

**VILLAGE OF LLOYD HARBOR
PROPOSED LOCAL LAW B-2018**

A local law to amend Chapter 205, “Zoning,” by adding new Article IX-A, entitled, “*Wireless Telecommunication Facilities*” to the Code of the Village of Lloyd Harbor. The Code was adopted by Local Law 2-1994 by the Board of Trustees on November 24, 1994 and last amended by Local Law 1-2018 adopted by the Board on May 21, 2018

BE IT ENACTED, by the Board of Trustees of the Incorporated Village of Lloyd Harbor, as follows:

SECTION 1. Add new Article IX-A to Chapter 205 of the Code entitled, “*Wireless Telecommunications Facilities*,” to read as follows:

Article IX–A: Wireless Telecommunications Facilities

§ 205-45.1. Purpose and legislative intent.

The Telecommunications Act of 1996 affirmed the authority of the Board of Trustees of the Incorporated Village of Lloyd Harbor concerning the placement, construction, and modification of Wireless Telecommunications Facilities. The Board of Trustees recognizes that Wireless Telecommunications Facilities may pose significant concerns to the safety, public welfare, character and environment of the Village and its residents. The Board of Trustees also recognizes that facilitating the development of wireless service technology can be of significant benefit to residents of the Village. In order to ensure that the placement, construction, or modification of Wireless Telecommunications Facilities is consistent with the Village’s land use policies, the Board of Trustees is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permitting process. The intent of this Local Law is to minimize impact of Wireless Telecommunications Facilities, establish a fair and efficient process for review and approval of applications, assure an integrated and comprehensive review of environmental impacts of such facilities, and protect the safety and welfare of the Village and its residents.

§ 205-45.2. Authority.

This Article is enacted pursuant to Municipal Home Rule and applicable authority granted expressly or otherwise by State and federal law.

§ 205-45.3. Title.

This Article shall be known and cited as the Wireless Telecommunications Facilities Siting Law for the Village of Lloyd Harbor.

§ 205-45.4. Definitions.

For purposes of this Article, and where not otherwise rendered inconsistent as a result of any particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section.

- A) **“Accessory Facility”** or **“Accessory Structure”** an accessory facility or structure 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, storage sheds, or cabinets.
- B) **“Administrative Approvals”** granting, denying, or revoking of a Special Use Permit under this Article, by the Village Clerk, after notification to the Board, where the proposed facility meets the requirements of this Article and that does not require a public hearing as defined by Section 205-45.17.
- C) **“Antenna”** a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
- D) **“Applicant”** any Person submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
- E) **“Application”** all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities, together with applicable fee(s).
- F) **“Board”** the Board of Trustees of the Incorporated Village of Lloyd Harbor.
- G) **“Co-location”** the use of an existing Tower or structure used as an existing cell antenna site to support antenna(s) for the provision of wireless services pursuant to a building permit or special use permit from the Village. A replacement tower constructed on the same site as an existing tower will be considered a co-location, as long as the new tower

is no taller than the old tower and that the old tower is removed in a reasonably short time frame after the new tower is constructed.

- H) **“Commercial Impracticability”** or **“Commercially Impracticable”** the inability to perform an act on terms that are reasonable in commerce; the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not render a situation to be “commercial impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- I) **“Completed Application”** an Application that contains all required information and/or data necessary to enable an informed decision to be made with respect to an Application.
- J) **“Distributed Antenna System”** or **“DAS”** a network of spatially separated antenna nodes connected to a common source via a transport medium that is designed to provide Wireless Service within a geographic area or structure.
- K) **“FAA”** the Federal Aviation Administration, or its duly designated and authorized successor agency.
- L) **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
- M) **“Height”** when referring to a Tower or structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
- N) **“Information Services”** the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service, and shall include mobile broadband access or other broadband services not included in 47 USC 332(c).
- O) **“Modification”** or **“Modify”** the addition, removal, or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changes to the color or

materials of any visually discernable components, vehicular access, parking, and/or any upgrade or changeout of equipment for better or more modern equipment. The term shall additionally include the adding of a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any component of a wireless facility where the component being replaced is identical to the component being replaced or the normal repair and maintenance of a wireless facility without any addition, removal, or changes to the component.

- P) **"NIER"** Non-Ionizing Electromagnetic Radiation.
- Q) **"Person"** any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
- R) **"Personal Wireless Facility"** see definition for Wireless Telecommunications Facilities.
- S) **"Personal Wireless Services"** or **"PWS"** or **"Personal Telecommunications Service"** or **"PCS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
- T) **"Repairs and Maintenance"** the replacement of any component of a wireless facility where the replacement is identical to the component being replaced or any normal repair or maintenance of a wireless facility without any additions, removal, or changes of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- U) **"shall"** expresses an instruction or command; a mandatory requirement.
- V) **"Special Use Permit"** the permission issued by the authority of the Board, pursuant to this Article IX-A, by which an Applicant is allowed to file for a building permit, to construct and use Wireless Telecommunications Facilities as granted or issued by any board or department of the Village.
- W) **"State"** means the State of New York.
- X) **"Stealth" or "Stealth Technology"** to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications

Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or Commercially Impracticable under the facts and circumstances present.

- Y) **“Telecommunications”** the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
- Z) **“Telecommunication Site”** see definition for Wireless Telecommunications Facilities.
- AA) **“Telecommunications Structure”** a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’.
- BB) **“Temporary”** temporary in relation to all aspects and components of this Article, something intended to, or that does not exist for more than ninety (90) days.
- CC) **“Tower”** any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
- DD) **“Village”** means the Incorporated Village of Lloyd Harbor, New York.
- EE) **“Wireless Services”** any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.
- FF) **“Wireless Telecommunications Facilities”** or **“Telecommunications Site”** or **“Personal Wireless Facility”** or **“Information Services site”** a structure, facility or location, which is designed or intended to be used as or to support Antennas, transmitting devices, or receiving devices. Towers of any kind shall be included in this definition, including buildings, steeples, silos, water towers, signs, or other similar structures which can be used as a support structure for Antennas or any functional equivalent thereof. This definition shall further include all related facilities and equipment, such as cabling, equipment shelters, and other structures associated with any site. The terms shall include any structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services, and any commercial wireless telecommunication service not licensed by the FCC.

§ 205-45.5. Overall policy and desired goals for Special Use Permits for Wireless Telecommunications Facilities.

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

- A) implementing an Application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
- B) establishing a policy for examining an application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent;
- C) promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
- D) promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or Commercially Impracticable under the facts and circumstances
- E) promoting and encouraging, proper permitting for all new, co-location, or modification of a Wireless Telecommunications Facility; and
- F) Promoting and encouraging the most appropriate site, with regards to being the least visually intrusive among those available in the Village, for placement of a Wireless Telecommunications Facility.

§ 205-45.6. Exceptions from a Special Use Permit for Wireless Telecommunications Facilities.

- A) Except as otherwise provided by this Article no Person shall be permitted to site, place, build, construct, modify, or prepare any site for the placement or use of, Wireless

Telecommunications Facilities as of the effective date of this Local Law without having first obtained a Special Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Special Use Permit shall be required for those non-commercial exclusions noted in Section 205-45.7.

- B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this Local Law shall be allowed to continue as such presently exists, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation comply with this Article.
- C) Any Repair and Maintenance of a Wireless Facility does not require an Application for a Special Use Permit.

§ 205-45.7. Exclusions.

The following shall be exempt from this **Article**:

- A) The Village Police Department, Highway Department, or other public service facilities owned and operated by the local government.
- B) Any facilities expressly exempt from the Village's siting, building, and permitting authority.
- C) Over-the-Air reception devices, including the reception antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television broadcast stations (TVBS) and other customer-end antennas that receive and transmit fixed wireless signals, that are primarily used for reception.
- D) Facilities exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio, and other similar non-commercial Telecommunications.
- E) Facilities used exclusively for providing unlicensed spread spectrum technology (i.e. Bluetooth or a 'Hot Spot'), where the facility does not require a new tower, where the service is not to be used for commercial purposes, where there is no fee or charge for the use of the service and where the service is intended to be useable for less than 200 feet.

- F) Applications for Special Use Permits for other than Wireless Telecommunications Facilities, which shall be governed by the provisions of Article IX.

§ 205-45.8. Special Use Permit Application and other requirements.

- A) All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Article. The Board is the officially designated agency or body of the Village to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Special Use Permits for Wireless Telecommunications Facilities. The Board may in its discretion delegate or designate other official agencies or officials of the Village to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting, not granting, or revoking Special Use Permits for Wireless Telecommunications Facilities.
- B) The Board delegates its authority to the Village Clerk, or their designee, to accept, review, analyze and, after notification to the Board, make Administrative Approvals with respect to the granting, denying, or revoking Special Use Permits for those facilities that meet requirements of this Article and that do not require a public hearing as defined by Section 205-45.17.
- C) No Wireless Telecommunications Facilities shall be installed, constructed or modified until the Application is reviewed and approved by the Board, or a designee thereof, and a Special Use Permit has been issued.
- D) Any and all representations made by the Applicant to the Village on the record during the Application process, whether written or verbal, shall be deemed a part of the Application and may be relied upon in good faith by the Village.
- E) An Application for a Special Use Permit for Wireless Telecommunications Facilities 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.
- F) The Applicant must provide documentation to verify the authority to proceed as proposed on the site. Proof of such authority can be established by the Applicant's furnishing of an

executed copy of a lease, easement, right-of-way agreement, collocation attachment agreement, or a signed letter acknowledging authorization to use said site in conformity with the use described in the application. If the Applicant owns the site, the applicant must provide a certified copy of the last deed of record showing the applicant as the grantee.

G) The Applicant shall include a statement in writing:

1. that the Applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Board, or a designee thereof, in writing, as well as all applicable and permissible local codes, laws, and regulations, including any and all applicable Village, State, and federal laws, rules, and regulations; and
2. that the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.

H) Where a certification is called for in this Article, such certification shall bear the signature and seal of a Registered Professional licensed in the State.

I) In addition to all other required information as stated in this Article, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing facility shall contain the information hereinafter set forth.

1. A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity.
2. Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Village. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage.
3. The name, address and phone number of the person preparing the report.

4. The name, address, and phone number of the property owner and Applicant, and to include the legal name of the Applicant. If the site is a tower and the owner is different than the Applicant, provide name and address of the tower owner.
5. The postal address and tax map parcel number of the property.
6. The Zoning District or designation in which the property is situated.
7. The size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines.
8. The location of nearest residential structure(s).
9. The location, size and height of all existing and proposed structures on the property which is the subject of the Application.
10. The type, locations and dimensions of all proposed and existing landscaping, and fencing.
11. The azimuth, size and center-line height location of all proposed and existing antennae on the supporting structure.
12. The number, type and model of the Antenna(s) proposed with a copy of the specification sheet.
13. The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users.
14. A site plan describing the proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting.
15. The frequency, modulation and class of service of radio or other transmitting equipment.
16. The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts.
17. Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions guidelines (NIER). If not categorically excluded, a complete RF Emissions study is required to provide verification.

18. A statement, signed by the Applicant, that the proposed installation will not cause physical or RF interference with other telecommunications devices.
 19. A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.
 20. A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design.
- J) The Applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the proposed new Tower or existing structure intended to support wireless facilities is in compliance with FAA Regulation Part 77 and if said structure requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines, that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.
- K) Application for New Tower
1. In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the Village. Copies of written requests and responses for shared use shall be provided to the Village in the Application, along with any letters of rejection stating the reason for rejection.
 2. If deemed necessary to better inform the public, in the case of a new Telecommunication Tower, the Applicant shall, prior to the public hearing on the application, conduct a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times, and location of this balloon test shall be advertised by the Applicant no less than seven (7) and no more than fourteen (14) days in advance of the first test date in a newspaper with a

general circulation in the Village. The Applicant shall inform the Village, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours between the hours of 7:00 am and 4:00 pm on the dates chosen. The primary date shall be on a weekend, however in the case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided with the Application.

3. The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant demonstrates, in writing, that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable, or creates an unnecessary and unreasonable burden, based upon:
 - a. the foreseeable number of FCC licenses available for the area;
 - b. the kind of Wireless Telecommunications Facilities site and structure proposed;
 - c. the number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites; and
 - d. available space on existing and approved Towers.
4. The owner of a proposed new Tower and their successors in interest shall negotiate, in good faith, for the shared use of the proposed Tower by other wireless service providers in the future, and shall:
 - a. respond within 60 days to a request for information from a potential shared-use Applicant;
 - b. negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers;

- c. allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference; and
 - d. failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit.
- L) The Applicant shall provide certification with documentation (structural analysis) including calculations that the Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all Village, County, State, and Federal structural requirements for loads, including wind and ice loads.
- M) If proposal is for a co-location or modification on an existing Tower, the Applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex J, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222G or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.
- N) All proposed Wireless Telecommunications 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 and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.
- O) If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include the following.
- 1. If a new Tower or increasing the height of an existing structure is proposed, a computer generated "Zone of Visibility Map" at a minimum of one mile radius

from the proposed structure, with and without foliage shall be provided to illustrate locations from which the proposed installation may be seen.

2. Pictorial representations of “before and after” (photo simulations) views from key viewpoints both inside and outside of the Village as may be appropriate, including but not limited to State highways and other major roads; State and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
 3. A written description of the visual impact of the proposed facility including; and as applicable the Tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- P) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility.
- Q) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as may be required by the Village.
- R) All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with all laws, rules and regulations of the Village, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- S) An access road, turn-around space, and parking shall be provided, at a Telecommunications Site, to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable.

Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

- T) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified, or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Village, State, or Federal Government, including but not limited to the most recent editions of the ANSI Code, State Fire Prevention and Building Code(s), National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- U) A holder of a Special Use Permit granted under this Article shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Village or other governmental entity or agency having jurisdiction over the applicant.
- V) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site.
- W) An Applicant shall submit to the Village the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities as applicable and/or requested.
- X) The holder of a Special Use Permit shall notify the Village of any intended Modification of a Wireless Telecommunication Facility and shall apply to the Board to modify, relocate, or rebuild a Wireless Telecommunications Facility.
- Y) With respect to this application process, the Board will typically seek to assume lead agency status pursuant to SEQRA. The Board shall conduct an environmental review of

the proposed project pursuant to SEQRA in combination with its review of the Application.

§ 205-45.9. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site, and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and seven (7) being the lowest priority:
1. on existing Towers or other structures on Village owned properties, including the right-of-way; then
 2. on existing Towers or other structures on other property in the Village; then
 3. a new Tower on Village-owned properties, including the right-of-way; then
 4. a new Tower on properties in areas zoned for Heavy Industrial use; then
 5. a new Tower on properties in areas zoned for Commercial use; then
 6. a new Tower on properties in areas zoned for Agricultural use; then
 7. a new Tower on properties in areas zoned for Residential use.
- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass 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 Board why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the Board may approve any site located within an area in the above list of priorities, provided that the Board finds that the proposed site is in the best interest of the safety and welfare of the Village and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.
- F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Board may disapprove an Application for any of the following reasons:
1. conflict with safety and safety-related codes and requirements;
 2. conflict with the historic nature or character of a neighborhood or historical district;
 3. the use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
 4. the placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Village, or employees of the service provider or other service providers; or
 5. conflicts with the provisions of this Article.

§ 205-45.10. Shared use of Wireless Telecommunications Facilities and other structures.

- A) It shall be presumed that the Board shall prefer locating Antenna, nodes, and all other facilities on existing Towers or others structures without increasing the height, as opposed to construction of new Towers.
- B) Applicants shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the proposed location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.
- C) Any Applicant which intends to locate on an existing Tower, or similarly suitable structure, shall provide documentary proof of the property owner's permission for the Applicant to use said property.

D) Unless good cause is shown, any such shared use shall, to the extent practicable, consist only of the minimum Antenna array technologically required to provide service primarily and essentially within the Village.

§ 205-45.11. Height of Telecommunications Tower(s).

- A) Applicants shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefore. Documentation in the form of propagation studies must include all supporting backup data used to perform at the height requested and a minimum of ten (10') feet lower than said height, to allow verification of the need for said height. Such documentation shall be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Village, to the extent practicable, unless good cause is shown.
- B) No Tower or any attachment constructed after the effective date of this Article shall exceed the height which shall permit operation without required artificial lighting of any kind in accordance with Village, State, and/or any Federal statute, law, local law, Village Code, rule or regulation.

§ 205-45.12. Visibility of Wireless Telecommunications Facilities.

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as otherwise required by law.
- B) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color, as may be approved by the Board, to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Article.
- C) If lighting is required, Applicant shall provide a plan for lighting, which is the most unobtrusive and inoffensive, while still complying with all requirements of law.

§ 205-45.13. Security of Wireless Telecommunications Facilities.

All Wireless Telecommunications Facilities and Antennas shall be located, fenced, and otherwise secured in a manner that prevents unauthorized access. Such security measures shall be as follows:

- A) all Antennas, Towers, and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed, or shielded, in such a manner as to prevent the structure from being scaled or struck; and
- B) transmitters and Telecommunications control points shall be installed in such a manner as to make allow only authorized personnel to access said structures.

§ 205-45.14. Signage.

Wireless Telecommunications Facilities shall provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area, which is no larger than four (4) square feet. A sign containing the name(s) of the owner(s) and operator(s) of the Antenna(s), shelter, and cabinet, as well as emergency phone number(s), measuring no large than four (4) square feet, shall also be located on the Applicant's equipment shelter or cabinet and be visible from the access point of the site. Signage on Tower sites shall also contain an FCC registration, whenever applicable. Signage shall not be lighted, unless otherwise required by law. No other signage, including advertising, shall be permitted, without permission of the Board.

§ 205-45.15. Lot size and setbacks.

- A) All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from adjacent parcels, recorded rights-of-way, and road or street lines by the greater of the following distances:
 - 1. a distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure; or
 - 2. the existing setback requirement of the underlying Zoning District.
- B) Accessory structures shall be located so as to comply with the applicable minimum setback requirements for the property as per the underlying Zoning District.

§ 205-45.16. Retention of expert assistance and reimbursement by Applicant.

- A) The Board may hire any consultant(s) and/or expert necessary to assist the Village in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.

- B) An Applicant shall deposit with the Village escrow funds sufficient to reimburse the Village for all costs of the Board's consultant(s) in providing expert evaluation and consultation to any agency of the Village in connection with the review of any Application, including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the Village shall precede the pre-application meeting. The Village will maintain a separate escrow account for all such funds. The Board's consultants/experts shall invoice the Village for its services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the Village, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Village before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Village is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the Applicant, be promptly refunded to the Applicant. If notified by the Village that additional escrow is required, the Applicant may request copies of Consultants' and/or experts' invoices. If the Applicant finds errors in those invoices, Applicant may ask the Board to audit those specific items for reasonableness, and may request relief there from if not deemed reasonable by the Village. Should the Application be for multiples sites, the Village Clerk shall have the authority to accept such initial escrow sum as they shall deem reasonable for all sites in the aggregate.
- C) Notwithstanding the above, there shall be a fee cap of \$17,000.00 as to the total consultant fees to be charged to applicant in a case. The foregoing does not prohibit the Board from imposing additional reasonable and cost based fees for costs incurred should an Applicant amend or change its application and the fee cap shall not apply as to any fees which the Board determines to be attributable to the dilatory or otherwise bad faith actions of Applicant in providing a complete application or in proceeding with a public hearing.

D) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

§ 205-45.17. Public hearing and notification requirements.

- A) Prior to the approval of any Application for a Special Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the Board, notice of which shall be published in a newspaper of general circulation in the Village no less than fifteen (15) calendar days prior to the scheduled date of the Public Hearing. In order that the Village may notify nearby landowners, the Application shall contain the names and address of all landowners whose property is located within fifteen hundred (1,500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- B) There shall be no Public Hearing required for an Application to co-locate on an existing Tower or other structure or a modification at an existing site, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- C) The Board shall schedule the Public Hearing referred to in Subsection (A) of this section once it finds the Application is complete, the Village, at any stage prior to issuing a Special Use Permit, may require such additional information as it deems necessary.

§ 205-45.18. Action on an Application for a Special Use Permit for Wireless Telecommunications Facilities.

- A) The Board, or a designee thereof, will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable State and Federal requirements, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public's interest and need to be involved, and the Applicant's desire for a timely resolution.
- B) The Board may refer any Application or part thereof to any advisory, other committee or commission for a non-binding recommendation.

- C) After a Public Hearing and after formal consideration of the Application, the Board may approve, approve with conditions, or deny any such Application for a Special Use Permit requested under this Article. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
- D) If the Board approves the Application for a Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Board's action, and the Special Use Permit shall be issued within thirty (30) days of such approval. Except for necessary building permits, and subsequent Certificates of Compliance, once a Special Use Permit has been granted hereunder, no additional permits or approvals from the Board, such as site plan or zoning approvals, shall be required by the Village for the Wireless Telecommunications Facilities permitted by the Special Use Permit.
- E) If the Board denies the Application for a Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Board's action.

§ 205-45.19. Extent and parameters of Special Use Permit for Wireless Telecommunications Facilities.

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

- A) such Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Board; and
- B) such Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit, or for a material violation of this Article after prior written notice to the holder of the Special Use Permit.

§ 205-45.20. Application fees.

The fee for a Special Use Permit required by this chapter shall be at the level fixed, from time to time, by resolution of the Board.

§ 205-45.21. Performance security.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the Village a bond, or other form of security acceptable to the Village as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the Village to assure the faithful performance of the terms and conditions of this Article and conditions of any Special Use Permit issued pursuant to this Article. 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.

§ 205-45.22. Reservation of authority to inspect Wireless Telecommunications Facilities.

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

§ 205-45.23. Liability insurance.

- A) A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance policies for personal injury, death, property damage, and umbrella, for the duration of the Special Use Permit in the amounts fixed, from time to time, by resolution of the Board.
- B) Any commercial general liability insurance policy, for a Wireless Telecommunications Facility on Village property, shall specifically include the Village, its officers, boards, members of any board, employees, attorneys, agents, and consultants as additional insureds.

- C) Insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State, which maintain a Best's rating of "A" or better.
- D) Before any building permit is granted for a permitted Wireless Telecommunications Facility, and in no case more fifteen (15) days after the granting of the Special Use Permit, the holder said Special Use Permit shall provide the Village with copies of all relevant policies or certificates of insurance reflecting the required insurance amounts.
- E) All such insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least thirty (30) days written notice prior to the cancellation of any of the insurance.
- F) Renewal or replacement policies or certificates of insurance shall be delivered to the Village at least fifteen (15) days before the expiration date of any policies or certificates of insurances then in effect.

§ 205-45.24. Indemnification.

- A) Any Application for Wireless Telecommunication Facilities proposed to be located on Village property, pursuant to this Article, shall contain a provision with respect to indemnification. Such provision shall require the Applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village, and its officers, Boards, employees, board members, 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, use, operation, maintenance, repair, installation, replacement, removal, performance of, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Village, or its servants or agents. The penalties, damages, and charges referenced herein, as recoverable by the Village, shall include reasonable attorneys' fees, consultants' fees, and expert witness fees.

B) Notwithstanding the requirements noted in subsection (A) of this section, no indemnification provision shall be required where the Village acts as an Applicant for a Special Use Permit under the provisions of this Article.

§ 205-45.25. Fines.

- A) In the event of a violation of this Article or any Special Use Permit issued pursuant to this Article, the Board may impose and collect, and the holder of the Special Use Permit for Wireless Telecommunications Facilities shall pay to the Village, fines or penalties as set forth below.
- B) Any failure of a Special Use Permit Applicant or holder to comply with provisions of this Article shall constitute a violation of this Article and shall subject same to the code enforcement provisions and procedures provided in Chapter 205, Article XIV of the Village Code.
- C) Notwithstanding anything in this Article, the holder of the Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to avoid compliance with this Article. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit. The Village may also seek injunctive relief to prevent the continued violation of this Article, without limiting other remedies available to the Village.

§ 205-45.26. Default; revocation.

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified, or maintained in a way that is inconsistent or not in compliance with the provisions of this Article or of the Special Use Permit, then the Village shall notify the holder of the Special Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 205-45.25 and if a violation is not corrected to the satisfaction of the Village, within a reasonable period of time, the Special Use Permit shall be subject to revocation.

§ 205-45.27. Removal of Wireless Telecommunications Facilities.

- A) The Board may determine that the safety and welfare interests of the Village warrant and require the removal of Wireless Telecommunications Facilities, under the following circumstances:
1. where a properly permitted Wireless Telecommunications Facilities has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by *force majeure* or *acts of God*, in which case, repair or removal shall commence within 90 days; or
 2. where a properly permitted Wireless Telecommunications Facilities falls into such a state of disrepair that said structure constitutes a safety hazard; or
 3. where a Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining any and all proper authorization; or
 4. where any such necessary authorization or Special Permit has been duly revoked.
- B) If the Board makes such a determination as noted in subsection (A) of this section, then the Village shall notify the holder of such Special Use Permit, within forty-eight (48) hours, that said Wireless Telecommunications Facilities are to be removed.
1. The Board may approve an interim temporary use agreement or permit, to enable the sale or rehabilitation, in compliance with this Article, of any such Wireless Telecommunications Facility.
- C) The holder of the Special Use Permit, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability, within ninety (90) days of receipt of written notice from the Village. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the Board.

- D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Special Use Permit holder has received notice, then the Board may order officials or representatives of the Village to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Special Use Permit holder.
- E) If the Board removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of said Wireless Telecommunications Facilities does not claim and remove same from the site to a lawful location within ten (10) days, then the Board may take steps to declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.
- F) Notwithstanding anything in this Section to the contrary, the Board may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or relocation of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Special Use Permit, subject to the approval of the Board, and an agreement to such plan shall be executed by the holder of the Special Use Permit and the Board. If such a plan is not developed, approved, and executed within the ninety (90) day time period, then the Village may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

§ 205-45.28. Relief.

Any Applicant desiring relief, waiver, or exemption from any aspect or requirement of this Article may request such, provided that the relief or exemption is contained in the submitted Application for either a Special Use Permit, or in the case of an existing or previously granted Special Use Permit a request for modification of Applicant's existing Tower and/or facility. Such relief may be temporary, permanent, partial, or complete. The Applicant bears the burden of proving the reasonable need for any such requested relief, waiver, or exemption. No such relief, waiver, or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver, or exemption will have no significant effect on the safety and welfare of the Village, its residents, and other service providers. The

Applicant shall bear all costs of the Village in considering the request, waiver, exemption, or other relief.

§ 205-45.29. Periodic regulatory review by the Board.

- A) The Board may at any time conduct a review and examination of this entire Article.
- B) If after such periodic review and examination of this Article, the Board determines that one or more provisions of this Article should be amended, repealed, revised, clarified, or deleted, the Board may take whatever measures necessary, in accordance with applicable law, to accomplish the same. Where warranted and in the best interests of the Village, the Board may repeal this entire Article.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the Board may at any time and in any manner, amend, add, repeal, and/or delete one or more provisions of this Article.

§ 205-45.30. Adherence to State and/or Federal rules and regulations.

- A) To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities has not received relief or otherwise exempt from appropriate State and/or Federal agency rules or regulations, the holder of a Special Use Permit granted under this Article 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 the requirements of this section are any rules and regulations regarding height, lighting, security, electrical, and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit for Wireless Telecommunications Facilities, the holder of such a Special Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable change or modification, or sooner, if so required by the issuing agency.

§ 205-45.31. Conflict with other laws.

In its interpretation and application, the provisions of this Article shall be held to be minimum requirements, adopted for the promotion of the public safety and welfare. Whenever the requirements of this Article are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, this Article shall govern, unless otherwise preempted by law.

§ 205-45.32. Singular and plural.

Words used in this Article in the singular, where the context so permits, shall be deemed to include the plural and vice versa. The definitions of words in the singular in this Article shall apply to such words when used in the plural where the context so permits and vice versa.

§ 205-45.33. Severability.

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

Section 2. This Local Law shall take effect immediately upon filing with the Secretary of State.