

VILLAGE OF BROOKLYN ORDINANCE CHAPTER 117

AN ORDINANCE TO AMEND

**SECTIONS 117-1017 OF CHAPTER 117 OF THE
ZONING CODE OF THE VILLAGE OF BROOKLYN**

THE BOARD OF TRUSTEES OF THE VILLAGE OF BROOKLYN DO ORDAIN AS FOLLOWS:

Section 117-1017: Chapter 117, Zoning Code; Article V Zoning Districts and Land Use; Division 7 Special Regulations, Section 117-1017 Telecommunication regulations, of the Village of Brooklyn Code is hereby amended to read as follows:

Sec. 117-1017. - Telecommunication regulations.

(a) *Satellite earth stations.*

- (1) *Permit required.* No person or entity shall, within the village, build, construct, use or place any type of satellite earth station until a permit shall have first been obtained from the building inspector and/or clerk-treasurer.

- (2) *Definitions.*

- a. For purposes of this section, the term "satellite television dish" or "earth station" is defined as an apparatus capable of receiving communications from a transmitter or a transmitter relay located in planetary orbit. They are also commonly referred to as disks, satellite communications systems or home earth stations.
- b. The term "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 interest. The personal representative of at least one owner shall be considered an owner.

- (3) *Application.* Application for a satellite earth station permit shall be made in writing to the building inspector or clerk-treasurer. With such application there shall be submitted a current fee and a complete set of plans and specifications, including a plot plan showing the location of the proposed satellite earth station with respect to adjoining alleys, lot lines, and buildings. If such application meets all requirements of this section, the application shall be approved.

- (4) *Installation restrictions.* Satellite earth stations installed in any zoning district within the village shall comply with the following provisions:

- a. *Number of units.* Not more than one satellite earth station may be allowed per individual recorded lot except additional stations may be permitted upon application for a variance in nonresidential zones.

- b. *Location and setbacks.*

1. Any satellite dish mounting post shall only be located in the rear yard of a residential lot and at least 15 feet from any property line. Placement of a

satellite dish in a business or industrial district shall not be allowed unless approved by the plan commission.

2. If the dish cannot receive a usable satellite signal in the rear yard of any residential lot, but can receive such a signal while located in a side yard, it may be located only in a side yard after receiving approval from the plan commission. For corner lots, a side yard is only a yard that does not face a street.
 3. No dish shall be placed in the front yard or on the roof of any residential, business or industrial lot in the village unless approved by the plan commission.
 4. The plan commission or its designee shall determine whether a signal constitutes a usable satellite signal, based on evidence provided by the person seeking a permit to erect or construct the dish.
- c. *Mounting.* Satellite earth stations located in agricultural or residential districts shall be ground-mounted only unless otherwise approved by the plan commission. Satellite earth stations may be wall- or roof-mounted in business or industrial districts only. Satellite earth stations attached to the wall or roof of any principal or accessory structure shall be subject to the structure being constructed to carry all imposed loading. The building inspector may require engineering calculations.
- d. *Diameter.* The diameter of the satellite television dish shall not exceed ten feet for the ground-mounted dish and six feet for the roof-mounted dish, except for stations used to provide community antenna television services.
- e. *Height.*
1. A ground-mounted satellite dish may not exceed ten feet in height, as measured from the ground to the highest point of the dish.
 2. A roof-mounted satellite dish may not exceed eight feet in height above the surrounding roofline as measured from the lowest point of the existing roofline.
- f. *Wind pressure.* All satellite earth stations 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 80 miles per hour.
- g. *Electrical installations.* Electrical installations in connection with earth satellite receiving stations, 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 satellite earth station to the receivers shall be installed underground unless installation site conditions preclude underground. If a satellite earth station is to be used by two or more residential property owners, all interconnecting electrical connections, cables and conduits shall be shown on the application for permit. All satellite earth stations shall be grounded against direct lightning strikes.

- h. *Temporary placement.* No portable or trailer-mounted satellite earth station shall be allowed, except for temporary installation for on-site testing and demonstration purposes for periods not exceeding five days. However, such trial placement shall be in accordance with all provisions of this section. Failure to comply shall result in a citation being issued for violation of this section. Any person making such temporary placement shall give written notice to the building inspector of the date when such placement shall begin and end.
 - i. *Advertising.* No form of advertising or identification, sign or mural is allowed on the dish or framework other than the customary manufacturer's identification plates.
 - j. *Interference with broadcasting.* Satellite earth stations 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 satellite earth station shall promptly take steps to eliminate the harmful interference in accordance with Federal Communications Commission regulations.
 - k. *Compliance with federal regulations.* The installation and use of every satellite earth station shall be in conformity with the Federal Cable Communications Policy Act of 1994 and any amendments thereto.
 - l. *Color.* The color of any satellite dish shall be such that it blends into its surroundings and shall be approved by the plan commission as part of the application.
- (5) *Variances.* Requests for variances from the standards established by this section may be made to the board of appeals pursuant to section 117-625.
- (6) *Enforcement.*
- a. It shall be unlawful to construct, use, build or locate any satellite television dish in violation of any provisions of this section. In the event of any violation, the village board, plan commission, building inspector, zoning administrator or any property owner who would be specifically damaged by such violation may institute appropriate action or proceedings to enjoin a violation of this section.
 - b. Any person, firm or corporation who fails to comply with the provisions of this section shall, upon conviction, be subject to the general penalty.
- (b) *Television and radio antennas.*
- (1) *Permit required.* No person or entity shall, within the village, build, construct, use or place any type of television or radio antenna tower until a permit shall have first been obtained from the building inspector and/or clerk-treasurer.
 - (2) *Application.* Application for permit shall be made to the building inspector or the village clerk-treasurer. With such application there shall be submitted the application fee and a sufficient set of installation plans and specifications, including a general plot plan, showing the location of the proposed antenna with

respect to streets, lot lines and buildings. If such application meets all requirements of this section, the application shall be approved.

- (3) *Setbacks.* No radio or television antenna tower shall be erected or installed within the front or side yard. The rear setback and the side setback in rear yards shall be that for the principal structure within the respective zoning district and shall preserve access to rear property areas by firefighting apparatus and emergency personnel.
- (4) *Height.* The maximum height of the antenna tower, from grade, shall equal but not exceed the distance to the nearest property line. To exceed this height, a conditional use permit is required from the plan commission.
- (5) *Installation.* Radio or television antenna towers shall be erected and installed in accordance with the Wisconsin State Electrical Code, National Electrical Safety Code, Federal Communications Commission, Wisconsin Department of Transportation Bureau of Aeronautics, Wisconsin building codes, and manufacturers' instructions to ensure personal and public safety.
- (6) *Inspections.* Upon completion of the construction or installation of any antenna tower, the building inspector shall be notified.
- (7) *Maximum number of antenna towers in residential districts.* No more than one antenna support structure for licensed amateur communications shall be allowed per lot of record in a residential district.
- (8) *Maintenance.* Antennas and antenna support structures that have, due to damage, lack of repair, or other circumstances, become unstable, lean significantly out-of-plumb, or pose a danger of collapse shall be removed or brought into repair within 90 days following notice given by the building inspector; or immediate action may be ordered if there is imminent threat to public safety or property.
- (9) *License requirements.* If an antenna tower is for ham radio operation, only licensed amateur radio operators shall be permitted to install, or have installed, and operate licensed amateur communication facilities under the provisions of this section. Proof of license shall be required at the time application is made for a building permit.

(c) *Wireless Communication System*

- (1) *Definition.* For the purpose of this section, the term "wireless communication system" means a system capable of receiving communication from a transmitter or transmitter relay located in different locations.
- (2) *Application.* Application for a permit shall be made in writing to the building inspector or clerk-treasurer. With such application there shall be submitted a current fee and a complete set of plans and specifications, including a plot plan showing the height and location of the tower, with respect to adjoining alleys, lot lines, and buildings. If such application meets all requirements of this section, the application shall be sent to the plan commission for review.

(3) *Installation restrictions.* Wireless communication systems may only be installed in any B-G, B-P, or I zoning district within the village and shall comply with the following provisions:

a. *Number of units.* Not more than one wireless communication system may be allowed in a zoning district.

b. *Location and setbacks.* Placement and location of a wireless communication system shall be subject to the approval of the plan commission.

c. *Mounting.* Wireless communication systems shall be wall- or roof-mounted. Wireless communication systems attached to the wall or roof of any structure shall be subject to the structure being constructed to carry all imposed loading. The building inspector may require engineering calculations to verify the structural sufficiency of the proposed system and the structure upon which it is to be installed.

d. *Height.* The height of the wireless communication system shall be determined by topographic location and be subject to review by the FAA (Federal Aviation Administration) and the village may require applicant to apply for an FAA Aeronautical Study. All costs of such review and study shall be the applicant's responsibility. Subject to FAA approval, the plan commission shall have the final authority to determine the permitted height of any such tower.

e. *Diameter.* The diameter of the wireless communication dish shall not exceed four feet.

f. *Wind pressure.* All wireless communication systems 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 80 miles per hour.

g. *Electrical installations.* Electrical installations in connection with wireless communication systems, including grounding of the system shall be in accordance with all applicable codes including but not limited to, Wisconsin State Electrical Code and the instructions of the manufacturer; in case of conflicts, the stricter requirements shall govern. All cable used to conduct current or signals from the wireless communication system to the receivers shall be installed underground unless installation site conditions preclude underground. All wireless communication systems shall be grounded against direct lightning strikes.

h. *Advertising.* No form of advertising or identification, sign or mural is allowed on the dish or tower other than the customary manufacturer identification plates, which shall not exceed ten inches by ten inches in size.

i. *Interference with broadcasting.* Wireless communication systems shall be filtered and/or shielded so as to prevent the emissions or reflection of an electromagnetic radiation or other emissions that would cause any harmful interference with the telephone, radio and/or television

broadcasting or reception. In the event any such interference is caused subsequent to its installation, the owner of the wireless communication system shall promptly eliminate the interference.

j. *Compliance with regulations.* The installation and use of every wireless communication system shall be in conformity with all applicable governmental regulations and rules, including but not limited to, Federal Communication Commission rules and regulations.

k. *Color.* The color of the tower and dish shall be such that it blends into its surroundings and shall be subject to approval of the plan commission.

l. *Maintenance.* The applicant shall maintain the system in good condition at all times.

- (4) *Enforcement.* It shall be unlawful to construct, use, build or locate any wireless communication system in violation of any provisions of this section, or any other applicable laws. In the event of any violation of this section, the village board, plan commission, building inspector may issue an order to the applicant, current owner and/or the occupant of the property upon which the wireless communication system is located, to promptly correct such violation, specifying the violation and the date by which the violation is to be corrected. Failure of such persons and/or entities to timely correct such violation shall result in the imposition of a forfeiture against such persons and/or entities for each violation executed after the date of such order. See schedule of fees.

(d) *Wireless Telecommunications Facilities in the Right-Of-Way.*

- (1) *Definition.* For the purpose of this section, the following definitions apply:

Application means a formal request, including all required and requested documentation and information, submitted by an applicant to the village for a wireless permit under this Section.

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 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 then Federal Communications Commission.

Right-of-way means the surface and space above and below the entire width of an improved or unimproved public roadway, highway, street, bicycle lane, terrace, shoulders, side slopes, and public sidewalk in which the village has an interest, including any other dedicated rights-of-way for travel purposes.

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 is fifty (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 more than 50 feet or by more than ten (10) percent above its preexisting height, whichever is greater, as a result of the collocation of new antenna facilities.
2. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume;
3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is cumulatively no more than 28 cubic feet in volume;
4. The facility does not require antenna structure registration;
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, 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 undergrounds; 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.

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.

(2) Purpose. In the exercise of its police powers, the village has priority over all other uses of the right-of-way. The purpose of this Chapter is to provide the Village with a process for managing, and uniform standards for action upon, requests for the placement of wireless telecommunications facilities within the right-of-way consistent with the village's obligation to promote the public health, safety, and welfare; to manage the right-of-way; and to ensure that the public's use is not obstructed or incommoded by the use of the right-of-way for the placement of wireless telecommunications facilities. The village recognized the importance of wireless telecommunications facilities to provide high-quality communications and internet access services to residents and businesses within the village. The village also recognizes its obligation to comply with applicable Federal and State laws regarding the placement of wireless telecommunications facilities in the right-of-way including, without limitations, 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.

(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. The provisions of this Chapter (other than Sections 10 to 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 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 village. See Section 13 of this Chapter.
4. Placement or modification of a wireless telecommunications facility by village staff or any person performing work under contract with the village.
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 the street and if the work does not change the visual or audible characteristics of the wireless telecommunications facility.

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

(5) Administration.

(a) The building inspector or the clerk-treasurer is responsible for administering this Chapter.

(b) Powers. As part of the administration of this Chapter, the building inspector or the clerk-treasurer may:

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.

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 telecommunication 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 applications.

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 village 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.

(6) Application

(a) Format. Unless the wireless regulations provide otherwise, the applicant must submit both a paper copy and an electronic copy (in a searchable format) of any application as well as any amendments or supplements to the application or responses to request for

information regarding an application, to the clerk-treasurer. An application is not complete until both the paper and electronic copies are received by the clerk-treasurer.

(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 providers(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 and modify it, including but not limited to detail regarding proposed excavations, if any; detailed site plans showing the location of the facility and technical specification 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 village 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 established 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.

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 provisions 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 that claim. Applicants are not permitted to supplement this evidence if doing so would prevent the village 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 related to an existing tower or base station that has been approved by the village. Before and after 360-degree photo simulations must be provided with detailed specification demonstrating that the modification does not substantially change the physical dimensions of the existing approved tower or base station.

(c) Waivers. Request 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 this issuance of the waiver, the village will be provided with all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the wireless permit sought.

(d) Fees. 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 contain proprietary or confidential information by clearly marking each portion of such materials accordingly, and the Village shall endeavor to treat the information as proprietary and confidential, subject to applicable state and federal public records law and the Administrator's determination that the applicant's request for confidential or proprietary treatment of the application materials is reasonable. The village shall not be required to incur any costs to protect the application from disclosure.

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 service, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Chapter and the wireless regulations may be waived, but only to the extent required to avoid the prohibition.
- (c) Standards.
 - 1. Wireless 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;
 - f. Ensures that the village 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 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.

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 issuance unless revoked pursuant to Section 9(b) of this Chapter.
3. Contact Information. The permit holder shall at all times maintain with the village 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 a least one natural person.
4. Emergencies. The village shall have the right to support, repair, disable, or remove any elements of the facility 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 village, 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 the 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 Village.
9. Relocation. At the request of the village pursuant to Section 10 of this Chapter, the permit holder shall promptly and at its own expense permanently remove and relocate any wireless telecommunications facility in the right-of-way.
10. Abandonment. The permit holder shall promptly notify the village whenever a facility has not been in use for a continuous period of 60 days or longer and must comply with Section 11 of this Chapter.
11. Restoration. A permit holder who removes or relocates a facility from the right-of-way 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 limitations all conditions of approval, approved plans, resolutions, and other documentation associated with the permit or regulatory approval. In the event the Village cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permit holder fails to retain full and complete records in the permit holder's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permit holder.
13. Radio Frequency Emissions. Every wireless facility shall at all times comply with applicable FCC regulations governing radio frequency emission, 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. 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. 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 Village Board. Any person adversely affected by the decision of the Administrator may appeal that decision to the Village Board, which may decide the issues de novo, and whose written decision will be the final decision of the village. An appeal by the 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 request 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.
- (f) Decision Deadline. All appeals shall be conducted so that a timely written decision may be issued in accordance with the applicable shot clock.

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 village and any appeals from the village's 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 village. All cost incurred by the village in connection with the revocation, removal, and right-of-way restoration shall be paid by the permit holder.
- (c) **Failure to Obtain Permit.** Unless exempt 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 village. All costs incurred by the village 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 village requests such removal and relocation. The village may make such a request to prevent the facility from interfering with a present or future village use of the right-of-way; a public improvement undertaken by the village; an economic development project in which the village has an interest or investment; when the public health, safety 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 village and do one of the following:

1. Provide information satisfactory to the Administrator that the permit holder's obligations for its facilities under this Chapter have been lawfully assumed by another permit holder.
 2. Submit to the Administrator a proposal and instruments for dedication of the facilities to the Village. If a permit holder proceeds under this Section 11(a)(2), the Village may, at its option:
 - 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 village for reasonably anticipated costs to be incurred in removing the facilities and undertaking restoration under Section 12.
 3. Remove its facilities from the right-of-way within one year and perform the required restoration under Section 12, unless the Administrator waives this requirement or provides a later deadline.
- (b) Abandoned Facilities. Facilities of a permit holder who fails to comply with Section 11(a) and which, for one year, remain unused shall be deemed to be abandoned. Abandoned facilities are deemed to be a nuisance. In addition to any remedies or rights it has at law or equity, the village may, at its option:
1. Abate the nuisance and recover the cost from the permit holder or the permit holder's successor in interest;
 2. Take possession of the facilities; and/or
 3. Require removal of the facilities by the permit holder or the permit holder's successor in interest.

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 village specifications. However, a support structure owned by another entity authorized to maintain that support structure in the right-of-way need not be removed but must instead be restored to its prior condition. If the permit holder fails to make the restoration required by this Section 12, the village at its option may do such work. In the event, the permit holder shall pay to the village, within 30 days of billing therefor, the cost of restoring the right-of-way.

Section 13: Placement on Village-Owned or -Controlled Structures

The village may negotiate agreements for placement of wireless telecommunications facilities on village-owned or -controlled structures in the right-of-way. The agreement shall specify the compensation to the village for use of the structures. The person or entity seeking the agreement shall reimburse the village for all the costs the village incurs in connection with the 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.

(Ord. of 12-17-2012, § 48-577)

Adopted by the Board of Trustees of the Village of Brooklyn, Wisconsin, this 11th day of April, 2022.

APPROVED:


Mark Bruner, Village President

Ayes: 6
Nays: 0

ATTEST:


Linda Kuhlman, Clerk-Treasurer

AFFIDAVIT OF POSTING

STATE OF WISCONSIN)

:SS

COUNTY OF GREEN)

I, Linda Kuhlman, Village Clerk/Treasurer for the Village of Brooklyn, County of Dane, State of Wisconsin, do solemnly swear that on April 12, 2022, Chapter 117, Zoning Code; Article V Zoning Districts and Land Use; Division 7 Special Regulations, Section 117-1017 Telecommunication regulations of the Village of Brooklyn Code is hereby amended to read as follows, was posted at the following locations:

1. Village Hall
210 Commercial Street
Brooklyn WI 53521
2. U S Post Office
218 Commercial Street
Brooklyn WI 53521
3. Village of Brooklyn website
www.brooklynwi.gov


Further affiant saith naught.

Dated this 13th Day of April, 2022



Linda Kuhlman
Village Clerk-Treasurer

SUBSCRIBED AND SWORN to before
me on this 13th day of April, 2022


Notary Public, Green County WI
My Commission expires: 09-01-2024