

# VILLAGE OF ELM GROVE

13600 Juneau Boulevard  
Elm Grove, WI 53122

LEGISLATIVE COMMITTEE

Thursday, February 21, 2019 \* 7:00 PM \* Parkview Room

## AGENDA

### 1. Bring meeting to order and roll call

### 2. Review and act on minutes

*Documents:*

[LC011719md.pdf](#)

### 3. Review and act on Chapter 335-86 Short-term Rentals

*Documents:*

[Short-Term Rentals CLEAN REVISIONS proposed by Legislative Committee and edited by HdIM 02 13 19.pdf](#)

### 4. Review and act on Chapter 335-22

B-1 Local Business District

*Documents:*

[335-22 B-1 Local Business District ordinance amendment \(HdIm 02 13 19\).pdf](#)

### 5. Other Business

### 6. Adjourn

Any person who has a qualifying disability as defined by the Americans with Disabilities Act who requires that the meeting or materials for the meeting has to be in an accessible location or format must contact the Village Clerk, Mary S. Stredni, at 262-782-6700 or 13600 Juneau Boulevard by 3:00 PM Friday prior to the meeting so that any necessary arrangements can be made to accommodate your request.

NOTICE: It is possible that members of, and possibly a quorum of, other governmental bodies of the Village may be in attendance at the above stated meeting to gather information. No action will be taken by any governmental body at the above stated meeting other than the governmental body specifically referred to in the above notice.

**VILLAGE OF ELM GROVE  
LEGISLATIVE COMMITTEE MINUTES  
Thursday, January 17, 2019**

Present: Chairman Domaszek, Trustee Haas and President Palmer. Angie Jodie excused.  
David De Angelis Village Manager, Mary Stredni Village Clerk, Tom Harrigan Zoning  
Administrator, and Village Attorney Hector de la Mora.

1. Call meeting to order  
Chairman Domaszek brought the meeting to order at 7:00 p.m. Mary S Stredni took the roll.

2. Minutes  
Palmer and Haas moved and seconded to approve the October 17, 2018 minutes. Motion carried.

3. Review and act on §335-32 Parking requirements  
The committee reviewed the parking analysis provided by Horizon Development. After discussion, Palmer and Haas moved and seconded to approve in §335-32J - eliminate 'Elderly multiple-family use' and add 'Independent Senior Living (as defined in Rm-2 Multi-family Residential) use with 1.1 per dwelling unit parking'. Motion carried.

*Palmer and Haas moved and seconded to amend agenda, placing Item #5 review of §335-80 short-term rental before Item #4 conditional use. Motion carried.*

4. Review §335-86 (l) Short-term Rentals  
Discussion regarding changes provided by Haas. Throughout change 'dwelling area' to 'dwelling area or dwelling unit as defined by §335-94.'

335-86(l) (3) (c) (vi) change time from 9:00 a.m. and 9:00 p.m. to 9:00 am. and 10:00 p.m.  
In the same paragraph discussion regarding outdoor event/activity and how the number of people can be limited. Attorney de la mora will review the language.

335-86(l) (3) (c) (ix) remove the extra Short-Term Rental. Add time frame for owner to keep records for two years.

335-86(l)(6)(b) change the room tax percent to – as per §249-2

Palmer and Domaszek moved and seconded to approve the above changes with the committee reviewing at the next meeting. Motion carried.

5. Review of existing and potential conditional use zoning provisions  
Attorney de la mora reviewed 2017 Wisconsin Act 67 Section 16, which changed how municipalities can govern conditional use permits. Clarified that any zoning district must have specific conditional uses. After discussion, the committee decided that each member will review the current B1 Local Business District permitted uses and the current conditional uses keeping in mind are they now reasonable and is the correct language being used. The committee will review during the next meeting.

5. Other business  
None

6. Adjourn  
Palmer and Haas moved and seconded to adjourn at 8:47 p.m. Motion carried.

Respectfully submitted,

Mary S Stredni, Village Clerk

1 STATE OF WISCONSIN WAUKESHA COUNTY VILLAGE OF ELM GROVE

2 ORDINANCE NO. \_\_\_\_\_

3 AN ORDINANCE CREATING § 335-86(I) OF THE  
4 VILLAGE OF ELM GROVE CODE OF ORDINANCES  
5 REGULATING SHORT-TERM RENTALS  
6

7 THE BOARD OF TRUSTEES OF THE VILLAGE OF ELM GROVE DO ORDAIN AS  
8 FOLLOWS:

9 **SECTION 1:** § 335-86(I) of the Village of ELM GROVE Ordinances is hereby created to read  
10 as follows:

11  
12 Section 335-86(I) – Short-Term Rentals  
13

14 (1) The purpose of this subsection is to ensure that the quality of short-term rentals  
15 operating within the Village is adequate for protecting public health, safety and general  
16 welfare, to protect the residential character, and stability of all areas within the Village of  
17 Elm Grove; to provide minimum standards necessary for the health and safety of  
18 persons occupying or using buildings, structures or premises; and provisions for the  
19 administration and enforcement thereof.  
20

21 (2) Definitions.  
22

23 For the purpose of this subsection, the following words and phrases shall have the  
24 following definitions:

25  
26 Clerk. The Village Clerk of the Village of Elm Grove or designee.  
27

28 Dwelling Unit/Area: A space within a Structure which a natural person can use as a  
29 sleeping place. Dwelling Unit as used in this ordinance shall be as defined in Village  
30 of Elm Grove Ord. sec. 335-94  
31

32 Property Owner: The owner of a Short-Term Rental Unit/Area.  
33

34 Residential Property: Any Residential Property having a Dwelling Unit/Area located  
35 within a zoning district, consisting of the following zoning districts: RS-I, RS-2, R-II,  
36 RS-3, RS-4, RM-1, but excluding an RM-2 district.  
37

38 Short-Term Rental Unit/Area: A Dwelling Unit/Area on a Residential Property that is  
39 offered for rent for consideration and for fewer than 29 consecutive days, as defined  
40 in Wis. Stat. Sec. 66.0615 (1)(d k).  
41

42 Village: The Village of Elm Grove, Wisconsin.  
43

44 (3) Operation of Short Term Rental Unit/Area  
45

46 (a) Any person maintaining, managing, offering, or providing a Short-Term Rental  
47 Unit/Area for more than six (6) consecutive days within each 365-day year  
48 commencing on the first day of rental of a Dwelling Unit/Area, shall obtain for such

49 Short-Term Rental Unit/Area a conditional use permit issued pursuant to the  
50 provisions of Village of Elm Grove Ordinance § 335-86.  
51

52 (b) Each Short-Term Rental Area requires a valid:  
53

54 (i) State of Wisconsin Tourist Rooming House License where operation of the  
55 Short-Term Rental Unit/Area exceed ten (10) nights within a consecutive 365  
56 day period;  
57

58 (ii) Seller's permit issued by the Wisconsin Department of Revenue;  
59

60 (iii) A conditional use permit issued pursuant to the provisions of Village of Elm  
61 Grove Ordinance § 335-86 per (3)(a) above,  
62

63 (c) Operation of a Short-Term Rental Unit/Area shall comply with all of the following:  
64

65 (i) The total number of days that all Dwelling Unit/Areas within a Residential  
66 Property may be collectively rented shall not exceed one hundred and eighty  
67 (180) days during any consecutive 365-day period.  
68

69 (ii) The Residential Property Owner shall notify the Clerk in writing not less than  
70 twenty-four (24) hours before the first rental within a 365-day period begins.  
71

72 (iii) Vehicular traffic shall not be generated that is greater than normally expected in  
73 the residential neighborhood, and provision shall be made for all vehicles  
74 associated with any person remaining overnight at a Short-Term Rental  
75 Unit/Area to be parked within the Residential Property where the Short-Term  
76 Rental Unit/Area is located.  
77

78 (iv) There shall not be excessive noise, fumes, glare, or vibrations generated  
79 during the period of Dwelling Unit/Area use, including any activity, event or  
80 social function held outside the interior of the Dwelling Unit/Area as described  
81 and restricted in §(3)(c)(vi) hereafter.  
82

83 (v) No recreational vehicles (RVs), camper, tent, or other temporary lodging  
84 arrangement shall be permitted in any zoning district as a means of providing  
85 additional accommodations for persons using the Residential Property where  
86 the Short-Term Rental Unit/Area is located.  
87

88 (vi) Any activity, event or social function held outside the interior of a Residential  
89 Property where the Short-Term Rental Unit/Area is located or opened to the  
90 outside by the use of a patio, balcony, back or side yard, veranda or deck shall  
91 last no longer than one day occurring between the hours of 9:00 a.m. and  
92 10:00 p.m. No outdoor music shall be allowed between 10:00 p.m. and 9:00  
93 a.m. All activities shall be in compliance with other noise regulations of the  
94 Village. All Property Owners of a Residential Property where the Short-Term  
95 Rental Unit/Area is located are responsible for complying with all regulations of  
96 any applicable room tax.  
97

98 (vii) There shall be compliance with all applicable state, county, and Village codes  
99 and ordinances.

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- (viii) The Property Owners of a Residential Property where the Short-Term Rental Short-Term Rental Unit/Area is located shall maintain for two past years the following written records for each rental of the Dwelling Unit/Area: the full name and current address of any person(s) renting the Residential Property, the time period for that rental, and the monetary amount or consideration paid for that rental.

(4) Granting of Short-Term Rental Conditional Use Permit

(a) The application shall also contain the following information:

- (i) Identify all the Residential Property Owners' contact information including mailing address, e-mail address, physical address and 24-hour phone number available seven (7) days a week;
- (ii) Specify the maximum number of Dwelling Unit/Areas within a Residential Property available for individual rentals.
- (iii) A copy of State of the Wisconsin License for a Tourist Rooming House License issued under Wis. Admin Code. Sec. ATCP 72.04 for each Short-Term Rental Unit/Area;
- (iv) A copy of a completed State Lodging Establishment Inspection form for the entire Residential Property issued not more than six (6) months before the date of the conditional use permit application.
- (v) Short term rental conditional use permits shall be issued for a one year period and must be renewed annually subject to Village approval or denial

(5) Issuance of a Conditional Use Permit

- (a) A conditional use permit may be issued to the Residential Property Owner(s) after review and a public hearing by the Village Plan Commission and upon approval by the Village Board. Transfer of a conditional use permit because of transfer or sale of a Residential Property is not permissible. Should such Residential Property be sold, then the conditional use permit shall automatically become void.
- (b) The conditional use permit shall be reviewed on an annual basis by the Village Plan Commission to ensure compliance with all conditional use requirements.
  - (i) Such Residential Property may be inspected by the police department, fire department, building inspector or other authorized personnel of the Village to investigate and determine if any violations exist.
  - (ii) A holder of a conditional use permit, in addition to being subject to a forfeiture prosecution for an ordinance violation arising, may have such permit revoked by the Village Board upon the holding of a hearing and finding of a repeated or substantial violation of any applicable provision of law.

- 150 (c). No conditional use permit shall be issued or renewed if the owner of, or the  
151 Residential Property which is the subject of an application, has any unpaid fees,  
152 taxes or forfeitures of any kind owed to any governmental unit.  
153  
154 (d). A conditional use permit for a Short-Term Rental Unit/Area may be revoked by the  
155 Village Board for any of the following reasons:  
156  
157 (i) Failure to make payment for any unpaid fees, taxes or forfeitures of any kind  
158 owed to any governmental unit;  
159  
160 (ii) Three (3) or more calls for police service, building inspection or the health  
161 department for nuisance activities or other law violations in a consecutive  
162 twelve (12) month period;  
163  
164 (iii) Failure to satisfy any required local, county, and state licensing requirements;  
165  
166 (iv) Any violation of local, county, or state laws that substantially harm or adversely  
167 impact the predominantly residential uses and nature of the Village.  
168  
169 (v) Failure by a Residential Property owner to properly dispose of trash upon the  
170 departure of a short term renter, and in all cases to arrange for trash removal  
171 not less than once a week in addition to collecting on a daily basis all trash on  
172 outside of the Residential Property not in trash containers.  
173

174 (6)Room Tax  
175

- 176 (a) Pursuant to Wis. Stats. § 66.0615(1m)(a), a tax is imposed on the privilege of  
177 furnishing at retail, rooms or lodging to customers by persons furnishing  
178 accommodations that are available to the public, irrespective of whether  
179 membership is required for the use of the accommodation.  
180  
181 (b) Such tax shall be at the rate of seven percent (7%) of the gross receipts from such  
182 retail furnishing of rooms or lodging.  
183  
184 (c) Such tax shall be collected from the customer when the customer's bill is paid, and  
185 shall be paid by the Residential Property Owner to the Village Clerk on a quarterly  
186 basis: each March, June, September, and December.  
187  
188 (d) Such tax shall not be subject to the selective sales tax imposed by Wis. Stats. §  
189 77.52(2). The proceeds of such tax shall be remitted to and received by the village  
190 treasurer on or before the 20<sup>th</sup> day of the month when due.  
191  
192 (e) Records Retention. Every person liable for the tax imposed by this subsection shall  
193 keep or cause to be kept such records, receipts, invoices and other pertinent papers  
194 in such form as required by the Village Clerk.  
195

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

200 **SECTION 3:** This ordinance shall take effect and be in full force from and after its passage and  
201 publication by posting commencing on \_\_\_\_\_, 2019.

202 Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

203 VILLAGE OF ELM GROVE

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207 \_\_\_\_\_  
Neil Palmer, Village President

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211 \_\_\_\_\_  
Mary S. Stredni, Village Clerk

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DRAFT

1 STATE OF WISCONSIN            WAUKESHA COUNTY            VILLAGE OF ELM GROVE

2    ORDINANCE NO. \_\_\_\_\_

3    AN ORDINANCE AMENDING SECTION 335-22  
4    OF THE VILLAGE OF ELM GROVE CODE OF ORDINANCES

5  
6            THE BOARD OF TRUSTEES OF THE VILLAGE OF ELM GROVE DO ORDAIN AS  
7            FOLLOWS:

8  
9            **SECTION 1:** Section 335-22 of the CODE OF ORDINANCES OF THE VILLAGE OF ELM  
10           GROVE is hereby amended by the addition of underlined text and the deletion of text as follows:

11            **§ 335-22 B-1 Local Business District.**

12            The B-1 Business District is intended to provide for individual or small groups of retail and  
13            customer service establishments serving primarily the convenience of the village residents. The  
14            character, appearance and operation of local centers shall be compatible with the character of  
15            the surrounding area.

16            **A.**

17            Permitted uses.

18            **(1)**

19            Antique, collectors and furniture consignment stores.

20            **(2)**

21            Appliance stores.

22            **(3)**

23            Art shops.

24            **(4)**

25            Bakeries.

26            **(5)**

27            Banks, credit unions, savings and loan associations and other financial services or institutions.

28            **(6)**

29            Barbershops and beauty parlors.

30            **(7)**

31            Books, newspapers and magazines or stationery stores.

32            **(8)**



- 33 **(9)**
- 34 Brokerages (stock, mortgage), accounting and similar financial services.
- 35 **(10)**
- 36 Business offices.
- 37 **(11)**
- 38 Camera and photographic or imaging supply stores.
- 39 **(12)**
- 40 Tailor or dressmaker or apparel stores.
- 41 **(14)**
- 42 Standalone convenience or full scale grocery or food store.
- 43 **(15)**
- 44 Confectioneries.
- 45 **(16)**
- 46 Delicatessens.
- 47 **(19)**
- 48 Drugstores.
- 49 **(20)**
- 50 Electronic devices stores.
- 51 **(22)**
- 52 Florist shops.
- 53 **(24)**
- 54 Furriers and fur apparel.
- 55 **(25)**
- 56 Furniture or household goods or home décor stores.
- 57 **(26)**
- 58 Gift stores.
- 59 **(28)**

- 60 Hardware stores.
- 61 **(29)**
- 62 Hobby and craft shops.
- 63 **(30)**
- 64 Insurance sales offices and real estate offices.
- 65 **(31)**
- 66 Interior decorator.
- 67 **(33)**
- 68 Jewelry stores.
- 69 **(34)**
- 70 Laundries and dry-cleaning establishments.
- 71 (35)
- 72 Household goods repair stores.
- 73 **(36)**
- 74 Meat or fish markets.
- 75 **(38)**
- 76 Music stores.
- 77 **(39)**
- 78 **(40)**
- 79 Office supplies and equipment and computer stores.
- 80 .
- 81 **(42)**
- 82 Packaged beverage stores.
- 83 **(43)**
- 84 Paint, glass and wallpaper stores.
- 85 **(44)**
- 86 Parking lots and parking structures serving businesses in the district.

- 87 **(45)**
- 88 Photographer.
- 89 **(46)**
- 90 Pet or pet supplies store.
- 91 **(47)**
- 92 Professional offices.
- 93 **(48)**
- 94 Equipment rental stores.
- 95 **(49)**
- 96 Real estate offices.
- 97 **(50)**
- 98 **(51)**
- 99 Self-service laundry and dry-cleaning establishments.
- 100 **(52)**
- 101 Shoe stores and leather goods stores, sales and repairs.
- 102 **(53)**
- 103 .
- 104 **(54)**
- 105 **(55)**
- 106 **(56)**
- 107 **(57)**
- 108 Tobacco shops.
- 109 **(58)**
- 110 **(59)**
- 111 **B.**
- 112 Permitted accessory uses.
- 113 **(1)**

114 Garages for storage of vehicles used in conjunction with the operation of business or owned or  
115 used by tenants residing within quarters located in the same structure as the business.

116 **(2)**

117 Off-street parking and loading areas.

118 **(3)**

119 Residential quarters for the owner or proprietor or any rental tenant located in the same  
120 structure as the business, provided such living accommodations satisfy all applicable health,  
121 safety and current building code provisions and such use is accurately reflected in a current  
122 plan of operation which identifies the number and location of all residential occupants in such  
123 structure in accordance with § **335-22** of the Code of the Village of Elm Grove.

124 **C.**

125 Conditional uses. All conditional uses shall require the issuance of a condition use permit in  
126 accordance with §335-86 of the Code of the Village of Elm Grove.

127 **(1)**

128 Cocktail, or wine or beer bars or taverns.

129 **(2)**

130 Building maintenance and supply stores.

131 **(3)**

132 Drive-in banks.

133 **(4)**

134

135 **(5)**

136 Online retailers' delivery drop-off or item return sites

137 **(6)**

138 Funeral homes.

139 **(7)**

140 Garden supply stores.

141 **(8)**

142 Gasoline service stations and car wash establishments, provided that all pumps and service  
143 islands meet the setback and yard requirements.

144 Medical, dental clinics or optical stores.

- 145 **(10)**
- 146 Physical culture facilities, such as fitness centers, massage parlors, tanning parlors and body-  
147 piercing establishments as defined by Wis. Admin. Code § HFS 173.03(8) and tattoo parlors.
- 148 **(11)**
- 149 Power equipment centers, sales, service and storage.
- 150 **(12)**
- 151 (a) Restaurants with drive-through windows with take-away service. Only property which  
152 has frontage along, and vehicular ingress and egress access to, Bluemound Road may be  
153 considered for such a use.
- 154 (b) Restaurants, without drive-through windows with take-away service.
- 155 **(13)**
- 156 Utilities.
- 157 **(14)**
- 158 Lodges and clubs.
- 159 **(15)**
- 160 **(16)**
- 161 Wireless communication antennas.
- 162 **(17)**
- 163 Multifamily residential units as part of a Mixed Compatible Residential Planned Development  
164 Overlay District project under § **335-30**. Densities of up to 12 dwelling units per net acre may  
165 potentially be granted subject to the adjustments provided for in § **335-30F(3)** and **(4)**.
- 166 **(18)**
- 167 Parking lots, driveways, walkways or other hardscape constructed using a permeable surface to  
168 exceed the allowable percentage of maximum impervious surface area as defined within this  
169 chapter.
- 170 **(19)**
- 171 Other unspecified uses which are found to be similar in character to those principal uses  
172 conditionally permitted by the Plan Commission.
- 173 **D.**
- 174 Lot area and width. Lots shall be a minimum of 7,200 square feet in area and shall be not less  
175 than 60 feet in width at the front building line.
- 176 **E.**

177 Building height. No structure or parts thereof shall exceed ??? feet in building height, or ???  
178 stories, whichever is less. No accessory structure shall exceed ??? feet in building height.

179 **F.**

180 Yards (principal and/or accessory structures).

181 **(1)**

182 There shall be a minimum building setback of ??? feet from each abutting street right-of-way.

183 **(2)**

184 There shall be no required side yard.

185 **(3)**

186 There shall be a rear yard setback of not less than ??? feet.

187 **G.**

188 Yards within the Downtown Design Overlay District (principal and/or accessory structures).

189 **(1)**

190 Subject to the provisions of § **335-22G(2)**, the Plan Commission may approve deviations from  
191 any of the yard requirements specified in § **335-22F**.

192 **(2)**

193 Notwithstanding the provisions of § **335-22F(1), (2) and (3)**, an applicant shall propose, and the  
194 Plan Commission shall review and approve, the proposed side, front and rear yard setbacks for  
195 structures to be developed or redeveloped within the boundaries of the Downtown Design  
196 Overlay District as established by § **335-12G(3)**. Before determining appropriate setbacks, the  
197 Plan Commission shall first make a final determination that due consideration has been given to  
198 the existing conditions of adjacent properties when establishing side, front and rear yard  
199 setbacks, so as to provide a suitable, streamlined and compatible transition between structures.  
200 The following criteria shall be considered by the Plan Commission in determining front, side and  
201 rear yard setbacks:

202 **(a)**

203 Whether the building setbacks of new or modified structures are compatible with those of  
204 existing, adjacent structures and are scaled at an appropriate distance based on massing and  
205 height characteristics to adjacent structures;

206 **(b)**

207 Whether the proposed new or modified structure fosters a harmonious relationship to adjacent  
208 structures;

209 **(c)**

210 Whether the proposed location of the new or modified structure is reasonably accessible to  
211 streets and public walkways, as contemplated in the Downtown District Site Design Guidelines;

212 **(d)**

213 Whether the major facade and/or major entrance of the proposed new or modified structure is  
214 functionally linked to the primary pedestrian access as determined by the Plan Commission on a  
215 case-by-case basis; and

216 **(e)**

217 Whether the proposed new or modified structure maintains an appropriate distance from any  
218 adjacent single- and/or multiple-family residentially zoned properties as determined by the Plan  
219 Commission on a case-by-case basis.

220 **[2]**

221 **H.**

222 Maximum impervious surface: 80% of lot area.

223 **I.**

224 Maximum building footprint area ??? % of lot area.

225 **J.**

226 Plan of operation required. (Refer to § **335-85**.)

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

231 **SECTION 3:** This ordinance shall take effect and be in full force from and after its passage and  
232 publication by posting commencing on \_\_\_\_\_, 2019.

233 Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

VILLAGE OF ELM GROVE

By: \_\_\_\_\_  
Neil Palmer, Village President

ATTEST:

\_\_\_\_\_  
Mary S. Stredni, Village Clerk

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OMNIBUS CONDITIONAL USE PROVISIONS  
PROPOSED AMENDMENTS

254 § 335-86 Conditional use permit.

255 A.  
256 Conditional use permits. The Village Board may authorize the Zoning Administrator to issue a  
257 conditional use permit for conditional uses after review and a public hearing, provided that such  
258 conditional uses and structures are in accordance with the purpose and intent of this chapter and  
259 are found to be not hazardous, harmful, offensive or otherwise adverse to the environment or the  
260 value of the neighborhood or community.

261 B.  
262 Application. Applications for conditional use permits shall be made in duplicate to the Zoning  
263 Administrator on forms furnished by the Zoning Administrator and shall include the following  
264 information:

265 (1)  
266 Names and addresses of the applicant, owner of the site, architect, professional engineer and/or  
267 contractor, and all opposite and abutting property owners of record.

268 (2)  
269 Description of the subject site by lot, block and recorded subdivision or by metes and bounds;  
270 address of the subject site; type of structure; proposed operation or use of the structure or site;  
271 number of employees; and the zoning district within which the subject site is located.

272 (3)  
273 Survey prepared by a registered land surveyor showing the location, property boundaries,  
274 dimensions, uses and size of the following: subject site; existing and proposed structures; existing  
275 and proposed easements, streets and other public ways; off-street parking, loading areas and  
276 driveways; existing highway access restrictions; existing and proposed street, side and rear yards;  
277 and areas subject to inundation by floodwaters. The survey shall also show the location, elevation  
278 and uses of any abutting lands and their structures that are located with 40 feet of the subject site;  
279 soil mapping unit lines, types and slopes; ground surface elevations; mean and historic high-water  
280 lines on or within 40 feet of the subject premises; and existing and proposed landscaping when so  
281 required by the Plan Commission.

282 (4)  
283 In areas subject to inundation by floodwaters, the survey provided by the applicant shall also  
284 include first floor elevations, utility elevations, historic and probable future floodwater elevations,  
285 depth of inundation, floodproofing measures and plans for proposed structures with dimensions  
286 and elevations pertinent to the determination of the hydraulic capacity of the structures or their  
287 effect on flood flows. Where floodproofing is required, the applicant shall submit a plan or  
288 document certified by a licensed professional engineer or architect attesting to the adequacy of the  
289 floodproofing measures to withstand flood forces and velocities associated with a one-hundred-  
290 year recurrence interval flood. Prior to the issuance of a certificate of compliance, the applicant  
291 shall also submit a certification by the licensed professional engineer that the finished floodproofing  
292 measures were accomplished in compliance with the provisions of this chapter.

293 (5)  
294 Additional information as may be required by the Village Board, Village Plan Commission, Village  
295 Engineer or the Zoning Administrator.

296 C.  
297 Plan Commission review.

298 (1)  
299 The Village Plan Commission shall review all applications for conditional use permits. The Plan  
300 Commission shall review and consider the site, existing and proposed structures, architectural  
301

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302 plans, neighboring uses, parking areas, driveway locations, highway access, traffic generation and  
303 circulation, drainage, sound and vibration generation, sewerage and water systems, aesthetic and  
304 conditional use compatibility with the then character of the neighborhood and the proposed plan of  
305 operation for compliance with the Code of Ordinances and the purpose and intent of this chapter.

306 **(2)**  
307 Conditions such as landscaping, architectural design, type of construction, construction  
308 commencement and completion dates, sureties, lighting, fencing, planting screens, operational  
309 control, hours of operation, traffic, deed restrictions, increased yards or parking requirements, and  
310 potential negative impact on neighboring properties may be considered by the Plan commission  
311 upon its finding that these are necessary to fulfill the propose and intent of this Chapter.

312  
313 **(3)**  
314 The Plan Commission shall report its findings to the Village Board within 60 days and may  
315 recommend conditions, such as landscaping, architectural design, type of construction,  
316 construction commencement and completion dates, sureties, lighting, fencing, drainage, sound and  
317 vibration generation reduction or elimination, planting screens, operational control, hours of  
318 operation, improved traffic circulation, deed restrictions, highway access restrictions, increased  
319 yards and parking requirements, or any other condition the Plan Commission deems necessary in  
320 order to ensure that the proposed use complies with the intent and character of the surrounding  
321 properties and where such conditions are deemed necessary to fulfill the purpose and intent of this  
322 chapter.

323 **D.**  
324 Public hearing. The Village Board shall hold a public hearing upon each application after receiving  
325 the recommendation from the Plan Commission. A notice shall be via class 2 notice prior to the  
326 public hearing giving the time and place for the hearing, and due notice shall be given to the parties  
327 in interest. At the hearing, the applicant may appear in person or by his or her agent or attorney.

328 [Amended 4-22-2008]  
329 **E.**  
330 Village Board action. Following the public hearing, and after consideration of the Plan  
331 Commission's recommendations, the Village Board shall exercise its own independent judgment in  
332 evaluating all data and information received or absent from the record of the application, including  
333 testimony or public comments which it deems to constitute substantial evidence under Wis. Stat.§  
334 62.23 (7)(de)b. and the recommendation of the Plan Commission in determining whether to grant  
335 the conditional use permit as applied for, grant the conditional use permit with conditions deemed  
336 appropriate by the Board, impose conditions such as the permit's duration, transfer, or renewal, in  
337 addition to any other conditions specified in the village's zoning ordinances or as recommended by  
338 the Plan Commission, or deny the permit In which case, such decision may be appealed to the  
339 circuit court under the procedures contained in Wis. Stat.§ 62.23(7)(e.)10. In addition:

340 **(1)**  
341 Compliance with all other provisions of this chapter, such as lot width and area, yards, height,  
342 parking, loading, traffic and highway access shall be required of all conditional uses unless a  
343 variance has been granted under Article **IX** of this chapter; provided, however, that the Village  
344 Board may, with the recommendation of the Plan Commission, authorize the reconstruction of a  
345 lawful pre-existing detached garage at its current location and in its current dimensions,  
346 notwithstanding noncompliance with the setback and minimum square footage requirements of this  
347 chapter.

348 **(2)**  
349 Amendments. Changes subsequent to the initial issuance of a conditional use permit that result in  
350 a need to change the initial conditions shall require an amendment to the conditional use permit.  
351 Enlargement of a conditional use shall be considered an amendment. The process for amending a  
352 permit shall generally follow the procedures for the initial granting of a conditional use permit.

353 **(3)**

354 Revocation of conditional use permit. In the event an applicant or its successors or assigns, where  
355 such transfer is allowed, fail to comply with the conditions of the conditional use permit, or if the  
356 use, or characteristics of the use, is changed without prior approval by the Plan Commission, the  
357 conditional use permit may be revoked by the Village Board of Trustees. The process for revoking a  
358 permit shall generally follow the procedures for granting a permit.

359 **F.**  
360 Existing conditional uses. Lawful uses existing at the effective date of this chapter that would be  
361 classified as a conditional use in the particular district concerned if they were established after the  
362 effective date of this chapter shall be considered legal conditional uses without further action of the  
363 Village. Changes to or substitution of such conditional uses shall be subject to review and approval  
364 by the Village Board of Trustees in accordance with this section.

365 **G.**  
366 Notice to Department of Natural Resources. The Zoning Administrator shall transmit a copy of each  
367 application for a conditional floodland use or shoreland W-1 District conditional use to the  
368 Wisconsin Department of Natural Resources (DNR) for its review and comment. Action on such  
369 applications shall not be taken for 30 days or until the DNR has made its recommendation,  
370 whichever occurs first. A copy of floodland conditional use permits and shoreland W-1 District  
371 conditional use permits shall be transmitted to the DNR within 10 days of the effective date of such  
372 permit.

373 **H.**  
374 Conditional use review of communication structures. The following procedures and standards are  
375 applicable to proposed communication structures identified as conditional uses within this chapter.  
376 Terms within this section shall have the meanings found in § 335-50.1 and § 335-94.  
377 [Added 10-13-1997; amended 8-25-2014]

378 **(1)**  
379 Application and review. The Village Manager shall determine an application to be complete and  
380 eligible for formal presentation to the Plan Commission and establishment of public hearing date  
381 only after the applicant has submitted information as required under this chapter.

382 **(2)**  
383 Fees and deposits. The Village Manager shall identify and estimate the need of the Village to  
384 engage expertise to assist the Village staff, the Plan Commission and the Board of Trustees in  
385 reviewing the application. Per the requirements set forth in § 30-3, the Village Manager shall inform  
386 the applicant of these requirements, and the amounts that the applicant will be required to pay shall  
387 be confirmed by the Plan Commission at its initial formal review and may be modified by the Plan  
388 Commission if additional expertise needs to be engaged. These amounts shall be due and payable  
389 by the applicant to the Village within the timetable established by the Village per § 30-3.

390 **(3)**  
391 Application documentation. The applicant shall submit in writing as part of its application the  
392 following documentation:

393 **(a)**  
394 The name and business address of, and the contact individual for, the applicant.

395 **(b)**  
396 Construction plan showing the location of the proposed or affected wireless Tower; and renderings  
397 showing site and structural features, including network components, Wireless Communication  
398 Antennas, transmitters, receivers, base stations, power supplies, cabling and any other associated  
399 equipment that is necessary to provide wireless communication service.

400 **(c)**  
401 If the application is a substantial modification of an existing Tower or Mobile Service Facility, the  
402 applicant shall submit a construction plan which describes the proposed modifications, including  
403 equipment and network components, antennas, transmitters, receivers, base stations, power  
404 supplies, cabling and related equipment associated with the proposed modifications.

405 **(d)**

406 If the application is to construct a new Tower and/or a New Mobile Service Facility, a construction  
407 plan which describes the proposed structure and the equipment and network components,  
408 including antennas, transmitters, receiver's base stations, power supplies, cabling and related  
409 equipment to be placed on or around the new wireless tower.

410 **(4)**

411 Co-location preference; public site preference.

412 **(a)**

413 As a matter of municipal policy, the Village of Elm Grove strongly supports co-location (single  
414 locations accommodating multiple Wireless Communication Antennas and related facilities on a  
415 single Mobile Service Support Structure or groupings of Mobile Service Support Structures) and  
416 location of facilities on public property. Applicants proposing locations not conforming with these  
417 policy preferences shall have the burden of demonstrating the necessity of location on private  
418 property and/or as single-use or single-system Mobile Service Facilities. Sites and Mobile Service  
419 Facilities proposed for approval shall generally be sized and designed to allow flexibility for addition  
420 of more facilities by the same applicant entity or other entities, and the Village may negotiate terms  
421 and conditions facilitating co-location. Once approved, additional antennas and accessory facilities  
422 may be added to a site in accordance with the sharing conditions of the conditional use approval.

423 **(b)**

424 Permittees shall exercise good faith in co-locating and/or clustering with other communication  
425 companies and sharing the permitted site, provided such shared use does not give rise to a  
426 substantial technical level or quality-of-service impairment of the permitted use (as opposed to a  
427 competitive conflict or financial burden). In the event a dispute arises as to whether the permittee  
428 has exercised good faith in accommodating other users, the Village may require a third-party  
429 technical study at the expense of either or both the applicant and complaining user.

430 **(c)**

431 If an application seeks to construct a new Tower and Mobile Service Facility the applicant shall  
432 provide a written explanation, in addition to the other required submittal materials, as to the reason  
433 for the proposed location instead of co-location with an existing Mobile Service Facility. This  
434 explanation shall include a sworn statement by the individual who has the responsibility over the  
435 placement of the wireless Tower attesting that co-location is not possible due to the following  
436 factors;

437 **[1]**

438 Co-location would not result in the same communication service functionality, coverage and  
439 capacity;

440 **[2]**

441 Co-location is technologically infeasible; and

442 **[3]**

443 Co-location creates an unreasonable economic burden to the wireless communication service  
444 provider.

445 **(5)**

446 Additional criteria and requirements for conditional use permit.

447 **(a)**

448 All changes made to towers exceeding what was requested in the original application or otherwise  
449 legally existing at the date of adoption of this subsection, including, but not limited to, adding  
450 microwave dishes, or increasing the height, or profile, shall require review and approval by the Plan  
451 Commission.

452 **(b)**

453 All towers and sites shall be properly maintained and shall be kept in a condition as not to become  
454 a public nuisance or eyesore. Proper maintenance shall include, but not be limited to, regular lawn  
455 and landscaping care, painting of an accessory building, fences, and tower. Additionally, the site  
456 shall be kept clear of junk and trash.

457 **(c)**

458 Landscaping requirements.

459 **[1]**

460 For all commercial towers over 50 feet in height, the tower base, accessory building, anchor points,  
461 and parking area shall be screened with a four-foot-tall (at time of planting) evergreen hedge  
462 consistent with the landscaping requirements for nonresidential properties.

463 **[2]**

464 For towers of 180 feet or greater, at least one row of deciduous trees not less than a caliper of  
465 2 1/2 inches' diameter at breast height (dbh) shall be planted between the tower and public rights-  
466 of-way and residential properties. The type and amount of required landscaping shall be  
467 determined by the Plan Commission on a case-by-case basis.

468 **[3]**

469 The Plan Commission may allow an alternative landscaping or screening plan or waive the  
470 landscape requirements if it is determined that the landscaping will not serve a functional value  
471 based on existing topography or surrounding land uses.

472 **(d)**

473 Every three years, beginning with the adoption of this subsection or following completion of  
474 construction of a tower, whichever is later, the owner of the tower shall submit to the Village  
475 Engineer a report from a structural engineer or other expert acceptable to the Village Engineer  
476 reflecting the fact that such tower is structurally sound and does not pose any threat to life or  
477 property.

478 **(e)**

479 No apparatus shall be attached to any tower except as approved by the Plan Commission.  
480 Apparatus attached legally to existing towers prior to enactment of this subsection may remain but  
481 not be increased in any way except with approval of the Plan Commission. Approval of the Plan  
482 Commission for additional apparatus will be granted only after the applicant demonstrates a need  
483 for additional apparatus.

484 **(f)**

485 Prior to final approval for new towers or within one year of the date of adoption of this subsection  
486 for existing towers, the tower owner shall furnish a financial guarantee, in the form of a letter of  
487 credit, to the Village in the amount of \$20,000. The amount of such financial guarantee may be  
488 reviewed by the Plan Commission at any time to determine the sufficiency of such amount to  
489 remove the tower and restore the site upon which it is located. Funds from the financial guarantee  
490 letter of credit may be used by the Village to pay any professional fees associated with the removal  
491 of the tower and/or restoration of the site upon which it is located.

492 **(g)**

493 Prior to final approval for new towers or within one year of the date of adoption of this subsection  
494 for existing towers, the owners shall furnish proof of liability insurance which protects against  
495 losses due to personal injury or property damage resulting from the construction, operation or  
496 collapse of the tower, antennas or accessory building in a form satisfactory to the Village Attorney.

497 **(h)**

498 This subsection applies to both towers existing at the time of adoption of this subsection and those  
499 constructed thereafter.

500 **(6)**

501 Conditions. Conditional use approvals shall contain conditions addressing issues such as  
502 maintenance, including allocation of responsibilities and costs for maintenance in co-location  
503 situations, mandatory removal of towers upon termination of their use, security features and  
504 provisions allowing municipal access for inspection purposes, and related issues

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