

§ 125-85.2. Wireless Telecommunications Facilities. [Added 3-2-1999 ; amended 5-21-2013 by L.L. No. 1-2013; 3-26-2018 by L.L. No. 2-2018; 12-18-2018 by L.L. No. 19-2018]

A. Purpose and legislative intent.

- (1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless telecommunications facilities in the Town of Bedford. While the Town recognizes the importance of wireless communications facilities in providing high-quality communications service to its residents and business, the Town also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities.
- (2) By enacting this chapter, the Town intends to:
 - (a) Provide for the managed development of wireless telecommunications facilities in a manner that enhances the benefits of wireless communications and accommodates the needs of Town residents and wireless carriers in accordance with federal, state and local laws and regulations;
 - (b) Establish fair and efficient processes for review and approval of applications;
 - (c) Establish procedures for the design, siting, construction, installation, maintenance and removal of wireless telecommunications facilities in the Town;
 - (d) Address and provide for new wireless technologies, including, but not limited to, microcell and distributed antenna systems ("DAS") technologies;
 - (e) Encourage the co-location of wireless communications facilities on existing structures rather than the construction of a new support structures;
 - (f) Protect Town residents and businesses from potential adverse impacts of wireless communications facilities, to the extent permitted under law, and to attempt to preserve the visual character of established communities and the natural beauty of the landscape;

- (g) Minimize safety hazards and avoid potential damage to adjacent properties through proper locational, engineering and operational requirements;
- (h) Minimize adverse visual and aesthetic impacts of wireless telecommunications facilities to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;
- (i) Protect the physical appearance of the Town and preserve its scenic and natural beauty;
- (j) Protect the public health, safety and welfare;
- (k) Protect property values of the community;
- (l) Minimize the impact of such facilities on residential properties;
- (m) Encourage the siting of wireless telecommunications services facilities on properties and areas which are not used exclusively for residential purposes; and
- (n) Protect, to the maximum extent practicable, aesthetic qualities, the open space character of the Town of Bedford, the property values of the community, the health and safety of citizens, and a citizen's ability to receive communication signals without interference from other communication providers, while not unreasonably limiting competition among communication providers.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

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 co-located on a structure, which is mounted or installed at the same time as an antenna.

ANTENNA — An apparatus designed for the purpose of emitting radio frequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service (whether on its own or with other types of 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 United States Code.

BASE STATION — A structure or equipment at a fixed location that enables Commission-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 distributed antenna systems and microcell networks).
- (3) The term includes any structure that supports or houses equipment described in Subsections (1) and (2) of this definition 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.
- (4) The term does not include any structure that, at the time the relevant application is filed with the Town under this section, does not support or house equipment described in Subsections (1) and (2) of this definition.

CO-LOCATION — Consistent with the Nationwide Programmatic Agreement (NPA) for the co-location of wireless antennas:

- (1) Mounting or installing an antenna facility on a preexisting structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

DISTRIBUTED ANTENNA SYSTEM (DAS) — A network of spatially separated antenna sites connected to a common source that provides wireless communications service within a geographic area or structure.

EAF — The environmental assessment form approved by the New York State Department of Environmental Conservation.

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

FCC — 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.

LARGE WIRELESS FACILITY — Any wireless telecommunications facility that is not a small wireless facility.

MICROCELL FACILITY — Microcells are 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 microcell facility meets both the following qualifications: 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 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 communications 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 communications facilities.

MONOPOLE — A wireless communications support structure which consists of a single pole, designed and erected on the ground or on top of a structure, to support a wireless communications 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 Town 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 communications 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 communications antenna and which does not substantially change the physical dimensions of any existing support structure.

SMALL WIRELESS FACILITY — A wireless telecommunications facility, including, but not limited to, DAS and microcells, that meets each of the following conditions:

- (1) The structure on which antenna facilities are mounted:
 - (a) Is 50 feet or less in height; or
 - (b) Is no more than 10% taller than other adjacent structures; or
 - (c) Is not extended to a height of more than 10% above its preexisting height as a result of the co-location of new antenna facilities; and
- (2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
- (3) All antenna equipment associated with the facility (excluding antennas and backup power and related backup power equipment) is cumulatively no more than 28 cubic feet in volume; and
- (4) The facility does not require antenna structure registration under Part 17;
- (5) The facility is not located on tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facility does not result in human exposure to radio-frequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b).

STEALTH TECHNOLOGY — Camouflaging methods applied to wireless communications 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 antennas painted to match the existing structure, and facilities constructed to resemble trees, shrubs, light poles, and the like.

STRUCTURE — 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 commingled 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 telecommunications 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.
- (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 communications 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 Town-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, microcell or small wireless facilities on utility poles in the public right-of-way or property of the Town or within the Town 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 cellular communications technologies, but excluding those used exclusively for the Town'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.

C. Permits for wireless telecommunications facilities.

- (1) Except as otherwise provided by this section, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities without having first obtained either a special use permit for a large wireless facility or a small wireless permit for a small wireless facility.
- (2) Notwithstanding anything to the contrary in this section, any application for a wireless telecommunications facility that does not substantially change the dimensions of a wireless telecommunications facility shall not require a special use permit or a small wireless facility permit. In the event that a modification to, or replacement of, an existing wireless telecommunications facility does not substantially change such existing wireless telecommunications facility, all that shall be required is a building permit from the Town Building Inspector.
- (3) A repair and/or maintenance of an existing wireless telecommunications facility shall not require a special use permit or small wireless facility permit.
- (4) In addition to the requirements set forth for the issuance of a small wireless facility permit or special use permit for a wireless telecommunications facility to be located in a public right-of-way as set forth in this section, any telecommunications provider seeking to place a wireless telecommunications facility in the public right-of-way shall also comply with the procedures and requirements set forth in Chapter 104 of the Town Code relating to conducting construction activities within the public right-of-way. To the extent any provisions in Chapter 104 are inconsistent with the provisions set forth in this section, the provisions in this section shall control.
- (5) Notwithstanding the provisions set forth in this § 125-85.2C, in the event an application seeks to place a wireless telecommunications facility on property owned or controlled by the Town, other than within a Town-owned public right-of-way, such application shall be exempt from the requirements of this section and shall remain within the sole and absolute

discretion of the Town Board, which may impose such conditions on any such use as it deems appropriate. Nothing herein shall be deemed to create any right or entitlement to use Town property for such wireless telecommunications facility.

- (6) In the event any conflict exists between federal or state laws or regulations and any provision of this Wireless Telecommunications Law, the provisions of the most recently adopted federal or state laws or regulations shall be applied and control.

D. Small wireless facility permit required.

- (1) All small wireless facilities shall require a small wireless facility permit to be issued by the Planning Board.
- (2) The Planning Board shall be empowered to condition the issuance of a building permit upon implementation of stealth technologies or other measures which mitigate visual effect.
- (3) All applications for small wireless facilities permits shall comply with all applicable provisions of this section. However, notwithstanding anything to the contrary, where appropriate, the Planning Board shall have the authority to waive any requirements set forth in this section relating to an application for, or approval of, a small wireless facility permit, provided that it would further the purposes of this section.
- (4) Unless otherwise set forth in this chapter, a DAS facility, microcell facility or other type of wireless telecommunications facility not meeting the requirements set forth for small wireless facilities shall require a special use permit from the Planning Board.

E. Applications for small wireless facilities.

- (1) Upon receipt of an application for a small wireless facility, the Planning Board shall review said application and plans in accordance with the standards and requirements set forth in this chapter.
- (2) The Planning Board may attach such conditions and safeguards to any small wireless facilities permit and site development plan as are, in its opinion, necessary to ensure initial and continued conformance to all applicable standards and requirements.

- (3) No application shall be accepted and no small wireless facilities permit shall be issued for a property where the Building Inspector has found, or there exists, a violation of the Town Code and where such violation has not been corrected.
- (4) Granting a small wireless facilities permit shall not waive the requirement for final site plan approval, including fees, in accordance with Chapter 125, Article IX, Site Plan Approval, if applicable.
- (5) An application for a small wireless facilities permit 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 Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- (6) 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.
- (7) The applicant shall include a statement, in writing, that:
 - (a) The applicant's proposed small wireless facility shall be maintained in a safe manner and in compliance with all conditions of the small wireless facility permit, without exception, as well as all applicable and permissible federal, state and local laws, statutes, codes, rules and regulations; and
 - (b) 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 New York State.
- (8) 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 should locate all existing wireless telecommunications facility sites within the Town and within 1/2 mile of the proposed small wireless facility.

- (9) In addition to all other required information as stated in this section, all applications for the construction or installation of a new small wireless facility or modification of an existing small wireless facility shall contain the following information:
- (a) 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;
 - (b) Documentation that demonstrates and proves the need for the small wireless facility to provide service primarily and essentially within the Town. Such documentation shall include, but not be limited to:
 - [1] Information relating to all other wireless telecommunications facilities or antennas associated with such wireless telecommunications facilities that are to be deployed in the Town in conjunction with the proposed small wireless facility; and
 - [2] 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;
 - (c) The name, address and phone number of the person preparing the report;
 - (d) The name, address, and phone number of the property owner, operator and applicant;
 - (e) The postal address and Tax Map parcel number of the property;
 - (f) The zoning district or designation in which the property is situated;
 - (g) 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;
 - (h) The location of the nearest residential structure;
 - (i) The location, size and height of all existing and proposed structures on the property which is the subject of the application;

- (j) 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;
- (k) The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
- (l) 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;
- (m) 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;
- (n) The frequency, modulation and class of service of radio or other transmitting equipment;
- (o) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
- (p) Direction of maximum lobes and associated radiation of the antenna(s);
- (q) Applicant's proposed maintenance and inspection procedures and related system of records;
- (r) Documentation justifying the total height of any proposed antenna and structure and the basis therefor. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown;
- (s) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC;
- (t) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
- (u) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;

- (v) 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 Town; and
- (w) Information relating to the expected useful life of the proposed small wireless facility.

(10) 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 to the Town prior to issuance of any certificate of occupancy or compliance.

(11) All proposed small 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 as directed by the Planning Board, 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 wireless telecommunications facility.

F. General and specific requirements for small wireless facilities.

(1) 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 Town.

(2) 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).

- (3) Aviation safety. Small wireless facilities shall comply with all federal and state laws and regulations concerning aviation safety.
- (4) Public safety communications. Small wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- (5) 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 Town.
- (6) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:
 - (a) Small wireless facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Town's residents.
 - (c) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
 - (d) 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. Notwithstanding the foregoing, the Planning

Board may waive the requirement for backup power, where appropriate, including, but not limited to, when a small wireless facility is not located in a densely populated area or on a major thoroughfare.

G. Approval procedures.

- (1) For small wireless facility applications, the Planning Board may, at its discretion, require a public hearing.
- (2) In any district, the Planning Board may grant a small wireless facility permit for the construction of the wireless telecommunications facility.
- (3) All decisions of the Planning Board involving applications for a small wireless facility permit shall be in writing and supported by substantial evidence contained in a written record.
- (4) Time frames for approval.
 - (a) Within 60 days of receipt of a complete application for the co-location of a small wireless facility on a preexisting utility pole, monopole or other existing wireless telecommunications facility support structure, the Planning Board shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
 - (b) Within 90 days of receipt of a complete application for a small wireless facility on a new utility pole, monopole or other new wireless telecommunications facility support structure, the Planning Board shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
 - (c) Within 10 days of receipt of an incomplete application for a small wireless facility, the Town 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 Town, the applicable shot clock will reset to zero, and the Town shall have the full 60 days or 90 days permitted by law to act on the completed application.
 - (d) For any subsequent determinations of incompleteness beyond the initial, the Town shall notify the applicant of

any required supplemental information within 10 days of receipt of the supplemental submission, and such notice shall toll the applicable shot clock until the applicant submits the required supplemental information.

- (5) All time periods set forth in this section reference calendar days.

H. Location.

- (1) Applications for small wireless facilities shall locate, site and erect said facility in accordance with the following priorities, (a) being the highest priority and (g) being the lowest priority.
- (a) Co-location on existing utility poles, monopoles or other wireless telecommunications facility support structures on lands owned or controlled by the Town, not including the public rights-of-way;
 - (b) Co-location on a site with existing wireless telecommunications facilities or other wireless telecommunications facility structures in the Town;
 - (c) On other lands owned or controlled by the Town, including, but not limited to, the Town public right-of-way;
 - (d) On lands owned or controlled by other municipal corporations within the Town, to the extent permitted by such other municipal corporation;
 - (e) On nonresidential zoned properties;
 - (f) On residential zoned properties; and
 - (g) No small wireless facilities shall be permitted in the Bedford Historic District, Katonah Historic District, or on any property designated as a Tier I or Tier II property, unless the applicant demonstrates to the Planning Board's satisfaction that the selected site is necessary to provide adequate service and no feasible alternative site exists. Approval shall be required from the Bedford Village Historic District Review Commission, the Katonah Historic District Advisory Commission, or the Historic Building Preservation Commission, as appropriate, before any small wireless facility is approved in the Bedford Historic District, Katonah Historic District, or on any property designated as a Tier I or Tier II property.

- (2) 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.
- (3) 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 co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Planning Board why co-location is commercially impracticable.
- (4) Notwithstanding the above, the Planning Board may approve any site located within the Town, provided that the Planning Board 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 Town and will not have a deleterious effect on the nature and character of the community and surrounding properties.

I. Height.

- (1) Small wireless facilities shall be no higher than the minimum height necessary. The proposed height, which may be in excess of the maximum height permitted for other structures in the applicable zone, shall address any additional height necessary to accommodate co-location by additional antenna arrays, but under no circumstances is the height to be in excess of what is permitted for small wireless facilities.

J. Setback. All wireless telecommunications support structures for small wireless facilities located outside the public right-of-way shall be set back from the property line of the lot on which they are located a distance equal to not less than the total height of the facility, including the 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 Planning Board 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.

K. Visibility.

- (1) All small wireless telecommunications 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.
- (2) Both the small wireless telecommunications 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.
- (3) Small wireless telecommunications facilities shall not be artificially lighted or marked, except as required by law.
- (4) Electrical and land-based telephone lines extended to serve the wireless telecommunications services facility sites shall be installed underground.
- (5) Stealth technologies shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.
- (6) Landscaping shall be provided, if appropriate.

L. Security.

- (1) All small wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - (a) 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
 - (b) 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.

M. Recertification of small wireless facilities permit.

- (1) At the five-year anniversary date after the effective date for the small wireless facility permit and for all subsequent fifth anniversaries of the effective date of the original permit for small wireless telecommunications facilities, the holder of the small wireless facility permit shall submit a signed, written document with the following information to the Town Building Department confirming the compliance of the small wireless facility with the small wireless facility permit. Such submission shall include the following:
 - (a) The name of the holder of the small wireless facilities permit for the wireless telecommunications facilities.
 - (b) The date of the original granting of the small wireless facilities permit.
 - (c) Whether the small wireless facility has been modified since the issuance of the small wireless facilities permit and, if so, in what manner.
 - (d) Any requests for waivers or relief of any kind whatsoever from the requirements of this section and any requirements for a small wireless facilities permit.
 - (e) Certification that the small wireless facilities are in compliance with the original small wireless facilities permit and in compliance with all applicable codes, laws, rules, regulations, and federal certification requirements, including, but not limited to, this section.
 - (f) Certification that the wireless telecommunications facility support structure, attachments and accessory equipment have been 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 certification shall be by a qualified New York State licensed professional engineer.
- (2) If the holder of a small wireless facility permit does not submit the certifications in Subsection M(1) of this section within the time frame noted in Subsection M(1) of this section, then such small wireless facilities permit shall terminate and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent fifth anniversaries, unless the holder of the small wireless facilities permit adequately demonstrates to the Planning

Board that extenuating circumstances prevented a timely submission of such written certification. If the Town Building Inspector agrees that there were extenuating circumstances, then the holder of the expired small wireless facilities permit may submit a late recertification request or application for a new small wireless permit.

- N. Application fees. At the time that a person submits an application for a small wireless facility, such person shall pay a nonrefundable application fee in an amount as determined by the Town Board and as set forth in the Town Fee Schedule, in addition to any other fee required by law.
- O. Performance security for small wireless facilities. The applicant and the owner of record of any proposed small wireless facilities property site shall comply with any requirements set forth in Chapter 104 of the Town Code regarding the posting of security to place a small wireless facility in the public right-of-way.
- P. Authority to inspect. In order to verify that the holder of a small wireless facilities permit and any and all lessees, renters, and/or licensees of small 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 Town 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 facilities, including, but not limited to, structures, antennas, accessory equipment and electromagnetic output.
- Q. Liability insurance.
 - (1) An applicant for a small wireless 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 small wireless facilities permit in amounts as set forth below:
 - (a) For co-location on an existing wireless telecommunications facility structure, the insurance policies shall be in the following amounts:
 - [1] Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[3] Workers' compensation and disability: statutory amounts.

(b) For a small wireless facility located on a new wireless telecommunications structure, the insurance policies shall be in the following amounts:

[1] Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence;

[2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[3] Workers' compensation and disability: statutory amounts.

(2) For a small wireless telecommunications facility on Town property, the commercial general liability insurance policy shall specifically include the Town, the Town Board, other elected officials, and the Town's officers, board members, employees, committee members, attorneys, agents and consultants as additional insureds.

(3) 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.

(4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance.

(5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.

(6) Prior to the issuance of a permit for a small wireless facility, the applicant shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

R. Indemnification. Any approval for small wireless facilities that is proposed for Town property or in a public right-of-way pursuant to this section shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the

extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town 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 Town 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 Town.

- S. Annual NIER certification. The holder of any small wireless facilities permit shall, annually, certify to the Planning Board, or its authorized designee, that NIER levels at the site where a small wireless facility is located are within the threshold levels adopted by the FCC. In addition, the Town, at its own cost and expense, shall be permitted to conduct its own certification test of the NIER levels at the site where any small wireless facility is located, with or without notice to the wireless telecommunications provider. Once operational, but prior to providing service to customers, as-built readings will be provided to the Town.
- T. Default and/or revocation of small wireless facilities permit.
- (1) If any small wireless facilities are 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 small wireless facility permit conditions and requirements, or it is determined conclusively that the applicant made materially false or misleading statements during the application process, then the Planning Board or the Building Inspector, or their designee, shall notify the holder of the small wireless facilities permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven 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 noncompliance causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Planning Board or Building Inspector may, at their sole discretion, order the violation remedied within 24 hours.

- (2) If, within the period set forth in Subsection T(1) above, 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 small wireless facilities into compliance, then the Planning Board or the Building Inspector may revoke such small wireless facility permit and require removal of such small wireless facility pursuant to § 125-85.2U below.

U. Removal.

- (1) Under the following circumstances, the Town may determine that the safety, public welfare, character and environment of the Town warrant and require the removal of small wireless facilities, under the following circumstances:
 - (a) The small wireless facility has been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case repair or removal shall commence within 90 days;
 - (b) A permitted small wireless facility falls into such a state of disrepair that it creates a safety hazard;
 - (c) The small wireless facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required small wireless facilities permit, or any other necessary authorization; or
 - (d) Any small wireless facility is determined to be in violation pursuant to § 125-85.2S above and fails to cure such violation within the time set forth in that section.
- (2) If the Planning Board makes a determination as noted in Subsection U(1) of this section, then it shall notify the holder of the small facilities permit and the owner of the property in writing that said small wireless facilities are to be removed.

- (3) The holder of the small wireless facilities permit or the owner of the property shall be required to dismantle and remove such small wireless facilities, 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 Town to remove such small wireless facilities. However, if the owner of the property upon which the small wireless facilities are located wishes to retain any access roadway to the small wireless facilities, the owner may do so with the approval of the Town.
- (4) If the small wireless facilities are not removed or substantial progress has not been made to remove the small wireless facilities within 90 days after the small facility permit holder has received such written notice of removal, then the Planning Board may order officials or representatives of the Town to remove the small wireless facilities at the sole expense of the property owner and/small wireless facility permit holder.
- (5) If the Town removes or causes to be removed the small wireless facilities, and the owner of the wireless telecommunications facilities does not claim and remove them to a lawful location within 10 days, then the Town may take steps to declare the small wireless facilities abandoned and dispose of or sell them and their components and retain the proceeds therefrom. The Town may also cause the costs associated with the removal and disposal of the small wireless facilities to be assessed on the property in the same manner as a tax or assessment.

V. Additional requirements relating to small facility permits.

- (1) Noncommercial usage exemption. Town residents utilizing satellite dishes, citizens' and/or band radios, and antennas 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.
- (2) 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.

W. Regulations applicable to small facility permits in the public right-of-way.

(1) In addition to the applicable small wireless facility permit provisions listed in this section, all small wireless facilities located in the public right-of-way shall be required to comply with the following regulations:

(a) Location. Small wireless facilities in the public right-of-way shall be co-located on existing wireless telecommunications facilities, whenever possible. If co-location 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 telecommunications facility support structures.

(b) Design requirements:

[1] All equipment shall be the smallest and least visibly intrusive equipment feasible.

[2] Antennas 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.

(c) 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 Town. In addition:

[1] In no case shall ground-mounted accessory equipment, walls, or landscaping be located within 18 inches of the face of the curb, or within four feet of the edge of the cartway, or within an easement extending onto a privately-owned lot;

[2] 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 Town. 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 Town.

- [3] Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Town.
 - [4] Any graffiti on any small wireless facility support structure or any accessory equipment shall be removed within 30 days upon notification by the Town, at the sole expense of the owner.
 - [5] Any proposed underground vault related to small wireless facilities shall be reviewed and approved by the Town.
 - [6] Accessory equipment attached to the a small wireless facility support structure shall have such vertical clearance as the Planning Board may determine.
- (d) Relocation or removal of small wireless facilities in the public right-of-way. In addition to the removal provisions set forth in § 125-85.2U above, within 90 days' following written notice from the Town, or such longer period as the Town 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 Town, 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:

- [1] To construct, repair, maintain or install any Town or other public improvement located in the public right-of-way;
 - [2] To prevent interference with the operations of the Town or other governmental entity, in the public right-of-way;
 - [3] Abandonment of a street or road or the release of a utility easement; or
 - [4] An emergency as determined by the Town Board.
- X. Reimbursement for the use of the public right-of-way. In addition to permit fees for a small wireless facility permit, every small wireless facility located in the public right-of-way is subject to the Town's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way. Such compensation for use of the public right-of-way shall be directly related to the Town's actual public right-of-way management costs, including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other public right-of-way management activities by the Town. The owner of each small wireless facility permit shall pay an annual fee to the Town to compensate the Town for the Town's costs incurred in connection with the activities described above as determined by the Town Board and as set forth in the Town Fee Schedule.
- Y. Special use permit applications for large wireless facility applications.
- (1) Except as otherwise provided by this section, no large wireless facilities shall be installed, constructed or substantially changed until a special use permit application is reviewed and approved by the Planning Board and a special use permit has been issued.
 - (2) Upon receipt of an application for a large wireless facility, the Planning Board shall review said application and plans in accordance with the standards and requirements set forth in this section. However, notwithstanding anything to the contrary, where appropriate, the Planning Board shall have the authority to waive any requirements set forth in this section relating to the an application for, or approval of, a special use permit for a large wireless facility, provided that it would further the purposes of this section.

- (3) The Planning Board may attach such conditions and safeguards to any permit and site development plan as are, in its opinion, necessary to ensure initial and continued conformance to all applicable standards and requirements.
- (4) No application shall be accepted and no permit shall be issued for a large wireless facility on a property where the Building Inspector has found, or there exists, a violation of the Town Code and where such violation has not been corrected.
- (5) Granting a special use permit shall not waive the requirement for final site plan approval, including fees, in accordance with Chapter 125, Article IX, Site Plan Approval.
- (6) An application for a special use permit for a large wireless facility 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 Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- (7) 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 for sale or lease for the property, depending on whether the applicant is the property owner, contract-vendee or lessee.
- (8) The applicant shall include a statement, in writing, that:
 - (a) 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
 - (b) 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 the New York State.
- (9) 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 Town and within one mile of the Town in bordering communities.

- (10) 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:
- (a) 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;
 - (b) Documentation that demonstrates and proves the need for the large wireless facility to provide service primarily and essentially within the Town. 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;
 - (c) The name, address and phone number of the person preparing the report;
 - (d) The name, address, and phone number of the property owner, operator and applicant;
 - (e) The postal address and Tax Map parcel number of the property;
 - (f) The zoning district or designation in which the property is situated;
 - (g) 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;
 - (h) The location of the nearest residential structure;
 - (i) The location, size and height of all existing and proposed structures on the property which is the subject of the application;
 - (j) 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;

- (k) The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
- (l) The make, model, type and manufacturer of the support structure and a design plan stating the support structure's capacity to accommodate multiple users;
- (m) 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;
- (n) The frequency, modulation and class of service of radio or other transmitting equipment;
- (o) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
- (p) Direction of maximum lobes and associated radiation of the antenna(s);
- (q) Applicant's proposed support structure and accessory equipment maintenance and inspection procedures and related system of records;
- (r) Documentation justifying the total height of any wireless telecommunications facility support structure and the basis therefor. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown;
- (s) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC;
- (t) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
- (u) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
- (v) 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;

- (w) Identify the proposed location of emergency power supply and the decibel level emitted during testing and operation;
 - (x) Information relating to the expected useful life of the proposed large wireless facility;
 - (y) 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
 - (z) Information relating to intended future co-locations on the large wireless facility that may result in a further increase in the size or height of the proposed large wireless facility.
- (11) In the case of a new wireless telecommunications facility support structure for a large wireless facility, the applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing wireless telecommunications support structure(s) or the use of alternative existing buildings or other structures within a 1/2-mile radius of the site proposed. Copies of written requests and responses for shared use shall be provided to the Planning Board with the application, along with any letters of rejection, stating the reason for rejection. Acceptable reasons for rejection include:
- (a) 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.
 - (b) 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.
 - (c) 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.

- (d) A commercially reasonable agreement could not be reached with the owner of such building or other structure.
- (12) 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 Town prior to issuance of any certificate of occupancy or compliance.
- (13) The applicant shall submit a completed long-form EAF. Based on circumstances of each application for a large wireless facility, the Planning Board may require submission of a detailed visual analysis.
- (14) 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.
- (15) 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 Town, and all municipalities adjoining the Town, for a two-year period following the date of the application.
- Z. General and specific requirements for large wireless facilities. Large wireless facilities are permitted in all zones, subject to the restrictions and conditions prescribed below:
- (1) 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 Town.

- (2) 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).
- (3) Aviation safety. Large wireless facilities shall comply with all federal and state laws and regulations concerning aviation safety.
- (4) Public safety communications. Large wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- (5) 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 Town.
- (6) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:
 - (a) Large wireless facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
 - (b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Town's residents.
 - (c) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

- (d) The owner or operator of a large wireless facility shall maintain standby power generators capable of powering the wireless telecommunications facility for at least 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 Planning Board may require standby power longer than 24 hours where circumstances indicate sufficient space exists to accommodate longer periods of backup power.

AA. Approval procedures.

- (1) For any special use permit application, the Planning Board 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 Planning Board for a special use permit under the provisions of this section.
- (2) Notice of the public hearing shall be by publication in the official newspaper of the Town at least 10 days in advance of the hearing. The hearing notice shall indicate that the application may be examined and further information is available from the Planning Board 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 Planning Board due on or before the date of the hearing.
- (3) In any district, the Planning Board may grant a special use permit for the construction of the large wireless facilities for a period of five years.
- (4) All decisions of the Planning Board involving applications for large wireless facilities shall be in writing and supported by substantial evidence contained in a written record.
- (5) Time frames for approval.
 - (a) Within 30 days of receipt of any application for a large wireless facility, the Town 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.

- (b) Within 90 days of receipt of an application for a co-located large wireless facility or 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 Planning Board for a special use permit under the provisions of this section, the Town shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

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

BB. Location.

- (1) Applications for special use permits for large wireless facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, (a) being the highest priority and (g) being the lowest priority.
 - (a) Co-location on existing wireless telecommunications facilities on lands owned or controlled by the Town, not including the public right-of-way;
 - (b) Co-location on a site with existing wireless telecommunications facilities or other tall structures in the Town;
 - (c) On other lands owned or controlled by the Town, including, but not limited to, the Town public right-of-way;
 - (d) On lands owned or controlled by other municipal corporations within the Town, to the extent permitted by such other municipal corporation;
 - (e) On nonresidential zoned properties;
 - (f) On residential zoned properties; and
 - (g) No large wireless facilities shall be permitted in the Bedford Historic District, Katonah Historic District, or on any property designated as a Tier I or Tier II property, unless the applicant demonstrates to the Planning Board's satisfaction that the selected site is necessary to

provide adequate service and no feasible alternative site exists. Approval shall be required from the Bedford Village Historic District Review Commission, the Katonah Historic District Advisory Commission, or the Historic Building Preservation Commission, as appropriate, before any large wireless facility is approved in the Bedford Historic District, Katonah Historic District, or on any property designated as a Tier I or Tier II property.

- (2) 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.
- (3) 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 co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Planning Board why co-location is commercially impracticable.
- (4) Notwithstanding the above, the Town may approve any site located within the Town, provided that the Town finds that the proposed site is in the best interest of the safety, public welfare, character and environment of the Town and will not have a deleterious effect on the nature and character of the community and surrounding properties.

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

DD. 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 they are 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 Planning Board 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.

EE. Visibility.

- (1) 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.
- (2) 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 they may be affixed and/or to harmonize with the natural surroundings.
- (3) Large wireless facilities shall not be artificially lighted or marked, except as required by law.
- (4) Wireless telecommunications 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.
- (5) Electrical and land-based telephone lines extended to serve the large wireless facility sites shall be installed underground.
- (6) Stealth technologies shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.
- (7) Landscaping shall be provided, if appropriate.

FF. Security.

- (1) All large wireless facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - (a) All antennas and supporting structures, including guy anchor points and wires and accessory equipment, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
 - (b) 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.

GG. Escrow for review costs. In accordance with the procedures set forth in Chapter 47 of the Town Code, and to the extent permissible under federal law, for large wireless facility applications, the applicant shall be required to provide funds to an escrow account held by the Town to allow the Planning Board 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.

HH. Recertification of special use permit.

- (1) At any time between 12 months and six months prior to the five-year anniversary date after the effective date for the special use permit for large wireless facilities and all subsequent fifth anniversaries of the effective date of the original special use permit for large wireless facilities, the holder of a special use permit for such large wireless facilities shall submit a signed, written request to the Planning Board for recertification. In the written request for recertification, the holder of such special use permit shall note the following:
 - (a) The name of the holder of the special use permit for the wireless telecommunications facilities.
 - (b) The date of the original granting of the special use permit.
 - (c) Whether the large wireless facility has been modified since the issuance of the special use permit and, if so, in what manner.

- (d) Any requests for waivers or relief of any kind whatsoever from the requirements of this section and any requirements for a special use permit.
 - (e) 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.
 - (f) 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 qualified New York State licensed professional engineer.
- (2) If, after such review, the Planning Board determines the permitted large wireless facility is in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Planning Board 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. If, after such review, the Planning Board determines that the permitted large wireless facility is not in compliance with the special use permit and all applicable statutes, local laws, ordinances, codes, rules and regulations, then the Planning Board 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 Planning Board unless and until any deficiencies determined by the Planning Board are cured. Any such decision shall be in writing and supported by substantial evidence contained in a written record.
- (3) If the applicant has submitted all of the information requested by the Planning Board and required by this section, and if the Planning Board does not complete its review, as noted in Subsection HH(2) of this section, prior to the five-year anniversary date of the special use permit, or subsequent fifth anniversaries, then 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 Planning Board to complete its review.

- (4) If the holder of a special use permit for a large wireless facility does not submit a request for recertification of such special use permit within the time frame noted in Subsection HH(1) of this section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent fifth anniversaries, unless the holder of the special use permit adequately demonstrates to the Planning Board that extenuating circumstances prevented a timely recertification request. If the Planning Board agrees that there were extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.
- II. Application fees. At the time that an application for a special use permit is submitted for a large wireless facility, or to renew any such application, a nonrefundable application fee shall be paid in an amount as determined by the Town Board and as set forth in the Town Fee Schedule, in addition to any other fee required by law.
- JJ. Performance security for special permits. The applicant and the owner of record of any proposed large wireless facilities property site shall, at their cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000 for a large wireless facility on a new wireless telecommunications support structure and \$25,000 for a co-location on an existing wireless telecommunications facility support structure or other existing structure; and with such sureties as are deemed sufficient by the Planning Board to assure the faithful performance of the terms and conditions of this section and conditions of any special use permit issued pursuant to this section. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.
- KK. Authority to inspect. In order to verify that the holder of a special use permit for a large wireless facility and any and all lessees,

renters, and/or licensees of large wireless facilities place and construct such facilities, including the wireless telecommunications support structure, 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 Town 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 facilities, including, but not limited to, wireless telecommunications support structures, antennas, accessory equipment, electromagnetic output and buildings.

LL. Liability insurance.

(1) An applicant for a special use permit for a large wireless facility shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special use permit in amounts as set forth below:

(a) For co-location on any existing large wireless facility or other wireless telecommunications facility support structure, including existing utility poles or monopoles, the required insurance policies shall be in the following amounts:

[1] Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[3] Workers' compensation and disability: statutory amounts.

(b) For all other large wireless facilities, the required insurance policies shall be in the following amounts:

[1] Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence;

[2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[3] Workers' compensation and disability: statutory amounts.

- (2) For a large wireless facility on Town property, the commercial general liability insurance policy shall specifically include the Town, the Town Board, other elected officials, and the Town's officers, board members, employees, committee members, attorneys, agents and consultants as additional insureds.
- (3) 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.
- (4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance.
- (5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- (6) Prior to the issuance of a special use permit for a large wireless facility, the applicant shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

MM. Indemnification. Any special use permit for a large wireless facility that is proposed for Town property or in the public right-of-way, pursuant to this section, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town 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 Town 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 Town.

NN. Regulations applicable to large wireless facilities in the public right-of-way.

(1) In addition to the applicable special permit provisions and requirements listed in this section, all large wireless facilities located in the public right-of-way shall be required to comply with the following regulations:

(a) Location. Large wireless facilities in the public right-of-way shall be co-located on an existing wireless telecommunications facility whenever possible. If co-location 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 telecommunications facility support structures.

(b) Design requirements:

[1] All accessory equipment shall be the smallest and least-visibly-intrusive equipment feasible.

[2] Antennas 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.

(c) Equipment location. Large wireless facilities, which include wireless telecommunications 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 Town. In addition:

[1] In no case shall ground-mounted accessory equipment, walls, or landscaping be located within 18 inches of the face of the curb, within four feet of the edge of the cartway, or within an easement extending onto a privately owned lot.

[2] 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 Town. 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 Town.

- [3] Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Town.
 - [4] Any graffiti on any large wireless facility support structure, base station or any accessory equipment shall be removed within 30 days upon notification by the Town, at the sole expense of the owner.
 - [5] Any proposed underground vault related to large wireless facilities shall be reviewed and approved by the Town.
 - [6] Accessory equipment attached to a large wireless facility support structure shall have such vertical clearance as the Planning Board may determine.
- (d) Relocation or removal of large wireless facilities in the public right-of-way. In addition to the removal provisions set forth in § 125-85.2RR below, within 90 days' following written notice from the Town, or such longer period as the Town 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 Town, 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:

- [1] To construct, repair, maintain or install any Town or other public improvement located in the right-of-way;
- [2] To prevent interference with the operations of the Town or other governmental entity in the right-of-way;
- [3] Abandonment of a street or road or the release of a utility easement; or
- [4] An emergency as determined by the Town Board.

OO. Reimbursement for the use of the public right-of-way. In addition to permit fees for a large wireless facility permit, every large wireless facility located in the Town public right-of-way is subject to the Town's public right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way and for any applicable permitting fees set forth in Chapter 104 of the Town Code. Such compensation for use of the public right-of-way shall be directly related to the Town's actual public right-of-way management costs, including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other public right-of-way management activities by the Town. The owner of each large wireless facility permit shall pay an annual fee to the Town to compensate the Town for the Town's costs incurred in connection with the activities described above as determined by the Town Board and as set forth in the Town Fee Schedule.

PP. Annual NIER certification. The holder of any special use permit shall, annually, certify to the Planning Board or its authorized designee that NIER levels at the site where the large wireless facilities are located are within the threshold levels adopted by the FCC. In addition, the Town, at its own cost and expense, shall be permitted to conduct its own certification test of the NIER levels at the site where any large wireless facility is located, with or without notice to the wireless telecommunications provider. Once operational, but prior to providing service to customers, as-built readings will be provided to the Town.

QQ. Default and/or revocation of special use permit.

- (1) If large wireless facilities are 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 any special use permit requirement, or it is determined conclusively that the applicant made materially

false or misleading statements during the application process, then the Planning Board or the Building Inspector shall notify the holder of the special use permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven 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 causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Planning Board may, at its sole discretion, order the violation remedied within 24 hours.

- (2) If, within the period set forth in Subsection QQ(1) above, the large wireless facilities are not brought into compliance with the provisions of this section, or of the special use permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the Planning Board or the Building Inspector may revoke such special use permit for the wireless telecommunications facility and may require the removal of such large wireless facility.

RR. Removal.

- (1) Under the following circumstances, the Town may determine that the safety, public welfare, character and environment of the Town warrant and require the removal of a large wireless facilities:
 - (a) Large wireless facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;
 - (b) Permitted large wireless facilities fall into such a state of disrepair that they create a safety hazard;
 - (c) Large wireless facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization; or

- (d) Any large wireless facility is determined to be in violation pursuant to § 125-85.2PP above and fails to cure such violation within the time set forth in that section.
- (2) If the Planning Board makes such a determination as noted in Subsection RR(1) of this section, then it shall notify the holder of the special use permit and the owner of the property that the large wireless facilities are to be removed.
 - (3) The holder of the special use permit or the owner of the property shall dismantle and remove such large wireless facilities, and all accessory equipment, antennas, support structures and other associated structures and facilities, 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 Town. However, if the owner of the property upon which the large wireless telecommunications facilities are located wishes to retain any access roadway to the large wireless facilities, the owner may do so with the approval of the Town.
 - (4) If the large wireless facilities are not removed or substantial progress has not been made to remove the large wireless facilities within 90 days after the special use permit holder has received notice, then the Planning Board may order officials or representatives of the Town to remove the large wireless facilities at the sole expense of the property owner and/or special use permit holder.
 - (5) If the Town removes or causes to be removed the large wireless facilities, and the owner of the large wireless facilities does not claim and remove any equipment or materials to a lawful location within 10 days, then the Town may take steps to declare the large wireless facilities abandoned and sell them and their components and retain the proceeds therefrom. The Town may also cause the costs associated with the removal and disposal of the large wireless facilities to be assessed on the property in the same manner as a tax or assessment.

SS. Penalties for offenses. In addition to any other remedies in this section, a violation of any provision of this section with respect to either large wireless facilities or small wireless facilities is hereby declared to be an offense, punishable by a fine not exceeding

\$350 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 \$350 nor more than \$700 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 \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Each continued violation shall constitute a separate additional violation.

TT. Adherence to state and/or federal rules and regulations.

- (1) The holder of a special use permit or small wireless facility permit issued pursuant to this section shall adhere to and comply with all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- (2) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security, are amended and/or are modified during the duration of a special use permit for large wireless facilities and a small wireless facility permit for small wireless facilities, then the holder of such a special use permit or small wireless facility permit shall conform the permitted wireless telecommunications facilities to the applicable amended and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.