TOWN OF LANSING COMMUNICATIONS TOWER LOCAL LAW
TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK
LOCAL LAW NUMBER __ of 2015

The Town Board of the Town of Lansing, Tompkins County, New York, pursuant to a Resolution dated _____, 2015, does hereby adopt and enact Local Law No. ____ of 2015, and thus **be it enacted by the Town Board of the Town of Lansing as follows:**

ARTICLE I - LEGISLATIVE INTENT; PURPOSES; EFFECT.

A. The Town of Lansing recognizes the increased demand for wireless communications and transmitting facilities and the need for the services they provide. Often these facilities require the construction of Towers and related Telecommunications Facilities. The intent of this local law is to protect the Town's interest in siting such Towers and related infrastructure in a manner consistent with sound land use planning by minimizing visual effects through careful design, siting, and vegetative screening. The Town seeks to avoid potential damage to adjacent properties from Tower failure or falling debris through engineering and the careful siting of Towers, while also maximizing use of any new or existing Tower and encouraging the use of existing buildings and structures to reduce the number of Towers needed, and while also allowing wireless service providers to meet their technological and service objectives for the benefit of the public.

B. The purpose of this local law is to allow for telecommunications installations in accordance with applicable state and federal law. While acknowledging the demand for wireless communications, the Town recognizes that the small-scale residential and commercial districts, agricultural landscapes, and Cayuga Lake waterfront are primary community resources. The erection of Towers of unusual height or bulk within the Town in some locations may threaten the historic integrity, damage the aesthetic value, and reduce residents' opportunities to enjoy these resources.

C. The intent of this local law is to regulate the construction and siting of communications Towers in compliance with the ~~TCA~~Telecommunications Act of 1996 ("TCA") to achieve the following: (i) protection of the health, safety and general welfare of the residents of the Town of Lansing; (ii) to protect the aesthetic characteristics and historic features of the Town of Lansing; and (iii) to ensure that communications Towers planned for locations within the Town of Lansing are sited and constructed in a manner consistent with sound land use planning, the Town's comprehensive plan, and other adopted goals of the Town of Lansing. As well, Tower heights are particularly problematic from a public health and safety perspective in the Town of Lansing given the hilly terrain and the presence of an international airport.

D. This local law supersedes, repeals, and replaces the Town of Lansing Cellular Tower Ordinance, commonly known as Appendix II to the Lansing Land Use Ordinance, together and along with each other local law or ordinance which, by its purpose, is intended to regulate cellular or communications towers and facilities. In the event any other law or regulation may affect any Telecommunications Facility, then such law or regulation shall apply together with this local law, and any conflict shall be resolved by applying the most restrictive non-preempted, enforceable standard or requirement.

ARTICLE II - DEFINITIONS.

As used in this local law, the following terms shall have the meanings indicated:

ACCESSORY STRUCTURE - An accessory facility or structure serving or being used in conjunction with any Telecommunications Facilities or Tower and located on the same lot as the Telecommunications Facility or Tower. Non-exclusive examples of such structures include utility or transmission equipment, base stations, Antennae, wires, utility appurtenances and connections, anchors, security fencing, storage sheds or cabinets.

ANTENNA - A system of electrical conductors that transmit or receive radio frequency and other wireless signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communication services, and microwave communications.

COLOCATION, COLLOCATE, COLLOCATED (also known as "co-location" or "collocation") - Telecommunications Facilities which utilize existing Towers, buildings, or other structures for placement of Antenna(s) and which do not require the construction of a new Tower.

DAS – Distributed antenna system(s).

FAA – The Federal Aviation Administration.

FCC – The Federal Communications Commission.

OTARD – The "Over the Air Reception Devices" rules and regulations of the FCC.

NIER - Non-ionizing electromagnetic radiation.

PCS – Personal communications services.

PERSON – Any individual, landowner, lessor, licensee, easement holder, trust, corporation, LLC, partnership, or other entity.

PLANNING BOARD – The Planning Board of the Town of Lansing.

RFI – Radio frequency interference.

SEQRA – The New York State Environmental Quality Review Act, generally codified at Environmental Conservation Law Article 8, and including the regulations pertaining thereto at 6 NYCRR Part 617, each as now exist or as hereafter amended or recodified.

SITE PLAN or SITE PLAN REVIEW – Site planning and reviews of site plans per the requirements of the Town of Lansing Land Use Ordinance and Article 16 of Town law, as enhanced by this local law.

SPECIAL USE - A use which is deemed allowable within a given zoning district, but which is potentially incompatible with other allowed or existing uses and, therefore, is subject to special standards and conditions of use and the approval of the Planning Board.

SPECIAL USE PERMIT – A form of land use permitting outlined in the Town of Lansing Land Use Ordinance and in Town Law Article 16, as enhanced by this local law.

TCA – The federal Telecommunications Act of 1996, as now exists and as hereafter amended, supplemented, or recodified. This includes all aspects of the TCA, including the codification of its provisions within Title 47 of the United States Code.

TELECOMMUNICATIONS FACILITIES - Towers, Antennae, and Accessory Structures used in connection with the provision of cellular telephone service, DAS, WAN, personal communications services (PCS), paging services, radio and television broadcast services, internet and data processing, SMS, and similar broadcast and communication services.

TOWER - An structure not intended for human habitation upon which Antennae are designed to be located or arrayed. It includes, without limit, freestanding Towers, latticework Towers, guyed Towers, monopoles, and other similar structures which may employ camouflage technology.

TOWN – The Town of Lansing, in Tompkins County, New York.

TOWN BOARD – The Town Board of the Town of Lansing.

ARTICLE III – RULES, REVIEW STANDARDS, AND APPROVALS REQUIRED FOR TELECOMMUNICATIONS FACILITIES; SPECIAL PERMITTING; SITE PLANNING; DOCUMENTATION REQUIRED.

A. No Telecommunications Facilities shall hereafter be used, erected, modified, or reconstructed except after the granting of a Special Use Permit and Site Planning approval by the Lansing Planning Board and in conformity with the Town's Land Use Ordinance and the provisions of this local law. No existing structure shall be modified to serve as a telecommunications or telecommunications-related Tower unless in conformity with this local law.

B. New Towers are and shall only be permitted in a RA, B2, or IR zoning district upon the issuance of a Special Use Permit and the granting of Site Plan approval by the Planning Board. Telecommunications Facilities and Towers are not permitted in R1, R2, R3, L1, and B1 zoned areas per the Town of Lansing Land Use Ordinance. These requirements are specifically intended to regulate Tower placement and not to preclude or regulate wireless and cellular services in the Town.

C. Not more than one communication Tower shall be permitted on any parcel of land. Telecommunications Facilities under the exclusive control or ownership of a municipal corporation are exempt from this subsection.

D. In reviewing any applications for any allowed or new Telecommunications Facilities or Tower(s), the Planning Board shall, at a minimum, require that the following application materials and information be submitted for review and, if appropriate, approved, and that the following review and approval standards and criteria be met:

1. Site Location. A proposed location shall receive approval from the Planning Board following satisfaction of the following requirements:

    a. Documentation of the need for the use of the site proposed, including an analysis demonstrating that proposed location is necessary to meet the needs of the applicant's telecommunications system and to provide adequate service and coverage to the intended area.

For new Towers it shall also be shown that there is not a technologically feasible and available location on an existing Tower or existing high structure or municipal or government-owned structure or property.

b. "Before" and "after" propagation studies prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer registered in the State of New York), demonstrating existing signal coverage and contrasting such signal coverage against the signal coverage resulting from the proposed Telecommunications Facilities, together with a "search ring" map overlaid upon an appropriate background map demonstrating the area within which the Tower or Telecommunications Facilities need to be located in order to provide proper signal strength and coverage to the target cell.

ec. Analyses and studies by NYS certified structural engineers showing adequate design and construction parameters for any proposed Telecommunications Facilitates, including calculations and a demonstration that the strength and capacity of the same and all Towers are designed to exceed the loading expected and calculated for such Telecommunications Facility or Towner at such location and elevation, including static loading, wind loading, and snow loading.

d. The applicant shall explain why it selected the proposed site, discuss the availability or lack of availability of a suitable structure within the search ring which would have allowed for Collocated Antennae and to what extent the applicant explored locating the proposed Tower in a more intensive use district. Verification of and delivery of copies of correspondence with other telecommunications companies concerning Colocation is a part of this requirement.

2. Location preference. Preference shall be given for facilities located in higher-use districts or in higher-intensity-of-use zones (or areas within a given zoning district or area), with the classifications of areas and zones immediately below being arranged from most-preferred applications and locations (top of list) to least-preferred locations (bottom of list), as follows:

Small-site locations on existing structures that are not highly visible tall structures.
Small-site locations on existing tall structures.
Colocation on existing Towers or upon property with an existing Tower.
Siting upon highly visible tall structures.
Siting upon tall structures.
Siting within industrial areas and districts (IR Zones).
Siting within commercial or business areas and districts not in the town center area (B2 Zones).
Siting in New York State recognized Agricultural Districts.
Siting in agricultural zones or areas (RA Zones).
Siting in mixed-use residential districts (R3 Zones).
Siting in the town center area properties (B1 Zone and mapped surrounding areas).
Siting in moderate density residential districts (R2 Zones).
Siting in low density residential districts (R1 Zones).

The applicant shall provide an explanation as to how this provision was considered and applied in selecting a site and why a lower-preferred site was selected over a higher-preferred site (if a lower-preferred site was selected). "Small-site" refers, generally, to multiple antennae configurations and

arrays that avoid the need for a large Tower, such as certain DAS systems or the utilization of telephone pole-mounted antennae.

3. Site Plan and Special Permit Applications. All Site Plans shall require the seal of a New York State licensed Professional Engineer, and all facilities shall meet applicable NYS code requirements, including the applicable safety and other requirements of the NFPA, ANSI, IEEE, and related national code agencies. A fully completed Special Permit Application and Site Plan prepared to scale in sufficient detail and accuracy shall be provided, and such Site Plan and related application shall show, at a minimum:

a. The exact location of the proposed Tower, together with any guy wires and anchors, if applicable, and a side elevation of the Tower showing the proposed Antenna locations or arrays.

b. The maximum height of the proposed Tower.

c. A detail of Tower type (monopole, guyed, latticed, freestanding, or other) including any appendages, and further including design parameters and mapping for all sub-surface improvements.

~~d. The location, type, and intensity of any lighting on the property.~~
d. The location, type, and intensity of any lighting on the property, together with a description of all FAA or other lighting requirements, including verification of such description and disclosure by an appropriate qualified engineer, or from the FAA or other authority having jurisdiction, and including a reference to the statute, regulations, or design manuals (or similar authoritative source of such requirements) that shows what lighting requirements are required for the particular Telecommunications Facilities and Towers.

e. Property boundaries and names of adjacent landowners.

f. Proof of the landowner's consent if the applicant does not own the property and a map or other document delineating the scope of any lease or easement allowing or relating to the siting of any improvements or facilities, together with a depiction and description of the access provided to the site.

g. The location of all other structures on the property and all structures on any adjacent property within 1,000 feet of the property lines, together with the distance from those structures to any proposed Tower.

h. The location, nature and extent of any proposed fencing, landscaping, and screening, together with final grading plans for all facilities and roads, and further including planting plans, access roads, parking areas, and all proposed buildings or structures and their appurtenances.

i. The location and nature of proposed utility easements and access road, if applicable, including a depiction and description of any above-ground utilities and mapping for all underground utilities, the location, size, and operational parameters of any on-site generators, and the source of any power supplied to the site.

j. A grid or map of all of the applicant's existing Telecommunications Facilities and related site areas in the Town, or otherwise located within 50 miles of the proposed Tower or Telecommunications Facilities, together with mapping of all other Telecommunications Facilities within 50 miles of the proposed site that specifically notes whether any such other Telecommunications Facilities are Towers, and which further describes the height of such Towers.

k. All information regarding the Tower and Antenna prepared by the manufacturer of the Tower or Antenna or the applicant, including but not limited to the following:

i. The make and model of the Tower to be erected.

ii. The manufacturer's design data for installation instructions and construction plans.

iii. The applicant's proposed Tower maintenance and inspection procedures and records system.

iv. Identification of any anti-climb device(s) to be installed.

v. Confirmation that the Antennae to be mounted on the Tower will be operated only at FCC-designated frequencies and power levels.

vi. The design parameters of such Tower and Antennae, including static, wind, and snow loading capability, together with data describing the excess capacity and dimensional capabilities capable of supporting future Colocation.

l. All proposed signage, provided that no Tower or Telecommunications Facilities shall contain any advertising signs or advertising devices except signage identifying a health or general welfare message and the owner(s) name and contact information, both being solely intended for identification and the protection of the general public.

m. Certification by a licensed New York State structural engineer confirming the structural integrity of the Tower design.

4. Height. The Planning Board shall approve the height of each proposed Tower~~, and in~~ and no Tower shall exceed 100' tall as measured from the average elevation of surrounding terrain (and no build-up of a base or foundation shall increase such allowed height) to the highest point of the Tower or its Antennae, extensions, or other devices extending above the structure of the Tower. In reviewing such issue the Planning Board shall consider the minimum height necessary for the applicant's needs. If additional height is requested, ~~then the Planning Board may take into consideration the potential for Colocation in approving or rejecting such request for any additional height above the minimum necessary for the applicant's demonstrated needs. The maximum height for Towers permitted under this local law, including any Antennas, extensions, or other devices extending above the Tower, as measured from the ground surface immediately surrounding the site, shall be the lower of 200 feet or a height below which lighting is required by the FAA~~the burden shall be upon the applicant to demonstrate that a waiver of this 100' limit is required or needed based upon applicable engineering, the need to meet any Colocation requirements of this local law, or to achieve required coverage. However, nothing herein shall require an approval merely because

the telecommunications or coverage needs of the applicant are less expensively achieved by one single taller tower as opposed to multiple smaller Towers or the installation of Telecommunications Facilities in other elevated locations. In approving or rejecting such request for any additional height, the Planning Board may take into consideration any other factor it deems reasonable, including lighting requirements and location in relation to known hazards, such as the airport.

5. Colocation. The applicant must examine the feasibility of designing a proposed Tower to accommodate future demand for additional facilities and applicants are encouraged (and where allowed, required) to allow Colocation upon their Towers and provide their Towers for use by other providers and carriers at a reasonable fair market value cost or rate. All Towers shall, unless impractical or not possible due to engineering or other considerations, be designed for and allow at least two future colocators to emplace Telecommunications Facilities and Antennae upon the proposed Tower, and thus all engineering and load capacity date shall delineate the present and future design loading capabilities of the Tower design chosen, including static, wind, and snow loads. An applicant shall also be required to present an adequate report inventorying existing Towers and Telecommunications Facilities within a reasonable distance of the proposed site and outline opportunities for Colocation with such existing facilities and other preexisting structures as an alternative to new construction. If no such existing facilities or preexisting structures are viable, then the reasons therefor shall be delineated, explained, and clearly stated. The applicant shall be further required to submit a report demonstrating good faith efforts to secure Colocation with or upon existing Towers, as well as to document the capacity for future Colocation for the proposed Tower. Written requests for and responses relating to Colocation shall be provided to the Town. One or more of these requirements may be waived by the Planning Board if the applicant demonstrates that Colocation or future shared usage or Colocation upon a proposed Telecommunications Facility or Tower is not feasible and an unnecessary burden, based upon:

a. The number of FCC licenses foreseeably available for the area.

b. The number of existing and potential licensees or Colocators without Tower spaces or sites.

c. Available spaces on existing and approved Towers.

d. Potential adverse visual impacts of a Tower designed for Colocation.

e. Colocation would exceed the structural capacity of such existing Tower and there is no reasonable manner by which the structural capacity of the existing Tower may be improved.

f. Colocation would cause unavoidable radio frequency interference with other equipment or signals.

g. The existing Tower or Telecommunications Facility owner refused to allow Colocation despite reasonable and diligent application, and the Colocation refusal is not an implied refusal due to a claim of a non-market-based, unfair, or steep price, or facility improvement or study costs as may be necessary to ensure safe Colocation, or similar fiscal factors.

6. Fall Zones. The applicant must demonstrate a safe fall zone around the Tower showing no impacts upon ~~occupied~~ structures or dwellings and adequate setbacks from public highways. The

radius of such fall zone must be at least equal to the highest point of the Tower and its Telecommunications Facilities, as measured from the lowest ground-level grade within such height radius, *plus* ~~20~~40 feet. If the Tower or Telecommunications Facility is to be attached to an existing structure then this fall zone requirement may be waived if, upon a case-by-case analysis, it is adequately demonstrated that the waiver of this requirement will not endanger the life, health, safety, or property of any person. Any conditions that are reasonable with respect to the waiver or non-application of these fall zone radii requirements shall be permissible.

7. Setbacks; Yardage. All Telecommunications Facilities shall comply with all setback, frontage, minimum lot size, yardage, and bulk requirements of the underlying zone in which situate. In the event more than one zone's regulations may apply the more restrictive requirements shall be applied upon a standard-by-standard basis. These standards apply to all major structures of any Telecommunications Facilities, as well as their supporting parts and appurtenances, such as guy wires, anchors, and Accessory Structures. In order to safeguard the general public and adjacent properties all Towers shall be set back from all adjacent property lines a sufficient distance to contain on site substantially all ice fall or debris from any Tower failures.

8. Subdivision. No subdivision for the purposes of the present or future siting or emplacement of any Telecommunications Facilities or Tower shall be reviewed as, or classified as, an exempt subdivision under the Town's subdivision local law (as now exists or as hereafter amended). In the event any subdivision application is submitted or any approval sought for any present, proposed, or future Telecommunications Facilities, then each and all such lots shall meet minimum lot sizes for the applicable district and all lots upon which any Telecommunications Facilities are proposed, or upon which such Telecommunications Facilities shall be sited, shall be sufficiently sized and shaped as to incorporate the entire fall zone within and upon such single lot. In the event this single-lot requirement is impossible to meet, then maximum compliance with this requirement shall be sought and any area of the fall zone not located upon such lot shall be subject to an express easement in a form as approved by the Town.

9. Aesthetics. Telecommunications Facilities shall be located and their visual effects minimized through careful design and buffering via vegetative screening to the maximum extent which is practical and feasible to help ensure compatibility with surrounding land uses. The following provisions shall serve as guidelines or examples for the Planning Board in considering to how to screen Towers:

a. Native plants and vegetation consistent with surrounding flora is recommended.

b. To screen the base of the Tower and Accessory Structures, a row of deciduous trees or other plants capable of forming a continuous hedge at 10 feet in height within two years of planting located within 25 feet of the Tower base and Accessory Structures shall be recommended, together with other landscaping or buffering as the Planning Board shall reasonably require.

c. Within 50 feet of the property boundaries, at least one row of evergreen trees, shrubs or other landscaping or buffering as the Planning Board shall reasonably require, at least four feet high when planted and spaced not more than 20 feet apart for trees, and a lesser and species-specific appropriate amount for shrubs or hedges.

d. All trees, plantings, and landscaping shall be maintained and replaced if needed.

e. Existing on-site vegetation shall be preserved to the maximum extent possible.

f. The Planning Board may require that the Tower be designed and sited so as to avoid, if possible, application of FAA lighting and painting requirements, it being generally understood that Towers should not be artificially lighted except as required by the FAA, or when public safety so requires.

g. The Tower shall be of a non-reflective galvanized finish or painted matte grey unless otherwise required by the FAA, and Accessory Structures should maximize use of building materials, colors, and textures designed to blend with the natural surroundings including by the use of camouflaging, where appropriate.

h. All Towers and Accessory Structures shall be sited to have the least adverse visual effect on the environment, and having Towers camouflaged as to shape, appearance, or coloration is encouraged.

i. All communication cable and utilities, including water, gas, electric, telephony, fiber optic and data lines, and sewer leading to and away from any Telecommunications Facilities or Tower shall be installed underground.

10. NEIR. Certification that the NIER levels at the proposed site are within threshold levels adopted by the FCC.

11. RFI and General Compliance. Certification that the proposed Antenna(s) will not cause interference with existing communication devices, or existing radio, television, or telephone reception, and that the Tower and attachments meet all state and federal structural requirements for loads, wind, ice, fall down specifications, etc.

12. FCC Licensure. Applicant shall provide a copy of the applicant's FCC license and verification in a form reasonably required by the Town that the applicant has utility status from New York State and the Public Service Commission.

13. FCC Compliance Assurances. Verification that the proposed facility will comply with all applicable FCC rules and regulations, and the Town shall impose conditions on the applicant that: (i) the communications Antennas be operated only at FCC designated frequencies and power levels (and Environmental Protection Agency (EPA) technical exposure limits); (ii) the applicant an owner submit evidence upon approval, and periodically thereafter (but not less than annually), demonstrating that the proposed use is in compliance with such standards. These requirements shall be enforced to the extent permissible under FCC rules, including those affecting cellular and PCS Towers based on the environmental effects of radio-frequency emissions.

14. Visual EAF. The applicant shall submit a visual environmental assessment form (visual EAF) and a landscaping plan addressing other standards listed within this local law, paying particular attention to visibility from key viewpoints within and outside of the municipality as identified in the visual EAF. The applicant will also be required to undertake a visual impact assessment which shall include:

a. A description of how the facilities can be blended with the viewshed, including any plans for camouflage, including but not limited to simulating the appearance of a tree or other structure depending on the particular context of the proposed location.

b. A Zone of Visibility Map shall be provided in order to determine locations where the Tower may be seen.

c. Pictorial representations of "before and after" views from key viewpoints both inside and outside the Town, including but not limited to public highways, local parks, identified important viewsheds or historic properties and sites, other vistas known to be important to the community, and from any other location where the site is visible to a large number of visitors or residents. The Planning Board may determine appropriate key sites at a pre-submission conference with the applicant or upon and after receipt of an application.

d. Assessment of the visual impact of the Tower base, guy wires, accessory buildings, and Accessory Structures from abutting properties and streets, and on viewsheds known to be important to the community.

e. The Planning Board is permitted to waive any requirements of this section which are inapplicable as a result of the applicant proposing a shared use or Colocation upon an existing Tower or structure.

15. Intermunicipal notification. In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that existing Telecommunications Facilities or a Tower in a neighboring municipality be considered for shared use or Colocation, the Town shall require that the applicant provide an intermunicipal notification (and proof of delivery thereof) to all neighboring municipalities, whether villages, towns, or counties, together with a general description of the project, a disclosure of the Tower height, and all information pertaining to the Tower's (or the Telecommunications Facilities') capacity for future Colocation.

16. Traffic, Access and Safety.

a. Access standards may be imposed or required to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Construction of pervious roadways (crushed stone, gravel, etc.) is preferred and shall be permitted notwithstanding underlying zoning district regulations which may provide otherwise. Road construction shall, at all times, minimize ground disturbance and vegetation cutting, and road grades shall closely follow natural contours to assure minimal visual disturbance and reduce potential soil erosion.

b. All Towers and guy anchors, if applicable, shall be enclosed by a climb-proof fence not less than eight feet in height and otherwise sufficiently secured to prevent and protect Telecommunications Facilities from trespassing or vandalism. All security measures and devices shall be identified, including motion sensing lights, camera systems, lock boxes, and emergency notification systems.

17. Agricultural Data Statement and Notice of Intent. If required, an Agricultural Data Statement shall be submitted, and if the Tower or Telecommunication Facilities are located within, contiguous to, or within a specified distance of an Agricultural District mapped by Tompkins County and recognized by the State of New York, Department of Agriculture and Markets, then the applicant shall also be required to file a Notice of Intent and to supply the Town with all documents, communications, and information submitted, together with any replies received from, New York State or the Department of Agriculture and Markets.

18. Emergency Response Plan and Removal. The applicant shall submit any required emergency response plan, if requested by the Planning Board. Additionally, the applicant shall be required to identify the manner in or by which the obligation to remove the Tower or Telecommunications Facilities will be securitized, whether by letter of credit, bonding, escrow deposit or otherwise. Any such proposed form of security shall be subject to review and approval by the Town Board, and in all cases the applicant shall provide detailed calculations supporting the amount of removal costs to be secured, taking into account a reasonable rate of inflation over the proposed useful life of the project. Such calculations shall be sealed by an engineer licensed in New York State. In no case may any removal or related performance bond be issued upon, in conjunction with, or as secured or underwritten upon a direct or indirect indemnity agreement supplied by the applicant or the present or future owner of such Tower of Telecommunications Facility, or any lessor or user thereof. Additional requirements for bonding and removal obligations appear elsewhere in this local law.

19. Indemnity Agreement. The form of the proposed indemnity and hold harmless agreement shall be submitted for approval and the same shall be approved by the Town Board as to form and content.

20. Other. Within the scope of FCC rules and the TCA, the Planning Board shall have the authority to require appropriate camouflaging and to impose such other reasonable conditions and restrictions as are directly related or incidental to the proposed Telecommunications Facilities Special Use Permit or Site Plan, or to general public health, safety, or welfare issues implicated by such permit, plan, or application.

ARTICLE IV – MODIFICATIONS OF EXISTING TOWERS AND FACILITIES.

A. Modifications to existing Telecommunications Facilities are permitted and shall require a Special Use Permit upon application to the Planning Board.

B. The review shall be non-discretionary and ministerial and the Planning Board shall issue such Special Use Permit if the applicant meets the following criteria:

1. The proposed modification involves the Colocation of new transmission equipment, or the removal or replacement of transmission equipment.

2. The proposed modification does not substantially change the physical dimensions of any Tower or base station, and does not exceed the 100' height restrictions set forth in this local law, or such greater height limit as may have been set for the Tower or Communications Facility in question based upon the standards contained in this local law.

3. An applicant intending to Collocate with an existing Tower shall be required to document written permission from an existing Tower owner to Collocate.

4. The Planning Board shall have the authority to: (i) require disclosure of such matters are may be important to public safety or the structural integrity and capacity of the Telecommunications Facilities upon which Colocation is proposed; (ii) impose only such reasonable conditions as are directly related to and incidental to the proposed modification; but in both such and in all other cases, due regard for and compliance with the rules for an "Eligible Facilities Request," as set forth in the Middle Class Tax Relief and Job Creation Act of 2012, shall be adhered to.

ARTICLE V – GENERAL REVIEW STANDARDS.

In reviewing any application hereunder the Town may apply site plan and special permitting rules and standards as set forth in New York State law and the laws and ordinances of the Town, and the Town shall also adhere to the requirements of the TCA including, at a minimum, the following requirements:

A The Town shall not unreasonably discriminate between providers of equivalent or near equivalent services.

B. The Town shall not prohibit or "effectively prohibit" the provision of the service.

C. The Town shall act on all requests within a reasonable time, taking into account the nature and scope of the request, including in accord with applicable FCC "shot clock" rules.

D. All denials must be in writing and based upon substantial evidence, fairly applied.

E. The Town may not regulate radio frequencies or address potential health effects of radio emissions, but may require verification of and compliance with FCC and EPA rules and license, permit, or spectrum allocation rules or conditions.

F. All Colocation rules pertaining to approvals for an "Eligible Facilities Request" as set forth in the Middle Class Tax Relief and Job Creation Act of 2012 shall be adhered to by the Town.

ARTICLE VI - REMOVAL OF OBSOLETE AND UNUSED TELECOMMUNICATIONS FACILITIES.

A. The applicant shall agree, in writing, to remove all Telecommunications Facilities (including Tower or Antennas) and restore the site to its original condition, and shall incur all expenses therefor, if the facility becomes obsolete or ceases to be used for its intended purpose for 120 days. Removal of such obsolete or unused facilities and restoration of the site to its original condition shall take place within 30 days of receipt of written notice from the Town. Such agreement shall also include a commitment by the applicant to impose a similar obligation to remove any unused or obsolete facilities upon any ~~person~~Person subsequently securing rights to Collocate on the Tower or in relation to any Telecommunications Facility (including the land or lot upon which any of the foregoing are situated).

B. As security for the performance of the requirements set forth above, the applicant shall, upon the granting of approval under this local law and prior to the installation of any Telecommunications Facilities, execute and file with the Town Clerk a bond or other form of security or undertaking which

shall be approved as to form, manner of execution, and sufficiency for surety by the Town Board and Town Engineer. Any bond or guaranty shall be provide by or placed with a solvent surety corporation duly licensed in the State of New York. Such bond or undertaking shall be conditioned upon the faithful performance of the provisions of this local law, and in the event of default the bond or undertaking shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The bond or undertaking shall remain in full force and effect until the removal of all Telecommunications Facilities, including the Tower, Antennas, and Accessory Structures, and all site restoration has been completed. The value of the bond shall be equal to 125% of the cost of demolition and restoration of the site, as determined by the Town Engineer, and no such decommissioning or removal bond shall be secured by an indemnity agreement with the applicant or any party affiliated with the applicant.

C. At least once every 5 years after any approval or permit is issued by the Town, the applicant or then future owner or operator of the Telecommunications Facility shall provide updated certified cost estimates for removal of all Telecommunications Facilities and all site restoration, and if the resulting 125% cost requirement shows that the exiting security or bond is monetarily insufficient, then the owner shall update such bond or undertaking, or see to its replacement or supplementation in an amount to equal such updated 125% cost number.

ARTICLE VII – EMERGENCY SERVICE COLOCATION.

All essential emergency services will be given access to obtain necessary space or service on the Tower at no cost (other than installation and maintenance). This provision shall be enforceable only to the maximum extent permitted by applicable law and in all cases this provision shall be presumed valid and the burden of proof shall be to establish the contrary by clear and convincing evidence.

ARTICLE VIII - REIMBURSEMENT FOR EXPENSES.

Each application shall include application fees, engineering review fees and legal fees, in the amount of $1,000 or as outlined in (or updated by) the Town's Fee Schedules. The Town may also retain such technical consultants as it deems necessary to provide assistance in the review of the site location alternative analyses, the environmental review of the project, and any engineering reviews pertaining to building permits or structural designs, structural integrity, and the feasibility of any modifications or the carrying capacity of any Tower for Colocation of any Antennas or other appurtenances. The applicant shall bear the reasonable costs associated with such consultations, which costs shall be assessed as an additional application fee. In no case shall the total fees and charges payable by an applicant be more than 5% of the total project cost as determined for building permit fee assessment purposes,, but SEQRA costs shall not count towards such 5% limit and shall be separately assessable pursuant to the Statutes and regulations of SEQRA.

ARTICLE IX - ANNUAL REPORTS.

The applicant or its successors or assigns shall file annually with the Town on the second day of each January following approval of the Telecommunications Facility a written report certifying that the applicant or its successors or assigns are complying with maintenance and inspection procedures, record-keeping systems, and that the subject Telecommunications Facility is not a hazard or a threatened hazard to the health and safety of the public. Such report and conclusions must be provided and sealed by a New York State licensed Professional Engineer. Any unsafe condition revealed by such report shall be immediately remedied. If no report is provided and such failure to provide a report

continues unabated for any 360-day period, then such fact shall be and be deemed an abandonment of the Telecommunications Facilities in question, and the Town may require the dismantling and removal of such Telecommunications Facilities, including under the terms of any removal or related bonds. Further, any failure to provide such written report within 30 days of request therefor by the Town is and shall be deemed and construed as a violation of this local law.

ARTICLE X - EXEMPTIONS.

The following types of Telecommunications Facilities are not subject to the provisions of this local law:

A. Satellite dishes and antennas, and similar devices, used solely for on-site residential household television and radio reception and involving a structure with a size or height not exceeding the minimum exemptions listed in OTARD rules.

B. Satellite Antennas measuring two meters or less in diameter and located in commercial districts.

C. Radio Antennas for personal use regulated by the FCC for licensed amateur radio operation.

D. Lawful or approved uses existing prior to the effective date of this local law; however, no Telecommunications Facility shall be modified unless in conformity with this local law, and no non-conforming use may be expanded except in accord with the Town's land use ordinance and applicable law.

E. Telecommunications Facilities may be repaired and maintained without restrictions.

~~**ARTICLE XI**~~**ARTICLE XI - ENVIRONMENTAL REVIEW REQUIREMENTS -** A Full "Long Form" Environmental Assessment Form ("FEAF") shall be completed and submitted with all applications under this local law, pursuant to the provisions of the State Environmental Quality Review Act and its implementing regulations found at 6 NYCRR Part 617. All applications for siting any Tower or ground station shall be and be deemed Type I Actions. If the environmental review of the FEAF indicates that the proposed activity may produce actual or potential moderate or significant environmental impacts or consequences then the Town Board shall require that a Draft Environmental Impact Statement be submitted by the applicant. Notwithstanding the foregoing, if a Colocation or related application meets the standards for qualifying as an "Eligible Facilities Request," as set forth in the Middle Class Tax Relief and Job Creation Act of 2012, then the matter may be classified as a Type I,, Unlisted, or Type II Action, per the requirements of SEQRA and its implementing regulations.

ARTICLE XII – VIOLATIONS AND PENALTIES –

A. The Town's Code Enforcement Officer is authorized to investigate any non-compliance (or complaints of such violation or non-compliance) with the requirements of this local law, to issue appearance tickets for any violation of this local law or any permit or approval requirements or conditions, to recommend the commencement of civil enforcement or related proceedings to the Town Board, and to order in writing the remedying of any condition or activity found to exist in, on, or about any Telecommunications Facility, Tower, building, structure, or premises in violation of this local law. Upon finding that any such violation exists, the Code Enforcement Officer may issue a Compliance Order, which Compliance Order shall comply with the requirements of Executive Law § 382 and served accordingly. The Person so served shall come into compliance with this local law within the specified

period of time as set forth in the Compliance Order, and any failure to do so shall be a violation of this local law. Any failure to comply with the terms and requirements of this local law, or the requirements and conditions of any permit or approval issued hereunder, is hereby declared also declared to be a violation of this local law. All violations of this local law are hereby declared to be illegal and subject to civil penalties and criminal sanctions as herein set forth.

B. All provisions of New York law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this local law, and each such misdemeanor shall be an unclassified misdemeanor. The following civil penalties and criminal fines and sanction shall apply violations of this Local Law:

1. First Violation: Any Person that violates any of the provisions of this Local Law shall be (i) guilty of an unclassified misdemeanor and subject to a fine of not more than $1,500, or (ii) subject to a civil penalty of not more than $2,500 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

2. Second Violation: Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any other violation of this Local Law shall be deemed a second violation. Any Person that commits or permits any second violation shall be (i) guilty of an unclassified misdemeanor and subject to a fine of not more than $2,500, or (ii) subject to a civil penalty of not more than $5,000 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

3. Third and Subsequent Violations: Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any second violation of this Local Law shall be deemed a third or subsequent violation, as applicable. Any Person who commits or permits a third or subsequent violation shall be (i) guilty of an unclassified misdemeanor and subject to a fine not more than $5,000 and a period of incarceration not to exceed 60 days, or (ii) subject to a civil penalty of not more than $10,000 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

C. An action or proceeding may be instituted in the name of the Town in any court of competent jurisdiction to prevent, restrain, enjoin, correct, enforce, or abate any violation of, or non-conformance with, any provision or requirement of this local law or the terms and conditions set forth in any permit or approval issued hereunder. In any such proceeding the Town shall not be required to: (i) prove the lack of an adequate remedy at law; or (ii) to post a bond or other undertaking as a condition or requirement for any preliminary, interim, or permanent restraining order or injunction. No such action or proceeding shall be commenced without the appropriate authorization from the Town Board.

D. For purposes of this Local Law the Justice Court of the Town is hereby vested and imbued with jurisdiction to: (i) issue administrative or other warrants in compliance with the New York Criminal Procedure Law and administrative codes of the State of New York; and (ii) hear and adjudicate allegations relating to the criminal or civil violation of this Local Law and to thereafter, if appropriate, impose any file, penalty, or sanction. All criminal matters arising under this local law shall be and be deemed unclassified misdemeanors, including for purposes of jurisdiction.

E. No remedy or penalty specified in this local law shall be the exclusive remedy available to the Town to address any violation of, or non-compliance with, the requirements of this local law. The rights and remedies of the Town are independent of each other and cumulative. The grant of any right or remedy in this Local Law is in addition to, and not in limitation of or substitution for, any other right or remedy of the Town, whether sounding in law, equity, or admiralty. Further, the election by the Town of any one right or remedy does not forestall or prevent the simultaneous or future election of any other right or remedy.

ARTICLE XIII – INDEMNIFICATION.

To the maximum extent permitted by law, the applicant shall execute an agreement indemnifying and holding the town harmless from any and all liabilities, claims of personal injury, or property damage arising out of or in any way related to the installation and operation of the Tower and its Accessory Structures and facilities. Further, the Town, and its officers and agents, shall not be liable or responsible for any injuries to persons or damages to property due to the Town's actions, or failures to act, under or pursuant to this Local Law unless it is proven to a reasonable degree of certainty that such injury or damage was solely caused by a willful or intentional act of the Town or its officers and agents. This provision shall be construed and applied to the maximum extent permitted by law, and does not create any theory or claim of liability where none exists at law or in equity.

ARTICLE ~~XII~~XIV – CONSTRUCTION.

All nouns and pronouns shall be construed in the singular, plural, masculine, feminine, or neutered context when the provisions hereof so demand or admit. Capitalized words shall have their defined meanings and all words, capitalized or otherwise, shall have standard meanings as applied within the context of the clause in which such terms appear. Subject headings are for convenience and shall not be construed or applied to limit or restrict the subject matter and terms appearing under such subject heading. Whenever any reference is made to any section of law or regulations, such reference shall be interpreted to include such law or regulation as later amended, renumbered, or re-codified, and a mere typographical citation error shall not be given effect.

ARTICLE ~~XIII~~XV – SAVINGS.

In the event any existing or hereafter adopted federal or state law restricts the ability of the Town to review or regulate any Telecommunications Facility or Tower, then the provisions hereof shall be read in harmony with such restrictions or limitations and applied to the maximum extent permitted under applicable law or in the face of preemption by a superior sovereign.

ARTICLE ~~XIV~~XVI – EFFECTIVE DATE.

This local law shall take effect immediately.