

**VILLAGE OF NEW GLARUS
ORDINANCE 20-06**

**ORDINANCE TO CREATE CHAPTER 306 OF THE MUNICIPAL CODE OF THE
VILLAGE OF NEW GLARUS, WISCONSIN TO ADDRESS
WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHT OF WAY**

- A. Purpose. The purpose of this section is to provide the Village of New Glarus 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 Village of New Glarus' obligation to promise 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.
- B. Applicability. 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 Section. This section is intended to regulate communications towers and other telecommunications facilities, but not residential satellite dishes that are 36 inches or less in diameter, residential television antennas, amateur radio facilities, or signal-receiving antennas under § 305-60.
- (1) Exempt Facilities:
- (a) 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.
 - (b) 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.
 - (c) Placement or modification of a wireless telecommunications facility on structures owned by or under the control of the Village of New Glarus.
 - (d) Placement or modification of a wireless telecommunications facility by the Village of New Glarus staff or any performing work under contract with the Village of New Glarus.
 - (e) Placement or modification of a 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 impeded 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.

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

- (1) “Application” means a formal request, including all required and requested documentation and information, submitted by an Applicant to the Village of New Glarus for a wireless permit under this Section.
- (2) “Applicant” means a person filing an application for placement or modification of a wireless telecommunications facility in the right of way
- (3) “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.
- (4) “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 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.
- (5) “FCC” means the Federal Communications Commission.
- (6) “Right-of-way” means the surface of, and the space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, landscape terrace, shoulder, side slope, and public sidewalk over which the Village of New Glarus exercises any rights of management and control or in which the Village of New Glarus has an interest.
- (7) “Small Wireless Facility,” consistent with 47 C.F.R. 1.6002(1), means a facility that meets each of the following conditions:
 - (a) The structure on which antenna facilities are mounted is 50 feet or less in height, or is no more than 10 percent taller than other adjacent structures, or is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height, whichever is greater, as a result of collocation of new antenna facilities;
 - (b) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;
 - (c) All other Wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;
 - (d) The facility does not require antenna structure registration;
 - (e) The facility is not located on Tribal lands; and
 - (f) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified by federal law.

- (8) “Support Structure” means any structure capable of supporting wireless telecommunications equipment.
- (9) “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 (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.
- (10) “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.
- (11) “Wireless Infrastructure Provider” means a person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.
- (12) “Wireless Permit” or “Permit” means a permit issues 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 e right-of-way, and the modification of an existing support structure to which the wireless telecommunications facility is proposed to be attached.
- (13) “Wireless Regulations” means those regulations adopted pursuant to Paragraph D.
- (14) “Wireless Service Provider” Means any entity that provides wireless service to end users.
- (15) “Wireless Telecommunications Equipment” means equipment at a fixed location that enables FCC-Licensed or authorized wireless communications between user equipment and a communications network.
- (16) “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.

D. Administration. The Village Engineer is responsible for administering this Chapter. As part of the administration of this Chapter, the Village Engineer may:

- (1) Adopt wireless regulations governing the placement and modification of wireless telecommunications facilities in addition to but consistent with the requirements of this section.
- (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 fees 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 any wireless permit application.
- (7) Issue notices of incompleteness or requests for information in connection with any wireless permit application
- (8) Determine whether to grant, grant subject to conditions, or deny an application.
- (9) 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.

E. Application. Unless the wireless regulations provide otherwise, the applicant must submit an application, as well as any amendments or supplements to the application or responses to requests for information regarding an application, to the Village Engineer on forms approved by and in a format acceptable to the Village Engineer.

- (1) In order to be considered complete, an application must contain:
 - (a) All information required pursuant to the wireless regulations.
 - (b) A completed application cover sheet signed by an authorized representative of the applicant, listing all standard permit conditions.
 - (c) 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.
 - (d) A statement of which shot clock or shot clocks apply to the application and the reasons the chosen shot clocks apply.
 - (e) 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 as the site before and after installation or modification and identifying the owners such preexisting structures and facilities; and describing the distance to the nearest residential dwelling unity. Within ten (10) days of submission of the application, the Village Engineer may require the applicant to submit before and after three hundred sixty (360)-degree photo simulations for each facility covered by the application. Failure to provide these photos within 10 days of request shall be considered non-responsive and the application shall be considered incomplete.
 - (f) 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 Village of New Glarus 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.

- (g) 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.
- (h) 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.
- (i) A sealed report by a professional engineer registered in the State of Wisconsin 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.
- (j) Payment of all required fees including any unpaid fees owed by the applicant to the Village under this Section.
- (k) If an applicant contends that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law, or otherwise violate applicable law, the application must provide all evidence on which the applicant relies in support of that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the Village of New Glarus from complying with any deadline for action on an application.
- (l) 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 Village of New Glarus and detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station. Within ten (10) days of submission of the application, the Village Engineer may require the applicant to submit before and after three hundred sixty (360)-degree photo simulations for each eligible facility request covered by the application. Failure to provide these photos within 10 days of request shall be considered non-responsive and the application shall be considered incomplete.
- (m) Requests for waivers from any requirement of this section shall be made in writing to the Village Engineer. The Village Engineer may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of the waiver, the Village of New Glarus will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.
- (n) 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 of New Glarus expects to incur.

- (o) Applications are public records that may be made publicly available pursuant to state and federal public records law. Notwithstanding the foregoing, the applicant may designate portions of the application materials that it reasonably believes contain proprietary or confidential information by clearly marking each portion of such material accordingly, and the Village of New Glarus shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the Village Engineer's determination and the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The Village of New Glarus shall not be required to insure any costs to protect the application from disclosure and makes no representations of such confidential treatment.

F. General Standards. Wireless telecommunications facilities shall meet the minimum requirements set forth in this Section and the wireless regulations, in addition to the requirements of any other applicable law or regulation.

- (1) 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. If that determination is made, the requirements of this Section and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.
- (2) Wireless telecommunications facilities shall be installed and modified in a manner that:
 - (a) Ensures that placement of facilities on existing structures is within the tolerance of those structures.
 - (b) 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;
 - (c) Maintains the integrity and character of the neighborhoods and corridors in which the facilities are located;
 - (d) Ensures that the Village bears no risk or liability as a result of the installations; and
 - (e) 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 Village or other government entities to improve, modify, relocate, abandon, or vacate the right-of-way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of facilities in the right-of-way.
- (3) 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.

- (4) 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.
- (5) Standard Permit Conditions. All wireless permits under this Chapter are issued subject to the following minimum conditions:
- (a) The permit holder shall at all times maintain compliance with all applicable Federal, State, and local laws, regulations, and other rules.
 - (b) A wireless permit issued pursuant to an eligible facilities request shall expire at the same time the permit for 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.
 - (c) Work to install a permitted facility shall commence within twelve (12) months and be completed no later than fifteen (15) months from issuance of a permit under this Section. Failure to comply with this requirement shall result in the expiration of the permit, unless the Village Engineer, upon application by the permittee and a showing of good cause, grants additional time for the work to commence or be completed.
 - (d) The Village of New Glarus 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.
 - (e) By accepting this permit, the permittee agrees to hold harmless, defend, and indemnify the Village, its officers, officials, employees and agents, from and against all claims, suits, liability, damages, expenses and penalties arising from the permittee's activities under this permit, whether caused by or contributed to by the negligence of the Village, its officers, officials, employees and agents.
 - (f) 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.
 - (g) 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.
 - (h) All graffiti on facilities shall be removed at the sole expense of the permit holder within 48 hours after notification from the Village of New Glarus.
 - (i) At the request of the Village of New Glarus pursuant to Section I 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.
 - (j) The permit holder shall promptly notify the Village of New Glarus whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section J of this Chapter.
 - (k) A permit holder who removes or relocates a facility from the right-of-way must restore the right-of-way in accordance with Section K of this Chapter.

- (l) The permit holder shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the facility, which includes without limitation all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the Village of New Glarus 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 permittee.
 - (m) 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.
 - (n) Certificate of Insurance. A certificate of insurance sufficient to demonstrate to the satisfaction of the Village Engineer 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.
- (6) The Village Engineer may add special conditions to a permit issued under this Section that are reasonably necessary to protect the public's health, safety and welfare, including after the issuance of the permit, provided such special conditions are not contrary to any federal, state or local law or regulation.

G. Application Processing

- (1) Notices of incompleteness shall be provided in conformity with state, local and federal law, in particular, 47 C.F.R. § 1.6003(d), as amended.
- (2) Wireless permit applications and appeals will be processed in conformity with shot clocks set forth in state, local, and federal law, as amended.
- (3) In the event that an application is denied (or approved) with conditions beyond the standard permit conditions, the Village Engineer shall issue a written decision with the reasons therefor, supported by substantial evidence contained in a written record.
- (4) Any person adversely affected by the decision of the Village Engineer may appeal that decision to the Village of New Glarus Board, which may decide the issues de novo, and whose written decision will be the final decision of the Village. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.
- (5) Appeals that involve eligible facilities requests must be filed within three business days of the written decision of the Village Engineer.
- (6) All other appeals must be filed within ten business days of the written decision on the Village Engineer, unless the Village Engineer extends the time therefor. An extension may not be granted where extension would result in approval of the application by operation of law.

- (7) Decision Deadline. All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock. Within twenty (20) days after the hearing, the Board shall cause to be issued a written decision which shall affirm, reverse or modify the determination of the Village Engineer, and state the reasons for this decision that are supported by the record.

H. Expiration and Revocation

- (1) 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:
 - (a) Remove the wireless telecommunications facility; or
 - (b) Submit an application to renew the permit at least 90 days prior to its expiration. The Facility must remain in place until the renewal application is acted on by the Village of New Glarus and any appeals from the Video of New Glarus' decision are exhausted.
- (2) 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 Village of New Glarus. All costs incurred by the Village of New Glarus in connection with the revocation, removal, and right-of-way restoration shall be paid by the permittee.
- (3) Unless exempted from permitting under this Chapter, a wireless telecommunications facility installed without a wireless permit must be removed within 30 days of receipt of written notice from the Village of New Glarus. All costs incurred by the Village of New Glarus 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.

- I. 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 Village of New Glarus requests such removal and relocation. The Village of New Glarus may make such a request to prevent the facility from interfering with a present or future Village of New Glarus use of the right-of-way; a public improvement undertaken by the Village of New Glarus; an economic development project which the Village of New Glarus 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 relation to the permit holder.

J. Abandonment

(1) In the event that a permitted facility within the right-of-way is not in use for continuous period of 60 days or longer, the permit holder must promptly notify the Village of New Glarus and do one of the following:

(a) Provide information satisfactory to the Village Engineer that the permit holder's obligations for its facilities under this Chapter have been lawfully assumed by another permit holder.

(b) Submit to the Village Engineer a proposal and instruments for dedication of the facilities to the Village of New Glarus. If a permit holder proceeds under this Section, Section J(1)(b), the Village of New Glarus may, at its option:

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

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

iii. Require the permit holder to post a bond or provide payment sufficient to reimburse the Village of New Glarus for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Section K.

(c) Remove its facilities from the right-of-way within one year and perform the required restoration under Section K, unless the Village Engineer waives this requirement or provides a later deadline.

(2) Facilities of a permit holder who fails to comply with Section J(1) and which, for one year, remain unused shall be deemed to be abandoned. In addition to any remedies or rights it has at law or in equity, the Village of New Glarus may, at its option:

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

(b) Take possession of the facilities; and/or

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

K. 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 I), the permit holder must restore the right-of-way to its prior condition in accordance with Village of New Glarus 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 J, the Village of New Glarus at its option may do such work. In the event, the permit holder shall pay to the Village of New Glarus, within 30 days of billing therefor, the cost of restoring the right-of-way.

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

M. 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.

This ordinance shall take effect the day after passage and publication as provided by law.

PRESENTED: ___/___/2020

ADOPTED: ___/___/2020

PUBLISHED: ___/___/2020

Roger Truttman, Village President

Lynne R. Erb, Village Clerk/Treasurer