

A Local Ordinance Regulating the Siting of Wireless Telecommunications Facilities

Section 1. Purpose and Legislative Intent

The Telecommunications Act of 1996 affirmed the Town of _____'s authority concerning the placement, construction, and modification of wireless telecommunications facilities. The Town of _____ finds that wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, and character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless telecommunications technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to ensure that the placement, construction, or modification of wireless telecommunications facilities is consistent with the Town's land use policies, the Adirondack Park Agency Act and Regulations, and the Federal Telecommunications Act, the Town is adopting a single, comprehensive wireless telecommunications facilities application and permit process. The intent of this Local Ordinance is to minimize the negative impacts of Wireless Telecommunication Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety, and welfare of the residents of the Town of _____.

Section 2. Title

This ordinance shall be known and cited as the Wireless telecommunications facilities Siting Ordinance for the Town of _____.

Section 3. Severability

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any Special Use Permit issued under this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town.

Section 4. Definitions

For the purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number, and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. **“Accessory Facility or Structure”** means an accessory facility or structure serving or being used in conjunction with the wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **“Applicant”** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities, including municipal providers.
3. **“Application”** means all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities.
4. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, Personal Telecommunications Services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town’s siting, building, and permitting authority.
5. **“Antenna Array”** means one or more antennas used to provide wireless service.
6. **“Board”** means the Town Board of the Town of _____, New York.
7. **“Collocation”** means the use of a Tower or other structure to support antennas for the provision of the wireless services without increasing the height of the tower or other structure. For the purposes of clarification, any application proposing to increase the height of the structure to be attached to shall be deemed a new tower and not a collocated facility.
8. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or terms of an agreement “commercially impracticable”.
9. **“Complete Application”** means an application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application as determined solely by the Planning Board.

10. **“FAA”** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
11. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
12. **“Height”** means, when referring to a tower or other structure, the distance measured from the pre-existing grade level to the highest point on the tower or structure, even if said highest point is an antenna, lightning protection device or any other apparatus attached to the tower or other structure.
13. **“Modification” or “Modify”** means, the addition, removal, or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or and upgrade or replacement of the equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A change in the effective radiated power (ERP) or a change in the radio frequency (RF) emissions from the facility is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing, or changing anything.
14. **“NIER”** means Non-Ionizing Electromagnetic Radiation
15. **“Person”** means any individual, corporation, eState, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.
16. **“Personal Wireless Facility”** See definition for Wireless Telecommunications Facilities.
17. **“Personal Wireless Services (PWS)” or “Personal Telecommunications Service (PCS)”** shall have the same meaning as defined and used in the 1996 Telecommunications Act, including but not limited to commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access service.
18. **“Planning Board”** means the Planning Board of the Town of _____.
19. **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
20. **“Special Use Permit”** means the official document or permit by which an applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.
21. **“Service Provider”** means any provider of Personal Wireless Services, Personal Telecommunications Services or Personal Communication Service.

22. **“Stealth”** or **“Stealth Technology”** means minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. This technology does not include the use of artificial tree towers, rocks, or other natural features used as camouflage, which shall not be utilized for a project permitted under this ordinance.
23. **“State”** means the State of New York
24. **“Steep Slopes”** means any slope of 15% grade or steeper.
25. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
26. **“Telecommunications Structure”** means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.
27. **“Temporary”** means, in relation to all aspects and components of this ordinance, something intended to, or that does, exist for fewer than ninety (90) days.
28. **“Town”** means the Town of _____, New York.
29. **“Wireless Service Provider”** means the same as Service Provider (see preceding definition).
30. **“Wireless”** means the use of radio frequencies (RF) over the air or any other functional equivalent means of providing service over the air that does not primarily rely upon wires or cable for the provision of service.
31. **“Wireless Telecommunications Facilities”** means and includes a **“Telecommunications Tower”** and **“Tower”** and **“Telecommunications Site”** and **“Personal Wireless Facility”** means a structure, facility, or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes without limit, towers of all types and kinds and structures that employ stealth technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structure but not artificial trees or rocks, that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, guy wires, and associated anchors, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, Personal Telecommunications Services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Town’s siting, building, and permitting authority.

Section 5. Overall Policy and Desired Goals for Special Use Permits for Wireless Telecommunications Facilities

In order to ensure that the placement, construction, modification, and maintenance of wireless telecommunications facilities protects the Town's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this ordinance, the Town hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. Implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
2. Establishing a policy for examining an Application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent;
3. Requiring, where not technologically or commercially impracticable, the sharing and/or collocation of wireless telecommunications facilities among service providers;
4. Requiring the placement, height, and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth technology so as to minimize the adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

Section 6. Authorization to Grant Special Use Permits

The Planning Board is hereby authorized to approve, approve with modifications, or disapprove Special Use Permits as provided herein and, when not reasonable, to waive any requirements for the approval, approval with modifications or disapproval of Special Use Permits submitted for approval, subject to the conditions set forth herein, in the event any such requirements are found not to be requisite in the interest of the public health, safety, or general welfare or inappropriate to a particular special use permit.

Section 7. Property Type Classifications

For the purposes of this ordinance, real property within the Town shall be classified in the same categories assigned by the Town Assessor for the purposes of property tax assessments. These categories include Industrial, Commercial, Agricultural, and Residential. If the Assessor assigns a property type classification other than these four to a parcel, such property shall be deemed to be Residential for purposes of this ordinance.

Section 8. Special Use Permit Application and Other Requirements

- A) Prior to the submission of an application there shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit, but such may be waived if there has been a prior site visit for the requested site and there has been no modification to the site since the site visit. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- B) All applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this section. The Town Planning Board is the officially designated agency or body of the Town to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities. The Town Planning Board may at its discretion designate other official agencies of the Town or engage consultants to review, analyze, evaluate, and make recommendations to the Town Planning Board with respect to the granting or not granting, recertifying or not recertifying, or revoking special use permits for wireless telecommunications facilities.
- C) An application for a Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the applicant by an authorized representative of the applicant and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Board, any false or misleading Statement made in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- D) Applications not meeting the requirements Stated herein or which are otherwise incomplete, may be rejected by the Town Planning Board.
- E) The applicant shall include a Statement in writing:
 - 1. That the applicant's proposed wireless telecommunications facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Town Planning Board in writing, as well as all applicable and permissible local codes, ordinances, and regulations including any and all applicable Town, State, and Federal laws, rules and regulations;
 - 2. That the construction of the Wireless Telecommunication Facilities is legally permissible, including, but not limited to the fact that they applicant is authorized to

do business in the State, proof of authorization to operate in the State shall be provided.

- F) No wireless telecommunications facilities shall be installed or constructed until the application is reviewed and approved by the Town Planning Board and the Special Use Permit and a building permit have been issued.
- G) All applications for the construction or installation of new wireless telecommunications facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized representative on behalf of the applicant. Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of New York. The application shall include the following information:
1. Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Town. Such documentation shall include, but may not be limited to propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites as requested by the Planning Board or its designee and shall allow the service area and signal strength relationship between the proposed site and adjoining planned, proposed, in-service or existing sites;
 2. The name, address, and phone number of the person preparing the report;
 3. The name, address, and phone number of the property owner, operator, and applicant, and to include the legal form of the applicant;
 4. The postal address and tax map parcel number of the property;
 5. The land use designation in which the property is situated;
 6. Size of the property Stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines. A survey is required by a licensed New York State land surveyor.
 7. The location of the nearest residential structure and the distance from the proposed site;
 8. The location, size, and height of all structures on the property which is the subject of the application;
 9. The location, size, and height of all proposed and existing antennas and all appurtenant structures;
 10. The type, location, and dimensions of all proposed and existing landscaping, vegetation, and fencing;
 11. The number, type, and design of the tower and antenna(s) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
 12. The make, model, and manufacturer of the tower and antenna(s);
 13. A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances, and apparatus, including the height above pre-existing grade, materials, color, and lighting;
 14. The frequency, modulation, and class of service of radio or other transmitting equipment;

15. The actual intended transmission and the maximum effective radiated power of the antenna(s);
16. Direction of maximum lobes and associated radiation of the antenna(s);
17. Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC and the provision of the calculations used to determine the cumulative NIER levels;
18. Certification that the proposed antenna(s) will not cause interference with other telecommunication devices;
19. A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
20. Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the subsurface and substrata and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities as designed, on the proposed site;
21. A list of pending permits or copies of all permits issued from all other local, State, or Federal agencies with jurisdiction over said project, other than the Town Planning Board, including but not limited to the Adirondack Park Agency and the Department of Environmental Conservation.

- H) In the case of a proposed new tower, the applicant shall be required to submit a detailed written report, identifying each alternative to a new tower that was investigated, and demonstrating its meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within a radius of four miles of the proposed site. Copies of written requests and responses for shared use shall be provided to the Planning Board in the application, along with any letters of rejection stating the reason for rejection.
- I) All new towers will be stealth structures, unless the applicant is able to prove the technological impracticability of such. Towers shall not be disguised as trees. Stealth technology that may be employed includes mounting transmission equipment on existing structures including multi-story buildings, church steeples, silos, water towers, signs or other structures. If equipment can not be mounted on existing structures, new stand-alone towers must be camouflaged so their color allows them to blend with their surroundings.
- J) The applicant shall certify that the telecommunications facility, foundation, and attachments are designed and will be constructed to meet all local, Town, State, and Federal structural requirements for loads, including wind and ice loads.
- K) The applicant shall certify that wireless telecommunications facilities will be effectively grounded and bonded so as to protect persons and property and that appropriate surge protectors will be installed.
- L) An applicant may be required to submit an Environmental Assessment Form and a Visual Addendum. Based on the results of the Assessment, including the Visual Addendum, the Planning Board may require submission of a more detailed visual analysis. The scope of

the required environmental and visual assessment will be reviewed at the pre-application meeting.

- M) With respect to the application process, the Planning Board will normally seek to have lead agency status pursuant to the State Environmental Quality Review Act (SEQRA). The Planning Board shall conduct an environmental review of the proposed project pursuant to SEQRA in combination with its review of the application.
- N) The applicant shall furnish a Visual Impact Assessment, which shall include:
1. A “Zone of Visibility Map” which shall be provided in order to determine locations from which the tower may be seen.
 2. Pictorial representations of “before and after” views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to State highways and other major roads, State and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key sites at a pre-application meeting.
 3. An assessment of the visual impact of the tower, the tower base, guy wires, and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- O) The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed wireless telecommunications facilities.
1. Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding 4 inches in diameter measured at a height of 4 feet above the ground shall take place without the approval of the Town Planning Board. Clear-cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
 2. The landscape plan shall include native evergreen tree plantings to screen the wireless facility from view. Unless otherwise permitted, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within 2 years of planting shall be provided and shall be diligently maintained to protect their vitality.
 3. If the visual impact analysis reveals that there is vegetation on or adjacent to the project site that must be retained for screening of the proposed tower or facility, the applicant shall document how such vegetation will be protected throughout the operational life of the facility.

4. Site work, with the exception of soil testing, surveying, and other necessary site location testing, is prohibited from being performed prior to the application approval and issuance of the Special Use Permit. Any violation of this section will, at the discretion of the Town Planning Board, subject the applicant to denial of the application without further consideration.
- P) Any and all representations made by the applicant to the Town on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Town.
- Q) All utilities at a wireless telecommunications facilities site shall be installed underground and in compliance with all local, State, and Federal laws, ordinances, rules, and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- R) All wireless telecommunications facilities shall contain a demonstration that the facility will be sited so as to be the least visually intrusive reasonably possible and thereby have a minimal adverse visual effect on the environment and the nature and character of the community, existing vegetation, and on the residences in the area of the wireless telecommunications facility.
- S) Both the wireless telecommunications facility and any and all necessary or associated facilities shall maximize the use of building materials, colors, and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, which shall include the utilization of stealth or concealment technology, not including fabricated trees, as may be required by the Town Board.
- T) At a telecommunications site, an access road, turn around space, and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours of the land and be constructed or improved at the edge of fields and/or forests. Road/driveway grades shall closely follow natural contours to also assure minimal visual disturbance and reduce soil erosion. Equipment or vehicles may not be stored at the facility site. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines, and if in an area with local stormwater regulations, comply with those local regulations as well.
- U) If the Adirondack Park Agency, Department of Environmental Conservation, Lake George Park Commission, or other regulatory agency has jurisdiction over a proposed project, the Planning Board shall wait until that agency issues a permit before making any decision on the project.
- V) Regardless of location, any road or access used to the site is required to be assessed for stormwater and erosion problems by a licensed professional engineer. Once the Planning Board and/or Town engineer has the opportunity to review the assessment, if they believe

erosion and/or stormwater problems exist, the Planning Board has the authority to request a plan to mitigate the impacts.

- W) A person who holds a Special Use Permit for Wireless Telecommunications Facilities shall construct, operate, maintain, repair, provide for removal of, modify, or restore the permitted wireless telecommunications facilities in strict compliance with all current applicable technical, safety, and safety-related codes adopted by the Town, State or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erector. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- X) A holder of a Special Use Permit granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation, or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- Y) An applicant shall submit to the Town Planning Board the number of completed applications determined to be needed at the pre-application meeting. Written notification of the application shall be provided to the legislative body of all adjacent municipalities and to the Town Planning Board.
- Z) An applicant for a new tower shall design the tower structurally to accommodate future demand for at least one additional commercial application, including future collocations. The tower shall be structurally designed to accommodate at least one additional antenna array equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived, provided the applicant, in writing, demonstrates that the provisions of future shared usage of the tower is not technologically feasible, is commercially impracticable, or creates an unnecessary and unreasonable burden based upon:
 - 1. The foreseeable number of FCC licenses available for the area;
 - 2. The kind of wireless telecommunications facilities site and structure proposed;
 - 3. The number of existing and potential licenses without wireless telecommunications facilities spaces/sites;
 - 4. Available space on existing and approved towers.
- AA) The owner of the proposed new tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
 - 1. Respond within 60 days to a request for the information from a potential shared-use applicant;

2. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
3. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower to equipment to accommodate a shared user without causing electromagnetic interference.

Failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit for the tower.

BB) In order to better inform the public, in the case of a new telecommunications tower, the applicant shall, prior to the public hearing on the application, hold a “balloon test”. The applicant shall arrange to fly, or raise upon a temporary mast of a brightly colored balloon at a minimum three feet in diameter at the minimum height of the proposed new tower. The dates, times, and location of this balloon test (including a second date in case of poor visibility on the initial date) shall be advertised by the applicant seven and fourteen days in advance of the first test date in a newspaper with a general circulation in the Town. The applicant shall inform the Planning Board, in writing, of the dates and times of the test, at least fourteen days in advance. The balloon shall be flown for a least four consecutive hours sometime between 7:00 AM and 4:00 PM on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday.

CC) The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new tower or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines, that the FAA must be contacted, then all filings with the FAA, all responses from the FAA, and any related correspondence shall be provided in a timely manner.

DD) The holder of a Special Use Permit shall notify the Planning Board of any intended modification of a wireless telecommunications facility and shall apply to the Planning Board to modify, add to, or relocate equipment or facilities to rebuild a wireless telecommunications facility. This includes a change in the effective radiated power (ERP) from the facility, or a change in the Radio Frequency (RF) emissions from the facility, or anything that could reasonably affect the health or safety of individuals.

Section 9. Location of Wireless Telecommunications Facilities

- A) Applicants for wireless telecommunications facilities shall locate, site, and erect said facilities in accordance with the following priorities, one (1) being the highest priority and four (4) being the lowest priority.
1. On existing Town-owned structures or facilities without increasing the height of the structure being attached to;
 2. On other existing towers or other structures without increasing the height of the tower or structure being attached to in areas designated as industrial or commercial;
 3. On or adjacent to electric power line transmission towers;
 4. On other property in the Town in the following order of priority:
 - (a) On properties in areas designated as industrial;
 - (b) On properties in areas designated as commercial;
 - (c) On properties in areas designated as agricultural.
- B) Telecommunications towers shall be excluded from all residential land use areas. The land use is determined by the current assigned land use classification for the subject parcel at the time the application is submitted to the Planning Board. In addition to Town land use classifications, whenever practicable towers should not be sited on land classified as Resource Management by the Adirondack Park Agency.
- C) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
- D) An applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address collocation as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Town Planning Board why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of commercial impracticability or hardship.
- E) Notwithstanding the above, the Town Planning Board may approve any site located within an area in the above list of priorities, provided that the Town Planning Board finds that the proposed site is in the best interest of the health, safety, and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- F) The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

G) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town Planning Board may disapprove an application for any of the following reasons.

1. Conflict with safety and safety-related codes and requirements;
2. Conflict with the historic nature or character of a neighborhood or historical district;
3. The placement and location of the wireless telecommunications facility would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees, and agents of the Town, or employees of the service provider or other service providers;
4. Conflicts with the provisions of this ordinance;
5. Conflict with the nature and character of the neighborhood;
6. There shall be no development or disturbance of land on or within 50 feet of a steep slope. The leased area or developed area shall be a minimum of 50 feet from any steep slope. The measurement of the slope shall be no more than a change of 3 feet in elevation in any 20 foot horizontal distance or no more than a change of 50 feet in elevation in any 100 foot horizontal distance.
7. There will be no development on mountaintops or ridgelines.
8. There will be no development within 200 feet of wetlands or where stormwater produced from the site or site development will cause undue impacts on a wetland.

Section 10. Shared Use of Wireless Telecommunications Facilities and Other Structures

- A) Locating on existing towers or other structures without increasing the height, shall be preferred by the Town, as opposed to construction of a new tower.
- B) The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within four miles of the location of any proposed new tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure can not be used.
- C) An applicant intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the applicant.
- D) Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

Section 11. Height of Telecommunications Tower(s)

- A) The applicant shall submit documentation justifying the total height of any requested tower, facility, and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service

primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

- B) The maximum permitted height of a new tower shall be one hundred feet tall, based on accommodating two collocated antenna arrays that can not be located at the same level.
- C) No tower constructed after the effective date of this ordinance, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with Town, municipal, State, and/or any Federal statute, law, local law, Town ordinance, code rule, or regulation.

Section 12. Appearance and Visibility of Wireless Telecommunications Facilities

- A) Wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- B) Towers shall be galvanized and painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this ordinance.
- C) All new towers will be stealth structures, unless the applicant is able to prove the technological impracticability of such. Towers may not be disguised as trees, but may be disguised as steeples, chimneys, or other structures when added to existing buildings. All accessory structures will be designed appropriately for the surrounding area.
- D) If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.
- E) Unless otherwise prohibited by applicable FAA regulations, if lighting is required the lighting shall be shielded from ground scatter effects, such as by using directional lenses focusing the light vertically or by physical shielding.

Section 13. Security of Wireless Telecommunications Facilities

All wireless telecommunications facilities and antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access, specifically:

1. All antennas, towers, and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
2. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

Section 14. Signage

Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has radio frequency or microwave transmission capabilities and shall contain the name(s) of the owners(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

Section 15. Lot Size and Setbacks

- A) Any proposed tower and/or other proposed wireless telecommunications facility structure shall be located on a single parcel of land and shall be set back from abutting parcels, recorded rights-of-way, and road and street lines by the greater of the following distances; For non-residential areas, a distance equal to one and a half (1½) times the height of the proposed tower or wireless telecommunications facility structure, or existing setback requirement for the applicable land use designation, whichever is greater. Setbacks shall apply to all components of the facility, including accessory facilities. For all areas the minimum setback shall be five hundred (500) feet from designated residential areas and/or property lines or non-compatible use easements or structures unrelated to the wireless facility.
- B) There will be no development or disturbances of land on or within 50 feet of a steep slope. The leased area or developed area shall be a minimum of 50 feet from any steep slope. The measurement of the slope shall be no more than a change of 3 feet in elevation in any 20 foot horizontal distance or no more than a change of 50 feet in any 100 foot horizontal distance.
- C) There will be no towers, nor shall there be any development of wireless facilities on mountaintops or ridgelines.
- D) When feasible, no new towers shall be placed on land designated Resource Management by the Adirondack Park Agency. Priority areas for placement of new towers or wireless facilities include hamlet areas and along existing roadways.
- E) New towers or wireless facilities should be constructed within 200 feet of a waterway or wetland or critical environmental area.

Section 16. Retention of Expert Assistance and Reimbursement by Applicant

- A) The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluation the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B) An applicant shall deposit with the Planning Board funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500.00, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.
- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any constriction or modification.

Section 17. Special Use Permit Required; Exceptions

- A) No person shall be permitted to site, place, build, contract, modify or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this ordinance without having first obtained a Special Use Permit for Wireless Telecommunications Facilities.
- B) All wireless telecommunication facilities existing on or before the effective date of this ordinance shall be allowed to continue as they presently exist, provided however, that an existing wireless telecommunications facility must comply with this ordinance in the event of any planned visible modification, or any modification that will result in a change in the effective radiated power from the facility, or a change in the radio frequency emissions from the facility or anything that could reasonably affect the health or safety of individuals.

Section 18. Public Hearing and Notification Requirements

- A) Prior to the approval of any application for a Special Use Permit for Wireless Telecommunications Facilities, a public hearing shall be held by the Planning Board,

notice of which shall be published in the official newspaper of the Town no less than ten calendar days prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the applicant, the application shall contain the names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located.

- B) The Planning Board shall schedule the public hearing referred to in Subsection (A) of this section once it finds the application is complete, the Planning Board, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

Section 19. Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities

- A) The Planning Board will undertake a review of an application pursuant to this ordinance in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstance, with due regard for the public's interest and need to be involved, and the applicant's desire for a timely resolution. The Planning Board shall decide upon the application within sixty-two (62) days after the public hearing. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board. The decision of the Planning Board shall be filed in the office of the Town Clerk within five (5) business days after such decision is rendered, and a copy thereof mailed to the applicant.
- B) The Planning Board may refer any application or part thereof to any advisory or other committee or Board for a non-binding recommendation.
- C) After the public hearing and after formally considering the application, the Planning Board may approve, approve with conditions, or deny a Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.
- D) If the Planning Board approves the Special Use Permit for Wireless Telecommunications Facilities, then the applicant shall be notified of such approval in writing within five (5) business days of the Planning Board's action, and the Special Use Permit shall be issued within thirty (30) days after such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Special Use Permit has been granted hereunder, no additional permits or approvals from the Planning Board, such as site plan approvals, shall be required by the Planning Board for the wireless telecommunications facilities covered by the Special Use Permit.

- E) If the Planning Board denies the Special Use Permit for Wireless Telecommunications Facilities, then the applicant shall be notified of such denial in writing within five (5) business days of the Planning Board's action.

Section 20. Maintenance

- A) All facilities shall be maintained to acceptable industry standards. All permitted facilities shall be inspected at least every second year for structural integrity, including but not limited to the effects of corrosion, by a New York State licensed engineer.
- B) All facilities shall be maintained to ensure paint and other coating is not deteriorated and continues to be consistent with the immediate surroundings of the tower. Furthermore, on site vegetation shall be maintained to ensure the desired screening effect is achieved.
- C) The Service Provider or owner of a tower, as appropriate, shall annually file with the Town Planning Board a written report showing the cumulative effect of the NIER radio frequency levels at the site, as obtained from field measurements. Reports may be subject to verification by an independent testing company. The decision for verification shall rest with the Planning Board and the costs borne by the applicant.
- D) The holder of a Special Use Permit granted under this ordinance shall provide to the Town Clerk, and _____ County Emergency Services the name and emergency contact information of the entity that performs maintenance activities for the facility.

Section 21. Recertification of a Special Use Permit for Wireless Telecommunications Facilities

- A) Between 12 months and 6 months prior to the five year anniversary date after the effective date of the Special Use Permit and all subsequent five year anniversaries of the effective date of the original Special Use Permit for Wireless Telecommunications Facilities, the holder of the Special Use Permit for such wireless telecommunications facilities shall submit a signed written request to the Town Planning Board for recertification. In the written request for recertification, the holder of such Special Use Permit shall note the following:
 - 1. The name of the holder of the Special Use Permit for Wireless Telecommunications Facilities;
 - 2. If applicable, the number or title of the Special Use Permit;
 - 3. The date of the original granting of the Special Use Permit;
 - 4. Whether the wireless telecommunications facilities have been moved, relocated, rebuilt, or otherwise visibly modified, then whether the Town Planning Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;

5. That the wireless telecommunications facilities are in compliance with the Special Use Permit and compliance with all applicable codes, laws, rules, and regulations;
 6. Recertification that the tower and attachments both are designated and constructed and continue to meet all local, Town, State, and Federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the State of New York, the cost of which shall be borne by the applicant.
- B) If, after such review, the Town Planning Board determines that the permitted wireless telecommunications facilities are in compliance with the Special Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations then the Town Planning Board will issue a recertification of the Special Use Permit for Wireless Telecommunications Facilities, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules, or regulations. If, after such review it is determined that the permitted wireless telecommunications facilities are not in compliance with the Special Use Permit and all statutes, laws, ordinances, codes, rules, or regulations, then the Town Planning Board may refuse to issue a recertification Special Use Permit for the wireless telecommunications facilities, and in such event such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of the decision by the Town Planning Board until such time as the facility is brought into compliance. Any decision requiring the cessation of the use of the facility or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the facility.
- C) If the applicant has submitted all of the information requested and required by this ordinance, and if the review is not completed, as noted in Subsection (B) of this section, prior to the five year anniversary date of the Special Use Permit, or subsequent five year anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the Special Use Permit for up to six months, in order for the completion of the review.
- D) If the holder of a Special Use Permit for Wireless Telecommunications Facilities does not submit a request for a recertification of such Special Use Permit within the timeframe noted in subsection (A) of this section, then such Special Use Permit and any authorizations granted there under shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or the subsequent five year anniversaries, unless the holder of the Special Use Permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the Town Planning Board agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit may submit a late recertification request of application for a new Special Use Permit.

Section 22. Extent and Parameter of Special Use Permit for Wireless Telecommunications Facilities

The extent and parameters of a Special Use Permit for Wireless Telecommunications Facilities shall be as follows:

1. Such Special Use Permit shall be non-exclusive;
2. Such Special Use Permit shall not be assigned, transferred, or conveyed without the express prior written notification to the Town;
3. Such Special Use Permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this ordinance after prior written notice to the holder of the Special Use Permit.

Section 23. Application Fee

- A) At the time that a person submits an application for a Special Use Permit for a new tower, such person shall pay a non-refundable application fee of \$5,000.00 to the Town. If the application is for a Special Use Permit for collocating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, the non-refundable fee shall be \$2,500.00.
- B) No application fee is required in order to recertify a Special Use Permit for Wireless Telecommunications Facilities, unless there has been a modification of the Wireless Telecommunications Facility since the date of the issuance of the existing Special Use Permit for which the conditions of the Special Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection (A) shall apply, in addition to any fines that may apply.

Section 24. Performance Security

Prior to issuance of a Building Permit for wireless telecommunications facilities, the applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Planning Board a bond, or other form of security acceptable to the Planning Board as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such securities are deemed sufficient by the Planning Board to assure the faithful performance of the terms and conditions of this ordinance and conditions of any Special Use Permit issued pursuant to this ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original Special Use Permit.

Section 25. Reservation of Authority to Inspect Wireless Telecommunications Facilities

In order to verify that the holder of a Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construction such facilities, including towers and antennas, in accordance with an applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations, and other applicable requirements, the Town Planning Board may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, and maintenance of such facilities, including, but not limited to, towers, antennas, and buildings or other structures constructed or located on the permitted site.

Section 25. Annual NIER Certification

The holder of the Special Use Permit shall, annually, certify to the Town Planning Board that NIER levels at the site are within the threshold levels adopted by FCC.

Section 26. Liability Insurance

- A) A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below.
 - 1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000.00 per occurrence / \$2,000,000.00 per aggregate;
 - 2. Automobile Coverage: \$1,000,000.00 per occurrence / \$2,000,000.00 per aggregate;
 - 3. Workers Compensation and Disability: Statutory amounts.
- B) The Commercial General liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State of New York and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town Planning Board with at least thirty days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Town Planning Board at least fifteen days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than fifteen days after the grant of a Special Use Permit, the holder of the

Special Use Permit shall deliver to the Town a copy of the policies or certificates representing the issuance in the required amounts.

Section 28. Indemnification

- A) Any application for wireless telecommunications facilities that is proposed for Town property, pursuant to this ordinance, shall contain a provision with respect to indemnification. Such provision shall require the applicant to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages, or charges referenced herein, reasonable attorney's fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Special Use Permit for Wireless Telecommunications Facilities.

Section 29. Fines

- A) In the event of a violation of this ordinance or any Special Use Permit issued pursuant to this ordinance, the Town Planning Board may impose and collect, and the holder of the Special Use Permit for Wireless Telecommunications Facilities shall pay to the Town, fines or penalties as set forth below.

- B) A violation of this ordinance is hereby declared to be an offense, punishable by a fine not exceeding three hundred and fifty dollars per day per occurrence or imprisonment for a period not to exceed six months, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred and fifty dollars per day nor more than seven hundred dollars per day or imprisonment for a period not to exceed six months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars per day nor more than one thousand dollars per day or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of such ordinance of law

relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

- C) Notwithstanding anything in this ordinance, the holder of the Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages, or other penalties, to evade or avoid compliance with this ordinance or any section of this ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the permit. The Town may also seek injunctive relief to prevent the continued violation of this ordinance, without limiting other remedies available to the Town.

Section 30. Default and/or Revocation

- A) If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified, or maintained in a way that is inconsistent or not in compliance with the provisions of this ordinance or of the Special Use Permit, then the Town Planning Board shall notify the holder of the Special Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this ordinance, if the violation causes, creates, or presents an imminent danger or threat to the health or safety of lives or property, the Town Planning Board may, at its sole discretion, order the violation remedied within twenty-four (24) hours.
- B) If within the period set forth in subsection (A) above the wireless telecommunications facilities are not brought into compliance with the provisions of this ordinance, or of the Special Use Permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the Town Planning Board may revoke such Special Use Permit for Wireless Telecommunications Facilities, and shall notify the holder of the Special Use Permit within forty-eight (48) hours of such action.

Section 31. Removal of Wireless Telecommunications Facilities

- A) Under the following circumstances, the Town Planning Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of wireless telecommunications facilities.
 - 1. Wireless telecommunication facilities with a permit have been abandoned (i.e. not used as wireless telecommunications facilities) for a period exceeding ninety (90) consecutive days or a total of one hundred and eighty (180) days in any three hundred and sixty-five (365) day period, except for periods caused by force majeure or acts of

God, in which case, repair or removal shall commence within 90 days of notification by the Town Planning Board;

2. Permitted wireless telecommunications facilities fall into such a State of disrepair that it creates a health or safety hazard;
 3. Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or any other necessary authorization.
- B) If the Town Planning Board makes a determination as noted in subsection (A) of this section, then the Town Planning Board shall notify the holder of the Special Use Permit for the wireless telecommunication facilities within forty-eight (48) hours that said such facilities are to be removed. The Town Planning Board may approve an interim temporary use agreement/permit, such as, for example, to enable the sale of the wireless telecommunications facilities.
- C) The holder of the Special Use Permit, or its successors or assigns, shall dismantle and removes such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, with ninety (90) days of receipt of written notice from the Town Planning Board. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Town Planning Board.
- D) If wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within 90 days after the permit holder has received notice, then the Town Planning Board may order officials or representatives of the Town to remove the wireless telecommunications facilities at the sole expense of the owner or Special Use Permit holder.
- E) If, pursuant to this section, the Town removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove it from the site to a lawful location within ten days, then the Town Planning Board may take steps to declare the wireless telecommunications facilities abandoned, and sell them, and their components and keep the proceeds from such facilities sale.
- F) Notwithstanding anything in this section to the contrary, the Town Planning Board may approve a temporary use permit/agreement for the wireless telecommunications facilities, for not more than 90 days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the Special Use Permit, subject to the approval of the Planning Board, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the

Planning Board. If such a plan is not developed, approved, and executed with the 90 day time period, then the Town may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in this section.

Section 32. Relief

Any applicant desiring relief, waiver, or exemption from any aspect or requirement of this ordinance may request such at the pre-application meeting, provided that the relief or exemption is contained in the original application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit, a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However the burden of proving the need for the requested relief, waiver, or exemption is solely on the applicant to prove. The applicant shall bear all costs of the Town in considering the request and the relief waiver or exemption. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted the relief, the requested waiver or exemption will have no significant affect on the health, safety including but not limited to the nature and character of the community, and welfare of the Town, its residents, and other service providers.

Section 33. Periodic Regulatory Review

- A) The Town may at any time conduct a review and examination of this entire ordinance.
- B) If after such a periodic review and examination of this ordinance, the Town determines that one or more provisions of this ordinance should be amended, repealed, revised, clarified, or deleted then the Town may take whatever measures are necessary to in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town may repeal this entire ordinance at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this section, the Town may at any time, and in any matter (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this ordinance.

Section 34. Adherence to State and/or Federal Rules and Regulations

- A) To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and radio frequency emissions standards.

- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA, and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

Section 35. Conflict with Other Laws

Where this ordinance differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or Federal government, this ordinance shall apply.

Section 36. Effective Date

This ordinance shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

This local ordinance is enacted pursuant to applicable authority granted by the State and Federal government, including New York State Town Law, Section 274-b.