

CITY OF RYE
LOCAL LAW NO. ____ 2017

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”, Chapter 167 “Streets and Sidewalks” by adding a new Section VI “Placement of permanent facilities in the rights of way” and Chapter 196 “Wireless Telecommunications Facilities” 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 land use provisions governing the time, place and manner of these facilities 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).

§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 on public property shall be measured at a distance of 50 feet, or, if less, the distance from the facility or its

supporting structure to a sidewalk or the nearest private residential property line, but no less than 10 feet. 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.

- 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:

Chapter 167 – Street and Sidewalks

167.66. Consent required for placement of permanent facilities.

Except as specifically provided in this Code, or where a consent has been granted by the State and no consent may be required by the City: any person that wishes to place permanent facilities in the rights of way must have consent from the City, which consent, if issued after the date of the ordinance, must take the form of a franchise or license. Persons who own or control facilities in the rights of way used to provide cable services to end users must obtain a video franchise from the City as provided in Section 185, but a video franchise under Chapter 185 is not in lieu of the franchise or license described herein if facilities are placed in the rights of way to provide other services. The grant of a right to use or occupy rights of way is not a waiver of the City's authority to control the time, place or manner of placement of the facilities or equipment of a licensee or franchisee, or the right to prohibit the placement of certain types of equipment that present a hazard to persons or property, or that may incommode the public or unduly interfere with use of the rights of way

167.67. No waiver of police powers.

No franchise or license may waive or restrict the City's exercise of its police powers.

167.68. Effect of loss of utility status.

A person that claims the right to use the rights of way as a utility pursuant to New York law loses its franchise if the status of the company changes, or the particular facility installed is not covered by the relevant provision of New York law.

167.69. Consent indivisible.

No person may subdivide, sublease or grant any other person the right to install facilities in the rights of way, including, without limitation, where the other person's facilities are enclosed entirely within the facilities of a person authorized to occupy the rights of way

167.70. Exceptions to requirement for franchise or license for Wireless Facilities

Notwithstanding the foregoing, City may permit a person holding a license or franchise issued by the City under this Section to allow another person who does not hold a franchise or license to place facilities in the rights of way within a Base Station (as defined in Chapter 196) after the effective date of this provision where:

- A.** The Base Station is the same as it was previously approved by the City as part of the initial authorization under Chapter 196, and the placement does not involve an increase in the size or total volume of the Base Station;
- B.** The Base Station is wholly under the control and management of a person holding a license or franchise, and that person is liable for all acts or omissions, and all harms associated

with the Base Station and all its components whether the same are its acts or omissions, or the acts or omissions of an owner of any component of the Base Station;

- C. The person holding the franchise or license must warrant and agree that it will not permit the other person to take any action in the rights of way with respect to the Base Station or its components, including but not limited to, installing, physically modifying, maintaining the facilities such person owns; all such activities shall be the sole responsibility of the person holding the franchise or license.
- D. The person for on whose behalf equipment has been installed must acknowledge and agree, in a form acceptable to the City Attorney:
 - (1) That the City has not granted it a franchise or consent to be in the Rights of Way for any purpose;
 - (2) That it understand and is bound by Franchisee's representations in the Section 167.70(1)-(3);
 - (3) That it shall have no rights or claims against the City of any sort related to its facilities, but shall be jointly and severally liable for any acts or omission of the holder of the license or franchise, or its own acts and omissions that result in any harms to the City or to the public;
 - (4) that City may treat any equipment owned by such entity as if it were owned by the person holding the franchise or license for all purposes (including but not limited to removal and relocation).
 - (5). That if its equipment is in the rights of way, in lieu of a franchise or consent fee, it will pay the fee required by Section 167.71, or cause the person holding the franchise or license to pay on its behalf.

167.71. Compensation for use of the rights of way.

- A. Unless a franchise or license provides otherwise: for a person that has facilities in the rights of way, except where compensation for that use is provided for under a franchise or license with another person, or is prohibited by New York State law:
 - (1) For lines or conduit occupying the rights of way, and supporting structures and associated equipment cabinets for the lines or conduit that may be permitted in the rights of way, a percentage of gross revenues derived from the operation of the facilities within the City as defined by the fee schedule;
 - (2) For Wireless Facilities as defined in Chapter 196, a fee per annum for each Wireless Facility as defined by the fee schedule. Where a Wireless Facility contains more than one radio unit, the fee will be assigned per radio unit per Wireless Facility. Where a Wireless Facility includes a new Supporting Structure as defined in Chapter 196 or ground-mounted equipment, an additional rent equal to the square footage affected by the Supporting Structure (taking into account separation

distances required from other structures, and including footage occupied by guy wires) times the average value of unimproved property in the City, as determined by the Assessor, except for Supporting Structures subject to the special state franchise tax.

- B.** For an entity which holds a franchise or license authorizing the use of the rights of way to provide that service, the amount specified in the franchise or license, or if no amount is specified, and a fee may be imposed, the amount specified in Section 167.71(1).
- C.** The fee specified in this section is not in lieu of any other tax, fee or assessment. Without limitation, an applicant shall bear costs associated with negotiating and issuing a franchise or license.
- D.** City may waive the fee or impose a different fee where the fee provided under Section 167.71(1) cannot reasonably be applied or is not reasonable in light of the right of way use.

167.72 Registration Requirement.

- A.** Whether or not a franchise or license is required, any person placing permanent facilities in the rights of way shall be required to register with the City beginning on October 1, 2017, identifying the nature and location of its facilities in the rights of way, and the location, by section block and lot, of major components associated with those facilities. Wireless Facilities are considered major components, and any powered facility is considered a major component. In addition, by October 1, 2017, any person that is required to register under Chapter 196 must identify the nature and location of its facilities and the location of major components associated with those facilities.
- B.** A permanent facility is defined as any structure or equipment, other than a structure or equipment owned by the municipality or an agency or subdivision of the federal or state government, that is (a) physically affixed to the ground, or to any structure affixed to the ground in the rights of way; and (b) intended to remain in place for more than one year.
- C.** This provision does not require any person to disclose information it is prohibited from disclosing under state or federal law. However, a person that would otherwise be subject to this provision, but who may not disclose the location or nature of its facilities consistent with state or federal law must register, and shall note the provisions of law which it claims restrict disclosure.
- D.** The City shall develop registration forms by July 1, 2017, and may establish requirements for the submission of information in a form that permits the City to locate and identify facilities in its rights of way.
- E.** Each registrant shall pay such fees as the City may establish from time to time to recover the cost of the registration system.

Section 3:

Chapter 196: “Wireless Telecommunications Facilities”

§ 196-1. Purpose and legislative intent.

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 an adverse visual impact on the community, its character and thus the quality of life in the City. 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 Code¹; 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 encourage shared use of wireless telecommunication facilities.

§ 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 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 on the same property or lot as 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.

¹ 1. Editor’s Note: See Ch. 197, Zoning.

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 FCC licensed or authorized wireless communications.

BASE STATION - A facility or equipment at a fixed location that enables FCC licensed or authorized 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); 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 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.

CITY — The City of Rye, New York.

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.

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 make a Wireless Facility or any Supporting Structure supporting it 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.

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

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.

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.

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 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 invisible 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 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 the term “Substantial Change” as defined by Federal Communications Commission regulations, 47 C.F.R. §1.40001(b)(7).

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 FCC-licensed or authorized Antennas (and related Base Station and Accessory Facilities or Structures), including supporting structures that are constructed for FCC-licensed or authorized 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.

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 at a fixed location used in connection with the provision of any FCC-licensed or authorized wireless communications, including the 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. The definition does not include facilities used for governmental communications, including public safety.

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

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 for a Wireless Facility.
- B. Establishing a policy for examining an application for and issuing a Special Use Permit for a Wireless Facility that is both fair and consistent.
- C. Establishing reasonable time frames for granting or not granting a Special Use Permit for a Wireless Facility, or recertifying or revoking the Special Use Permit granted under this chapter.
- D. Promoting and encouraging, wherever possible, and where it will result in the least overall visual 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 facilities adjacent to, surrounding and in generally the same area as the requested location of such a Wireless Facility and to minimize adverse aesthetic impacts to the community.

§ 196-5. Special Use Permit.

- A. 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 are subject to an exemption under Section 196-2 or 195-4 (or if existing on June 1, 2017 would have required a Special Use Permit or would have been exempt if installed after June 1, 2017); and Wireless Facilities in the rights of way are subject to the registration requirements of Section 167.72.
- 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.** The following Wireless Facilities do not require a Special Use Permit, except where the same are on 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.
- (1) Wireless Facilities that are less than 1 cu ft. in size, 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).
 - (2) Wireless Facilities placed on the rooftop of non-residential buildings; that are at least 30 feet from any residential unit; and that includes Concealment Elements so that the Wireless Facilities are not visible from the street.
 - (3) Wireless Facilities within Existing Supporting Structures (other than historical properties) that are not visible 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 or visibility of a Wireless Facility or Supporting Structure.
- D.** The City Engineer 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 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. Prior to completion of those forms, persons seeking a Special Use Permit must submit at least the information required by the City Code. The City may seek additional information from a person seeking to place Wireless Facilities in the City even is not required by the application form.
- E.** 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, a 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. 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.

F. 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.

- (1) Special Use Permits may be granted where applicant shows:
 - (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 promptly upon approval.
 - (b) 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, or the owner of the property, and to modify, replace or attach to a Supporting Structure.
 - (c) The Wireless Facility is designed and placed to minimize the visual 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 claims the status of a utility under New York law, it must demonstrate that the Wireless Facility is necessary for the provision of services. As part of that demonstration, the Applicant must show that the proposed installation is the least intrusive alternative for providing service. If the applicant claims a right as 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.
- (2) City may approve a Special Use Permit without the showing required by Section F(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 F(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.

G. Demonstration of least intrusive alternative.

- (1) As part of showing that it has proposed the least intrusive alternative for placement, an applicant is required:
- (a) To show that it is installing Stealth Facilities to the extent possible;
 - (b) To show that it is otherwise 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 a 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.
 - (c) To submit RF engineering data 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;
 - (d) To 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.
- (2) The highest priority locations are, in order of priority:
- (a) Existing Towers serving Rye.
 - (b) Rooftops or building exteriors that support Existing Wireless Facilities approved under Chapter 196, including municipally-owned Supporting Structures.
 - (c) Zoning Areas B-4, B-5 and B-6, where service can be provided using an existing Supporting Structure or a replacement Supporting Structure of similar height and design; or a new Supporting Structure whose height does

not exceed 50 feet above ground level provided that the Wireless Facility is at least 50 feet from the nearest residential unit.

- (d) Other municipally-owned property (other than the rights of way) where service can be provided using an existing Supporting Structure or a replacement Supporting Structure of similar height and design; or a new Supporting Structure whose height does not exceed 40 feet above ground level.
- (3) 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 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, or 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.
- (4) 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 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.
- (5) In considering whether a proposal represents the least intrusive alternative, the City will consider the impact of a planned project as a whole, taking into account the factors specified above, and the rights granted by virtue of approval.

H. Demonstration of need.

As part of its showing of necessity or effective prohibition applicant shall:

- (1) Submit information verified by the wireless providers that have agreed to utilize the proposed Wireless Facility with respect to necessity or effective prohibition, as applicable.
- (2) Specifically identify the geographic areas that are to be served by the proposed installation, and explain why the proposed installation is necessary.
- (3) Describe any deficiencies in service it claims exists in the area to be served; and the signal levels across all frequencies used by the wireless providers identified in subsection H(1) for the geographic area. Without limiting the obligation under subsection H(2), if there is coverage within the area to be served, applicant must explain what wireless services, if any, cannot be provided given the existing coverage.

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

- A.** All applicants for a Special Use Permit 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 conditional use permit must comply with the requirements of subsections 196-6(B-D; E (2)-(6),(10), (14)-(18) and (22); G; H); and where the Wireless Facilities that are being modified are Stealth Facilities or subject to Concealment Elements, the visual impact analysis required by subsections I-J so that the City may determine whether the Concealment Elements or Stealth Facility characteristics are defeated.
- 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, 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 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. For Special Use Permits, the site plan shall be reviewed and approved by the Council prior to issuance of the permit. 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, the following information:

- (1) Documentation that shows applicant satisfies the requirements of Section 196-5€ (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 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, 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) 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.
- (20) 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.
- (21) Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites.
- (22) 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.
- L.** Where possible, for Wireless Facilities located outside of the rights of way wiring and other components shall be located within buildings. 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 any 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.

- 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 the installation to accommodate future demand for at least two additional commercial applications, e.g., future collocations. The scope of this examination shall be determined by the Council. The Wireless Facility shall be structurally designed to accommodate at least two additional Antenna arrays equal to those of the applicant and located as close to the applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the applicant, 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 part of a Stealth Facility.
 - (2) No Wireless Facilities are permitted within underground areas except Stealth Facilities.
 - (3) A new or replacement Supporting Structure, other than a Stealth Facility, 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 the lesser of 20% or six feet.
 - (4) Except for cabling within a conduit, the lowest edge of any component of the Wireless Facility (including meters) on a Utility Pole must be 8 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;
 - (6) All Wireless Facilities mounted to the top of a pole must be designed so that the facilities form a continuous 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 placing Wireless Facilities, following rules apply:

- (a) Wireless Facilities should be at least 30 feet from any residential structure, 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.

§ 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 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 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.
- 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.

§ 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 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]

- 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.

§ 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 initial deposit shall be \$7,500 for a facility application and \$5,000 in the case of collocation. These funds shall accompany the filing of an application, and the City will maintain a separate escrow account for all such funds. The City's consultants/experts shall bill or invoice the City no less frequently than monthly for its services in reviewing the application and performing its duties. If at any time during the review process the balance of this account falls below \$2,500, additional funds must be submitted to the City to bring the balance of the account to \$5,000, or in the case of collocation, \$5,000, or upon request from the applicant, a lesser amount to be set by the City Council, before any further action or consideration is taken on the application. In the event that the amount held in escrow by the City is more than the amount of the actual billing or invoicing, the difference shall be promptly refunded to the applicant.
- 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 telecommunications facilities existing on or before the effective date of this chapter shall be allowed to continue as they presently exist; provided, however, that any modification to existing facilities must comply with this chapter.

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

- A. Public hearing and public notification by applicant. Before the City Council acts on any application for a Special Use 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 linearly measured along the right of way. 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.
 - (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 Towers, 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.
- 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, 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 Permit.

- A.** 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. 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 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 for a Wireless Facility, then the applicant shall be notified of such denial, in writing, within 10 calendar days of the Council's action.
- F. The City's decision on an application for a Special Use Permit for a Wireless Facility shall be supported by substantial evidence contained in a written record.

§ 196-17. Recertification of Special Use Permit.

- 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 for such Tower shall submit a written request for recertification. In the written request for recertification, the holder of such Special Use Permit shall note the following:
 - (1) The name of the holder of the Special Use Permit for the Wireless Facility.
 - (2) If applicable, the number or title of the Special Use Permit.
 - (3) The date of the original granting of the Special Use Permit.
 - (4) Whether the Wireless Facility has been moved, relocated, rebuilt, repaired or otherwise modified since the issuance of the Special Use Permit.
 - (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.
 - (7) That the Wireless Facility is in compliance with the Special Use Permit and compliance with all applicable codes, laws, rules and regulations.
 - (8) Whether the facility is still being used; and whether it can be reduced in sized, combined with or replaced by other facilities or otherwise altered to make it less visible.
 - (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 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, then the Council shall issue a recertification Special Use 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 for up to six months, in order for the Council to complete its review.
- D.** If the holder of a Special Use Permit for a Wireless Facility does not submit a request for recertification of such Special Use 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 and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Special Use Permit adequately demonstrates to the 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 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 and Eligible Facility Permit.

The extent and parameters of a Special Use 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.
- C.** Such permit may be revoked, canceled or terminated for a violation of the conditions and provisions of the Special Use 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 PermitSpecial Use Permit for a new Wireless Facility, such person shall pay an application fee to the City of Rye as 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.** No application fee is required in order to recertify a Special Use Permit for a Wireless Facility, unless there has been a modification of the Wireless Facility since the date of the issuance of the existing Special Use Permit for which the conditions of the Special Use Permit have not previously been modified. In the case of any modification, the fees provided in Subsection A shall apply.

§ 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 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 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 and shall entitle the Council to revoke the Special Use 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 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 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.

- B.** The City shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including Towers, Supporting Structures, Antennas and Accessory Facilities and Structures, or refusal to otherwise cooperate with the City with respect to an inspection, or if violations of this chapter are found to exist, in which case the holder, lessee or licensee shall reimburse the City for the cost of the inspection.
- C.** 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.

§ 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 or Eligible Facility Permit, shall:
 - (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.

§ 196-23. Liability insurance.

- A.** A holder of a Special Use 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) Commercial general liability: \$1,000,000 per occurrence, \$2,000,000 aggregate.
 - (2) Automobile coverage: \$1,000,000 per occurrence, \$2,000,000 aggregate.
- 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, the holder of the Special Use 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 issued pursuant to this chapter shall contain a provision with respect to indemnification. Such provision shall require the holder of the Special Use 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 \$3,000 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 \$500 and not more than \$1,000 and, for a second offense and each subsequent offense, shall be guilty of a violation punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not more than 15 days, or both. Each consecutive day of violation will be considered a separate offense.

- C. Notwithstanding anything in this chapter, the holder of the Special Use 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. The City may also seek injunctive relief to prevent the continued violation of this chapter.

§ 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, then the Council shall notify the holder of the Special Use Permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance and 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 substantial steps are not taken in order to bring the affected Wireless Facility into compliance, then the Council may revoke such Special Use Permit for a Wireless Facility and shall notify the holder of the Special Use Permit within 48 hours of such action.
- C. Without limiting the foregoing, if a Supporting 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.

§ 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.
- 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 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 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.
- 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 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 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.

§ 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, and subject to the same penalties as set forth therein.

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

Section 4: 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 5: Effective date.

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