed agreements for the use of existing towers and antennas, if applicable, with the owner(s) of such facilities to be used or affected by the construction of the proposed Wireless Telecommunications System.
- (4) It shall be unlawful for the Permittee or any other person or entity to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without first obtaining approval to do so after proceeding in the manner described in Subsection (e)(1) and (2). Violation of this Subsection shall subject the Permittee to all penalties and remedies prescribed herein and to all other remedies, legal or equitable, which are available to the Village.
- (5) The Permittee shall restore any street or sidewalk it has disturbed in accordance with the provisions of the Village's standard specifications for streets and sidewalks, and shall at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured, by or on account of its activities, to as good as the condition such property was immediately prior to the disturbance, damage or injury, or pay the fair market value of such property to its owner(s), or shall make such other repairs or restoration as outlined in the approved permit.
- (6) The Permittee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such

street or other public place, any of its property when required to do so by the Village because of street or other public excavation, construction, repair, regrading or grading, traffic conditions, installation of sewers, drains, water pipes, Village-owned power or signal lines, tracts, vacation or relocation of streets or any other type of construction or improvement of a public agency, or any type of improvement necessary for the public health, safety or welfare, or upon termination or expiration of the permit.

- (7) The Permittee shall maintain all wires, conduits, cables or other real and personal property and facilities in good condition, order and repair. The Permittee shall provide indemnity insurance and performance bonds or demonstrate financial responsibility as shall comply with all rules and regulations issued by the Village Engineer governing the construction and installation of Wireless Telecommunications Systems.
  - (8) The Permittee shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, public ways and public places within the Village and shall furnish, as soon as they are available, two (2) complete copies of such maps and records, including as-built drawings, to the Village Engineer.
  - (9) The Permittee shall comply with all rules and regulations issued by the Village Engineer governing the construction and installation of Wireless Telecommunications Systems.
- (f) **Violation and Penalties.** Any entity who shall carry on or conduct any business or occupation or profession for which a Wireless Telecommunications Permit or a Structure Location Permit is required by this Section without first obtaining such a permit shall be considered to be in violation of this Section and, upon conviction, shall be punished as provided in Section 13-1-175. Each day any violation continues shall be deemed a separate, chargeable offense. No tower or antenna may be sited on residential property within the Village. Placement of towers or antennas on such residentially-zoned property shall be a violation of this Section and shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) per day for each day that the tower or antenna is in place. Any other violation of this Section shall be punished as provided in Section 13-1-175.
- (g) **Restrictions on Assignment, Transfer, Sale and Subleasing.**
- (1) The rights and privileges hereby granted are considered personal, and if the Permittee sells, assigns, transfers, leases or pledges such rights or privileges, or both, in whole or in part, either directly or by operation of the law, then the Village shall have the right to terminate any and all permits issued hereunder for no other cause. The Village shall terminate such permits in writing, by certified mail, return receipt requested, to the Permittee, and such termination shall be effective sixty (60) days from said date of mailing. The rights and privileges hereby granted shall not be mortgaged or encumbered without the prior consent and approval of the Village given by written resolution.
  - (2) In addition to the provisions of termination provided for in Subsection (g)(1), the Village shall have the right to terminate any and all permits issued hereunder upon any actual or pending change in, or transfer of, acquisition by any other party, or

control of Permittee. The word "control" as used in this context is not limited to major stockholders, but includes actual working control in whatever manner exercised. The Permittee shall annually submit to the Village a list of all shareholders and a list of all officers and directors. By acceptance of the Wireless Telecommunications Permit, the Permittee specifically agrees that any violation of this Section shall, at the Village's option, cause any and all permits granted the Permittee under this Section to be revoked.

(h) **Reports.**

- (1) Entities requesting a Wireless Telecommunications Permit may be required by the Village to submit evidence of financial capability to construct and operate a Wireless Telecommunications Permit. Such evidence may include, but is not limited to, previous years' audited financial statements for the entity, individual financial statements of principals or investors or such other financial information as the Village may desire.
- (2) The Permittee shall provide the Village with a written statement from an independent certified public accountant within one hundred twenty (120) days after the close of the calendar year that such certified public accountant has reviewed the books and records of the Permittee as they related to any permits issued under this Section, and based upon such review, the certified public accountant believes the payment received by the Village property reflects the fee due to the Village with respect to this Section. The Village shall have the right to reasonable inspection of the Permittee's books and records during normal business hours.

**Sec. 13-1-135 through Sec. 13-1-139      Reserved for Future Use.**

Sec. 13-1-134 Wireless Telecommunications Systems.

- (a) **Definitions.** For the purpose of this Chapter and any permit issued in accordance herewith, the following terms, phrases, words and their derivations shall have the meaning given herein unless otherwise specifically provided for in this Chapter or unless the context clearly indicates otherwise or unless such meaning would be inconsistent with the manifest intent of the Village of Elmwood:
- (1) **Antenna.** Any structure or device for the purpose of collecting or transmitting electromagnetic waves, including, but not limited to, directional antennas, such as panels, microwave dishes, and satellite dishes, and omni-directional antennas, such as whip antennas.
  - (2) **Village Engineer.** The Village Engineer of the Village of Elmwood.
  - (3) **Entity.** Any individual, corporation, partnership, association or other legal entity which seeks to provide a Wireless Telecommunication System.
  - (4) **FCC.** The Federal Communication Commission or its legally appointed successor.
  - (5) **Permittee.** Any entity or its legal successor in interest who is issued a Wireless Telecommunications Permit and/or a Structure Location Permit in accordance with the provisions of this Chapter for the erection, construction, reconstruction, operation, dismantling, testing, use, maintenance, repair, rebuilding, or replacing of a Wireless Telecommunications System in the Village.
  - (6) **Street.** Any area established for vehicular or public access use of the entire width between the property lines of every way publicly maintained when any part thereof is open for public purposes. "Street" includes, but is not limited to, a highway, avenue, road, alley, right-of-way, lane, boulevard, concourse, bridge, tunnel, parkways and waterways.
  - (7) **Structure Location Permit.** A permit issued by the Zoning Administrator which authorizes the location of an Antenna or Tower at a particular geographic location.
  - (8) **Tower.** Any ground, building or roof-mounted pole, spire, structure or combination thereof including supporting lines, cables, wires, braces, masts, intended primarily for the purpose of mounting an antenna.
  - (9) **Wireless Telecommunications Permit.** The privilege granted by the Village by which it authorizes an entity to erect, construct, reconstruct, operate, dismantle, test, use, maintain, repair, build or replace a Wireless Telecommunications System. Any permit issued in accordance herewith shall be a non-exclusive permit.
  - (10) **Wireless Telecommunications Service.** A licensed commercial wireless telecommunications service including cellular, Personal Communication Services ("PCS"), Specialized Mobile Radio ("SMR"), Enhanced Specialized Mobilized Radio ("ESMR") paging, and similar services that are marketed to the general public.
- (b) **License Requirements; Fees.**
- (1) No entity may construct, operate or continue to operate a Wireless Telecommunications System within the Village without having been issued a Wireless Telecommunications Permit by the Zoning Administrator.
  - (2) It shall be a term and condition of any Wireless Telecommunications Permit issued in accordance herewith and part of the consideration supporting the issuance of such

Wireless Telecommunications Permit that the Permittee shall pay to the Village a yearly permit fee of \$300.00.

- (3) **Structure Location Permit Fees.**
    - (a) All applicants for a Structure Location Permit shall pay to the Village a permit request fee as prescribed in Section 1-3-1 per site.
    - (b) Any entity operating a Wireless Telecommunications System shall pay to the Village and annual Structure Location Permit Fee as prescribed in Section 1-3-1 per site.
  - (4) The requested fee shall be paid to the Zoning Administrator at the time of making application for a Structure Location Permit. The annual Structure Location Permit Fee provided for in Subsection (c) above shall be paid to the Zoning Administrator annually on or before October 1 of each calendar year for the portion of the Wireless Telecommunications System within the Village right-of-way on January 1 of that year, and a prorated license fee, based upon the calendar quarter in which the application is filed, shall be paid at the time of the application for a Structure Location Permit. Such quarterly fees are due on January 1, April 1, July 1 and September 1.
  - (5) Fees not paid within ten (10) days after the due date shall incur interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid.
  - (6) The acceptance of any fee payment required hereunder by Village shall not be construed as an acknowledgment that the payment paid is the correct amount due, nor shall such acceptance of payment be construed as release of any claim which the Village may have for additional sums due and payable.
- (c) **Conditions of Permit.**
- (1) Any Wireless Telecommunications Permit or Structure Location Permit issued by the Village shall be a non-exclusive permit for the use of those areas within the Village specified in the Wireless Telecommunications Permit or Structure Location Permit.
  - (2) Any Wireless Telecommunications Permit or Structure Location Permit issued by the Village shall continue in full force and effect so long as the Permittee is in compliance with this Chapter, all applicable federal, state and local ordinances and regulations and the space occupied is not deemed to be needed by the Village for any other public purpose.
- (d) **Permit Locations and Conditions.** Antennas and towers authorized by a Structure Location Permit shall comply with the following requirements:
- (1) A proposal for a new antenna or tower shall not be approved unless the Village finds that the telecommunication equipment planned for a proposed antenna cannot be accommodated on an existing or approved tower within a one (1) mile radius of the proposed location due to one or more of the following reasons:
    - (a) The planned equipment would exceed the structural capacity of the existing or approved tower, as documented by a qualified and licensed professional engineer, and the existing unit or approved tower cannot be reinforced, modified, or replaced to accommodate the planned or equivalent equipment at a reasonable cost.
    - (b) The equipment would cause interference materially impacting the usability of other existing or approved equipment at the tower as documented by a qualified and licensed professional engineer and the interference cannot be prevented at a reasonable cost.

- (c) Existing or approved towers within the search radius cannot accommodate the planned equipment at a height necessary to function reasonably as documented by qualified and licensed professional engineer.
- (d) Other unforeseen reasons make it unfeasible to locate the planned telecommunications equipment upon an existing or approved tower.

(2) Any proposed tower shall be designed in all respect to accommodate both the applicant's antennas and comparable antennas for at least two (2) additional users if the tower is over one hundred (100) feet in height and for at least one (1) additional user if the tower is over sixty (60) feet to one hundred (100) feet in height. Towers must be designed to allow for future rearrangements of antennas upon the tower and to accept antennas mounted at varying heights. All towers shall be erected and constructed in such a manner as to comply with all applicable Village ordinances. All towers and antennas shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration. Towers shall not be illuminated by artificial means and shall not display strobe lights except if such lighting is specifically required by the Federal Aviation Administration or other state or federal authority. Any Permittee seeking to operate a Wireless Telecommunications Systems shall provide the Village with a letter of intent signed by the tower owner committing the tower owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet objectively reasonable terms and conditions for share use.

(e) Use of Streets and Pole Attachments.

- (1) Before commencing construction of a Wireless Telecommunications System in, above, over, under, across, through or in any way connected with the streets, public ways or public places of the Village, the Permittee shall first obtain the written approval of, and all other necessary permits from, all appropriate Village agencies, including, but limited to, the Zoning Administrator and the Department of Public Works. Applicants for such approval shall be made in the form prescribed by the Village Engineer.
- (2) Upon obtaining such written approval, the Permittee shall give the Village Engineer and any other appropriate agency written notice within a reasonable time for proposed construction, but in no event shall such notice be given less than ten (10) days before commencement of such constructions, except for emergency repairs of existing lines and cables.
- (3) Any entity that submits a request for a Wireless Telecommunications Permit in accordance herewith shall include therein proposed agreements for the use of existing towers and antennas, if applicable, with the owner(s) of such facilities to be used or affected by the construction of the proposed Wireless Telecommunications System.
- (4) It shall be unlawful for the Permittee or any other person or entity to open or otherwise disturb the surface of any street, sidewalk, driveway, public way or other public place for any purpose whatsoever without first obtaining approval to do so after proceeding in the manner described in Subsection (e)(1) and (2). Violation of this Subsection shall subject the Permittee to all penalties and

remedies prescribed herein and to all other remedies, legal or equitable, which are available to the Village.

- (5) The Permittee shall restore any street or sidewalk it has disturbed in accordance with the provisions of the Village's standard specifications for streets and sidewalks, and shall at its own cost and expense, restore and replace any other property disturbed, damaged or in any way injured, by or on account of its activities, to as good as the condition such property was immediately prior to the disturbance, damage or injury, or pay the fair market value of such property to its owner(s), or shall make such other repairs or restoration as outlined in the approved permit.
  - (6) The Permittee shall, at its own cost and expense, protect, support, temporarily disconnect, relocate in the same street or other public place, or remove from such street or other public place, any of its property when required to do so by the Village because of street or other public excavation, construction, repair, regarding or grading, traffic conditions, installation of sewers, drains, water pipes, Village-owned power or signal lines, tracts, vacation or relocation of streets or any type of construction or improvement of a public agency, or any type of improvement necessary for the public health, safety or welfare, or upon termination or expiration of the permit.
  - (7) The Permittee shall maintain all wires, conduits, cables or other real and personal property and facilities in good condition, order and repair. The Permittee shall provide indemnity insurance and performance bonds or demonstrate financial responsibility and shall comply with all rules and regulations issued by the Village Engineer governing the construction and installation of Wireless Telecommunications Systems.
  - (8) The Permittee shall keep accurate, complete and current maps and records of its system and facilities which occupy the streets, public ways and public places within the Village and shall furnish, as soon as they are available, two (2) complete copies of such maps and records, including as-built drawings, to the Village Engineer.
  - (9) The Permittee shall comply with all rules and regulations issued by the Village Engineer governing the construction and installation of Wireless Telecommunications Systems.
- (f) **Violation and Penalties.** Any entity who shall carry on or conduct any business or occupation or profession for which a Wireless Telecommunications Permit or a Structure Location Permit is required by this Section without first obtaining such a permit shall be considered to be in violation of this Section and, upon conviction, shall be punished as provided in Section 13-1-175. Each day any violation continues shall be deemed a separate, chargeable offense. No tower or antenna may be sited on residential property with the Village. Placement of towers or antennas on such residentially-zoned property shall be a violation of this Section and shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) per day for each day that the tower or antenna is in place. Any other violation of this Section shall be punished as provided in Section 13-1-175.
- (g) **Restrictions and Transferability**



(1) The rights and privileges hereby granted are considered personal, and if the Permittee sells, assigns, transfers, leases or pledges such rights or privileges, or both, in whole or in part, either directly or by operation of the law, then the Village Shall have the right to terminate any and all permits issued hereunder for the following grounds:

(a) Revocation. Grounds for revocation of the Wireless Telecommunications Permit shall be limited to one of the following findings as determined by the Village of Elmwood:

- i. The owners of such site, service provider and/or tower owner fails to comply with the requirements of this Ordinance as it existed at the time of the issuance of the permit.
- ii. The permittee has failed to comply with the conditions of approval.
- iii. The facility has not been properly maintained.

(b) Revocation Process.

- i. The owner of such site, service provider and/or tower owner shall be notified by certified mail of non-compliance by the Licensing Committee of the Village of Elmwood.
- ii. The owner may bring the site into compliance to the satisfaction of the Committee within thirty (30) days from the date the notice was mailed.
- iii. If compliance is not obtained with thirty (30) days, the Licensing Committee shall notify the Village Board of non-compliance and request permission to proceed with the revocation process (this time period may be extended by staff to adjust for seasonal limitations).
- iv. The Licensing Committee shall petition the Village Board for a public hearing before the Village Board upon publication of a Class 2 notice in the legal newspaper of the Village of Elmwood.
- v. A copy of the hearing notice shall be mailed by certified mail to the owner of record of the Wireless Telecommunications System site at least two weeks prior to the hearing date.
- vi. A representative of the Licensing Committee shall appear at the hearing before the Village Board to present the evidence of non-compliance. All other interested parties may also give testimony to the Committee.
- vii. A written decision of the Village Board will be made within thirty (30) days of the hearing.

(2) Transferability. Permits granted under this chapter go with the land and are transferable. All chapter and permit requirements shall apply to subsequent owners. The Village shall be notified of any change in ownership including, but not limited to, facility leases, mortgages, liens or other instruments which may affect title to the property.

(h) Reports.

(1) Entities requesting a Wireless Telecommunications Permit may be required by the Village to submit evidence of financial capability to construct and operate a

Wireless Telecommunications Permit. Such evidence may include, but is not limited to, previous years' audited financial statements for the entity, individual financial statements of principals or investors or such other financial information as the Village may desire.

- (2) Owners, providers or permittees shall submit an annual report by January 31. The report shall detail the use, maintenance and condition of the Transmission Facility since the previous report, availability of the site for added co-location and other information reasonably deemed necessary by the Licensing Committee. Failure to submit the report shall result in a late fee of \$200.00 per week until received. Failure to submit the report by July 1 of each year, shall result in the Licensing Committee taking Revocation Enforcement action under subsection (g)(1).