

LOCAL LAW NO. ____ OF 2019

VILLAGE BOARD OF TRUSTEES
OF THE VILLAGE OF WILLIAMSVILLE

A LOCAL LAW TO AMEND
CHAPTERS 100 AND 112 OF THE
CODE OF THE VILLAGE OF WILLIAMSVILLE

A LOCAL LAW to amend
Chapters 100 and 112 of the
Code of the Village of
Williamsville concerning
Wireless Telecommunication
Facilities.

BE IT ENACTED by the Village Board of Trustees of the Village of Williamsville as follows:

Section 1. Chapter 100, entitled “Telecommunications Franchising and Licensing” is hereby deleted in its entirety and a new Chapter 100, entitled “Wireless Telecommunication Facilities,” is hereby created as follows:

§ 100-1. Purpose and legislative intent.

- A. The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless telecommunication facilities in the Village of Williamsville consistent with Federal, State and local law.
- B. By enacting this chapter, the Village intends to:
 - (1) Provide for the managed development of wireless telecommunication facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of Village residents, businesses and wireless carriers in accordance with federal, state and local laws and regulations;
 - (2) Establish fair, non-discriminatory and efficient processes for review and approval of applications to deploy telecommunications facilities on private and public property that address the appropriate design, siting, construction, installation, maintenance and removal of such facilities in the Village;
 - (3) Address and provide for new wireless technologies, including but not limited to small wireless facilities, micro cell and distributed antenna systems (“DAS”) technologies;

- (4) Encourage, to the maximum extent practicable, the collocation of telecommunication facilities on existing structures, rather than the construction of a new support structures; and
- (5) Protect Village residents and businesses from potential adverse impacts of wireless communication facilities, to the extent permitted under law, by providing safeguards to:
 - (i) Protect the public health, safety and welfare of the community by ensuring that such facilities do not present a physical danger to persons or property by ensuring proper locational, engineering and operational requirements;
 - (ii) Minimize adverse visual and aesthetic impacts of such facilities to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;
 - (iii) Protect against excessive interference with the use of public rights of way;
 - (iv) Protect property values of the community;
 - (v) Minimize the impact of such facilities on historic resources and residential properties and neighborhoods.
 - (vi) Protect residents' ability to receive high-quality communication signals without interference from other communication providers, while not unreasonably limiting competition among communication providers.

§ 100-2. Definitions.

As used in this Chapter, the following terms shall have the meanings indicated. Terms not specifically defined herein shall, to the extent applicable, have the meanings defined in the Communications Act of 1934, 47 U.S.C. § 151 et seq., Title 47 of the Code of Federal Regulations, or other applicable Federal, State or local laws or regulations, as such laws and regulations may be amended from time to time.

ACCESSORY OR ANTENNA EQUIPMENT

Any equipment serving or being used in conjunction with 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, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, buildings and similar structures and, when collocated on a structure, is mounted or installed at the same time as an antenna.

ANTENNA

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to authorization from the FCC, for the provision of personal wireless service and any commingled information services. For purposes of this definition, the term antenna does not include an unintentional radiator,

mobile station, or device authorized under part 15 of Title 47 of the Code of Federal Regulations.

ANTENNA FACILITY

An antenna and associated antenna equipment.

APPLICATION or SITING APPLICATION

A written submission requesting authorization for the deployment of a wireless telecommunication facility at a specific location.

BASE STATION

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network.

- (1) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including small wireless telecommunication facilities, distributed antenna Systems and micro-cell networks).
- (3) The term includes any structure that supports or houses equipment described in paragraphs (1) through (2) above that has been reviewed and approved under the applicable zoning or siting process, even if the structure was not built for the sole or primary purpose of providing such support, but does not include any structure that, at the time the relevant application is filed with the Village under this section, does not support or house equipment described in paragraphs (1)-(2) of this section.

COLLOCATION

Consistent with the Nationwide Programmatic Agreement (NPA) for the Collocation of Wireless Antennas, means:

- (1) Mounting or installing an antenna facility on a pre-existing structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.
- (3) With respect to wireless facility modifications, collocation means the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

DEPLOY or DEPLOYMENT

The placement, construction, or modification of a wireless telecommunication facility on any property or structure within the Village.

DISTRIBUTED ANTENNA SYSTEM (DAS)

Network of spatially separated antenna sites connected to a common source that provides wireless communication service within a geographic area or structure.

EAF

The Environmental Assessment Form approved by the New York State Department of Environmental Conservation and set forth in N.Y.C.R.R. § 617.20.

FAA

The Federal Aviation Administration or its duly designated and authorized successor agency.

FACILITY or PERSONAL WIRELESS SERVICE FACILITY

An antenna facility or a structure that is used for the provision of personal wireless service (as defined in 47 U.S.C. § 332(7)(C)(i)), whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

FCC or COMMISSION

The Federal Communications Commission, or its duly designated and authorized successor agency.

HEIGHT

When referring to a structure, the distance measured from the preexisting grade level to the highest point on the structure, including the antenna and any other appurtenances.

HISTORIC PROPERTY OR RESOURCE

Any property or structure that has been designated a landmark pursuant to Chapter 47 or that is listed, or eligible for listing, on the National or State Register of Historic Places.

LARGE WIRELESS FACILITY

Any wireless telecommunications facility that is not a Small Wireless Facility.

LARGE WIRELESS FACILITY PERMIT or LWFP

A permit to deploy a large wireless facility issued pursuant to this Chapter.

MICRO CELL FACILITY

Low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. A micro cell facility meets both the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna

that has exposed element, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 17 cubic feet in volume.

MODIFICATION

The improvement, upgrade or expansion of existing wireless communication facilities, or the improvement, upgrade or expansion of the wireless communications facilities located within an existing equipment compound if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless communication facilities:

MONOPOLE

A wireless communication support structure which consists of a single pole designed and erected on the ground or on top of a structure, to support wireless communication antenna and accessory equipment.

NIER

Nonionizing electromagnetic radiation.

PERSON

Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

PUBLIC RIGHT OF WAY

Any way over which the public possesses the right to travel, which heretofore has been duly laid out, adopted and established by law, whether publicly owned or not. The term "road" includes state, county and Village highways and roads, streets, squares, places, courts, boulevards, parkways and other ways however designated to which the public has access.

REPLACEMENT

The replacement of existing wireless communication antenna on any existing support structure or on existing accessory equipment for maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight, and height as the existing wireless communication antenna and which does not substantially change the physical dimensions of any existing support structure.

SMALL WIRELESS FACILITY

A wireless telecommunication facility, including but not limited to DAS and micro cells, that meets each of the following conditions:

- (1) The facilities:
 - (i) Are mounted on structures 50 feet or less in height, including their antennas (as defined in 47 C.F.R. §1.1320(d)), or

- (ii) Are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - (iii) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
- (2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
 - (3) All other wireless equipment associated with the facility (excluding antennas and backup power and related back up power equipment) are cumulatively no more than 28 cubic feet in volume; and
 - (4) The facility does not require antenna structure registration under 47 CFR §17.4; and
 - (5) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b) and §1.1310.

SMALL WIRELESS FACILITY PERMIT or SWFP

A permit to deploy a small wireless facility issued pursuant to this Chapter.

STEALTH TECHNOLOGY

Camouflaging methods applied to wireless communication facilities which render them more visually appealing or which serve to blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted facilities, building-mounted antenna painted to match the existing structure, and facilities constructed to resemble trees, shrubs, light poles, and the like.

STRUCTURE

Means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

SUBSTANTIAL CHANGE

A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) The mounting of a proposed antenna on existing towers, that would increase the original height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater.

- (2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter;
- (3) The mounting of the proposed antenna would involve adding an appurtenance to the body of an existing wireless telecommunication support structure that would protrude from the edge of the original support structure more than 20 feet, or more than the original width of the support structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet, except that the mounting of the proposed antenna may exceed the size limits herein if necessary to shelter the antenna from inclement weather or to connect the antenna to the support structure via cable;
- (4) The mounting of the proposed antenna would involve excavation outside the current existing structure site, defined as the current boundaries of the leased or owned property surrounding the existing structure and any access or utility easements currently related to the site;
- (5) The modification defeats concealment and/or stealth elements of the support structure; or
- (6) The modification does not comply with prior conditions of the approval for the existing structure and/or site; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

TRANSMISSION EQUIPMENT

Equipment that facilitates transmission for any Commission-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

UTILITY POLE

A pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including Village-owned poles or poles owned by other utility companies. Any utility pole in excess of 50 feet shall be deemed a tower.

WIRELESS TELECOMMUNICATIONS FACILITY

A structure, facility or location designed or intended to be used as, or used to support, antennas, along with any antennas located on such structure and any accessory equipment. It includes, without limit, freestanding towers, guyed towers, monopoles,

DAS, micro cell or small wireless facilities on utility poles in the public right-of-way or property of the Village or within the Village and similar structures that employ stealth technology, including but not limited to structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It includes any structure, antennas and accessory equipment intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave telecommunications or other wireless or cellular communication technologies, but excluding those used exclusively for the Village's fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

WIRELESS TELECOMMUNICATIONS PROVIDER

A wireless telecommunications infrastructure provider or a wireless telecommunications services provider.

§ 100-3. Permits for wireless telecommunications facility.

- A. Except as otherwise provided by this Chapter, no person shall be permitted to deploy, or prepare any site for the deployment of, a wireless telecommunication facility without having first obtained either a small wireless facility permit (SWFP) for the a small wireless facility or a large wireless facility permit (LWFP) for a large wireless facility, as applicable.
- B. Notwithstanding anything to the contrary in this section, any application for a wireless telecommunication facility that does not substantially change the dimensions of a wireless telecommunication facility shall not require a SWFP or a LWFP, but such modification may require a building permit or other administrative approval from the Village Code Enforcement Officer.
- C. The repair and/or maintenance of an existing wireless telecommunications facility that does not substantially change the dimensions of such facility shall not require a SWFP or a LWFP.
- D. All applications for a SWFP or a LWFP shall comply with all applicable provisions of this Chapter. However, notwithstanding anything to the contrary herein, where appropriate, the Zoning Board of Appeals may waive any requirements set forth in this Chapter relating to an application for, or approval of, a wireless telecommunications facility permit, provided that it would further the purposes of this section.
- E. In addition to the requirements set forth for the issuance of a SWFP or LWFP, any telecommunications provider seeking to deploy a wireless telecommunications facility in the public right of way or on public property shall also obtain a license for such deployment from the Board of Trustees as provided for in § 100-13(A)(1) and § 100-23(A)(1) herein.

- F. In the event any conflict exists between any applicable Federal or State laws or regulations and any provision of this Chapter, the provisions of the most recently adopted applicable Federal or State laws or regulations shall be applied and control.

§ 100-4. Application for small wireless facility permit.

- A. An application for a SWFP shall be in writing and contain all of the information required by this Chapter as well as such other information as reasonably requested by the Code Enforcement Officer and/or the Zoning Board of Appeals.
- B. No application shall be accepted and no SWFP shall be issued for a property where the Code Enforcement Officer has found, or there exists, a violation of the Village Code and where such violation has not been corrected.
- C. An application for a SWFP shall be signed on behalf of the applicant by the person preparing the same 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 Zoning Board of Appeals, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- D. The applicant must provide documentation to verify it has a legal interest in the site, if not within the public right-of-way. Said documentation may be in the form of a deed, contract or sale or lease for the property, depending on whether the applicant is the property owner, contract-vendee or lessee.
- E. The applicant shall include a statement, in writing, that:
 - (1) The applicant's proposed small wireless facility shall be maintained in a safe manner and in compliance with all conditions of the SWFP, without exception, as well as all applicable and permissible federal, state and local laws, statutes, codes, rules and regulations; and
 - (2) The construction of the small wireless facility is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the New York State.
- F. If proposing a new structure for the purpose of supporting a small wireless facility, the application shall be accompanied by a map which shows the applicant's existing and proposed area of coverage. Such map must locate all existing wireless telecommunication facility sites within the Village and within one-half (1/2) mile of the proposed small wireless facility.
- G. In addition to all other required information as stated in this section, all applications for the construction or installation of new small wireless facility or modification of an existing small wireless facility shall contain the following information:

- (1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
- (2) Documentation that demonstrates and proves the need for the small wireless facility to provide service primarily and essentially within the Village. Such documentation shall include, but not be limited to: (i) information relating to all other wireless telecommunication facilities or antennas associated with such wireless telecommunication facilities that are to be deployed in the Village in conjunction with the proposed small wireless facility; (ii) propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
- (3) The name, address and phone number of the person preparing the report;
- (4) The name, address, and phone number of the property owner, operator and applicant;
- (5) The postal address and Tax Map parcel number of the property;
- (6) The zoning district or designation in which the property is situated;
- (7) The size of the property stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines, if the proposed small wireless facility is located outside the public right-of-way;
- (8) The location of the nearest residential structure;
- (9) The location, size and height of all existing and proposed structures on the property which is the subject of the application;
- (10) The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed small wireless facility is located outside the public right-of-way;
- (11) The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
- (12) The make, model, type and manufacturer of the utility pole, monopole or other structure on which any antenna or accessory equipment for a small wireless facility is to be located and a design plan stating the structure's capacity to accommodate multiple users;
- (13) A site plan describing any new proposed structure and antenna(s) and all related fixtures, accessory equipment, appurtenances and apparatus, including but not limited to height above preexisting grade, materials, color and lighting;

- (14) The frequency, modulation and class of service of radio or other transmitting equipment;
 - (15) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
 - (16) Direction of maximum lobes and associated radiation of the antenna(s);
 - (17) Applicant's proposed maintenance and inspection procedures and related system of records;
 - (18) Documentation justifying to the total height of any proposed antenna and structure and the basis therefor. Such justification shall be to provide service within the Village, to the extent practicable, unless good cause is shown;
 - (19) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC;
 - (20) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - (21) A copy of the FCC license applicable for the intended use of the wireless telecommunication facilities; and
 - (22) Certification that a topographic and geomorphologic study and analysis has been conducted, and that, taking into account the subsurface and substrate, and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site, though the certifying engineer need not be approved by the Village.
 - (23) Information relating to the expected useful life of the proposed small wireless facility.
- H. The applicant shall furnish written certification that the small wireless facility and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the wireless facility is subsequently approved and constructed, as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished prior to the Village prior to issuance of any certificate of occupancy or compliance.
- I. All proposed small wireless facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion to the maximum extent practicable based upon the facts and circumstances involved with the proposed site and facility, will employ stealth technologies as directed by the Zoning Board of Appeals, where appropriate and feasible, and will thereby have the least adverse visual effect on the environment, the character of the community, surrounding properties and on the residences in the area of the wireless telecommunication facility.

- J. All applications shall be accompanied by the appropriate non-refundable application fee, as established by the Village Board and set forth in the Village Fee Schedule, in addition to any other fee required by applicable law.

§ 100-5. Requirements for small wireless facility permit.

- A. Design. All small wireless facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. All small wireless facilities shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Village.
- B. Wind and ice. All small wireless facilities structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- C. Aviation safety. Small wireless facilities shall comply with all federal and state laws and regulations concerning aviation safety.
- D. Public safety communications. Small wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- E. Radio frequency emissions. A small wireless facility shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended. When a small wireless facility is complete, as-built readings will be taken and submitted to the Village.
- F. Maintenance. To the maximum extent practicable, the following maintenance requirements shall apply:
- (1) Small wireless facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (2) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Village's residents.
 - (3) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

- (4) The owner or operator of a small wireless facility shall maintain standby power generators or batteries capable of powering the small wireless facility for at least (12) hours without additional public utility power and indefinitely with a continuous or replenished fuel supply, where appropriate. Such standby power shall activate automatically upon the failure of public utility power to the site.

§ 100-6. Location.

- A. Small wireless facilities must be deployed in accordance with the following priorities, one (1) being the highest priority and eight (8) being the lowest priority.
 - (1) Collocation on existing utility poles, monopoles or other wireless telecommunication facility support structures on lands owned or controlled by the Village, not including the public rights-of-way;
 - (2) Collocation on a site with existing wireless telecommunication facilities or other wireless telecommunication facility structures in the Village;
 - (3) On other lands owned or controlled by the Village including but not limited to the Village public right-of-way;
 - (4) On lands owned or controlled by other municipal corporations within the Village, to the extent permitted by such other municipal corporation;
 - (5) On non-residentially zoned properties;
 - (6) On residentially zoned properties;
 - (7) On or adjacent to any historic property or resource; and
 - (8) No small wireless facilities shall be permitted within Glen Park.
- B. 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 a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a special use 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.
- C. 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 Zoning Board of Appeals why collocation is commercially impracticable.
- D. Notwithstanding the above, the Zoning Board of Appeals may approve any site located within the Village, provided that it finds that the proposed site will further the purposes of this section, is in the best interest of the safety, public welfare, character and environment

of the Village and will not have a deleterious effect on the nature and character of the community and surrounding properties.

§ 100-7. Height.

A small wireless facility shall be no higher than the minimum height necessary to provide effective service. The proposed height, which may be in excess of maximum height permitted for other structures in the applicable zone, shall address any additional height necessary to accommodate collocation by additional antenna arrays, but under no circumstances is the height to be in excess of what is permitted for a small wireless facility.

§ 100-8. Setback.

All wireless telecommunication support structures for a small wireless facility located outside the public right of way shall be set back from the property line of the lot on which it is located a distance equal to not less than the total height of the facility, including support structure, measured from the highest point of such support structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. The Zoning Board of Appeals may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, other forms of screening and/or structural characteristics of the proposed support structure.

§ 100-9. Visibility.

- A. All small wireless telecommunication facilities shall be sited so as to have the least adverse visual effect on the built or natural environment of the Village, on existing vegetation and on the residents in the area of the wireless telecommunications facilities sites. 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 federal, state and local laws, statutes, codes, rules or regulations.
- B. Both the small wireless telecommunication facility and any and all accessory equipment shall maximize 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.
- C. A small wireless telecommunication facility shall not be artificially lighted or marked, except as required by law.
- D. Electrical and land-based telephone lines extended to serve the wireless telecommunication services facility sites shall be installed underground.
- E. Stealth technologies, consistent with design guidelines, if any, adopted by the Village Board, shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.
- F. Landscaping shall be provided, if appropriate.

§ 100-10. Determination procedures.

- A. The Zoning Board of Appeals may, at its discretion, require a public hearing on any application for a SWFP.
- B. The Zoning Board of Appeals shall grant, grant with conditions or deny the application for a SWFP within the timeframes set forth herein, and it shall render its determination, based upon substantial evidence in the record, in writing.
- C. In granting any SWFP, the Zoning Board of Appeals may attach such conditions and safeguards to such permit as are, in its opinion, necessary to ensure initial and continued conformance to all applicable standards and requirements, including the incorporation of stealth technologies or other measures which mitigate adverse visual impacts and may require that such facility be designed and constructed in accordance with design guidelines, if any, adopted by the Village Board.
- D. Timeframes for Determination.
 - (1) Within sixty (60) days of receipt of a complete application for the collocation of a small wireless facility on a preexisting utility pole, monopole or other existing wireless telecommunication facility support structure, the Zoning Board of Appeals shall make a final decision on whether to approve, approve with condition or deny the application and shall notify the applicant in writing of such decision.
 - (2) Within ninety (90) days of receipt of a complete application for a small wireless facility on a new utility pole, monopole or other new wireless telecommunication facility support structure, the Zoning Board of Appeals shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
 - (3) Within ten (10) days of receipt of an incomplete application for a small wireless facility, the Village shall notify the applicant in writing of any supplemental information required to complete the application. Upon receipt of an applicant's supplemental information in response to the initial notification of incompleteness by the Village, the applicable shot clock will reset to zero and the Village shall have the full sixty (60) or ninety (90) days permitted by law to act on the completed application.
 - (4) For any subsequent determinations of incompleteness beyond the initial, the Village shall notify the applicant of any required supplemental information within ten (10) days of receipt of the supplemental submission and such notice shall toll the applicable timeframes until the applicant submits the required supplemental information.
 - (5) Batching.
 - (i) If a single application seeks authorization for multiple deployments, all of which fall within a category set forth in either subparagraphs (C)(1) or (C)(2) of this Section, the Zoning Board of Appeals shall render its

determination within the time periods provided in the applicable subparagraph;

- (ii) If a single applicant seeks authorization for multiple deployments, the components of which are a mix of deployments that fall within subparagraphs (C)(1) or (C)(2) of this Section, the Zoning Board of Appeals shall render its determination within ninety (90) days.

(6) All time periods set forth in this Section reference calendar days.

(7) The timeframes set forth herein may be extended by mutual agreement of the applicant and the Zoning Board of Appeals, or upon a determination by the Zoning Board of Appeals, set forth in writing and based upon substantial evidence, that, despite its best efforts, the Zoning Board of Appeals could not complete its review of such application consistent with all applicable requirements within such time frames.

§100-11. Recertification of small wireless facility permit.

A. At the five-year anniversary date after the issuance of any SWFP and for all subsequent fifth anniversaries thereafter, the holder of the SWFP shall submit a signed written document with the following information to the Village Code Enforcement Officer confirming the compliance of the small wireless facility with the SWFP. Such submission shall include the following:

- (1) The name of the holder of the SWFP for the small wireless telecommunications facility.
- (2) The date of the original granting of the SWFP.
- (3) Whether the small wireless facility has been modified since the issuance of the SWFP and, if so, in what manner.
- (4) Any requests for waivers or relief of any kind whatsoever from the requirements of this section and any requirements for a SWFP.
- (5) Certification that the small wireless facilities are in compliance with the original SWFP and in compliance with all applicable codes, laws, rules, regulations, Federal certification requirements including but not limited to this section.
- (6) Certification that the wireless telecommunications facility support structure, attachments and accessory equipment have been designed and constructed (as built) and continues to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such certification shall be by a professional engineer licensed by the State of New York.

- B. If the holder of a SWFP provides all of the information required under subparagraph A to the satisfaction of the Code Enforcement Officer, the Code Enforcement Officer shall recertify the SWFP for an additional five year period.
- C. If the holder of a SWFP does not submit the certifications in Subparagraph A within the time frame noted in Subparagraph A, such SWFP shall terminate and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original issuance of the permit, or subsequent fifth anniversaries, unless the holder of the SWFP adequately demonstrates to the Code Enforcement Officer that extenuating circumstances prevented a timely submission of such written certification, in which case the holder of the expired small wireless permit may submit a late recertification request or application for a new small wireless permit.

§ 100-12. Additional requirements relating to small facility permits.

- A. Non-commercial usage exemption. Village residents utilizing satellite dishes, citizen and/or band radios, and antenna for the purpose of maintaining television, phone, and/or internet connections at their residences shall be exempt from the regulations relating to small wireless facilities enumerated in this section.
- B. Prohibited on certain structures. No small wireless facility shall be located on single-family detached residences, single-family attached residences, twin-homes, duplexes, or any residential accessory structure.

§ 100-13. Regulations applicable to small wireless facility permits on Village-owned property or within public rights of way.

- A. In addition to the applicable SWFP provisions listed in this Chapter, any application to deploy a small wireless facility on Village owned property or within a public right of way owned or controlled by the Village, shall comply with the following requirements:
 - (1) License. An applicant to deploy a small wireless facility on Village owned property or within a public right of way owned or controlled by the Village must obtain a license from the Board of Trustees that fairly and reasonably compensates the Village for the costs associated with such deployment.
 - (i) In the case of deployments within a public right of way owned or controlled by the Village, such costs shall be limited to those costs that are objectively reasonable approximations of the costs incurred by the Village relating to such deployment in the right of way, which costs shall be adopted by the Village Board and included in the Village's schedule of fees.
 - (ii) Any license issued pursuant to this section shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village and its elected officials, officers, board members, 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, product 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 Village or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village.

- (2) Location. Small wireless facilities in the public right-of-way shall be collocated on existing wireless telecommunications facilities, whenever possible. If collocation is not technologically feasible, the applicant shall locate its small wireless facility on existing utility poles or other structures that do not already act as wireless telecommunication facility support structures.
- (3) Design Requirements:
 - (i) All equipment shall be the smallest and least visibly intrusive equipment feasible.
 - (ii) Antenna and accessory equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
 - (iii) The small wireless facility shall be designed to be consistent with the design guidelines, if any, adopted by the Village.
- (4) Equipment Location. Small wireless facilities and any accessory equipment in the public right-of-way shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the public right-of-way as determined by the Village. In addition:
 - (i) In no case shall ground-mounted accessory equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb, or within four (4) feet of the edge of the cartway, or within an easement extending onto a privately-owned lot;
 - (ii) To the extent feasible, accessory equipment, exclusive of antenna, shall be placed underground. Ground-mounted accessory equipment that cannot be placed underground shall be screened from surrounding views, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Village. Ground-mounted accessory

equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted accessory equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology to the satisfaction of the Village.

- (iii) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Village.
 - (iv) Any graffiti on any small wireless facility support structure or any accessory equipment shall be removed within thirty (30) days upon notification by the Village at the sole expense of the owner.
 - (v) Any proposed underground vault related to small wireless facilities shall be reviewed and approved by the Village.
 - (vi) Accessory equipment attached to a small wireless facility support structure shall have such vertical clearance as the Zoning Board of Appeals may determine.
- (5) Relocation or removal of small wireless facilities in the public right-of-way. In addition to the removal provisions set forth in § 100-__, within ninety (90) days following written notice from the Village, or such longer period as the Village determines is reasonably necessary, or such shorter period in the case of an emergency, an owner of a small wireless facility and any accessory equipment in the public right-of-way shall, at its own expense, temporarily or permanently remove, relocate, or change the position of any small wireless facility or accessory equipment when the Village, consistent with its police powers and any applicable Federal and/or State regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (i) To construct, repair, maintain or install any Village or other public improvement located in the public right of way;
 - (ii) To prevent the interference with the operations of the Village or other governmental entity, in the public right of way;
 - (iii) Abandonment of a street or road or the release of a utility easement; or
 - (iv) An emergency as determined by the Village Board.

§ 100-14. Applications for large wireless facility permit.

- A. An application for a LWFP shall be in writing and contain all of the information required by this Chapter as well as such other information as reasonably requested by the Code Enforcement Officer and/or the Zoning Board of Appeals.

- B. No application shall be accepted and no LWFP shall be issued for a large wireless facility on a property where the Code Enforcement Officer has found, or there exists, a violation of the Village Code and where such violation has not been corrected.
- C. An application for a LWFP shall be signed on behalf of the applicant by the person preparing the same 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 Zoning Board of Appeals, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- D. The applicant must provide documentation to verify it has a legal interest in the site where the large wireless facility is to be located. Said documentation may be in the form of a deed, contract or sale or lease for the property, depending on whether the applicant is the property owner, contract-vendee or lessee.
- E. The applicant shall include a statement, in writing, that:
 - (1) The applicant's proposed large wireless facility shall be maintained in a safe manner and in compliance with all conditions of the special use permit, without exception, as well as all applicable and permissible federal, state and local laws, statutes, codes, rules and regulations; and
 - (2) The construction of a large wireless facility is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in New York State.
- F. The application shall be accompanied by a map in graphical form and in AutoCAD® or compatible drawing exchange file format, which shows the applicant's existing and proposed area of coverage. Such map should locate all existing facility sites within the Village and within one mile of the Village in bordering communities.
- G. In addition to all other required information as stated in this section, all applications for the construction or installation of new large wireless facilities, or any substantial change to an existing large wireless facility, shall contain the following information:
 - (1) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements;
 - (2) Documentation that demonstrates and proves the need for the large wireless facility to provide service primarily and essentially within the Village. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;

- (3) The name, address and phone number of the person preparing the report;
- (4) The name, address, and phone number of the property owner, operator and applicant;
- (5) The postal address and Tax Map parcel number of the property;
- (6) The zoning district or designation in which the property is situated;
- (7) The size of the property stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines;
- (8) The location of the nearest residential structure;
- (9) The location, size and height of all existing and proposed structures on the property which is the subject of the application;
- (10) The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed facility is located outside the public rights-of-way;
- (11) The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
- (12) The make, model, type and manufacturer of the support structure and a design plan stating the support structure's capacity to accommodate multiple users;
- (13) A site plan describing the proposed support structure and antenna(s) and all related accessory equipment, fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting;
- (14) The frequency, modulation and class of service of radio or other transmitting equipment;
- (15) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
- (16) Direction of maximum lobes and associated radiation of the antenna(s);
- (17) Applicant's proposed support structure and accessory equipment maintenance and inspection procedures and related system of records;
- (18) Documentation justifying to the total height of any wireless telecommunications facility support structure and the basis therefor. Such justification shall be to provide service within the Village, to the extent practicable, unless good cause is shown;
- (19) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC;

- (20) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
- (21) A copy of the FCC license applicable for the intended use of the wireless telecommunication facilities;
- (22) Certification that a topographic and geomorphologic study and analysis has been conducted, and that, taking into account the subsurface and substrate, and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site;
- (23) Identify the proposed location of emergency power supply and the decibel level emitted during testing and operation;
- (24) Information relating to the expected useful life of the proposed large wireless facility;
- (25) Construction details for the proposed tower, supporting structure, and base, including specifications for the maximum height of the tower or structure the proposed base could support; and
- (26) Information relating to intended future collocations on the large wireless facility that may result in a further increase in the size or height of the proposed large wireless facility.

H. In the case of a new wireless telecommunication facility support structure for a large wireless facility, the applicant shall be required to submit a written report demonstrating its efforts to secure shared use of existing wireless telecommunication support structure(s) or the use of alternative existing buildings or other structures within a one-half (1/2) mile radius of the site proposed. Copies of written requests and responses for shared use shall be provided to the Zoning Board of Appeals with the application, along with any letters of rejection stating the reason for rejection. Acceptable reasons for rejection include:

- (1) The proposed antenna and accessory equipment would exceed the structural capacity of the existing building or other structure, and its reinforcement cannot be accomplished at a reasonable cost.
- (2) The proposed antenna and accessory equipment would cause radio frequency interference with other existing equipment for that existing building or other structure and the interference cannot be prevented at a reasonable cost.
- (3) Such existing buildings or other structures do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
- (4) A commercially reasonable agreement could not be reached with the owner of such building or other structure.

- I. The applicant shall furnish written certification that the wireless telecommunications facility, structure, foundation, attachments and accessory equipment are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the large wireless facility is subsequently approved and constructed, as-built certification indicating that the large wireless facility has been constructed in accordance with all standards shall be furnished to the Village prior to issuance of any certificate of occupancy or compliance.
- J. The applicant shall submit a completed long-form EAF. Based on circumstances of each application for a large wireless facility, the Zoning Board of Appeals may require submission of a detailed visual analysis.
- K. All proposed large wireless facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, will employ stealth technologies where appropriate, and will thereby have the least adverse visual effect on the environment, the character of the community, surrounding properties and on the residences in the area of the large wireless facility.
- L. The applicant shall, in writing, identify and disclose the number and locations of any additional sites that the applicant has been, is or will be considering, reviewing or planning for wireless telecommunications facilities in the Village, and all municipalities adjoining the Village, for a two-year period following the date of the application.
- M. All applications shall be accompanied by the appropriate non-refundable application fee, as established by the Village Board and set forth in the Village Fee Schedule, in addition to any other fee required by applicable law, and shall deposit funds, in an amount to be determined by the Zoning Board of Appeals, into an escrow account held by the Village to allow the Zoning Board of Appeals to retain such technical experts and other consultants as may be necessary to review the proposal, including, but not limited to, the review of financial and technical aspects of the proposal and of the financial, legal and technical practicability of alternatives which may be available to the applicant.

§ 100-15. Requirements for large wireless facility permit.

Large wireless facilities are permitted only in the M-1, MU and NMU zoning districts and are subject to the restrictions and conditions prescribed below:

- A. Construction and design. All large wireless facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any large wireless facilities shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any Person or any property in the Village.

- B. Wind and ice. All large wireless facilities structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- C. Aviation safety. Large wireless facilities shall comply with all federal and state laws and regulations concerning aviation safety.
- D. Public safety communications. Large wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- E. Radio frequency emissions. A large wireless facility shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled “Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields,” as amended. When a small wireless facility is complete, as-built readings will be taken and submitted to the Village.
- F. Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:
 - (1) Large wireless facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (2) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Village’s residents.
 - (3) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
 - (4) The owner or operator of a large wireless facility shall maintain standby power generators capable of powering the wireless telecommunications facility for at least twenty-four (24) hours without additional public utility power, and indefinitely with a continuous or replenished fuel supply. Such standby power shall activate automatically upon the failure of public utility power to the site. Notwithstanding the foregoing, the Zoning Board of Appeals may require standby power longer than twenty-four (24) hours where circumstances indicate sufficient space exists to accommodate longer periods of backup power.

§ 100-16. Location.

- A. Large wireless facilities must be deployed in accordance with the following priorities, one (1) being the highest priority and five (5) being the lowest priority.

- (1) Collocation on existing wireless telecommunication facilities on lands owned or controlled by the Village, not including the public right of way;
 - (2) Collocation on a site with existing wireless telecommunication facilities or other tall structures in the Village;
 - (3) On other lands owned or controlled by the Village including but not limited to the Village public right of way;
 - (4) On lands owned or controlled by other municipal corporations within the Village, to the extent permitted by such other municipal corporation;
 - (5) On private property not zoned exclusively for residential use.
- B. 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 a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a special use 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.
- C. 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 Zoning Board of Appeals why collocation is commercially impracticable.

§ 100-17. Height.

Wireless telecommunication facility support structures shall be no higher than the minimum height necessary. The proposed height, which may be in excess of maximum height permitted for other structures in the applicable zone, shall address any additional height necessary to accommodate collocation by additional antenna arrays, but under no circumstances is the height to be in excess of 150 feet.

§ 100-18. Setback.

All large wireless facilities, including any support structures and accessory equipment, located outside the public right-of-way shall be set back from the property line of the lot on which it is located a distance equal to not less than the total height of the facility, including support structure, measured from the highest point of such support structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. The Zoning Board of Appeals may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, other forms of screening and/or structural characteristics of the proposed support structure.

§ 100-29. Visibility.

- A. All large wireless facilities shall be sited so as to have the least adverse visual effect on the environment and its character, on existing vegetation and on the residents in the area of the wireless telecommunications facilities sites. 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 federal, state and local laws, statutes, codes, rules or regulations.
- B. Both the large wireless facility and any and all accessory equipment shall maximize 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.
- C. A large wireless facility shall not be artificially lighted or marked, except as required by law.
- D. Wireless telecommunication facility support structures for large wireless facilities shall be galvanized and/or painted with a rust-preventive paint of an appropriate color as specified by the Planning Board, to harmonize with the surroundings and shall be maintained in accordance with the requirements of this section.
- E. Electrical and land-based telephone lines extended to serve the large wireless facility sites shall be installed underground.
- F. To the maximum extent practicable, stealth technologies, consistent with design guidelines, if any, adopted by the Village Board, shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.
- G. Landscaping shall be provided, if appropriate.

§ 100-20. Determination procedures.

- A. For any LWFP application the Zoning Board of Appeals shall hold a public hearing on due notice within 60 days after submission of a formal completed application, including such technical information from the applicant as may be required by the Zoning Board of Appeals.
- B. Notice of the public hearing shall be by publication in the official newspaper of the Village at least 5 days in advance of the hearing. The hearing notice shall indicate that the application may be examined and further information is available from the Building Department office during regular business hours. Copies of the publication order shall be mailed by the applicant to the owners of property within 1,000 feet of the property which is the subject of the application, and an affidavit of service thereof shall be filed with the Code Enforcement Officer no later than the date of the hearing.
- C. Within sixty-two (62) days of the close of the public hearing, the Zoning Board of Appeals shall grant, grant with conditions or deny the application and shall set for the reasons therefore in a written determination.

- D. In granting any LWFP, the Zoning Board of Appeals may attach such conditions and safeguards to such permit as are, in its opinion, necessary to ensure initial and continued conformance to all applicable standards and requirements, including the incorporation of stealth technologies or other measures which mitigate adverse visual impacts and may require that such facility be designed and constructed in accordance with design guidelines, if any, adopted by the Village Board.
- E. Timeframes for Determination.
 - (1) Within thirty (30) days of receipt of any application for a large wireless facility, the Code Enforcement Officer shall notify the applicant in writing of any supplemental information required to complete the application. Such notification shall toll the applicable shot clock until the applicant submits the required supplemental information.
 - (2) Within ninety (90) days of receipt of an application for a collocated large wireless facility or one hundred fifty (150) days of receipt of an application for a new large wireless facility with accompanying support structure, including such technical information from the applicant as may be required by the Zoning Board of Appeals, the Zoning Board of Appeals shall make its final decision on the application for a LWFP.
 - (3) All time periods set forth in this Section reference calendar days.
 - (4) The timeframes set forth herein may be extended by mutual agreement of the applicant and the Zoning Board of Appeals, or upon a determination by the Zoning Board of Appeals, set forth in writing and based upon substantial evidence, that, despite its best efforts, the Zoning Board of Appeals could not complete its review of such application consistent with all applicable requirements within such time frames.

§ 100-21. Recertification of large wireless facility permit.

- A. At any time between 12 months and six months prior to the five-year anniversary date after the issuance of a LWFP, and all subsequent fifth anniversaries thereafter, the holder of a LWFP shall submit a signed written request to the Zoning Board of Appeals for recertification. In the written request for recertification, the holder of such permit shall note the following:
 - (1) The name of the holder of the LWFP for the wireless telecommunications facility.
 - (2) The date of the original granting of the LWFP.
 - (3) Whether the large wireless facility has been modified since the issuance of the special use permit and, if so, in what manner.
 - (4) Any requests for waivers or relief of any kind whatsoever from the requirements of this section and any requirements for a LWFP.

- (5) Certification that the large wireless facilities are in compliance with the special use permit and in compliance with all applicable codes, laws, rules, regulations and Federal certification requirements.
 - (6) Certification that the wireless telecommunications support structure, base station and accessory equipment are designed and constructed (as built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed by the State of New York.
- B. If, after such review, the Zoning Board of Appeals determines the permitted large wireless facility is in compliance with the LWFP and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, the Zoning Board of Appeals shall recertify the special use permit for the large wireless facility, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations.
- C. If, after such review, the Zoning Board of Appeals determines that the permitted large wireless facility is not in compliance with the LWFP and all applicable statutes, local laws, ordinances, codes, rules and regulations, the Zoning Board of Appeals may refuse to issue a recertification of the special use permit for the large wireless facility, and, in such event, such large wireless facility shall not be used after the date that the applicant receives written notice of such decision by the Zoning Board of Appeals unless and until any deficiencies determined by the Zoning Board of Appeals are cured. Any such decision shall be in writing and supported by substantial evidence contained in a written record.
- D. If the applicant has submitted all of the information requested by the Zoning Board of Appeals and required by this section, and if the Zoning Board of Appeals does not complete its review, as noted in Subsection B of this section, prior to the five-year anniversary date of the special use permit, or subsequent fifth anniversaries, the applicant for the permitted large wireless facility shall receive an extension of the special use permit for up to six months in order for the Zoning Board of Appeals to complete its review.
- E. If the holder of a LWFP does not submit a request for recertification of such permit within the time frame noted in Subsection A of this section, then such LWFP and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original issuance of the LWFP, or subsequent fifth anniversaries, unless the holder of the LWFP adequately demonstrates to the Zoning Board of Appeals that extenuating circumstances prevented a timely recertification request, in which case the holder of the LWFP may submit a late recertification request or application for a new LWFP.

§ 100-22. Performance security for large wireless facility permits.

The applicant and the owner of record of any proposed large wireless facility property site shall, at their cost and expense, be jointly required to execute and file with the Village a bond, or other

form of security acceptable to the Village as to type of security and the form and manner of execution, in an amount sufficient to ensure the proper operation, maintenance and, if necessary, removal of such large wireless facility and associated equipment and restoration of any impacted property, as determined by the Zoning Board of Appeals based on a written estimate from a qualified professional, and with such sureties as are deemed sufficient by the Zoning Board of Appeals to assure the faithful performance of the terms and conditions of this section and conditions of the LWRP issued pursuant to this Chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the LWRP 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.

§ 100-23. Regulations applicable to large wireless facilities on Village owned property or within public rights of way.

- A. In addition to the applicable LWRP permit provisions and requirements listed in this section, any application to deploy a large wireless facility on Village owned property or within a public right of way owned or controlled by the Village shall be required to comply with the following regulations:
- (1) License. An applicant to deploy a small wireless facility on Village owned property or within a public right of way owned or controlled by the Village must obtain a license from the Board of Trustees that fairly and reasonably compensates the Village for the costs associated with such deployment.
 - (i) In the case of deployments within a public right of way owned or controlled by the Village, such costs shall be limited to those costs that are objectively reasonable approximations of the costs incurred by the Village relating to such deployment in the right of way, which costs shall be adopted by the Village Board and included in the Village's schedule of fees.
 - (ii) Any license issued pursuant to this section shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village and its elected officials, officers, board members, 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, product 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 Village or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable

attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village.

- (2) Location. Large wireless facilities in the public right-of-way shall be collocated on existing wireless telecommunications facility whenever possible. If collocation is not technologically feasible, the applicant shall locate its large wireless facility on existing utility poles, monopoles or other structures that do not already act as wireless telecommunication facility support structures.
- (3) Design Requirements:
 - (i) All accessory equipment shall be the smallest and least visibly intrusive equipment feasible.
 - (ii) Antenna and accessory equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
 - (iii) The large wireless facility shall be designed to be consistent with the design guidelines, if any, adopted by the Village.
- (4) Equipment Location. Large wireless facilities, which include wireless telecommunication support structures and accessory equipment in the public right-of-way, shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the right-of-way as determined by the Village. In addition:
 - (i) In no case shall ground-mounted accessory equipment, walls, or landscaping be located within eighteen (18) inches of the face of the curb, within four (4) feet of the edge of the cartway, or within an easement extending onto a privately-owned lot;
 - (ii) To the extent feasible, accessory equipment shall be placed underground. Ground-mounted accessory equipment that cannot be placed underground shall be screened from surrounding views, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Village. Ground-mounted accessory equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted accessory equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology to the satisfaction of the Village.
 - (iii) Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Village.

- (iv) Any graffiti on any large wireless facility support structure, base station or any accessory equipment shall be removed within thirty (30) days upon notification by the Village at the sole expense of the owner.
 - (v) Any proposed underground vault related to large wireless facilities shall be reviewed and approved by the Village.
 - (vi) Accessory equipment attached to a large wireless facility support structure shall have such vertical clearance as the Zoning Board of Appeals may determine.
- (5) Relocation or removal of large wireless facilities in the public right of way. In addition to the removal provisions set forth in Section 100-27, within ninety (90) days following written notice from the Village, or such longer period as the Village determines is reasonably necessary, or such shorter period in the case of an emergency, an owner of a small wireless facility and any accessory equipment in the right-of-way shall, at its own expense, temporarily or permanently remove, relocate, or change the position of any large wireless facility or accessory equipment when the Village, consistent with its police powers and any applicable Public Service Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (i) To construct, repair, maintain or install any Village or other public improvement located in the right-of-way;
 - (ii) To prevent the interference with the operations of the Village or other governmental entity, in the right-of-way;
 - (iii) Abandonment of a street or road or the release of a utility easement; or
 - (iv) An emergency as determined by the Village Board.

§ 100-24. Requirements for all wireless facilities permits.

- A. Security. All small wireless telecommunication facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - (1) All antennas and other supporting structures, 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.
- B. Inspections. In order to verify that the holder of a permit issued pursuant to this Chapter, and any and all lessees, renters, and/or licensees of such wireless facilities, place and

construct such facilities, including supporting structures, accessory equipment and antennas, in accordance with all applicable technical, safety, fire, building, and zoning laws, statutes, codes, rules, regulations and other applicable requirements, the Village may inspect at any time, upon providing reasonable notice, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facility, including, but not limited to, structures, antennas, accessory equipment and electromagnetic output.

- C. Insurance. An applicant for a wireless telecommunications facility permit 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 permit in amounts as set forth below:
- (1) For collocation on existing wireless telecommunication facility structure, the insurance policies shall be in the following amounts:
 - (i) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - (ii) Automobile coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
 - (iii) Workers' compensation and disability: statutory amounts.
 - (2) For a wireless telecommunication facility located on a new wireless telecommunication structure the insurance policies shall be in the following amounts:
 - (i) Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence;
 - (ii) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - (iii) Workers' compensation and disability: statutory amounts.
 - (3) For a wireless telecommunication facility on Village property, the commercial general liability insurance policy shall specifically include the Village as an additional insured.
 - (4) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.
 - (5) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least 30 days' prior written notice in advance of the cancellation of the insurance.

- (6) Renewal or replacement policies or certificates shall be delivered to the Village at least 15 days before the expiration of the insurance that such policies are to renew or replace.
 - (7) Prior to the issuance of a permit for a small wireless facility, the applicant shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.
- D. Annual NIER certification. The holder of any permit issued pursuant to this Chapter shall, annually, certify to the Code Enforcement Officer that NIER levels at the site where a wireless telecommunications facility is located are within the threshold levels adopted by the FCC. In addition, the Village, at its own cost and expense, shall be permitted to conduct its own certification test of the NIER levels at the site where any wireless telecommunication facility is located, with or without notice to the wireless telecommunication provider. Once operational, but prior to providing service to customers, as-built readings must be provided to the Village.
- E. Granting a wireless telecommunications facility permit does not waive the requirement for site plan and architectural review approval, including fees, in accordance with Chapter 112, Sections 23 Site Plan Approval, or certificate of appropriateness, in accordance with Chapter 47, as applicable.

§ 100-25. Revocation of permits.

- A. A SWFP or LWFP may be revoked under the following circumstances:
- (1) The facility has been abandoned (i.e., not used as a wireless telecommunication facility) for a period exceeding 90 consecutive days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;
 - (2) The permitted facility falls into such a state of disrepair that it creates a safety hazard;
 - (3) The facility has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required permit, or any other necessary authorization;
 - (4) If a permitted facility is constructed, repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this section or of the permit conditions or other legal requirements, or it is determined that the applicant made materially false or misleading statements during the application process; or
 - (5) The holder of the permit fails to obtain the recertification required under § 100-11 or §100-21, as applicable.

- B. The Code Enforcement Officer shall notify the permit holder in writing of any violation of Subsection A, which notice shall specify the nature of the violation or noncompliance, and specify 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 section, if the violation or non-compliance causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Code Enforcement Officer may order the violation remedied within 24 hours.
- C. If within the period set forth in Subparagraph A the small wireless facilities are not brought into compliance with the provisions of this section, or of the permit, or substantial steps are not taken in order to bring the affected facility into compliance, then the Code Enforcement Officer may issue a written recommendation to the Zoning Board of Appeals that such permit be revoked and such wireless facility be removed pursuant to § 100-26.
- D. Upon the receipt of a recommendation described in Subsection B, above, the Zoning Board of Appeals shall conduct a public hearing on said recommendation as soon as practicable and, based upon evidence adduced at such hearing, adopt such recommendation, in whole or in part, or reject such recommendation. If the Zoning Board of Appeals determines to revoke such permit, the owner or applicant shall remove such wireless facility in accordance with § 100-26.

§ 100-26. Removal.

- A. If the Zoning Board of Appeals revokes a permit as provided in § 100-25, the Code Enforcement Officer shall promptly notify the holder of such permit and the owner of the property in writing that said wireless facility is to be removed and any affected property appropriately restored.
- B. The holder of the permit or the owner of the property shall be required to dismantle and remove such small wireless facility, and all accessory equipment and associated structures, from the site and return the site to its original condition and certify through soils or other testing that no contamination has been created by the facility, such restoration being completed, limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Code Enforcement Officer to remove such wireless facility.
- C. If the wireless facility is not removed or substantial progress has not been made to remove the wireless facilities within 90 days after the small facility permit holder has received such written notice of removal, the Village may remove the wireless facilities at the sole expense of the property owner and/ or permit holder.
- D. If the Village removes or causes to be removed the wireless facility, and the owner of the wireless telecommunication facility does not claim and remove them to a lawful location within 10 days of being notified of its removal, the Village may take steps to declare the facilities abandoned and dispose of or sell them and their components and retain the

proceeds therefrom. The Village may also cause the costs associated with the removal and disposal of the wireless facilities to be assessed on the property in the same manner as a tax or assessment.

§ 100-27. Adherence to state and/or federal rules and regulations.

- A. The holder of a permit issued pursuant to this Chapter 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 FCC and the FAA. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FCC and the FAA, and specifically including any rules and regulations regarding height, lighting, and security, are amended and/or are modified during the duration of a permit issued pursuant to this Chapter, the holder of such a permit shall conform the permitted wireless telecommunication facility to the applicable amended and/or modified rule, regulation, standard, or provision within a maximum of twelve (12) months after 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.

§ 100-28. Penalties for offenses.

In addition to any other remedies in this section, a violation of any provision of this Chapter is hereby declared to be an offense, punishable by a fine not exceeding \$500, 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 \$500 nor more than \$1000, 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 \$1000 nor more than \$5,000 or imprisonment for a period not to exceed one year, or both. Each continued violation shall constitute a separate additional violation.

Section 3. Chapter 112, Section 26 (“Telecommunication Facilities”) is deleted and replaced with the following:

§ 112-26 [Reserved].

Section 4. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included

therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. This local law shall be enacted upon filing with the Secretary of State and shall apply to applications for wireless telecommunications facilities that are filed on or after such date.