

**CITY OF RYE  
1051 BOSTON POST ROAD  
RYE, NY 10580  
AGENDA**

**SPECIAL MEETING OF THE CITY COUNCIL  
Thursday, December 27, 2018  
7:30 p.m.**

*Please Note: The Council will convene at 6:30 p.m. and it is expected they will adjourn into Executive Session at 6:31 p.m. to discuss attorney-client privileged matters, personnel matters and labor negotiations.*

1. Pledge of Allegiance.
2. Roll Call
3. Continue the Public Hearing to amend Chapter 133 “Noise” of the City Code with respect to installations in the public right of way.
4. Continue the Public Hearing to amend Chapter 196 “Wireless Telecommunications Facilities”, the City’s wireless code.
5. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, January 9, 2019 at 7:30 p.m.

\*\* City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at [www.ryeny.gov](http://www.ryeny.gov) under “RyeTV Live”.

**The Mayor and City Council have office hours in the Mayor’s Conference Room Annex at Rye City Hall, 1051 Boston Post Road. Attendance by the Mayor and Council Members will vary. The Mayor’s Conference Room Annex is located on the 1<sup>st</sup> floor of City Hall adjacent to the Council Chambers. Hours are as follows BEGINNING 01/07/19\*:**

**Mondays 9:30 a.m. to 11:00 a.m.  
Wednesdays 9:30 a.m. to 11:00 a.m.  
\*No more office hours in 2018**



# CITY COUNCIL AGENDA

NO. 3

DEPT.: Legal

DATE: December 27, 2018

CONTACT: Kristen Wilson, Corporation Counsel

**AGENDA ITEM:** Continue Public Hearing to amend Chapter 133 "Noise" of the City Code with respect to installations in the public right of way.

**FOR THE MEETING OF:**  
December 27, 2018

**RYE CITY CODE:**  
CHAPTER  
SECTION

**RECOMMENDATION:** That the City Council continue the Public Hearing to amend Chapter 133 "Noise" of the City Code with respect to installations in the public right of way.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

## **BACKGROUND:**

The proposed amendments address how the intensity of noise is measured for installations in the right of way.

See attached.

**CITY OF RYE**  
**LOCAL LAW NO. \_\_\_\_ 2019**

A local law to amend Chapter 133 "Noise" Section 3 "Permissible Intensity of Noise" and Section 4 "Points and method for measuring intensity of sound" to reflect changes in technology related to the deployment of wireless services and other supporting equipment as follows:

**Section 1:**

**Chapter 133: Noise**

**§133-1 Unnecessary noise prohibited.**

Subject to the provisions of this chapter, the creation of any unreasonably loud, disturbing and unnecessary noise is prohibited. Noise of such character, intensity and duration as to be detrimental to the life or health of any individual is prohibited.

**§133-2 Prohibited acts. \*\*\***

**§133-3 Permissible intensity of noise.**

[Amended 8-21-1991 by L.L. No. 19-1991]

Except for noise emanating from the operation of motor vehicles, the permissible intensity of noise from any of the foregoing acts, whether such noise is intermittent, impulsive, sporadic or continuous, shall be limited as follows:

**A.** Maximum sound pressure [db(A)] shall be as follows:

- (1) Fifty-five db(A) for stationary sources and 70 db(A) for outdoor power tools.
- (2) Portable air compressors and their related equipment are limited to 76 db(A).
- (3) Lawn mowers, leaf blowers, and outdoor vacuum cleaners shall have a permitted intensity of 85 db(A); use of this equipment is prohibited between the hours of 8:00 p.m. and 8:00 a.m. on weekdays and between the hours of 6:00 p.m. and 10:00 a.m. on weekends and holidays. The permitted intensity and hours described in this subsection will apply to leaf blowers during months when the use of leaf blowers is permitted.
- (4) Air-conditioning units and pool filters are limited to 60 db(A).
- (5) Except for Micro-Wireless Facilities, aboveground and belowground stationary utilities or communication facilities, are limited to 45 db(A).
- (6) For Micro-Wireless Facilities, as defined in Chapter 196, there shall be no permissible measurable level of noise.

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**§133-4 Points and method for measuring intensity of sound.**

- A. Except for noise emanating from the operation of motor vehicles, the point at which the intensity of sound is to be measured shall be at a distance of 50 feet, except that noise from:
- (1) Air-conditioning units and pool filters at a distance of 10 feet.
  - (2) Stationary utility or communications facilities located underground shall be measured three feet from the source of the noise. Stationary utility or communications facilities located on a utility pole or within a pole or other stealth facility shall be measured twelve feet from the sources of the noise or the nearest property line, whichever is closer. Any non right-of-way stationary utility or communications facility shall be measured at the point that meets vertically from the nearest property line and horizontally from the equipment. For any such facilities, the measurements should include noise from that facility and all other stationary utility or communications facilities proximately associated with the stationary utility or communications facility or its Supporting Structure as defined in Chapter 196.
- B. Measurement shall be made using a meter capable of measuring decibels and of a type meeting ANSI S1.4-1971, Type 2 standard. The measurement is to be made using a free-field microphone directed at the noise source.

**Section 2: Severability.**

If any clause, sentence, paragraph, section or part of any section of this title shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy and in which such judgment shall have been rendered.

**Section 3: Effective date.**

This local law will take effect immediately on filing in the office of the Secretary of State.

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# CITY COUNCIL AGENDA

NO. 4 DEPT.: Legal

DATE: December 27, 2018

CONTACT: Kristen Wilson, Corporation Counsel

**AGENDA ITEM:** Continue Public Hearing to amend Chapter 196, the City's wireless code.

**FOR THE MEETING OF:**  
December 27, 2018

**RYE CITY CODE:**  
CHAPTER  
SECTION

**RECOMMENDATION:** That the City Council continue a Public Hearing to amend Chapter 196, the City's wireless code.

**IMPACT:**  Environmental  Fiscal  Neighborhood  Other:

## **BACKGROUND:**

Amendments to Chapter 196 concern the aesthetics and use of the best available technology of certain types of telecommunication infrastructure in the City's right of way.

See attached.

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**CITY OF RYE**  
**LOCAL LAW NO. \_\_\_\_ 2019**

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A local law to amend in its entirety Chapter 196 “Wireless Telecommunications Facilities” to be responsive to the Federal Communications Order 18-133, to reflect changes in technology related to the deployment of wireless services, to update the permitting process regarding new technology, and to update the City’s regulations governing the time, place and manner of these facilities as follows:

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**Section 1**

**Chapter 196 - “Wireless Telecommunications Facilities”**

**§ 196-1. Purpose and legislative intent.**

- A. The Telecommunications Act of 1996 affirmed the City of Rye’s authority concerning the placement, construction and modification of wireless telecommunications facilities. The City Council finds that wireless telecommunications facilities and related equipment may pose a unique hazard to the health, safety, public welfare and environment of the City and its inhabitants, and may also have adverse visual and sonic impacts on the community, its character and thus the quality of life in the City.
- B. The intent of this chapter is to ensure that the placement, construction or modification of wireless telecommunications facilities and related equipment is consistent with the City’s land use policies and Zoning Code<sup>1</sup>; to minimize the negative and adverse visual impact of wireless telecommunications facilities; to assure a comprehensive review of environmental impacts of such facilities; to protect the health, safety and welfare of the City of Rye; and to define when shared use of wireless telecommunication facilities is the more aesthetically sensitive alternative.
- C. The City finds that minimization of clutter and structures in the rights-of-way is important to the welfare of the community, and that placement near residential structures, and in historical areas should be restricted where not critical to the provision of services.

**§ 196-2. Title.**

This chapter may be known and cited as the “Wireless Telecommunications Facilities Siting and Special Use Permit Law for the City of Rye,” or may otherwise be known as the “Wireless Facilities Law.”

**§ 196-3. Definitions; word usage.**

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations and their derivations shall have the meanings

<sup>1</sup> 1. **Editor’s Note: See Ch. 197, Zoning.**

given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

**ACCESSORY FACILITY OR STRUCTURE** — An accessory facility or structure serving or being used in conjunction with a Base Station and located in proximity to the Base Station, whether or not owned by the person who owns or controls the Base Station, including but not limited to utility or transmission equipment storage sheds or cabinets; electric meters; and fencing or shielding.

**APPLICANT** — Includes any individual, corporation, estate, trust partnership, joint-stock company, association of two or more persons, limited liability company or entity submitting an application to the City of Rye for a Special Use Permit for a Wireless Facility.

**APPLICATION** — The form as may be amended from time to time, together with all necessary and appropriate documentation that an applicant must submit in order to receive a Special Use Permit for a Wireless Facility.

**ANTENNA** — A device, dish, array, or similar device used for sending and/or receiving electromagnetic waves for any wireless communications.

**BASE STATION** - A facility or equipment at a fixed location that enables any wireless communications between user equipment and a communications network. The term does not encompass a Tower as defined herein or Accessory Facility or Structure associated with a Tower. The term Base Station includes, without limitation:

- (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems (“DAS”) and small-cell networks or micro-wireless facilities); provided that, wireline connections in the rights of way linking Antennas to other elements of a small cell, DAS or similar network will not be treated as part of the Wireless Facility and instead their placement shall be subject to review consistent with applicable provisions of the Rye City Code, the applicable franchise; and New York law.
- (3) Any Supporting Structure, other than a Tower, that at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs (1)-(2) that has been reviewed and approved for placement of such equipment under this Chapter, or under another State or local regulatory review process, even if the Supporting Structure was not built for the sole or primary purpose of providing that support. For Supporting Structures that support equipment described in paragraphs (1)-(2), including but not limited to the sides of buildings, water Towers, or utility poles, the term includes only that portion of a Supporting Structure specifically approved to support the wireless equipment described in paragraphs (1)-(2), and only relates to activities necessary to permit

the installation, maintenance, replacement or collocation of wireless equipment described in the preceding paragraph. The exemption of a Supporting Structure from review is not an approval.

**BREAK POINT** — The location on a Tower which, in the event of a failure of the Tower, would result in the Tower falling or collapsing within the boundaries of the property on which the Tower is placed.

**CARRIER ON WHEELS or CELL ON WHEELS (“COW”)** - A portable self-contained temporary facility that can be moved to a location and set up to provide Personal Wireless Services. A COW is normally vehicle-mounted and contains a telescoping boom to support the Antenna. A COW shall only be in place in connection with an emergency or event, but no longer than required for the emergency or event, provided the installation does not involve excavation, movement or removal of existing facilities.

**CITY** — The City of Rye, New York.

**CITY MANAGER** – The chief administrative officer of the City of Rye, or its designee.

**COLLOCATION** — The use of an Existing Tower or Base Station to install additional transmission equipment or Antennas for the provision of wireless services.

**COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE** — The meaning in this chapter and any Special Use Permit granted hereunder as is defined and applied under the United States Uniform Commercial Code (UCC).

**COMPLETED APPLICATION** — An application that contains all information and/or data required by the City on application forms, by ordinance or by written practice and such additional information as the City may reasonably require specific to any application.

**CONCEALMENT ELEMENT** - Any design feature, including but not limited to painting, landscaping, shielding requirements and restrictions on location, proportions, or physical dimensions in relation to the surrounding area or Supporting Structures that are intended to and do make a Wireless Facility or any Supporting Structure supporting it substantially less visible to the casual observer.

**COUNCIL** — The City Council of the City of Rye, which is the officially designated agency or body of the community to whom applications for a Special Use Permit for a Wireless Facility must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or revoking Special Use Permits for Wireless Facilities. The Council may, at its discretion, delegate or designate other official agencies of the City to accept, review, analyze, evaluate and make recommendations to the Council with respect to the granting or not granting, recertifying or not recertifying or revoking Special Use Permits for Wireless Facilities.

**EAF** — The Environmental Assessment Form approved by the New York Department of Environmental Conservation.

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**ELIGIBLE FACILITY PERMIT** – The official document or permit by which an applicant meets the criteria for administrative review of a Wireless Facility as granted by the City Engineer and Corporation Counsel.

**ENVIRONMENTALLY SENSITIVE AREA (“ESA”)** – An area that is a Residential Zone or an area that has an exceptional or unique character with respect to one or more of the following: a) a benefit (or threat) to human health or quality of life; b) a benefit (or threat) to wildlife; c) a natural setting (e.g. fish/wildlife habitat open space, area of important aesthetics of scenic quality); d) agricultural, social cultural, archeological, recreational or educational values. The City Council shall determine what areas qualify as an ESA.

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**EXISTING** - In place as of the date an application is received for installation or modification of a Wireless Facility.

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

**FCC** — The Federal Communications Commission or its duly designated and authorized successor agency.

**HEIGHT** — When referring to a Tower or Supporting Structure, the distance measured from the preexisting grade level to the highest point on the Tower or Supporting Structure, even if said highest point is an Antenna.

**MICRO-WIRELESS FACILITY** – A small wireless facility that makes no sound strung between two utility poles having dimensions no larger than 24 inches in length, 15 inches in width and 12 inches in height and an exterior antenna, if any, no longer than 11 inches, and which antenna may be enclosed in an imaginary cylinder no larger than one inch in diameter. The reference to height in this definition is not intended to permit any person to install a facility that violates, or causes the strand to which it is attached to violate, clearance or other requirements under the applicable safety codes.

**NIER** — Nonionizing electromagnetic radiation.

**PERSON** — Any individual, corporation, estate, trust, partnership, joint-stock company, association of two or more persons having a joint common interest or governmental entity.

**PERSONAL WIRELESS SERVICES** — Shall have the same meaning as defined and used in the 1996 Federal Telecommunications Act and associated regulations.

**RESIDENTIAL RIGHT-OF-WAY** – the right-of-way in a Residential Zone.

**RESIDENTIAL STRUCTURE** – a structure located in a residential zone with its principal use being residential.

**RESIDENTIAL UNIT** – a dwelling unit - One or more rooms with provision for living, cooking, sanitary and sleeping facilities arranged for the use of one family, as defined in Rye City Code Chapter 197 “Zoning”.

**RESIDENTIAL ZONE** – those zones designated as “Residence Districts” under the City of Rye City Code Chapter 197 “Zoning”.

**RIGHT-OF-WAY** - The strip of land over which facilities such as roads are built as identified on the official City Map.

**SPECIAL USE PERMIT** — The official document or permit by which an applicant is allowed to construct and use a Wireless Facility, as granted by the City.

**STEALTH FACILITY** - Any Wireless Facility that is integrated as an architectural feature of a an Existing Supporting Structure or any new Wireless Facility that is camouflaged or concealed so that the presence of the Wireless Facility is either: (1) virtually imperceptible to the casual observer, such as an Antenna behind louvers on a building, or inside a steeple or similar structure; or (2) camouflaged, through stealth design, so as to blend in with its surroundings to such an extent that it is indistinguishable by the casual observer from the structure on which it is placed or the surrounding in which it is located. Examples of Stealth Facilities include Wireless Facilities which are disguised as flagpoles, as indigenous trees, as rocks, or as architectural elements such as dormers, steeples and chimneys. To qualify as “stealth” design, the item in question must match the character of its surroundings and the type of item that it is mimicking in size, scale, shape, dimensions, color, materials, function, and other attributes as closely as possible. The elements that make a facility a Stealth Facility are Concealment Elements.

**SUPPORTING STRUCTURE** – Any building, mast, pole, Utility Pole or other facility capable of supporting or housing a Base Station. Except as used in the definition of the term “Tower,” the term “Supporting Structure” does not include and is not used to refer to a Tower.

**SUBSTANTIAL CHANGE** - Substantial change has the same meaning as the term “Substantial Change” as defined by Federal Communications Commission regulations, 47 C.F.R. §1.40001(b)(7).

**TALL STRUCTURE** – A tall structure includes, but is not limited to, existing Towers, non-residential building rooftops at least 4 stories in height or greater, and domes, belfry’s, lanterns, spires, steeples or other architectural features on top of the roof of a building that is at least 45 feet high.

**TELECOMMUNICATIONS** — The transmission and reception of audio, video, data and other information by wire, radio frequency, light and other electronic or electromagnetic systems.

**TEMPORARY** — In relation to all aspects and components of this chapter fewer than 90 days.

**TOWER** – Any supporting structure built for the sole or primary purpose of supporting any Antennas (and related Base Station and Accessory Facilities or Structures), including supporting structures that are constructed for wireless communications including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include Utility Poles.

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**UNDERGROUND AREAS** – Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled, at the time of determination to be converted from overhead to underground. If any area that currently has electrical facilities above-ground is later converted to an area with all such facilities under-ground, then such an area will be considered an “Underground Area” and the responsible party for above-ground Wireless Facilities and Accessory Facilities must comply with all regulations for Underground Areas within one year of such conversion. For the purposes of this Chapter, any Residential Area outside the FEMA designated 50-year floodplain as depicted on the most recently approved FEMA flood maps is considered an Underground Area. An “electrical facility” is a distribution facility owned by an electric utility and does not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

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**UTILITY POLE** - A Supporting Structure owned and/or operated by a public utility, and regulated by the New York State Department of Public Service, which is primarily built to support lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

**WIRELESS FACILITY** — All elements of a facility or proximate to a common location used in connection with the provision of any wireless communications, including the Antenna, Base Station (but excluding any Existing Supporting Structure to which the Base Station is attached or within which it is enclosed), Tower, if any, and Accessory Facilities or Structures serving that Base Station.

**Deleted:** TALL STRUCTURE – A tall structure includes, but is not limited to, existing Towers, non-residential building rooftops at least 5 stories in height or greater, domes, belfry’s, lanterns, spires, steeples or other architectural features on top of the roof. ¶

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**WIRELESS REGULATIONS** – Those regulations, adopted by majority vote of City Council pursuant to this Chapter and implementing the provisions set forth herein.

**§ 196-4. Policy and goals for Special Use Permits and Special Exception Permits.**

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In order to ensure that the placement, construction and modification of Wireless Facilities conforms to the City’s purpose and intent of this chapter, the Council creates a Special Use Permit for Wireless Facilities for the purpose of achieving the following goals:

- A. Implementing an application process for person(s) seeking a Special Use Permit or Special Exception Permit for a Wireless Facility.
- B. Establishing a policy for examining an application for and issuing Special Use Permits and Special Exemption Permits for Wireless Facilities that is both fair and consistent.
- C. Establishing time frames for granting or not granting a Special Use Permits and Special Exemption Permits for Wireless Facilities, or recertifying or revoking the Special Use Permit granted under this chapter.
- D. Promoting and encouraging, wherever possible, but only where it will result in the least overall visual and sonic impact for residential dwelling units, the collocation of Wireless Facilities.
- E. Promoting and encouraging, wherever possible, the placement of a Wireless Facility in such a manner as to cause minimal disruption to the land, property, buildings and other

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facilities adjacent to, surrounding and in generally the same area as the requested location of such a Wireless Facility and to minimize adverse visual, sonic, and aesthetic impacts to the community and risk of adverse impacts to community character and property value.

§ 196-5. Special Use Permit and Special Exception Permits.

A. All Wireless Facilities within the City must be in compliance with this Chapter and all other applicable law and regulations. A person who installs Wireless Facilities pursuant to this section must comply with all safety codes; comply with requirements for RF emissions; and must utilize Concealment Elements and maintain facilities to minimize visibility of the Wireless Facilities. Wireless Facilities that require a Special Use Permit or Special Exception Permit, or if existing on January 14, 2019 would have required a Special Use Permit but for Section 196-14 “Existing Facilities” or would have been exempt if installed after January 14, 2019, and all Wireless Facilities in the rights of way are subject to the registration requirements of Section 167.72 as applicable.

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B. This Chapter does not apply to any device designed for end-user over-the-air reception, not transmission, of television broadcast signals, multi-channel multi-point distribution service, or direct broadcast satellite service; or for end user reception of signals from an Internet service provider and end user transmission of signals to an Internet service provider.

C. All Wireless Facilities (including modifications), or construction, modification or replacement of Support Structures in connection with the installation of Wireless Facilities must be permitted by a Special Use Permit, Special Exception Permit or Eligible Facility Permit. Notwithstanding the foregoing, the following Wireless Facilities do not require a Special Use Permit, except where the same are on, substantially contiguous to, or affect a historic property, or an environmentally sensitive area. Requirements that may apply to the underlying Supporting Structure, to which a Base Station is to be attached, as well as all other applicable laws and regulations continue to apply. Such Wireless Facilities that do not require a Special Use Permit shall require a Special Exception Permit and pay the associated fee to the City Manager or his/her designee. Such Wireless Facilities shall be authorized to be installed on condition that any and all other permits or approvals have been received.

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(1) Wireless Facilities that are less than 1 cu ft. in size, create no measurable sound and are placed on Existing Supporting Structures without increasing the physical dimensions of the Existing Supporting Structures. The “cubic footage” takes into account all the elements of the Wireless Facility (including Accessory Facilities or Structures).

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(2) Wireless Facilities placed on the rooftop of non-residential structures; that make no measurable sound beyond the rooftop; that are at least 40 feet from any residential unit; and that include some Concealment Elements so that the Wireless Facilities are not visible from the street.

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- (3) Wireless Facilities within Existing Supporting Structures (other than historical properties) that are not visible or audible from outside the Supporting Structure and do not change the physical dimensions or appearance of the Supporting Structure within which they are placed.
- (4) Carriers on Wheels where the placement is permitted, and complies with, applicable FCC regulations for temporary placement of Wireless Facilities.
- (5) Routine maintenance, or replacement of elements of a Wireless Facility or Supporting Structure that do not change the dimensions, visibility, or audibility of a Wireless Facility or Supporting Structure.

(6) Micro-Wireless Facilities.

D. The City Manager or his/her designee shall prepare application forms that must be used by persons seeking to place Wireless Facilities in the City and which shall require additional submission of at least the information required by the City Code, and may require information that the City may consider in acting upon an application

1. Franchise Required. In addition to the Special Use Permit, Special Exception Permit and Eligible Facilities Permit required herein, the placement of a wireless telecommunications facility in the public rights-of-way requires the persons who will own or control those facilities to obtain a franchise or permit to be located within the City's right-of-way, unless that person holds a franchise from the State which authorizes it to use the right-of-way for that purpose, without further permission of the City. Pursuant to Chapter 167 "Streets and Sidewalks", such franchise or permit shall be approved by the City.

E. As part of the administration of this Article, the City Council may adopt by simple majority vote regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Article, including regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities, and guidelines for placement of wireless telecommunications facilities on City-owned or controlled structures in the rights-of-way.

- (1) Develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way;
- (2) The City Manager shall issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.
- (3) The City Manager shall develop forms and procedures for submission of applications for placement or modification of wireless telecommunication facilities, and proposed changes to any support structure consistent with this Article.

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F. For eligible facilities requests, as defined in the Federal Communications regulation 47 C.F.R. §1.40001(b)(3), implementing federal law, 47 U.S.C. §1455, an Eligible Facility Permit is required prior to installation (including modifications), of Wireless Facilities or modification of Existing Support Structures in connection with the installation of Wireless Facilities.

- (1) An Eligible Facility Permit may be issued administratively by the City Engineer and Corporation Counsel jointly after all applicable safety and fire code regulations have been complied with. The Eligible Facility Permit shall specifically provide that it is being issued at the direction of the federal government and without the consent of the City, and shall be of no further force and effect when the permit for the underlying facility expires, or the federal law changes so that the permit as issued is no longer required.
- (2) The application for any permit must contain at least the information required to permit the City Manager and Corporation Counsel to determine whether the application is an eligible facilities request, including (i) the underlying approval for the existing Tower and Base Station; (ii) any approved modifications to the same where the modifications were approved prior to February 22, 2012; and (iii) detailed information about the physical dimensions of Tower and Base Station as the same exist on the date of the application, and as proposed to be modified.
- (3) The application shall be denied if it is not an eligible facilities request. If an application is denied because it is determined that it is not an eligible facilities request, the applicant may request that the application be treated as a request for special permit by submitting all the information required for a special permit within ten (10) days of the denial of application. The applicant has the burden of proof by providing clear and convincing evidence.

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G. All other Wireless Facility installations (including modifications), or construction, modification or replacement of Support Structures in connection with the installation of Wireless Facilities require a Special Use Permit or Special Exception Permit.

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- (1) Special Use Permits and Special Exception Permits may be granted where applicant shows by clear and convincing evidence:
  - (a) The Wireless Facility proposed is not being built speculatively (that is, there is a customer for the Wireless Facility), and it will be built and used promptly upon approval.
  - (b) The applicant is a utility under New York law or a provider described in (e) below or a governmental entity. The applicant and any entity whose equipment would be included in the installations has all the authorizations required to place the Wireless Facilities from the state, or the City (other than the Special Use Permit requested), or the owner of the property, and to modify, replace or attach to a Supporting Structure, and the placement,

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construction and operation of the Wireless Facilities (including ~~Supporting Structures~~) will be in compliance with all applicable laws.

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- (c) The Wireless Facility is designed and placed to minimize the visual and sonic impact on the community.
- (d) The Wireless Facility does not significantly impact the site upon which it will be located or the properties that will be disturbed as a result of its installation.
- (e) If Applicant is confirmed to ~~be a~~ utility under New York law or is confirmed to be a provider, as described below, it must demonstrate that the Wireless Facility is necessary for the provision of services. All Applicants must show that the proposed installation is the least intrusive alternative for providing service. If the applicant is a provider of wireless services or facilities under 47 U.S.C. § 332(c)(7), it must show that absent approval, there will be a prohibition in the provision of wireless services within the meaning of federal law.

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(2) City may approve a Special Use ~~Permit or Special Exception~~ Permit without the showing required by Section G(1)(e) where the facility is not located in or does not affect historic properties or Environmentally Sensitive Areas and the Wireless Facility:

- (a) Is a Stealth Facility that otherwise satisfies the provisions of this ordinance.
- (b) Contains Concealment Elements, and is to be placed or shielded on an Existing Supporting Structure in such a way such that the Wireless Facility is not readily visible to surrounding properties, and is not subject to modification except at the discretion of the City.

(3) Notwithstanding the foregoing, City may require the showing under Section G(1)(e) where the City determines installation or modification of the Wireless Facility substantially alters the size, proportions or dimensions of an Existing Supporting Structure.

~~(4) Notwithstanding any other provisions of this Chapter, the City Council may for reasonable cause and based on substantial evidence exempt any applicant from any requirement of this Chapter or require the location or character of a Wireless Facility to be other than that which this Chapter might otherwise mandate.~~

**H. [new section] General Standards for Wireless Telecommunications Facilities in the Rights-of-Way**

(1) Generally. ~~All~~ Wireless telecommunications facilities in the rights-of-way shall: ~~first, be located in accordance with the location priorities in subsection I below;~~ and ~~second, be~~ the most aesthetically pleasing alternative ~~for the type of location~~. In addition, such facilities ~~must meet~~ the minimum requirements set forth in this ordinance, the Wireless Regulations, and the requirements

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of any other applicable law. An Applicant must establish that ~~it is~~ installing Stealth Facilities to the extent possible ~~and must:~~

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- (a) ~~Show that it is~~ installing facilities in the highest priority locations that are available and necessary to the provision of service or to avoid a prohibition. ~~As part of its application, an applicant must describe in detail its efforts to place a Wireless Facility at each higher priority location, including what properties were contacted, and the reasons why applicant claims the Wireless Facility cannot be placed at a higher priority location.~~

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- (b) ~~Submit RF engineering data signed by an engineer for the relevant wireless provider, including propagation maps and supporting information identifying areas where a Wireless Facility could be placed that would serve the areas where applicant believes that service is required, and describing the Wireless Facility required to provide such services;~~

**Deleted:** Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities, including towers or other tall structures, in accordance with the following priorities in Section 196-5(I) below.

- (c) ~~Submit a written explanation as to why it claims its proposed Wireless Facility is the least intrusive alternative, considered individually, and as part of any project of which it is a part that involves installation of more than one Wireless Facility; and taking into account all potential alternatives, whether or not raised by the City or its citizens, including all those that a diligent applicant acting in good faith would raise.~~

(2) Waiver of Requirements. ~~Subject to Section 196-5(G)(4), the~~ Wireless Regulations and decisions on applications for placement of wireless telecommunications facilities in the rights-of-way shall, at a minimum, ensure that the requirements of this Chapter are satisfied, unless, in the case only of an applicant who has the requisite status protected by federal laws, it is determined that applicant, who has requisite status to be protected by federal law, has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized. If that determination is made, the requirements of this ordinance, including any regulations and forms to implement this ordinance, may be waived, but only to the minimum extent required to avoid conflict with federal law.

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(3) Standards. Wireless telecommunications facilities in the rights-of-way shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, complies in the rights-of-way with the City's prioritization list ~~in subsection I(2) below~~ and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way and compliance with health and safety codes; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the rights-of-way or any portion thereof, or the ability of the City or other

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government agencies to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.

(4) Concealment. The Special Use Permits for Wireless Facilities in the rights-of-way shall incorporate specific concealment elements to minimize visual impacts consistent with the Wireless Regulations, and shall incorporate design requirements ensuring compliance with all standards for noise emissions and in accordance with Chapter 133 of the Rye City Code. Unless it is determined that another design is less intrusive or placement is required under applicable law:

- a. Antennas located at the top of support structures shall be incorporated into the structure, [or placed within shrouds of a size such that the antenna appears to be part of the support structure];
- b. Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
- c. Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on the utility pole, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that visibility is limited to the fewest number of people, the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed. In Underground Areas, the equipment cabinets shall be located underground with any above ground intrusion minimized. If an equipment cabinet must be located aboveground, then the cabinet shall be a Stealth Facility and shall substantially incorporate all other concealment elements. If an equipment box must be placed on a pole, the box shall be placed on the pole in such a fashion as to have it front facing the closing boundary of the right-of-way.
- d. Wiring and cabling shall be neat and concealed within, or or within conduit, flush to the support structure, ensuring concealment of these components to the greatest extent possible.
- e. Ground-mounted equipment associated with a wireless telecommunications facility is prohibited in Underground Areas and shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be undergrounded, located in alleys or otherwise shielded. Ground-mounted equipment shall not interfere with pedestrian or vehicular traffic.
- f. Wireless telecommunications facilities shall comply with FCC regulations governing radio frequency (“RF”) emissions. At all times, every wireless

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facility shall comply with applicable FCC regulations governing RF emissions, and failure to comply shall be a treated as a material violation of the terms of any permit or lease. No special use permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with those regulations; any areas where occupational or general public exposures will exceed FCC limits are identified, and there is a clear plan addressing safety for any areas where exposures may exceed those limits.

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g. No Towers greater than 80 feet shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted above-ground in Underground Areas; towers less than or equal to 80 feet may be placed in the public rights-of-way only on major roads provided that the City Council determines that such towers in the public right-of-way would be the most aesthetically pleasing means to serve an area with low residential density. Any Tower design must be as consistent as possible with the corridor in which the facility is placed, and minimize the obtrusiveness of the facility considered individually and as part of a network of wireless telecommunications facilities. For Towers proposed to be located in the right-of-way, all other restrictions including, but not limited to equipment type and placement, setback requirements, safety concerns and aesthetics shall still apply.

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5. No electric meters shall be placed on a Utility Pole or any other Supporting Structure.

6. Underground installations will have no protrusions above pre-existing grade.

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**I. Demonstration of compliance with Wireless Regulations.**

As part of showing that the proposed location and structure meets the criteria in this law and the Wireless Regulations, an applicant is required to show how it has complied with the priority list below unless the applicant can show that compliance is prohibitory:

(1) The highest priority locations for all installations are:

- (a) On existing tall structures or telecommunications towers.
- (b) Collocation on a site with existing telecommunications towers or tall structures.
- (c) In commercially zoned areas along Interstate 95, Interstate 287 or railroad tracks.
- (d) In nonresidential areas.
- (e) On other property in the City.

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(2) The priority of locations for installations in the residential right-of-way are, in order of priority:

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(a) Located on a major road, at least 60 feet or more from the nearest residential unit;

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(b) Located on other roads but only when required to be non-prohibitory, and at least 60 feet or more from the nearest residential unit;

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(c) Located on a major road, at least 40 feet from the nearest residential unit;

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(3) Municipal property in category (1) and (2) above shall be a higher priority than other locations in the same category.

(4) An applicant is further required to show that its proposed installation or modification:

(a) Minimizes the visual impact of the Wireless Facilities and associated Supporting Structures upon the community, and in particular upon residential units, as proposed and under any modification that could be made to that installation as of right; and

(b) Is designed to be consistent with the overall characteristics of the area where the facilities are located; and

(c) Has minimized the new Supporting Structures proposed, and the impact of those Supporting Structures.

(d) In considering the visibility of Wireless Facilities, City may consider separately and in conjunction with any nearby or similar facilities, or any other facilities then proposed, the mass and size of the facilities, the scale of the facilities (or the effect of the placement on the mass, size and scale of Supporting Structures to which or within which the Wireless Facilities may be attached or concealed), and any other factor that may affect the impact on the community. It may consider the elements of a Wireless Facility separately and collectively, and may require a showing the visibility of each element of the Wireless Facility, and the effect on any Supporting Structure to which the Wireless Facility will be attached, has been minimized.

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(e) It has proposed facilities using universal antennae, each having and utilizing multi-carrier capacity to the fullest extent technologically possible.

(5) The City may approve or require placement in a location that is not the highest priority where the record shows a proposed installation at a different location will

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result in less impact on the community, considering the specific installation that is proposed and any project of which it is a part that involves installation of more than one Wireless Facility.

- (6) In considering whether a proposal meets the general requirements of this law and the Wireless Regulations, the City will consider the impact of a planned project as a whole, taking into account the factors specified above.

**§ 196-6. Special Use Permit, Special Exception Permit, and Eligible Facility Permit Application Requirements.**

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A. All applicants for a Special Use Permit or a Special Exception Permit (in the case of a Special Exception Permit only to the extent as set forth in subsection (U)) for a Wireless Facility or any modification of such facility shall comply with the requirements set forth in this section. In addition to the information required by Section 196-5(E), an applicant for a Special Use permit must comply with the requirements of this section, as applicable.

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B. An application shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Council, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction, or to revocation of the permit if the permit is issued.

C. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the Council.

D. The applicant shall include a statement in writing that:

- (1) The applicant's proposed Wireless Facility will be maintained in a safe manner and in compliance with all conditions of the Special Use Permit, Special Exception Permit or an Eligible Facility Permit, without exception, unless specifically granted relief by the Council in writing, as well as all applicable and permissible local codes, ordinances and regulations, including any and all applicable county, state and federal laws, rules and regulations.
- (2) The construction of the Wireless Facility is legally permissible, including but not limited to the fact that the applicant is authorized to do business in New York State.

E. Each application for a Special Use Permit or Special Exception Permit shall include a complete plan for the site proposed, and if the application is submitted as part of a larger project that will include multiple sites, a description of that project, and the number and type of installations required, and complete application materials for each site proposed, so that the Council has the ability to and shall review and make a determination with respect to each individually and as part of any larger project. For Special Use Permits or Special Exception Permits, the site plan shall be reviewed and approved by the Council prior to

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issuance of the Special Use Permit or Special Exception Permit by the City Council. Where a certification is required, the certification shall be in the form of a report containing the information hereinafter set forth, signed by a licensed professional engineer registered in the state and acceptable to the City, unless otherwise noted. The application shall include, in addition to the other requirements for the Special Use Permit or Special Exception Permit, the following information:

- (1) Documentation that shows applicant satisfies the requirements of Section 196-5(E)-(H), as applicable.
- (2) Name and address of the engineer or engineers submitting any certifications, and to whom questions regarding the certification should be submitted.
- (3) Name and address of the property owner, operator and applicant, to include the legal form of the applicant. Name and address of any person who will own equipment associated with the Wireless Facility.
- (4) Postal address and Tax Map parcel number of the property.
- (5) Zoning district or designation in which the property is situated.
- (6) Size of the property stated both in square feet and lot line dimensions and a diagram showing the location of all lot lines where the facility is proposed to be located outside of the right of way, and within the rights-of-way, the location of the proposed facility in relation to the right of way, pedestrian and non-motorized vehicle pathways and cross-walks, and the location in relation to driveways on the same right-of-way and within 750 feet.
- (7) Location of all residential structures within 750 feet.
- (8) Location of all habitable structures within 750 feet.
- (9) Location of all structures on the property which is the subject of the application, or for the right of way, within 250 feet of the proposed facility.
- (10) Location, size and height of all proposed and Existing Wireless Facilities and Supporting Structures at the proposed site.
- (11) Type, size and location of all proposed and existing landscaping.
- (12) The number, type and design of the Wireless Facility(s) proposed and the basis, if any, for the calculations of the Wireless Facility's capacity to accommodate multiple users.
- (13) The make, model and manufacturer of each of the elements of the Wireless Facility.
- (14) A detailed description of each element of the proposed Wireless Facility and any Existing Support Structure which will be utilized, which description shall include,

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but not be limited to, a description of the Supporting Structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting. For a modification to a facility, applicant must describe precisely any change in physical dimensions to any portion of the Wireless Facility or and describe in detail any additional equipment installed as part of the modification and any modifications required to the Supporting Structure (including, but not limited to, modifications to meters, powers supplies, cabling, and guys).

- (15) The frequency, modulation and class of service of radio or other transmitting equipment.
- (16) Transmission and maximum effective radiated power of the Antenna(s).
- (17) Direction of maximum lobes and associated radiation of the Antenna(s).
- (18) Certification by a qualified RF engineer that NIER levels at the proposed site are within the threshold levels adopted by the FCC.
- (19) The applicant's proposed wireless facility maintenance and inspection procedures and related system of records.
- (20) A copy of the FCC license applicable for the use of the Wireless Facility, if any, and a copy of any certificate issued by the State of New York for the facility; and proof that applicant and any person who will own facilities associated with the proposed Wireless Facility are authorized to place the facilities at the location proposed.
- (21) For a Tower, certification that a topographic and geomorphologic study and analysis has been conducted and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed s Tower on the proposed site. The certifying engineer need not be approved by the City.
- (22) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites signed by a suitable engineer and the provider(s) that will utilize the proposed installation.
- (23) The applicant shall disclose, in writing, any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share any new Wireless Facility that it constructs.
- (24) The applicant shall provide a notarized affidavit that either the proposed installation meets all laws, codes and ordinances or that it meets the same except as specifically listed on said affidavit.

**F.** In the case of a new Wireless Facility, the applicant shall be required to submit a report demonstrating its efforts to secure shared use of existing Wireless Facility(s). Copies of written requests and responses for shared use shall be provided to the Council.

- G.** Certification that the Wireless Facility and, if applicable, the Existing Supporting Structure both are designed and constructed (“as built”) to meet all county, state and federal structural requirements for loads, including wind and ice loads.
- H.** After construction and prior to receiving a certificate of compliance, certification that the Wireless Facility and related facilities are grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- I.** The applicant shall submit a completed long form EAF and a completed Visual EAF addendum. The Council may require submission of a more detailed visual analysis based on the results of the Visual EAF addendum. Applicants are encouraged to seek pre-application meetings with the City Council to address the scope of the required visual assessment.
- J.** A visual impact assessment shall be provided with each application which shall include:

  - (1) A Zone of Visibility Map, which shall be provided in order to determine locations where the facility may be seen.
  - (2) Pictorial representations of before and after views from key viewpoints, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; environmentally sensitive areas; 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 or travelers. The City will provide guidance concerning the appropriate key sites at a pre-application meeting.
  - (3) An assessment of the visual impact of the facility base, guy wires and accessory buildings from abutting and adjacent properties and streets.
  - (4) Scaled and dimensioned photo simulations of the before and after images of the project and project site from at least three different angles and showing the maximum silhouette, viewshed analysis, color and finish palette and proposed screening for the Wireless Facility.
- K.** The applicant shall identify any Concealment Elements proposed for the Wireless Facility, and for a Stealth Facility, shall specifically show that the proposed Wireless Facility qualifies as a Stealth Facility and effectively screen from view its proposed wireless telecommunications facilities and structures, subject to Council approval.
- L.** All utilities serving any wireless telecommunications facility shall be installed underground, embedded in existing construction or otherwise shielded from view and in compliance with all laws, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Council may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Council, such variance or waiver shall not be detrimental to the health, safety, general welfare or environment, including the visual and scenic characteristics of the area. Where possible, for Wireless Facilities located outside of the rights of way wiring and other components shall be located within buildings.

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Wireless Facilities installed on the exterior of Existing buildings/Supporting Structures shall be integrated into the design of such buildings/Supporting Structures. The intent of this provision is to make the installation invisible or indistinguishable from other existing architectural features. Both the Wireless Facility and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the Existing Supporting Structure to which it may be affixed and with the natural surroundings. Where possible, for facilities in the rights of way, when existing Utility Poles are replaced, the Wireless Facility will be placed within a pole approved by the City and the utility.

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- M. An access road and parking to assure adequate emergency and service access shall be provided, should such be deemed necessary by the Council. 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 vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- N. Every Wireless Facility, and the Existing Support Structures to which Wireless Facilities are attached shall be constructed, operated, maintained, repaired, modified or restored in strict compliance with the then-current version of all technical, safety and safety-related codes adopted by the City, county, state or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly 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, health and land use codes. The applicant is responsible for ensuring compliance with the foregoing for the Wireless Facility and any portion of an Existing Supporting Structure affected by the Wireless Facility. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- O. Every person constructing or owning a Wireless Facility shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or law and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- P. The Council intends to be the lead agency, pursuant to SEQRA. The Council shall conduct a review of the proposed project in combination with its review of the application under this chapter.
- Q. An applicant shall submit to the City Engineer the number of completed applications determined to be needed at the pre-application meeting. A copy of the notification of application shall be provided to the legislative body of all adjacent municipalities and to the Westchester County Planning Board.
- R. If the applicant is proposing the construction of a Tower or installation on an Existing Tower or building, the applicant shall examine the feasibility of designing a multi-carrier use to extent practicable and consistent with other requirements of this Chapter. This

requirement may be waived, provided that the applicant, in writing, demonstrates that the provisions of future shared usage of the Wireless Facility is not technologically feasible, or is commercially impracticable and creates an unnecessary and unreasonable burden, based upon:

- (1) The number of FCC licenses foreseeably available for the area.
- (2) The kind of Wireless Facility proposed, or Existing Supporting Structure that would be utilized.
- (3) Available space on existing and approved Towers.

S. Unless waived by the Council, there shall be a pre-application meeting required for every Special Use Permit. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. Where the application is for the shared use of an Existing Tower or Supporting Structure, the applicant can seek to waive any application requirements that may not be applicable. At the pre-application meeting, the waiver requests, if appropriate, will be decided by the City. Costs of the City's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

T. Without limiting the foregoing, except where it is demonstrated that denial would result in a prohibition of the provision of wireless services within the meaning of federal law:

- (1) In the rights-of-way, no Towers are permitted except as permitted in Section 196-5(H)(4)(g).
- (2) No Wireless Facilities are permitted within Underground Areas except those that are located underground.
- (3) A new or replacement Supporting Structure, other than a Stealth Facility or one permitted in Section 196-5(H)(4)(g), street lighting or traffic control structure may not be approved that is greater in height from ground level than the average height of existing distribution utility poles in the same area. No extension of an existing Supporting Structure (other than street lighting or traffic control structures), to permit installation of a Wireless Facility may be approved that unless the addition complies with subsection 5 and increases the height of the supporting structure by no more than the lesser of 20% or six feet.
- (4) Except for cabling within a conduit, the lowest edge of any component of the Wireless Facility on a Utility Pole must be at least 12 feet above the ground unless concealed within the pole.
- (5) All Wireless Facilities mounted to the side of a Supporting Structure in the right of way, other than in the communications space, must be flush-mounted, sized and painted so that the facility to the extent possible the facility is concealed;

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(6) All Wireless Facilities mounted to the top of a pole must be designed so that the facilities form a continuous and uninterrupted line with the pole, and as a Concealment Element, are no more than 10% greater in diameter than the pole itself.

(7) Any indicator lights should be recessed or otherwise designed so that they present no hazard to traffic or interfere with enjoyment of properties from which the lights may be visible.

(8) In addition to any more restrictive provisions of this Chapter, in placing Wireless Facilities, the following rules apply:

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(a) Wireless Facilities should be at least 40 feet from any residential unit, and located so that the facilities are not directly in front of any front window or door of a residential structure.

(b) Locations that are less visible from a residential structure are preferred over locations that are more visible.

(c) With the exception of those facilities that qualify for a Special Exception Permit, locations of Wireless Facilities in the rights-of-way shall be located no closer than 1000 feet measured in all directions to another Wireless Facility of the same carrier. Wireless Facilities in the rights-of-way for different carriers shall be located no closer than 600 feet measured in all directions from each other.

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(i) For Wireless Facilities that qualify for a Special Exception Permit in the right-of-way, such facilities shall be located no closer than 400 feet measured in all directions to another Wireless Facility of the same carrier and shall be located no closer than 200 feet measured in all directions to another Wireless Facility for different carriers.

(d) All Wireless Facilities shall make maximum use of universal antennae capable of serving multiple carriers.

(e) Stealth and concealment shall have priority over collocation.

(f) Subject to (d) and (e) above, towers shall have provisions to allow for multiple carriers.

U.To the extent applicable, every applicant for a Special Exception Permit shall comply with Sections 196-6 A-D, E 1-5, 7, 10, 12-20, 22, 24, F-H, K, N, O, Q, S, and T.

**§ 196-7. Failure to pursue an application.**

Applicants shall respond to all requests or notices from the City with respect to an application promptly, so that City may meet any applicable deadlines for action on an application. Where an applicant fails to promptly respond, the Corporation Counsel is authorized to notify an applicant

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that its application is denied for failure to pursue that application, without prejudice to resubmittal of an application. Without limiting the foregoing, if an applicant is notified that its application is incomplete, and there is fails to complete the application within sixty (60) days of the date of the notice, the Corporation Counsel is authorized to notify an applicant that its application is denied for failure to pursue that application, without prejudice to resubmittal of an application even if there is no deadline applicable to action on the application.

**§ 196-8. Height of wireless telecommunications facilities.**

- A. Wireless Facilities shall be no higher than the minimum height necessary. Unless an area variance for height is granted by the Board of Appeals, the maximum height of Wireless Facilities approved pursuant to Section 196-5(H)(4)(g) shall be 80 feet and the maximum height of Wireless facilities located outside the rights of way shall be 90 feet, based on three collocated Antenna arrays and ambient tree height of 70 feet. Height shall be measured from ground level, to the highest point on the Wireless Facility, or if higher, the highest point on any extension to an Existing Supporting Structure required to support the Wireless Facility. In Towers, universal antennas allowing multicarrier use will be utilized to the extent technologically possible and maximum height shall be reduced accordingly.
- B. The maximum height of any Wireless Facility constructed after the effective date of this chapter shall not exceed that which shall permit operation without artificial lighting of any kind in accordance with municipal, county, state and/or any federal law and/or regulation.

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**§ 196-9. Visibility of facilities.**

- A. Excluding indicator lights satisfying the requirements of Section 196-6, Wireless Facilities shall not be artificially lighted or marked, except as required by law.
- B. Except where inconsistent with concealment elements, Towers shall be of a galvanized finish, or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings as approved by the Council and the Board of Architectural Review, and shall be maintained in accordance with the requirements of this chapter.
- C. Excluding indicator lights satisfying the requirements of Section 196-6, if lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under state and federal regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 1,500 feet of all property lines of the parcel on which the Wireless Facility is located.

**§ 196-10. Security of facilities.**

All Wireless Facilities shall be secured in a manner which prevents unauthorized access to hazardous components. Specifically:

- A. Where possible, Wireless Facilities and modifications to Existing Supporting Structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or run into; Towers will be fenced and

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shielded to prevent unauthorized access to the structure unless the Tower is a Stealth Facility or the fencing or shielding is inconsistent with required Concealment elements; and

- B. To the extent possible, Wireless Facilities shall be installed so that powered elements are readily accessible only to persons authorized to operate or service them.

**§ 196-11. Signage**

For Towers, unless the City determines that the signage required under this section would be inconsistent with minimizing visual impact, Wireless Facilities shall contain a sign no larger than four square feet to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities. The sign shall contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located so as to be visible from the access point of the site. No other signage, including advertising, shall be permitted on any Wireless Facilities, unless required by law, or unless the signage is part of a concealment element. Signs shall be approved by the Board of Architectural Review. Nothing in this section affects rules with respect to signage that may apply to Existing Support Structures.

**§ 196-12. Lot size and setbacks,** [Amended 10-1-2003 by L.L. No. 7-2003]

With the exception for Towers approved pursuant to Section 196-5(H)(4)(g):

- A. All proposed Towers shall be set back from abutting parcels, recorded rights-of-way and road and street lines a distance sufficient to substantially contain on site all ice-fall or debris from a Tower or Tower failure and to preserve the privacy and sanctity of any adjoining properties.
- B. Towers, other than Towers placed on an existing Supporting Structure shall be setback from any property line at least a distance equal to the height of the facility plus 10 feet, or the existing setback requirement of the underlying zoning district, whichever is greater. Further, any Accessory Facility or Structure shall be located so as to comply with the minimum zoning setback requirements for the principal building on the property on which it is situated.
- C. Where a Wireless Facility involves an attachment to an existing building or Supporting Structure other than a Supporting Structure in the rights of way, the facility, including but not limited to Antennas, accessory Supporting Structures, and/or other appurtenances, shall be setback from any property line the distance of the setback requirement of the underlying zoning district and shall comply with the setbacks set forth in Section 196-5(D)

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**§ 196-13. Retention of expert assistance and reimbursement by applicant.**

- A. The Council may hire any consultant and/or expert necessary to assist the Council in reviewing and evaluating the application and any requests for recertification.
- B. An applicant shall deposit with the City funds sufficient to reimburse the City for all reasonable costs of consultant and expert evaluation and consultation to the Council in

connection with the review of any application. The necessary application fee(s) shall be set annually by the City Council and the consultant and expert deposit shall be established on an application by application basis.

- C. The total amount of the funds set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the Council or its consultant/expert to complete the necessary review and analysis. Additional funds, as required, shall be paid by the applicant. The initial amount of the escrow deposit shall be established at a pre-application meeting with the City. Notice of the hiring of a consultant/expert shall be given to the applicant at or before this meeting.

**§ 196-14. Existing Facilities.**

All Wireless Facilities existing on or before the original effective date of this chapter shall be allowed to continue as they presently exist; provided, however, any owner of such existing facility must submit the Inventory Report Form and provide the City information set forth in Section 196-17 to the extent it applies and any modification to existing facilities must comply with this chapter. All other wireless telecommunications facilities existing prior to January 14, 2019 must apply for a Special Use Permit, Special Exception Permit or Eligible Facility Permit and otherwise come into compliance with this Chapter.

**§ 196-15. Public hearing required for Special Use Permit and Special Exception Permit.**

- A. Public hearing and public notification by applicant. Before the City Council acts on any application for a Special Use Permit or Special Exception Permit, it shall hold a public hearing thereon in accordance with the General City Law. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owners name and owner's mailing address for each property located wholly or partially within 300 feet of the perimeter of the property in any direction. If a property on the public notification list is also listed as a cooperative or an apartment on a list entitled "Apartment List City of Rye," maintained by the City Assessor's office, the notice shall only be mailed to the property owner of record. When the public hearing is required by the City Council, the applicant shall deliver a copy of the public notice provided by the City Planner to all of the property owners contained on the public notification list by certified mail with certificate of mailing.

The above mailing and posting notice requirements must be performed in accordance with the following requirements:

- (1) The delivery of mailing shall be limited solely to the public notice provided by the City Planner.
- (2) The public notice shall be mailed to all property owners with a certificate of mailing (no return receipt necessary) at a post office or official depository of the Postal Service, at least 14 calendar days prior to the date of the public hearing.

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- (3) At least five business days prior to the public hearing, the applicant shall provide to the City Planner all certificates of mailing.

(4) For all application for a Special Use Permit and Special Exception Permit, at least one week preceding the date of the public hearing, at least one sign, a minimum of two feet by three feet in size and carrying a legend prescribed by the City Council announcing the public hearing, shall be posted on the property. The height of the lettering on the sign shall be no less than two inches, except that the words "PUBLIC NOTICE" appearing at the top of the sign shall have no less than five-inch-high lettering. The sign shall be in full public view from the street and not more than 30 feet therefrom. The sign shall be removed from the property within two days after the public hearing.

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- B. The Council shall schedule the public hearing referred to in Subsection A of this section once it finds the application is complete. The Council, at any stage prior to issuing a Special Use Permit or Special Exception Permit, may require such additional information as it deems necessary.
- C. Council may waive any requirement hereof and of Section 196-16 as required to comply with state or federal law.

**§ 196-16. Action on application for Special Use Permits and Special Exception Permits.**

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- A. Subject to the requirements of any effective state and federal law or FCC order, the Council will undertake a review of an application pursuant to this chapter in a timely fashion 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 Council shall refer any application or part thereof to the Board of Architectural Review (BAR) and may refer any application or part thereof to the Planning Commission for their advisory review and comment prior to the public hearing. This referral shall not preclude any final approvals of these or other City boards or departments required by this chapter or other law.
- C. After the public hearing and after formally considering the application, the Council may approve and issue or deny a Special Use Permit or Special Exception Permit. Its decision shall be in writing and shall be based on substantial evidence in the record. The burden of proof for the grant of the permit shall always be upon the applicant.
- D. If the Council approves the Special Use Permit or Special Exception Permit for a Wireless Facility, then the applicant shall be notified of such approval, in writing, within 10 calendar days of the Council's action, and the Special Use Permit shall be issued within 30 days after such approval.
- E. If the Council denies the Special Use Permit or Special Exception Permit for a Wireless Facility, then the applicant shall be notified of such denial, in writing, within 10 calendar days of the Council's action.

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F. The City’s decision on an application for a Special Use Permit or Special Exception Permit for a Wireless Facility shall be supported by substantial evidence contained in a written record.

§ 196-17. **Recertification of Special Use Permits and Special Exception Permits.**

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A. At any time between 12 months and six months prior to the five-year anniversary date after the effective date of the permit and all subsequent fifth anniversaries of the original Special Use Permit for a Wireless Facility, the holder of a Special Use Permit or Special Exception Permit shall submit a written request for recertification. In the written request for recertification, the holder of such Special Use Permit or Special Exception Permit shall note the following:

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(1) The name of the holder of the Special Use Permit or Special Exception Permit for the Wireless Facility.

(2) If applicable, the number or title of the Special Use Permit or Special Exception Permit.

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(3) The date of the original granting of the Special Use Permit or Special Exception Permit.

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(4) Whether the Wireless Facility has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the Special Use Permit or Special Exception Permit.

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(5) If the Wireless Facility has been moved, relocated, rebuilt, repaired or otherwise modified, then whether the Council approved such action, and under what terms and conditions, and whether those terms and conditions were complied with and abided by.

(6) Any requests for waivers or relief of any kind whatsoever from the requirements of this chapter and any requirements for a Special Use Permit or Special Exception Permit.

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(7) That the Wireless Facility is in compliance with the Special Use Permit or Special Exception Permit and compliance with all applicable codes, laws, rules and regulations.

(8) Whether the facility is still being used; and whether it is the least intrusive means of providing service, including whether it can be reduced in size, combined with or replaced by other facilities or otherwise altered to make it less visible or less audible.

(9) Whether it complies with then applicable requirements of the City Code for placement of Wireless Facilities.

(10) Whether there have been any changes in the legal status of the applicant or any entity whose facilities are part of the Wireless Facility; and whether all required authorizations and consents are still in full force and effect.

- B. If, after such review, the Council determines that the permitted Wireless Facility is in compliance with the Special Use Permit or Special Exception Permit and all applicable codes, laws and rules; that it continues to be used in the provision of wireless services; that all relevant entities continue to have all necessary authorizations; and that the facility cannot be modified or replaced so that it is less visible or less audible, or has a lesser adverse impact on aesthetics, community character or property values, then the Council shall issue a recertification Special Use Permit or Special Exception Permit for the Wireless Facility, which may include any new provisions or conditions that may be lawfully imposed, or that are required by codes, law or regulation.
- C. If the Council does not complete its review, as noted in Subsection B of this section, prior to the five-year anniversary date of the Special Use Permit, or subsequent fifth anniversaries, then the applicant for the permitted Wireless Facility shall receive an extension of the Special Use Permit or Special Exception Permit for up to six months, in order for the Council to complete its review.
- D. If the holder of a Special Use Permit or Special Exception Permit for a Wireless Facility does not submit a request for recertification of such Special Use Permit or Special Exception Permit within the time frame noted in Subsection A of this section, or if the Council finds that the Wireless Facility has been moved, relocated, rebuilt, or otherwise modified without approval of such having been granted by the Council under this chapter, or that the conditions for recertification have not been met, then such Special Use Permit or Special Exception Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit or Special Exception Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit or Special Exception Permit adequately demonstrates to the Council that extenuating circumstances prevented a timely recertification request. If the Council agrees that there were legitimately extenuating circumstances, then the holder of the Special Use Permit or Special Exception Permit may submit a late recertification request. Council may also recertify subject to additional conditions that it establishes, and contingent on satisfaction of those conditions.

**§ 196-18. Extent and parameters of Special Use Permit, Special Exception Permit and Eligible Facility Permit.**

The extent and parameters of a Special Use Permit, Special Exception Permit or an Eligible Facility Permit for a Wireless Facility shall be as follows:

- A. Such permit shall be nonexclusive.
- B. Such permit shall not be assignable or transferable without the express written consent of the Council.

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- C. Such permit may be revoked, canceled or terminated for a violation of the conditions and provisions of the Special Use Permit or Special Exception Permit for a Wireless Facility, or for a material violation of this chapter or applicable law.
- D. Such permit shall be valid for a period of five (5) years, or such longer period as is required by state law, but the permit may be recertified upon application, which application must demonstrate:
  - (1) The Wireless Facility is still in use; and for facilities where a demonstration of need or effective prohibition was required, that the facility remains necessary or that recertification is required to avoid an effective prohibition; and
  - (2) The impact of the Wireless Facility cannot reasonably be further minimized.

**§ 196-19. Application fee.**

- A. At the time that a person submits an application for a Special Use Permit or Special Exception Permit for a new Wireless Facility, such person shall pay an application fee to the City of Rye as set annually by the City Council set forth in the fee schedule. If the application is for a Special Use Permit for collocating on an Existing Wireless Facility, the applicant shall also pay a fee as set forth in the fee schedule.
- B. Applicants for recertification of a Special Use Permit or Special Exception Permit for a Wireless Facility shall also pay a fee as set forth in the fee schedule.

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**§ 196-20. Performance security.**

The applicant and the owner of record of any portion of a Wireless Facility, and the owner of real property on which the Wireless Facility is located (unless the property is publicly owned) shall be jointly required to execute and file with the City a bond, or other form of security acceptable to the City as to type of security and the form and manner of execution, in an amount and with such sureties as are deemed sufficient by the Council to assure the faithful performance of the terms and conditions of this chapter and conditions of any Special Use Permit or Special Exception Permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit or Special Exception Permit and/or until the removal of the Wireless Facility and any necessary site restoration is completed. The failure to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the Special Use Permit or Special Exception Permit and shall entitle the Council to revoke the Special Use Permit or Special Exception Permit after prior written notice to the applicant and holder of the permit.

**§ 196-21. Reservation of authority to inspect Wireless Facilities.**

- A. In order to verify that the holder of a Special Use Permit or Special Exception Permit for a Wireless Facility and any and all lessees, renters and/or licensees of a Wireless Facility place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the City may inspect all facets of said permit

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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 Supporting Structures constructed or located on the permitted site. The Applicant shall pay for costs associated with such an inspection

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**B.** Payment of such costs shall be made to the City within 30 days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is (are) appealed in accordance with the procedures set forth in this chapter, said reimbursement payment must still be paid to the City, and the reimbursement shall be placed in an escrow account established by the City specifically for this purpose, pending the final decision on appeal.

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**§ 196-22. NIER certification.**

- A. Every Wireless Facility must meet FCC RF emission standards as the same may be amended from time to time.
- B. Except as prohibited by law, City may require any person controlling a Wireless Facility to provide proof that the Wireless Facility satisfies FCC RF emission standards.
- C. An applicant for a Special Use Permit, Special Exception Permit, or Eligible Facility Permit, shall:

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- (1) At the time of an application provide information sufficient to show that the facility will comply with FCC RF standards; and
- (2) Immediately after installation, submit field test measurements sufficient to show compliance with FCC RF standards at full operational power. Measurements should be cumulative, and not just based on facilities that a particular person may own or install at a location.

D. All Special Use Permit, Special Exception Permit, and Eligible Facility permit holders shall submit an annual recertification showing that the Wireless Facility satisfies FCC RF emission standards.

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**§ 196-23. Liability insurance.**

A. A holder of a Special Use Permit or Special Exception Permit for a Wireless Facility shall secure and at all times maintain public liability insurance, property damage insurance and umbrella insurance coverage for the duration of the Special Use Permit in amounts as set forth below:

- (1) Special Use Permits - Commercial general liability: \$5,000,000 per occurrence, \$10,000,000 aggregate.
- (2) Automobile coverage: \$1,000,000 per occurrence, \$2,000,000 aggregate.

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B. The commercial general liability insurance policy shall specifically include the City and its officials, employees and agents as additional insureds.

- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the City with at least 30 days' written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the City at least 15 days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction of a permitted Wireless Facility is initiated, but in no case later than 15 days after the grant of the Special Use Permit or Special Exception Permit, the holder of the Special Use Permit or Special Exception Permit shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

**§ 196-24. Indemnification.**

Any Special Use Permit or Special Exception Permit issued pursuant to this chapter shall contain a provision with respect to indemnification. Such provision shall require the holder of the Special Use Permit or Special Exception Permit, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless and exempt the City, officials of the City, its officers, agents, servants, and employees from any and all penalties, damage 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 construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal or restoration of a Wireless Facility within the City (including, by way of example and not limitation, the same resulting from modification to an Existing Supporting Structure). With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

**§ 196-25. Penalties for offenses.**

- A. Civil sanctions. Any person who violates any of the provisions of this chapter shall be liable for a civil penalty of not more than \$5,000 for every such violation. Each consecutive day of violation will be considered a separate offense. Such civil penalty may be released or compromised by the City Council. In addition, the City Council shall have power, following a hearing, to direct the violator to comply with the provisions of this chapter.
- B. Criminal sanctions. Any person, firm or corporation who or which willfully violates any of the provisions of this chapter or permits promulgated thereunder, excluding provisions set forth in the rules and regulations promulgated thereunder, upon conviction thereof of the first offense, shall be guilty of a violation punishable by a fine of not less than \$5,000 and not more than \$10,000 and, for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than \$10,000 nor more than \$20,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of violation will be considered a separate offense.

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- C. Notwithstanding anything in this chapter, the holder of the Special Use Permit or Special Exception Permit for a Wireless Facility may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit or Special Exception Permit. The City may also seek injunctive relief to prevent the continued violation of this chapter.

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**§ 196-26. Default and/or revocation.**

- A. If a Wireless Facility is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the Special Use Permit or Special Exception Permit, then the Council shall notify the holder of the Special Use Permit or Special Exception Permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Council may, at its sole discretion, order the violation remedied within 24 hours.
- B. If within the period set forth in Subsection A above the Wireless Facility is not brought into compliance with the provisions of this chapter, or of the Special Use Permit or Special Exception Permit, or substantial steps are not taken in order to bring the affected Wireless Facility into compliance, then the Council may revoke such Special Use Permit or Special Exception Permit for a Wireless Facility and shall notify the holder of the Special Use Permit or Special Exception Permit within 48 hours of such action.
- C. Without limiting the foregoing, if a Supporting Structure, Accessory Facility or Structure or Tower no longer complies with applicable codes, and may no longer be safely used to support other elements of a Wireless Facility, the City may require removal of those elements, in addition to taking any action against the owner of the Supporting Structure or Tower.

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**§ 196-27. Removal of Wireless Facilities.**

- A. Under the following circumstances, the Council may determine that the health, safety and welfare interests of the City warrant and require the removal of a Wireless Facility:
- (1) A Wireless Facility with a permit has been abandoned (i.e., not used as a Wireless Facility) for a period exceeding 90 days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God.
  - (2) A permitted Wireless Facility falls into such a state of disrepair that it creates a health or safety hazard.
  - (3) A Wireless Facility has been located, constructed or modified without first obtaining the required Special Use Permit, or any other necessary authorization.

(4) A Wireless Facility that has allowed its Special Use Permit or Special Exception Permit to lapse or has otherwise failed to timely comply with providing the City with the required inspection reports, NIER certifications or other information in order to confirm such facility's compliance with this Chapter.

**B.** If the Council makes such a determination as noted in Subsection A of this section, then the Council shall notify the holder of the Special Use Permit or Special Exception Permit for the Wireless Facility within 48 hours that said Wireless Facility is to be removed. The Council may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Facility.

**C.** The holder of the Special Use Permit or Special Exception Permit, or its successors or assigns, shall dismantle and remove such Wireless Facility, and all associated Supporting Structures or portions of Supporting Structures and Accessory Facilities and Structures used solely by it, 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 90 days of receipt of written notice from the Council. However, if the owner of the property upon which the Wireless Facility is located wishes to retain any access roadway to the Wireless Facility, the owner may do so with the approval of the Council.

**D.** If removal, or substantial progress to complete removal has not occurred within 90 days after the permit holder has received notice, then the Council may order officials or representatives of the City to remove the Wireless Facility and associated structures at the sole expense of the owner or permit holder.

**E.** If the owner of property that is removed does not claim the property and remove the property from the site to a lawful location within 10 days, then the City may take steps to declare the property abandoned and sell it and its components.

**F.** Notwithstanding anything in this section to the contrary, the Council may approve a temporary use agreement/permit for the Wireless Facility, for no more 90 days, during which time a suitable plan for removal, conversion or relocation of the affected Wireless Facility shall be developed by the holder of the permit, subject to the approval of the Council, and an agreement to such plan shall be executed by the holder of the permit and the City. If such a plan is not developed, approved and executed within the ninety-day time period, then the City may take possession of and dispose of the affected Wireless Facility in the manner provided in this section.

**§ 196-28. Applicability of application requirements and permit conditions.**

**A.** Any applicant can request the waiver of application requirements that are inapplicable to their permit application. Such request shall be in writing. Requests should be discussed at the pre-application meeting. The applicant shall have the burden of supporting such requests. Determinations as to applicability of application requirements shall be made by the City.

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- B. In determining permit conditions, the City Council can waive inapplicable permit requirements, consistent with the policy goals and priorities of this chapter. The applicant shall have the burden of supporting such requests. Determinations as to applicability of permit condition requirements shall be made by the City Council.

**§ 196-29. Adherence to state and/or federal rules and regulations.**

- A. To the extent that the holder of a Special Use Permit ~~or Special Exception Permit~~ for a Wireless Facility has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a Special Use Permit ~~or Special Exception Permit~~ shall adhere to and comply with all applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards and provisions of any state or federal agency, including but not limited to the 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 a Wireless Facility, then the holder of such a Special Use Permit shall conform the permitted Wireless Facility to the applicable changed and/or modified rule, regulation, standard or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard or provision, or earlier as may be required by the issuing entity.

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**§ 196-30. Conflict with other laws.**

Where this chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the county, state or federal government, the more restrictive or protective of the City and the public shall apply.

**§ 196-31. Severability.**

If any phrase, sentence, part, section, subsection or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

**§ 196-32. Enforcement.**

This chapter shall be enforced by the Building Inspector or the City Engineer in the same manner as provided in Chapter 197, Zoning.

**§ 196-33. Authority.**

This chapter is enacted pursuant to the Municipal Home Rule Law. This chapter shall supersede the provisions of City law to the extent it is inconsistent with the same, and to the extent permitted

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by the New York State Constitution, the Municipal Home Rule Law or any other applicable statute.

**Section 2: Effective date.**

This local law will take effect immediately on filing in the office of the Secretary of State.