

TOWN OF ATHENS
Local Law No. 2 for the Year 2025
Adopted April 7, 2025

BE IT ENACTED by the Town Board of the Town of Athens as follows:

Section 1. Title

A local law to amend the Town's zoning law and enact other changes necessary to update local regulations governing wireless communications facilities developments in the Town

Section 2. Purpose

The purpose of this local law is to enact changes to the Town of Athens Town Code necessary in order to modernize, streamline, and update the Code with respect to wireless telecommunications facilities, as more particularly set forth in Sections 5.1 and Section 6 of this local law.

Advancements in technology and changes in society's use of technology have made it necessary to amend the Town's code to ensure further development of wireless communications facilities, including so-called macro cell and small cell types, are consistent with the Comprehensive Plan goals of both expand high-speed broadband services and other telecommunications in the Town while also addressing open space, environmental, natural resource, and scenic needs; historic, cultural, and recreational needs; and to preserve and enhance Athens' existing residential neighborhoods.

It is further the purpose of this local law to exercise the town's right to protect its citizens and their property by controlling the use of land under authority of the Town Law and the Municipal Home Rule Law of the State of New York, to broadly protect the public health, safety and general welfare and to carry out locally established goals and objectives in a democratic manner in accordance with the Town's Comprehensive Plan.

Section 3. Authority

This local law is adopted by the Town Board of Town of Athens (hereinafter referred to as the "Town Board") pursuant to its authority to adopt local laws under Article IX of the New York State Constitution; Articles 2 and 3 of the Municipal Home Rule Law; Article I of the Town Zoning Law, including Section 2 which authorize the Town to adopt zoning provisions that promote health and general welfare, encourage the most appropriate use of land throughout the Town, encourage development in accord with a comprehensive plan and professional planning techniques, and improve the quality of life throughout the Town.

Section 4. Repeal of Chapter 162 Telecommunications Towers

Chapter 162 Telecommunications Towers is hereby repealed in its entirety.

Section 5. Chapter 180 Amendments

Chapter 180 Zoning of the Town of Athen Town Code is amended as set forth in this Section.

Section 5.1. Addition of a new Section 180-54.1 Telecommunications Towers

A new Section 180-54.1 Telecommunications Towers is hereby added as follows:

A. Purpose.

The purpose of these supplemental regulations is to:

- (1) Locate towers and/or antennas in a manner which protects property values and encourages the appropriate use of adjacent lands, as well as the general safety, health, welfare and quality of life of the citizens of the Town of Athens and all those who visit this community;
- (2) Preserve the character and appearance of the town and its neighborhoods especially when those adjacent lands are residential while allowing adequate telecommunications services to be developed;
- (3) Provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations;
- (4) Minimize the total number and maximum height of towers in the community by encouraging shared use of existing and future towers and the use of existing appropriate buildings and other appropriate structures; and
- (5) Minimize adverse visual effects from towers by requiring careful siting, stealth technology and techniques, camouflaging, visual impact assessment and appropriate landscaping.

B. Definitions.

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

ACCESSORY FACILITY — An accessory facility serves the principal use, is subordinate in area, extent and purpose to the principal use and is located on the same lot as the principal use. Examples of such facilities include transmission equipment and storage sheds.

ANTENNA — A system of electrical conductors that transmit or receive electromagnetic waves. Such waves shall include but not be limited to radionavigation, radio, television and microwave communications.

DISTRIBUTED ANTENNA SYSTEM (DAS) -- A network of spatially separated antenna nodes, or micro cells, connected to a common source via a transport medium that provides wireless service within a geographic area or structure. DAS antenna elevations are generally a small antenna and box mounted on a utility, at or below the clutter level, and node installations are compact, and can be placed underground.

FORESTED AREA — A forested area where tree canopy cover is at least 25% comprised of woody plants having a more or less erect perennial stem(s) capable of achieving at least 3 inches (7.6 cm) d.b.h., or 5 inches (12.7 cm) diameter at root collar, and a height of 16.4 feet (5 meters) at maturity in situ.

LINE OF SIGHT — A line drawn between two points, an origin and a target, that is compared against a surface to show whether the target is visible from the origin and, if it is not visible, where the view is obstructed.

MAJOR MODIFICATION OF AN EXISTING FACILITY — Any change, or proposed change, in power input or output, number of antennas, change in antenna(s) type or model, repositioning of antenna(s), change in number of channels per antenna above the maximum number approved under an existing approved site plan.

MAJOR MODIFICATION OF AN EXISTING TOWER — Any increase, or proposed increase, in dimensions of an existing and permitted tower or other structure designed to support telecommunications transmission, receiving, and/or relaying antennas, and/or equipment.

REPEATER — A small receiver/relay transmitter of not more than 20 watts' output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.

STEALTH OR CAMOFLOUGING — To minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, use of the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

TELECOMMUNICATIONS TOWER — A structure on which transmitting and/or receiving antennas are located.

TOWER — Hereinafter refers to telecommunications tower, antenna and accessory facility as a unit. **TOWN OF ATHENS** — Hereinafter referred to as the "town."

C. Scope; applicability.

- (1) No tower, except those approved prior to the effective date of this chapter, shall be used unless in conformity with these regulations. No tower shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a tower unless in conformity with these regulations.
- (2) All new towers shall require special use permit and site plan approval in accordance with § 180-56 and § 180-55, respectively, and shall additionally be subject to the requirements of this Section.
- (3) Applicants proposing to co-locate on a previously approved tower do not require a special permit. They are, however, subject to site plan review. The Board may require the applicant to submit any of the items under § 180-54.1.F and/or § 180-54.1.G and/or § 180-54.1.H, below, as part of the site plan review process.
- (4) Exemptions and disallowances. The following wireless telecommunications facilities are exempt: police, fire, ambulance and other emergency dispatch; amateur (HAM) radio, citizens band radio; any existing commercial radio tower, and radio dispatch services for local businesses. Also exempt from this chapter are antennas used solely for residential household television and radio reception, and satellite dishes measuring two meters or less in diameter. No personal wireless service facility shall be considered exempt from this chapter for any reason, whether or not said facility is proposed to share a tower or other structure with such exempt uses.
- (5) The regulations shall apply to all property within the Town of Athens.

D. Shared use of existing appropriate structures.

At all times, shared use of existing appropriate structures (for example, water towers, multistory buildings, church steeples, farm silos, etc.) and existing or approved towers shall be preferred to the construction of new towers.

- (1) An applicant proposing to share use of an existing appropriate structure shall be required to submit:
 - (a) A completed application for site plan approval, in accordance with § 180-55 of this local law.
 - (b) Documentation of intent from the owner of the existing facility to allow shared use.
 - (c) A site plan. The site plan shall be submitted in accordance with § 180-55. In addition, the site plan shall:
 - (a) Show all existing and proposed structures and improvements, including towers, antennas; and
 - (b) Indicate any methods used to conceal the modification of the existing facility.
 - (d) An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing appropriate structure and explaining what modifications, if any, will be required in order to certify to the above.
 - (e) A completed environmental assessment form (EAF) and a completed visual EAF addendum.
 - (f) A copy of its Federal Communications Commission (FCC) license.
- (2) Subject to the provisions of Subsection C, below, if an applicant proposing to share use of an existing appropriate structure submits complete and satisfactory documentation in accordance with Subsection A above, and if modifications indicated according to Subsection A are deemed by the Board to not constitute a major modification of an existing tower, as defined herein, and after the Board conducts a public hearing and complies with all SEQRA provisions, the Board shall grant site plan approval and, as appropriate, a modification of any applicable special permit(s), without further review under this chapter. If the Board, in its sole discretion, determines that any modifications indicated according to Subsection A are a major modification of an existing tower, it may require further review according to § 180-54.1F through § 180-54.1H, inclusive, below.
- (3) Notwithstanding the foregoing provisions of this Section, the Board may not issue site plan and, as applicable, special permit approval where the property is the subject of existing violations of this chapter.

E. New tower.

- (1) Upon receipt of a complete application, the Planning Board shall conduct a public hearing on the same in accordance with the provisions of § 180-56 of this chapter, except that written notice of the public hearing shall be mailed to the owners of all property abutting the exterior

boundaries of the boundaries of the property or parcel of land involved in the application, and to all other landowners having property located within 1,000 feet of the exterior boundaries of the property or parcel of land involved in the application, via certified mail.

- (2) Findings by the Planning Board. The applicant shall comply with the requirements set forth in § 180-54.1.F through § 180-54.1.H, inclusive, and shall provide all information reasonably required by the Planning Board. In its review of the application, the Planning Board shall apply the site plan review standards set forth at § 180-55(F) and the special use permit review standards set forth at § 180-56(E). In addition, in issuing approval, or conditional approval, of the special use permit, the Board shall make all of the following applicable findings:

- (a) Applicant is not already providing adequate coverage and/or adequate capacity to the Town of Athens.
- (b) Applicant is not able to use an existing tower/facility, either within or outside of the Town of Athens, either with or without the use of repeaters, and in accordance with the requirements set forth in 180-54.1G(3) of this chapter, to provide adequate coverage and/or adequate capacity to the Town of Athens.
- (c) Applicant has endeavored to provide adequate coverage and adequate capacity to the Town of Athens with the least number of towers and antennas as is technically and economically feasible.
- (d) Applicant will be providing at least 50% of its coverage to the Town of Athens.
- (e) Efforts have been made to locate new towers adjacent to existing towers.
- (f) Applicant has agreed to rent or lease available space on the tower under the terms of fair-market lease, with reasonable conditions and without discrimination to other telecommunications providers.
- (g) Proposed telecommunications facility(s) or tower(s) should make use of available municipal lands if those lands conform with appropriate setbacks for this chapter, and where visual impact can be minimized.
- (h) The proposal shall comply with all applicable FCC rules, including regarding emissions and exposure to electromagnetic radiation.
- (i) Towers and telecommunications facilities shall be located so as to minimize the following potential impacts:

[1] Visual/aesthetic. Unless adequate coverage and adequate capacity cannot otherwise be achieved, towers shall be sited off ridgelines and where their visual impact is least detrimental to residential areas and scenic areas, such as scenic areas of statewide significance (SASS), state- designated scenic roads, public parks and historic sites, landmarks or districts, and such scenic resources as may be locally-designated by the Town of Athens. In determining whether or not a tower will have an undue adverse visual impact on the scenic or natural beauty of a ridge or hillside, the Planning Board shall consider, but not be limited to:

- i. The period of time, and the frequency of viewing, during which the proposed

tower would be seen by the traveling public on a public highway.

- ii. The degree to which the tower is screened by topographic features;
 - iii. Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
 - iv. The distance of the proposed tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
 - v. The number of vehicles traveling on a public highway or waterway at or near any critical vantage point as may be determined by the Board, in its sole discretion;
 - vi. The sensitivity or unique value of the particular view affected by the proposed development.
 - vii. Magnitude and importance of visibility to adjacent residential structures.
- [2] Devaluation of property. Siting shall be in as low population density areas as possible.
- [3] Safety hazards. In cases of structural failure, ice accumulation and discharge, and attractive nuisance.
- (j) In addition to the above criteria, in the case of any tower or telecommunications facility located in or directly adjacent to a residence district, the visibility, height, and impact on the neighborhood or property values of such tower or telecommunications facility shall not discourage the appropriate use of adjacent lands, nor be incompatible with the residential use thereof.
- (3) Documentation of denial. Any decision of the Athens Planning Board to deny an application for a site plan permit under this chapter shall be in conformance with 47 U.S.C. 332(7)(B)(iii) of the Telecommunications Act of 1996, in that it shall be in writing and supported by substantial evidence contained in a written record.

F. Site plan requirements.

- (1) A presubmission conference shall be held in accordance with § 180-55C of this local law.
- (2) Applicants. If the applicant is not the landowner, the landowner will be considered a co-applicant and must submit the required documentation under § 180-54.1.G.2 of this chapter.
- (3) Access road, parking, and underground utilities.
 - (a) Where new telecommunications towers and facilities require construction of, or improvements to, access roads, to the extent practicable roads shall follow the contour of the land and be constructed or improved within existing forest fringe areas, and not in open fields. Access roads must be minimal, and must be designed to mitigate erosion and other damage to existing topography. The Planning Board may request input from the Town

Highway Superintendent, Building Inspector, responding Fire Department, and/or Town Designated Engineer, regarding the adequacy of emergency access for the planned drive or roadway to the site.

- (b) Parking shall be provided to assure adequate emergency and service access. The Board shall determine the number of required spaces based upon a recommendation from the applicant.
 - (c) Utility or service lines shall be buried underground. The Planning Board, in its sole discretion, may waive the underground requirement.
- (4) Landscaping/screening.
 - (a) Screening shall be required at the perimeter of the site. If the tower or facility site is in a wooded area, a natural vegetated buffer strip of undisturbed trees shall be retained for at least 100 feet in depth, and at least 15 feet in height, at all times around the perimeter and only minimally disturbed where the access drive is located.
 - (b) If the tower or facility site is not in a wooded area, a vegetated barrier at least 50 feet deep by 10 feet high around the perimeter shall be planted by the applicant. It shall be of a type that has the potential to reach a height of at least 15 feet at maturity. Existing vegetation surrounding the site shall be preserved and maintained to the greatest extent possible. All landscaping shall be properly maintained to ensure its good health and viability at the expense of the owner(s). All areas disturbed during project construction shall be replanted with vegetation. Applicant shall insure the remediation of any damage to the landscape which occurs during the clearing of the site. The Planning Board may require landscaping in excess of any written requirements as is deemed reasonably necessary in order to enhance compatibility with adjacent residential and nonresidential land uses.
- (5) Fencing and signs. The area around the tower and communication equipment shelter(s) shall be completely fenced for security to a height of not less than eight feet or more than 12 feet and gated. Use of razor wire is not permitted. A sign of no greater than two square feet indicating the name of the facility owners(s) and a twenty-four-hour emergency telephone number, either local or toll-free, shall be posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs, and the federal registration plate (where applicable), shall be posted on the fence or as required to meet federal requirements.
- (6) Building design. Communication equipment shelters and accessory buildings shall be designed to be architecturally similar and compatible with each other and the zoning district in which the project is situated, and shall be no more than 12 feet high or 750 square feet. The buildings shall be used only for the housing of equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building. Buildings and related structures shall use materials and textures that will blend them into the natural setting to minimize the visual impact. Buildings shall be designed, finished, and/or painted in stealth or neutral color tones.
- (7) Height of towers. New towers shall not exceed the minimum height necessary to provide adequate coverage of the telecommunications facilities proposed for use on the tower.

- (a) The maximum height, including any antennas, extensions or other devices extending above the tower, measured from the ground surface immediately surrounding the site, of any new tower shall be as follows:
 - [1] Tower height shall not exceed the minimum height required to address significant gaps in coverage and shall be based on the results of field measurements of RF signals taken using different height increments at the proposed tower site. These field measurements may be combined with the balloon test identified in § 180-54.12.I.1 of this chapter. The intent of these field measurements is to determine the minimum height necessary to address gaps in coverage and/or capacity. The Applicant shall supply the plan for RF measurement to the Planning Board prior to conducting the measurements. The Planning Board may require that evidence provided to support proposed tower height, inclusive of said test plan, be reviewed by a qualified expert in RF field measurement, the cost of which shall be borne by the applicant, pursuant to § 180-54.1.K(4) of this chapter. The Planning Board may, in its sole discretion, and upon a recommendation from its qualified expert in RF field measurement, waive the requirement for said field measurements of RF signals.
 - [2] In residential zoning districts and in the Telecommunications Tower Residential Buffer Overlay District, the following standards shall apply:
 - i. Towers shall be located within forested areas, as defined in this section. The extent of the forested area shall be determined by the area within the fall zone, as defined herein.
 - ii. Ground-mounted towers shall not project more than 10 feet, or more than 10% of the proposed tower height, whichever is greater, above the average canopy height, as measured above ground level, of the forested area.
 - [3] In no event shall towers exceed the following maximum heights:
 - i. In residential zoning districts, maximum height shall not exceed 100 feet.
 - ii. In non-residential zoning districts, maximum height shall not exceed 125 feet.
 - (b) Planning Board modification of maximum height. The Planning Board, in its sole discretion, may increase maximum height allowed should the Board determine that there is potential for co-location of public safety communications facilities. In granting any such increase, the Board shall further find that any such increase in maximum height allowed is the minimum increase necessary to accommodate said public safety communications facilities co-location. In no case shall the Planning Board be permitted under this section to approve a height of greater than 200 feet.
- (8) Tower design.
- (a) Finish. New tower(s) shall have a galvanized finish unless otherwise required by the Planning Board. The Planning Board may require the tower(s) to be painted or otherwise camouflaged to minimize the adverse visual impact.
 - (b) Sharing/camouflaging. Tower(s) must be of a structural type which will maximize potential

sharing. The Applicant must demonstrate the future utility of the proposed structure for expansion of service for applicant and other future applicants. The Planning Board reserves the right to require stealth designs, such as towers made to resemble trees, silos, or other structures. The Planning Board, in its sole discretion, may require the Applicant produce one (1) or more alternative designs meeting the criteria of this Section.

- (9) Use of repeaters. The applicant shall demonstrate that it is not reasonably able to assure adequate coverage or to create adequate coverage in the Town of Athens from base stations located in other towns or to fill holes within the area of otherwise adequate coverage by use of repeaters. Applicants shall detail the number, location, power output, and coverage of any proposed repeaters in their systems and provide engineering data to justify their use.
- (10) Coverage area. If primary coverage (greater than 50%) from proposed telecommunications facility is outside of the Town of Athens, then the permit may be denied unless the applicant can demonstrate an inability to locate within the town which is primarily receiving service from the proposed facility.
- (11) Commercial advertising. Commercial advertising shall not be allowed on any antenna, tower, or accessory building or communications equipment shelter.
- (12) Lighting. No external lighting is permitted, except for manually operated emergency lights for use only when operating personnel are on site.
- (13) Noise. The project shall comply with the performance standards for noise at § 180-24(C) of this chapter. Noise-producing equipment may be required to be sited and/or insulated to ensure compliance with said performance standards for noise.
- (14) Air navigation. No tower or telecommunications facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation Regulations (Title 14 CFR), is permitted.
- (15) Lot size/setback requirements. Tower setbacks shall be measured from the base of the tower (unless guy-wired) to the nearest point along each property line of the parcel on which it is located.
 - (a) The minimum lot size for any telecommunications tower(s) or facilities shall be in accordance with the applicable zoning district(s).
 - (b) No repeater shall be closer than 200 feet to a dwelling unit measured at ground level, nor less than 35 feet above the ground.
 - (c) Where guy wire supports are used, setbacks will begin at the base of the guy wire anchor(d) to the ground, not at the base of the tower.
 - (d) Location; fall zones.
 - [1] No telecommunications facility or tower, excluding repeaters, including guy-wire anchors and protective fencing, if any, shall be located no closer than the distance of the fall zone, as defined at § 180-54.1.F(15)(d)[2] of this chapter, as follows:
 - i. horizontally to any structure existing at the time of application which is, or may be, used as a residence.

- ii. horizontally to any boundary line of the property upon which the tower(s) or facilities are located, except this restriction may be reduced if the applicant has obtained an easement from the owners of all properties located within said fall zone, precluding such owners, their heirs successors, administrators and assignees from locating any structure used for a primary or secondary residence, private or public school, church or other public structures within said fall zone of such towers or facility.

[2] Fall zones.

- i. The fall zones area for guy-wire towers shall be at least four times the tower height; and for non-guyed towers, 1 and 1/2 times the tower heights.
- ii. In reviewing site plan applications, the Planning Board may allow the fall zones to extend within a neighboring property if it finds that a substantially better design will result from such a reduction. Such neighboring property shall not be developed and will be subject to a legally binding agreement, secured by the applicant, preventing development during the time the tower is in place.

(16) District regulations. Towers and wireless telecommunications facilities shall comply with the specific regulations of the zoning district(s) in which the facility is situated, as set forth at § 180-15, except that the permanent open space requirements at § 180-15B(7) shall apply to the leased area or the land area purchased by the developer for purposes of installing the facility.

(17) The Planning Board request such other documentation as may reasonably be required under § 180-55D of this local law.

G. Application requirements and required documentation.

The following shall be required in all applications:

- (1) Contract with provider. Applicants for a telecommunications tower or facility site plan permit must be a telecommunications provider, and/or must provide a copy of its lease/contract with an existing telecommunications provider. A site plan permit will not be granted for a tower/facility to be built on speculation. Copies of all lease/contracts must be provided with the application. The applicant will also provide copies of any applications in other towns within a ten-mile radius of the proposed site. The Planning Board may submit this copy to any other host town for review and comment.
- (2) Appropriate signatures/contacts. All applications shall require that the landowners, if separate from the tower owners and/or service providers, be co-applicants. Required documents include one each displaying original signature(s), and five photocopies. The following shall be provided:
 - (a) Signature(s) of landowner(s), applicant(s), tower owner(s).
 - (b) An affidavit from the owner of the property acknowledging responsibility for the removal of a tower or facility that is deemed "abandoned" or unsafe by the Planning Board, or is in violation of this section.

- (c) Landowners shall also provide an affidavit expressing written consent for co-application and copies of any and all leases or other agreements with tower owners, applicant(s) or other service providers.
 - (d) Contacts. The applicant shall submit the exact legal name, address or principal place of business and phone number of the following:
 - [1] Applicant. If any applicant is not a natural person, it shall also give the type of business entity and the state in which it is registered. If any applicant is a corporation, trust, association, or other organized group or legal entity, it shall also provide the state under which it was created or organized and the date of such creation.
 - [2] Person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named and service shall be deemed to be service upon the applicant.
 - [3] Person to be contacted in the event of an emergency involving the facility. This should be someone available on a twenty-four-hour basis who is authorized by the applicant to act on behalf of the applicant regarding an emergency situation.
 - [4] Owner of the property on which the proposed tower shall be located, and of the owners(s) of the tower on which the proposed facility shall be located; written permission of the owner(s) to apply for the site plan permit on the proposed property or facility site(s) and for the Town's independent consultant(s) to conduct any necessary site visit(s).
 - [5] Identification, address, phone number and contact person for each proposed service provider who might be named as an applicant, in addition to the landowner.
 - (e) The names and addresses of the record owners of all abutting properties.
- (3) Evidence of need.
- (a) Existing coverage. The Applicant shall provide written documentation demonstrating that existing telecommunications facility sites in the Town, in abutting municipalities, and within a thirty-mile radius of the proposed site cannot reasonably be made to provide adequate coverage and/or adequate capacity to the Town of Athens.
 - [1] The documentation shall include, for each facility site listed which is owned or operated by the applicant, the exact location (in longitude and latitude, to degrees, minutes and seconds to be nearest tenth of a second), ground elevation, height of the tower or facility, type of antennas, antenna gain, height of antennas on tower(s), output frequency, number of channels, power output and maximum power output per channel. Potential adjustments to these existing facility sites (including changes in antenna type), orientation, gain, height or power output shall be specified. Radio frequency propagation maps showing each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.
 - [2] The documentation shall also include evidence of meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures,

including those within the Town. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.

- (b) Repeater. The Applicant shall demonstrate with written documentation that they have analyzed the feasibility of repeaters in conjunction with all facility sites listed in compliance with 180-54.1.G(3)(a) (above) to provide adequate coverage and/or adequate capacity to the Town of Athens. Radio frequency propagation maps of all repeaters considered for use in conjunction with these facility sites shall be provided as part of the application.
- (c) Distributed Antenna Systems. The Applicant shall demonstrate with written documentation that they have analyzed the feasibility of use of Distributed Antenna Systems (DAS) in conjunction with all facility sites listed in compliance with § 180-54.1.G(3)(a) to provide adequate coverage and/or adequate capacity to the Town. Radio frequency propagation maps of all DAS considered for use in conjunction with these facility sites shall be provided as part of the application.
- (d) Indirect service. Applicant shall demonstrate which portion of a tower or facility and which antennas, if any, are to reduce or eliminate reliance on land-lines, or otherwise provide communications capability to the applicant, as opposed to providing direct service to customers. Such provision of indirect service may be considered if reasonable alternatives are not available and the overall effect is consistent with the purposes set forth in § 180-54.1.A of this chapter.
- (e) Five-year plan. All applications shall be accompanied by a written five-year plan for the utilization of the proposed facilities. This plan should include justification for capacity in excess of immediate needs, as well as plans for any further development within the Town.
- (f) The applicant shall further demonstrate with written documentation that it has investigated all available state-of-the art alternative technologies which might be effectively employed to provide adequate coverage and/or adequate capacity to the Town in lieu of its proposed facility.
- (g) The Board, in its sole discretion, may require network reports of dropped and blocked calls in a format to be approved by the Board.
- (h) The requirements of this Subsection C may be waived by the Planning Board where it has found that, in the case of facility co-location on an existing tower or on an existing structure, said application does not constitute a major modification, as defined in this Section.

H. Required legal and technical documentation.

The following documents are required in all applications:

- (1) Federal permits. Applicant shall submit copies of all pertinent submittals and showings pertaining to: FCC permitting/licensing; environmental assessments and environmental impact statements; FAA notice of construction or alteration; aeronautical studies; all pertinent data, assumptions and calculations relating to service coverage; and all pertinent calculations

and/or measurements data related to nonionizing radiation emissions and exposure, regardless of whether categorical exemption from routine environmental evaluation under the FCC rules is claimed.

- (2) Financial security. Details of proposed method of financial surety as required by this chapter.
- (3) Commitment to available space. Applicants for new tower construction or modification permits shall provide a written, irrevocable commitment, valid for the duration of the existence of the tower, to rent or lease available space for collocation on the tower at fair market prices and terms, without discrimination to other telecommunications providers.
- (4) Lease of tower. Applicants for a site plan permit for a facility to be installed on an existing tower shall provide a copy of its lease/contract with the owner of the existing structure.
- (5) Applications/plans for other facility sites. Applicants shall submit any applications or plans for other facility sites within a ten-mile radius of the Town of Athens. Applicants shall submit a list of existing facility sites within a thirty-mile radius of the Town of Athens.
- (6) Site plans and maps. Physical plant plans, prepared, stamped and signed by a professional engineer, are required. Survey plans shall be stamped and signed by a land surveyor licensed in New York. Signal propagation and radio-frequency studies and related material shall be prepared, clearly identified and signed by a qualified radio-frequency engineer. Proposed site plans (include five copies) require the following:
 - (a) Location map. Copy of a portion of the most recent U.S.G.S. Quadrangle Map, at a scale of 1:25:000, and showing the area within at least two miles from the proposed tower site; indicate the tower location and the exact latitude and longitude (degrees, minutes, and seconds to the nearest tenth).
 - (b) Vicinity map. At a scale of one inch equals 416 feet (1:5000) with contour intervals no greater than 10 feet (three meters) showing the entire vicinity within a radius of one (1) mile of the tower site, and including the topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic and archaeological sites, and habitats for endangered or threatened species; indicate the property lines of the proposed tower site parcel and of all abutters to the tower site parcel (from assessors' maps or available surveys); indicate any access easement or right-of-way needed for access from a public way to the tower and/or facility site, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement; locate all residential or commercial structures, schools, churches, or public buildings within 2,500 feet of the proposed base of the tower.
 - (c) Existing conditions plan. A recent survey of the area within 500 feet of the tower site at a scale no smaller than one inch equals 40 feet with topography drawn with a minimum of two-foot contour intervals, showing existing utilities, property lines, existing buildings or structures, stone wall or fence lines, wooded areas, existing water wells and springs, individual trees with diameters greater than 12 inches within a radius of 200 feet from the base of the proposed tower (labeled with their current heights); show the boundary of any wetlands or floodplains or watercourses, and of any bodies of water within 500 feet from the tower or any related facilities or accessways, or appurtenances. The survey must have been completed, on the ground, by a land surveyor licensed in New York within two

years prior to the application date.

(d) Proposed site plan. Proposed facility site layout, grading and utilities at the same scale or larger than the existing conditions plan (above).

- [1] Proposed tower location and any appurtenances, including supports and guy wires, if any, and any accessory building (communication equipment shelter or other); indicate property boundaries and setback distances to the base(s) of the tower and to the nearest corners of each of the appurtenant structures to those boundaries, and dimensions of all proposed improvements. Where protective fencing is proposed, indicate setback distances from the edge of the fencing.
- [2] Indicate proposed spot elevations at the base of the proposed tower and at the base of any guy wires, and the corners of all appurtenant structures.
- [3] Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines, and exact locations of the underground route. Detailed plans for emergency power generation, including:
 - i. Demonstration of percent of electrical demand being proposed in event of loss of commercial power.
 - ii. Type of fuel, storage method and expected means and frequency of fuel delivery to the site for power generation.
 - iii. Amount of generator time based on historic power reliability for the area of the facility, proposed frequency and duration of tests, and description of muffler system and methods for noise abatement.
 - iv. Feasibility of wind and/or solar power in conjunction with storage batteries.
- [4] Limits of areas where vegetation is to be cleared or altered, and justification for any such clearing or alteration.
- [5] Any direct or indirect wetlands alteration proposed.
- [6] Detailed plans for drainage of surface and/or subsurface water; plans to control erosion and sedimentation both during construction and as a permanent measure.
- [7] Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, etc.; any exterior lighting or signs.
- [8] Plans of proposed access driveway or roadway and parking area at the tower site; include grading, drainage, traveled width; include a cross section of the access drive indicating the width, depth of gravel, paving or surface materials.
- [9] Plans showing any changes to be made to an existing facility's landscaping, screening, fencing, lighting, drainage, wetlands, grading, driveways or roadways, parking or other infrastructure as a result of a proposed modification of the facility.

(e) Proposed tower and appurtenances plan (include five copies).

- [1] Plans, elevations, sections and details at appropriate scales, but not smaller than one inch equals 10 feet.
 - [2] Two cross sections through proposed towers drawn at right angles to each other, and showing the ground profiles to at least 100 feet beyond the limit of clearing, and showing any guy wires or supports; dimension the proposed height of tower above average grade at tower base; show all proposed antennas, including their location on the tower.
 - [3] Details of proposed tower foundation, including cross sections and details; show all ground attachments, specifications for anchor bolts and other anchoring hardware.
 - [4] Detail proposed finish of the tower.
 - [5] Indicate relative height of the tower to the tops of surrounding trees as they currently exist, and the height to which they are expected to grow in 10 years.
 - [6] Illustration of the modular structure of the proposed tower indicating the heights of sections which could be removed or added in the future to adapt to changing communications conditions or demands.
 - [7] A professional structural engineer's written description of the proposed tower structure and its capacity to support additional antennas or other communications facilities at different heights and the ability of the tower to be shortened if future communications facilities no longer require original height.
 - [8] A description of available space on the tower, providing illustrations and examples of the type and number of telecommunications facilities which could be mounted on the structure.
- (f) Proposed communications equipment shelter plan.
- [1] Floor plans, elevations, and cross sections at a scale no smaller than one-fourth-inch equals one inch of any proposed appurtenant structure.
 - [2] Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.
- (g) Proposed equipment plan.
- [1] Plans, elevations, sections and details at appropriate scale, but no smaller than one inch equals 10 feet.
 - [2] Number of antennas and repeaters, as well as the exact locations of antennas and of all repeaters (if any) located on a map as well as by degrees, minutes and seconds to the nearest tenth of latitude and longitude.
 - [3] Mounting locations on tower or structure, including height above ground.
 - [4] A recent survey of the facility site at a scale no smaller than one inch equals 40 feet showing horizontal and radial distances of antenna(s) to nearest point on property

line, and to the nearest dwelling unit.

[5] Antenna(s) types, manufacturer(s), model number(s).

[6] For each antenna, the antenna gain, and antenna radiation pattern.

[7] Number of channels per antenna, projected and maximum.

[8] Power input to the antenna(s).

[9] Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.

[10] Output frequency of the transmitter(s).

(h) Visibility maps/line-of-sight analysis.

[1] A line of sight analysis from a minimum of eight view lines in a zero-to-two mile radius from the site, shown beginning at true North and continuing clockwise at forty-five-degree intervals, shall be provided. Origin points shall be determined in concert with the Planning Board. In addition, where adjoining properties are in residential use, sight line analyses shall be provided from all residential structures on said adjoining properties, and such additional residential properties within one (1) mile as the Planning Board may, in its sole discretion, identify.

[2] Applicant shall utilize the U.S.G.S. quadrangle map, at a scale of one inch equals 400 feet, with vertical scale of one inch equals 40 feet. Trees shall be shown at existing heights and at projected heights in 10 years.

[3] A map of the Town of Athens on which any visibility of the proposed tower from a public way (including all existing public rights-of-way) shall be indicated.

I. Supplemental legal and technical documentation.

The following shall be required for major modifications of existing facilities and towers, and for all new tower proposals.

(1) Balloon test.

(a) The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum three-foot-diameter brightly colored balloon at the maximum height of the tower, at other heights as may be required under § 180-54.F(7), below, and within 50 horizontal feet of the center of the proposed tower base.

(b) The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised by the applicant at seven and 14 days in advance of the first test date. Such notice must be printed in the Town's official newspaper or other publication as may be determined by the Board. The notice shall be reviewed and approved by the Board prior to the required publication.

(c) The Applicant shall inform the Planning Board, the Town Board, and all abutting property owners, in writing, via certified letter with return receipt, of the dates and times of the

test, at least 14 days in advance.

- (d) The balloon shall be flown for at least four consecutive hours sometime between 9:00 a.m. and 5:00 p.m. on the dates chosen. The primary date should be on a weekend, but in case of poor weather on the initial date, a secondary date may be on a weekday.
- (2) Visual analysis. The applicant shall develop and submit a written analysis of the visual impact of the proposed tower. This analysis shall include photographs of the balloon test taken from at least 10 different perspectives within the Town of Athens.
 - (a) A Zone of Visibility Map, which shall be provided in order to determine locations where the tower may be seen. The visibility shall be analyzed with a minimum one (1) mile radius of the proposed tower. The Planning Board, in its discretion, may require a larger area of analysis. Positive visibility determinations shall be made using bare-earth elevations (i.e., without factoring in vegetation).
 - (b) Pictorial representations (visual simulations) of before and after views from key viewpoints both inside and outside of the Town of Athens, including but not limited to state highways and other major roads, state and local parks, other public lands, 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 Board shall determine the appropriate key sites.
 - (c) Assessment of alternative tower designs and color schemes, as described in § 180-54.F(8), below.
 - (d) Assessment of the visual impact of the tower base, guy wire, accessory facilities and overhead utility lines, if any, from abutting properties and streets.

J. Co-location and Town services.

Licensed carriers shall share facilities and sites with other licensed carriers where feasible, thereby reducing the number of stand-alone facilities. The conversion of a single-use facility to a collocation shall be considered a modification. The Planning Board may require as a condition of approval of the site plan that the tower/facility owner(s) dedicate a space on the facility for emergency services communications facilities for public health and safety purposes. Any such dedications and/or improvements to existing emergency services will be negotiated prior to approval of the site plan permit.

K. Fee schedule and financial security.

- (1) Application fees. Upon submission of a signed application that meets all of the criteria herein described, including all supporting documents and maps, an application fee shall be submitted to the Town of Athens in the amount that may be determined by the Town Board, from time to time, which fee shall not be less than \$4,000, and which fee shall be in addition to the independent consultant's fees incurred by the Town and/or the Town Planning Board and as provided for under Chapter 180-55 and 180-56 of the Town Code.
- (2) Financial security. As a condition of approval of a site plan, the applicant shall provide a

separate demolition security in an amount and form determined and approved by the Planning Board. The security shall be for a duration, and in a form and manner of surety as determined by the Planning Board, with provision for inspection and Town removal of facilities in the event of failure to perform by the responsible parties as defined in § 180-54.1.M (Duty to remove).

- (3) Performance security. The Planning Board will require additional performance security, in an amount and form to be approved by the Planning Board, payable at the time of application, as deemed necessary to protect facility building site(s) during construction; ensure installation and/or maintenance of required site plan elements, such as landscaping and screening;
- (4) Independent consultants fees. At the time of application, the Planning Board may require a separate escrow fund, in an amount to be determined, to cover independent consultants' fees. These consultants shall be qualified professionals with an appropriate combination of training, record of service, and/or certification in one of the following fields:
 - (a) Telecommunications/radio frequency engineering;
 - (b) Structural engineering;
 - (c) Assessment of electromagnetic fields; and, if determined by the Planning Board.
 - (d) Other fields.

L. Abandonment and discontinuation of use.

Any telecommunications facility which ceases to operate for six consecutive months shall be deemed to be abandoned and removed within 90 days. "Cease to operate" is defined as not performing the normal functions associated with a telecommunications facility and its equipment on a continuous and on-going basis for a period of six consecutive months. Determination of the date of abandonment shall be made by the Building Inspector who shall have the right to request documentation and/or affidavits from the telecommunications tower owner/operator/service provider(s) regarding the subject of tower usage. Failure or refusal for any reason by the owner/operator/service provider(s) to respond within 20 days to such a request shall constitute prima facie evidence that the communications tower has been abandoned. Upon a determination of abandonment and notice thereof to the owner/operator/service provider(s), the owner(s) and all others listed as responsible parties in § 180-54.1.M (below) shall remove the tower and all facilities, and remediate the site within 90 days. At the time of removal, the facility site shall be remediated such that all telecommunications facility improvements which have ceased to be utilized are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the site shall be revegetated. Existing trees shall only be removed if necessary to complete the required removal. Applicant shall, as a condition of the site plan permit, provide a financial surety bond payable to the Town of Athens and acceptable to the Planning Board to cover the cost of removal of the telecommunications facility, and the remediation of the landscape, should the facility cease to operate. (See § 180-54.1.K, Fee schedule and financial security.)

M. Duty to remove.

The following are considered jointly and severally to be the responsible parties for tower/facility

removal and site remediation:

- (1) The owner of the abandoned tower (and, if different, the operator of the abandoned tower).
- (2) The owner of the land upon which the abandoned tower is located.
- (3) The lessee, if any, of the land upon which the tower is located.
- (4) The sublessee or sublessees, if any, of the land upon which the tower is located.
- (5) Any communications service provider who, or which, by ceasing to utilize the tower or otherwise failing to operate any of its transmitters or antennas on the tower for which it leased space or purchased the right to space on the tower for its transmitters or antennas, and by such ceasing or failure to utilize the tower, in fact caused the tower to become abandoned.
- (6) Any person to whom, or entity to which, there has been transferred or assigned any license issued by the FCC and under which the tower owner/operator operated the tower/facility.
- (7) Any person or entity which has purchased all or a substantial portion of the assets of the tower owner/ operator/service provider(s).
- (8) Any entity which has merged with, or which has arisen or resulted from a merger with, the tower owner or operator or service provider(s).
- (9) Any person or entity which acquired the owner or the operator of the abandoned tower.
- (10) Any parent or subsidiary of any of the foregoing which happens to be a corporation.
- (11) Any managing partner of any of the foregoing which happens to be a limited partnership.
- (12) Any partner of any of the foregoing which happens to be a general partnership.

N. Failure to remove.

In the event that the responsible parties have failed to remove the tower and/or restore the facility site within 90 days, the Town of Athens may remove the tower and restore the site using the financial security deposited at the time of application, and may thereafter initiate judicial proceedings against the responsible parties for any portion of the cost not covered by the financial security.

Section 5.2. Addition of a new Section 180-54.2 Communication Facilities, Poles, and Towers Associated with Small Wireless Facility Deployment.

A new Section 180-54.2 Communication Facilities, Poles, and Towers Associated with Small Wireless Facility Deployment is hereby added as follows:

Small Wireless Facilities, as defined in Chapter 160 of the Town of Athens Town Code, are permitted in all districts, subject to the requirements set forth at Chapter 160 and the following additional requirements:

A. As may be required pursuant to Chapter 160, review of Communication Facilities, Poles, and Towers

and issuance of special use permit approval shall be pursuant to the procedures set forth at Section 56 of this Chapter.

B. In its review of special use permit applications for Communication Facilities, Poles, and Towers Associated with Small Wireless Facility Deployment, the Planning Board shall consider the criteria set forth at Chapter 180 Section 56(E) as well as the following criteria:

- (1) the design standards set forth in Section 4(K) of Chapter 160;
- (2) the compatibility of further deployments and their potential impact on the surrounding neighborhood;
- (3) whether the proposal involves co-location with other wireless service providers on the same support structure and same communications equipment whenever feasible. Where the applicant chooses to not co-locate when options appear available, demonstrative proof must be provided as to why co-location is not feasible;
- (4) the potential for Collocation of other Provider's Communication Facilities;
- (5) the network and service density fulfillment needs of the neighborhood; and
- (6) the district-specific standards at § 180-15: Regulations specific to districts.

Section 5.3. Amendment to Table 1 of Section 180-10 Schedule of Uses

Table 1 of Chapter 180 Schedule of Uses is hereby amended to appear as shown in Exhibit 1 of this local law.

Section 5.4. Amendment to Section 180-23 Height Regulations

The following sentence is hereby added to the end of the paragraph at Section 180-23 Height Regulations:

The Planning Board is expressly prohibited from granting a special use permit under this section for any wireless telecommunication facilities, as defined in this chapter or Chapter 160.

Section 5.5. Amendment to Section 180-4 Adoption of Zoning Map; division of Town into districts

A new district is hereby added to the list of districts at subsection B as follows:

TTCRB	Telecommunications Tower Residential Buffer Overlay District
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Section 5.6. Amendment to Section 180-5 District Objectives

A new section, K, is hereby added as follows:

K. Telecommunications Tower Residential Buffer Overlay District. An overlay district is hereby established within 1,500 feet of the boundary of all residential districts in order to provide additional use-specific standards for wireless telecommunications facilities addressing compatibility between these facilities and residential areas.

Section 6. Enactment of a New Chapter 160 Small Cell Wireless Deployment Requirements

A new Chapter 160 Small Cell Wireless Deployment Requirements is hereby added to the Town of Athens Town Code as follows:

§ 160-1. Purpose.

- A. The purpose of this article is to establish uniform standards for the deployment and installation of small wireless facilities in rights-of-way within the Town's jurisdiction, including, without limitation, to:
- (1) Prevent interference with the use of streets, sidewalks, and other public ways and places;
 - (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (3) Prevent interference with existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
 - (4) Ensure that reasonable efforts are made to preserve the character of neighborhoods in which facilities are installed and preserve scenic views of the rural environment, the Hudson River, views of the Catskill and Berkshire Mountains, open spaces, and other important physical features in Athens;
 - (5) Protect against environmental damage, including damage to trees; and
 - (6) Facilitate deployment of small wireless facilities to provide the benefits of reliable access to wireless telecommunications technology, broadband, and emergency services to homes, businesses, schools, and other uses within the Town.
- B. The Town recognizes the importance of small wireless facilities to provide high-quality communications and internet access to residents and businesses within the Town. The Town also recognizes its obligation to comply with applicable federal and state laws regarding the placement of small wireless facilities within the Town's rights-of-way, including, without limitation, the federal Telecommunications Act, as codified at 47 U.S.C. §§ 253 and 332(c), and the federal Spectrum Act, as codified at 47 U.S.C. § 1455, and this article shall be interpreted consistent with those provisions.
- C. To the extent that this article may conflict with other sections of the Code of the Town of Athens, this article shall be controlling to the extent of such conflict.
- D. In establishing the rights, obligations, and conditions set forth in this article, it is the intent of the Town to treat each applicant and right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, while taking into account the unique technologies, situations, and legal status of each applicant or request for use of the right-of-way.

§ 160-2. Definitions.

Administrative Review – Ministerial review of an Application by the Town relating to the review and issuance of a Permit, including review by the Code Enforcement Officer, to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter.

Antenna – Communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.

Applicable Codes – Uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted, or incorporated, by the Town.

Applicant – Any Person who submits an Application under this Chapter.

Application – A written request, on a form provided by the Town, for a Permit.

Authority or Town – The Town of Athens or any agency, subdivision or any instrumentality thereof.

Collocate – To install or mount a Small Wireless Facility in the Public ROW on an existing Support Structure, an existing Tower, or on an existing Pole to which Small Wireless Facility is attached at the time of the Application. "Collocation" has a corresponding meaning.

Communications Facility – Collectively, the equipment at a fixed location or locations within the Public ROW or on private property that enables Communications Services, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply' (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.

Communications Service – Cable service, as defined in 47 U.S.C. § 522(6); information service or broadband, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).

Communications Service Provider – A provider of Communications Services and includes a cable operator, as defined in 47 U.S.C. § 522(5).

Decorative Pole – A pole that is specially designed and placed for aesthetic purposes.

Discretionary Review – Review of an Application by the Town Planning Board relating to the review and issuance of a Permit that is other than an Administrative Review.

Eligible Facilities Request – An eligible facility request as set forth in 47 C.F.R. Section 1.6100 (b)(3)--as that section may-be amended from time to time.

FCC – The Federal Communications Commission of the United States.

Laws – Collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.

Ordinary Maintenance and Repair – Inspections, testing and/or repair of existing Communication Facilities that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower that does not require blocking, damaging or disturbing any portion of the Public ROW.

Permit – A written authorization (in electronic or hard copy format) to install, at a specified location(s) in the Public ROW or at a specific location on private property, a Communications Facility, Tower or a Pole to support a Communications Facility.

Permittee – An Applicant that has received a Permit under this Chapter.

Person – An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

Pole – A legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right of Way. A Pole does not include a Tower or Support Structure.

Provider – A Communications Service Provider or a Wireless Services Provider, and includes any Person that owns and/or operates within the Public ROW any Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers.

Public Right of Way or Public ROW – The area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Chapter shall include Public Utility Easements, but only to the extent the Town has to permit use of the area or Public Utility Easement for Communications Facilities or Poles, Towers and Support Structures that support Communications Facilities. The term does not include a federal interstate highway or other areas that are not within the legal jurisdiction, ownership or control of the Town, nor does it include any property owned by the Town that is not a public street, road, highway, sidewalk, or other public way, such as parks, Town buildings, and property on which Town buildings are located.

Public Utility Easement – Unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities. Public Utility Easement does not include an easement dedicated solely for Town's use, or where the proposed use by the Provider is inconsistent with the terms of any easement granted to the Town.

Replace or Replacement – In connection with an existing Pole, Support Structure or Tower, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this Chapter and any other applicable Town code, in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.

Small Wireless Facility – A Wireless Facility that meets the definition of "small wireless facility" set forth in 47 CFR § 1.6002. The term "small wireless facility" includes associated equipment and facilities as those terms are defined in this section, but does not include support structures to which such equipment and facilities are attached.

State – The State of New York.

Support Structure – A structure in the Public ROW other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.

Tower – Any structure in the Public ROW built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

Wireless Facility – Means the equipment at a fixed location or locations in the Public ROW that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly

associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility.

Wireless Services – Any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Wireless Services Provider – A person who provides Wireless Services.

[§ 160-3. Access to Public ROW.](#)

A. Agreement. Prior to installing any Communications Facility in a Public ROW, or any Pole built for the sole or primary purpose of supporting a Communications Facility, or any Tower, a Person shall enter into a Right of Way Agreement ("ROW Agreement") with the Town expressly authorizing use of the Public Right of Way for the Communications Facility, Pole or Tower proposed to be installed.

(a) General Terms. The ROW Agreement shall include:

- (a) The term of the ROW Agreement shall be annual, which shall renew automatically unless terminated by the Town upon (90) days' written notice.
- (b) The ROW Agreement authorizes the Provider's non-exclusive use of the Public ROW for the sole purpose of installing, maintaining and operating Communications Facilities, including any Pole built for the sole or primary purpose of supporting the Communications Facilities and any Tower, to provide the services expressly authorized in the ROW Agreement, subject to applicable Laws, this Chapter and the terms and conditions of the ROW Agreement. The ROW Agreement authorizes use only of the Public ROW in which the Town has an actual interest. It is not a warranty of title or interest in any Public ROW and it does not confer on the Provider any interest in any particular location within the Public ROW. No other right is granted except as expressly set forth in the ROW Agreement. Nothing herein shall authorize the use of the Town's Poles, Towers, Support Structures, or other structures in the Public ROW. All use of Town Poles, Towers, Support Structures, and other structures in the Public ROW shall require a separate agreement (Attachment Agreement), and the payment of separate fees for such use.
- (c) The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public ROW in a safe condition, and in good order and repair.
- (d) The Provider shall keep and maintain liability insurance in the amount of \$1,000,000 for each incident and an umbrella policy in the amount of \$5,000,000 for each Communication Facility in a Public ROW. The Town shall be named an additional insured on each policy.
- (e) The ROW Agreement shall include the name and contact information for the Provider to be called in cases of emergencies.
- (f) Licensees using space in ducts, conduits and on Poles must comply with the terms of this ROW Agreement, unless expressly exempted by the Town.
- (g) The Provider shall provide proof to the Town that it has a license or authority from

the owner to use an existing Pole, Tower or Support Structure in the ROW for a Communications Facility.

- (h) The terms and conditions set forth herein are not exhaustive, and the Town reserves the right to require additional terms and conditions to the ROW Agreement.

B. Public ROW Construction and Installation Requirements

(1) ROW Permit

- (a) Unless expressly authorized in this Chapter or in writing by the Town, no Person may construct, maintain or perform any other work in the Public ROW related to Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers without first receiving a Permit to the extent required under this Chapter, and any other permit or authorization required by applicable Laws.
- (b) The Town shall not issue a Permit unless the Applicant, or a Provider on whose behalf the Applicant is constructing Communications Facilities, Poles or Towers, has executed a ROW Agreement required by this Chapter, or otherwise has a current and valid franchise with the Town expressly authorizing use of the Public ROW for the Communications Facilities, Poles or Towers proposed in the Application, and all applicable fees have been paid.

(2) Location of New Facilities

- (a) The Provider shall not locate or maintain its Communications Facilities, Poles and Towers so as to unreasonably interfere with the use of the Public ROW by the Town, by the general public or by other persons authorized to use or be present in or upon the Public ROW.
- (b) Aboveground placement of new poles and equipment cabinets shall meet the requirement set forth in Section 4(K) of this Chapter.
- (c) Unless otherwise agreed to in writing by the Town, or otherwise required by applicable Laws, whenever any existing electric utilities or Communications Facilities are located underground within a Public ROW, the Provider with permission to occupy the same portion of the Public ROW shall locate its Communications Facilities underground at its own expense. The Town may, in its sole discretion, approve aboveground placement of equipment cabinets, pedestals and similar equipment, pursuant to Section 4(K) of this Chapter. For facilities or equipment such as Wireless Facilities that cannot, by their nature, operate unless located above-ground, the Provider and Town shall work to find a suitable location for such facilities or equipment, which may be outside the Public ROW.

- (3) Construction Standards. In performing any work in or affecting the Public ROW, the Provider, and any agent or contractor of the Provider, shall comply with the provisions of Section 5 of this Chapter and all other applicable Laws.

(4) Restoration Requirements.

- (a) The Provider, or its agent or contractor, shall restore, repair and/or replace any portion of the Public ROW that is damaged or disturbed by the Provider's Communications Facilities, Poles, Towers or work in or adjacent to the Public ROW as required in Section 5 of this Chapter and all other applicable Laws.
- (b) If the Provider fails to timely restore, repair or replace the Public ROW as required in this subsection, the Town or its contractor may do so and the Provider shall pay the Town's costs and expenses in completing the restoration, repair or replacement.

(5) Removal. Relocation and Abandonment.

- (a) Within sixty (60) days following written notice from the Town, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles, Support Structures or Towers within the Public ROW, including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Chapter), whenever the Town has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Town improvement, the operations of the Town in, under or upon the Public ROW, or otherwise is in the public interest. The Provider shall be responsible to the Town for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate Communications Facilities, Poles, Support Structures or Towers as required in this subsection.
- (b) The Town retains the right and privilege to cut or move any Communications Facility, Pole, Support Structure or Tower located within the Public ROW of the Town, as the Town may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Town shall notify the Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole, Support Structure, or Tower. In all cases the Town shall notify the Provider after cutting or removing the Communications Facility, Pole, Support Structure or Tower as promptly as reasonably possible.
- (c) A Provider shall notify the Town of abandonment of any Communications Facility, Pole, Support Structure or Tower at the time the decision to abandon is made; however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice by the Town, the Provider shall remove its Communications Facility, Pole, Support Structure or Tower at the Provider's own expense, unless the Town determines, in its sole discretion, that the Communications Facility, Pole, Support Structure or Tower may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles, Support Structures and Towers until they are removed from the Public ROW, unless the Town agrees in writing to take ownership of the abandoned Communications Facilities, Poles, Support Structures or Towers. Upon the issuance of a Permit, the Provider shall provide a removal bond in the

amount estimated for the removal of all of the Communication Facilities that are the subject of an Application, such estimated amount to be provided by Provide subject to approval by the Code Enforcement Officer, who may consult with the Engineer for the Town. The form of said removal bond shall be subject to review by the Town Attorney.

- (d) If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles, Support Structures or Towers or remove any of its abandoned Communications Facilities, Poles, Support Structures or Towers as required in this subsection, the Town or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Town incurs arising from the delay.
- (6) As-builts and Maps - Maps showing locations of communication facilities, poles, support structures and Towers in ROW and as-builts after construction shall be provided to the Town, within thirty (30) days after completion of construction, in a format designated by the Town or otherwise compatible with such format.

C. Fees and Charges

- (1) Permit Application Fee. Every Applicant for a co-location shall pay a Permit application fee of \$500.00 for each Application up to five (5) Small Wireless Facilities and \$100.00 for each additional Small Wireless Facility. The fee shall be paid upon submission of the Application.
- (2) Every Application for a new pole in the Right of Way shall pay a Permit application fee of \$1,000.00. The fee shall be paid upon submission of the Application.
- (3) ROW Agreement Fee. Every Person requesting a ROW Agreement from the Town shall pay an administrative fee of \$340.00, which shall include the legal costs of drafting such ROW Agreement.
- (4) ROW Use Fee. In exchange for the privilege of non-exclusive occupancy of the Public ROW, the Provider shall pay the Town \$270 per Small Wireless Facility, per year, for as long as the ROW Agreement is effective. The ROW Use Fee shall be due and payable within thirty (30) days of issuance of the ROW Agreement.
- (5) Attachment Fees. The Provider shall be subject to an additional attachment fee of \$500.00 if the Small Wireless Facilities will be attached to property (either real or personal) owned by the Town. No attachment will be allowed except after issuance of a permit pursuant to an Attachment Agreement.
- (6) Other Fees. The Applicant or Provider shall be subject to any other generally applicable fees of the Town or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable Laws, as well as attachment fees for the use of Town owned Poles, Towers, Support Structures, ducts, conduits or other structures in the Public ROW, as set forth in attachment agreements authorizing such use.

- (7) No Refund. Except as otherwise provided in a ROW Agreement, the Provider may remove its Communications Facilities, Poles or Towers from the Public ROW at any time, upon not less than thirty (30) days prior written notice to the Town, and may cease paying to the Town any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the Public ROW. In no event shall a Provider be entitled to a refund of fees paid prior to removal of its Communications Facilities, Poles or Towers.

§ 160-4. Permit Applications.

- A. Permit Required. Unless expressly authorized in this Chapter or in writing by the Town Board, no Person may construct, install or maintain in the Public ROW any Communications Facilities, Poles built for the primary purpose of supporting Communications Facilities, or Towers, including the installation or Collocation of Communications Facilities on existing Poles, Towers, Support Structures or other structures within the Public ROW, without first receiving a Permit. Notwithstanding the foregoing, in the event of an Emergency, a Provider or its duly authorized representative may work in the Public ROW prior to obtaining a Permit, provided that the Provider shall attempt to contact the Town prior to commencing the work and shall apply for a Permit as soon as reasonably possible, but not later than twelve (12) hours after commencing the Emergency work. For purposes of this subsection, an "Emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.
- B. Permit Application Requirements. The Application shall be made by the Provider or its duly authorized representative and shall contain the following:
 - (1) The Applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
 - (2) The names, addresses, telephone numbers, and email addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.
 - (3) A description of the proposed work and the purposes and intent of the proposed , facility sufficient to demonstrate compliance with the provisions of this Chapter. The Applicant shall state whether the Applicant believes the proposed work is subject to Administrative Review or Discretionary Review and if the Permit is an Eligible Facilities Request.
 - (4) If applicable, a copy of the authorization for use of the property from the Pole, Tower, or Support Structure owner on or in which the Communications Facility will be placed or attached.
 - (5) Detailed construction drawings regarding the proposed Communication Facility.
 - (6) To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure owned by the Town, as with decorative poles, a structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.
 - (7) For any new aboveground facilities or structures, accurate visual depictions or

representations, if not included in the construction drawings.

- (8) If new construction, a plan that would show how co-locations on the new Pole, Tower or Support Structure would be possible for other Providers who may wish to deploy small cell technology in the geographic area of the subject Application.
- C. Ordinary Maintenance and Repair. A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable Laws and shall notify the Town in writing at least forty-eight (48) hours before performing the Ordinary Maintenance and Repair.
- D. Material Changes. The Town may require payment of an additional Permit application fee in the event the Town determines, in its sole discretion, that material changes to an Application after submission amount to a new Application and will materially increase the time and/or costs of the Permit review process. Unless otherwise agreed to in writing by the Town, any material changes to an Application, as determined by the Town in its sole discretion, shall be considered a new application for purposes of the time limits set forth in Section 160-4(I)(2)(b), unless otherwise provided by applicable Laws.
- E. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the Fees required under Section 160-3(C).
- F. Effect of Permit. A Permit from the Town authorizes an Applicant to undertake only the activities in the Public ROW specified in the Application and Permit, and in accordance with this Chapter and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public ROW; a Permittee or Provider must obtain all necessary approvals and pay all necessary fees from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant Town to the Applicant to interfere with other existing uses of the Public ROW.
- G. Duration. Any Permit for construction issued under this Chapter shall be valid for a period of ninety (90) days after issuance and may be extended for additional periods of ninety (90) days each, upon written request of the Applicant, at the sole consent of the Town.
- H. An Applicant may simultaneously submit up to five (5) Applications for Communications Facilities, or may file a single, consolidated Application covering a batch of not more than twenty (20) such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Town. If the Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each Communication Facility were a separate Application.
- I. Administrative Review
 - (1) Permitted Use. The following Communications Facilities, Poles or Towers uses within the Public ROW shall be permitted uses, subject to Administrative Review and issuance of a Permit as set forth in this Section 160-4. All such uses shall be in accordance with all other applicable provisions of this Chapter, including without limitation, those set forth in Section 160-5 below and the terms of any ROW Agreement. Administrative Review will

not be available for consolidated Applications or simultaneous Applications for more than five (5) Communication Facilities.

- (a) Collocation of a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 160-4(I)(3) or a Collocation that qualifies as an Eligible Facilities Request.
- (b) Modification of a Pole, Tower or Support Structure or Replacement of a Pole for Collocation of a Communications Facility where the modification or Replacement qualifies as an Eligible Facilities Request.
- (c) Construction of a new Decorative Pole or a monopole Tower (but no other type of Tower) to be used for a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 160-4(I)(3), provided that there are existing poles of similar height and appearance within one hundred (100) feet of either side of the proposed new Pole or monopole Tower.
- (d) Construction of a Communications Facility, other than those set forth in subsections (a), (b) or (c) in this Section 160-4(I), involving the installation of coaxial, fiber-optic or other cabling, that is installed underground or aboveground between two or more existing Poles or an existing Pole and an existing Tower and/or existing Support Structure, and related equipment and appurtenances.
- (e) Collocation of a Small Wireless Facility on a Pole, Tower, Support Structure or building that is in the Federal, State or County Right of Way, or on private property.

(2) Application Review.

- (a) The Town shall review the Application either under the Administrative Review or Discretionary Review, as the case may be, and, if the Application conforms with applicable provisions of this Section, the Town shall issue the Permit, subject to the design standard set forth in Section 160-4(K) of this Chapter.
- (b) Except as otherwise provided by applicable Laws, the Town shall:
 - [1] Within ten (10) days of receiving an Application, notify the Applicant if the Application is incomplete, and identify the missing information. The Applicant may resubmit the completed Application within thirty (30) days without additional charge, in which case the Town shall have ten (10) days from receipt of the resubmitted Application to verify the Application is complete, notify the Applicant that the Application remains incomplete or, in the Town's sole discretion, deny the Application; and
 - [2] Make its final decision to approve or deny the Application within sixty (60) days for a collocation, and ninety (90) days for any new structure, after the Application is complete (or deemed complete in the event the Town does not notify the Applicant that the Application or resubmitted Application is incomplete).
- (c) The Town shall advise the Applicant in writing of its final decision.

- (3) Maximum Height of Permitted Use. Small Wireless Facilities, and new, modified, or Replacement Poles, Towers and Support Structures in the Public Right of Way may be approved through Administrative Review as provided in this Section 160-4(l) only if the following requirements are met:
 - (a) Each new, modified or Replacement Pole, Tower or Support Structure installed in the Public ROW shall not exceed thirty-five (35) feet in height.
 - (b) New Small Wireless Facilities in the Public ROW shall not exceed thirty-five (35) feet in height.
- J. Discretionary Review and Approval. All other uses within the Public ROW or on private property not expressly set forth or referenced in Section 160-4(l)(1) shall require compliance with the requirements of Chapter 180 Section 54.2.
- K. Design Standards. Communications Facilities, or Poles or Towers built for the sole or primary purpose of supporting Communications Facilities, shall be designed in accordance with the following standards and requirements:
 - (1) The standards of the applicable zoning district(s) in which said Communications Facilities, Poles or Towers are to be located, in accordance with § 180-15: Regulations specific to districts.
 - (2) Small wireless facilities shall not interfere with pedestrian or vehicle safety, the use of streets, sidewalks, alleys, parkways, and/or other public ways and places, the operation of traffic control equipment or sightlines at intersections, and shall not obstruct or hinder the usual travel, use, or public safety of the Public ROW, or obstruct the legal use of the Public ROW by utilities.
 - (3) Small wireless facilities shall not violate or materially interfere with compliance with the federal Americans with Disabilities Act of 1990 or similar federal or state standards regarding pedestrian access or movement.
 - (4) The color of small wireless facilities shall reasonably match the color of the support structure upon which they are attached. Reasonable, technically feasible, nondiscriminatory, and technologically neutral design and stealth concealment measures shall be required. New poles shall match the color and finish of existing decorative lighting or other poles in the area (or black where no nearby poles exist).
 - (5) Ground equipment should be minimal and the least intrusive. Electric service methods should, to the maximum extent feasible, not require the need for a separate above-grade electric meter. Where placed above ground, electric meters shall be concealed consistent with the requirements of this Chapter.
 - (6) Lights. Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under the Federal Aviation Administration, FCC, or other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed within enclosures or in locations that minimize visibility from publicly accessible areas.

- (7) Antenna locations. Applicants shall install antennas above the pole unless the applicant demonstrates that this location would be technically infeasible. Side-mounted antennas on a stand-off bracket or extension arm must be concealed with a shroud. All cables, wires, and other connectors must be concealed within the side-arm mount or extension arm.

§ 160-5. General Public ROW Installation Requirements.

A. General Work Requirements.

- (1) General safety and compliance with laws. The Permittee shall employ due care during the installation, maintenance or any other work in the ROW, and shall comply with all safety and Public ROW protection requirements of applicable Laws, Applicable Codes (including Art. III of Chapter 150 of the Town Code), and any generally applicable Town guidelines, standards and practices, and any additional commonly accepted safety and Public ROW-protection standards, methods and devices (to the extent not inconsistent with applicable Laws).
- (2) Traffic control. Unless otherwise specified in the Permit, the Permittee shall provide a plan for work zone traffic control consistent with the Uniform Manual of Traffic Control Devices and subject Town Highway Superintendent approval. The Permittee shall maintain all traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition, or as otherwise directed by the Town.
- (3) Interference. The Permittee shall not interfere with any existing facilities or structures in the Public ROW, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.
- (4) Utility Locations. Before beginning any excavation in the Public ROW, the Permittee shall comply protect underground facilities and contact the UDig one-call notification system at phone number 811, or its successor.

B. Compliance with Permit.

- (1) All construction practices and activities shall be in accordance with the Permit and approved final plans and specifications. The Town and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the Permittee. The Town may stop work in order to assure compliance with the provision of this Chapter.
- (2) In addition to obtaining a Permit for installation of a Communications Facility, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers in the Public ROW, an Applicant must obtain all other required permits, including but not limited to, an Excavations permit, as required under Art. III of Chapter 150 of the Town Code, and work permits as may be required by the road-owning agency.

C. As-Built. The Permittee shall provide to the Town as-builts, in a format designated by the

Town or otherwise compatible with such format, showing the location of Communications Facilities, Poles, Support Structures and Towers upon completion of the permitted work.

D. Attachment to and Replacement of Decorative Poles.

- (1) Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, or replace a Decorative Pole with a new Decorative Pole unless the Town has determined, in its sole discretion, that each of the following conditions has been met:
 - (a) The Application qualifies for issuance of a Permit under Section 160-4(l)(1);
 - (b) The attachment and/or the replacement Pole is in keeping with the aesthetics of the Decorative Pole; and
- (2) Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, replace a Decorative Pole with a new Decorative Pole, or install new above-ground Communications Facilities, in a Residential Zoning District unless the Town has determined, in its sole discretion, that each of the following conditions has been met:
 - (a) The Application qualifies for issuance of a Permit under Section 160-4(l)(1);
 - (b) The attachment and/or the replacement Pole is in keeping with the aesthetics and character of the Decorative Pole and/or the Residential Zoning District.

Section 7. Severability

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

Section 8. Effective Date

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

EXHIBIT 1

[INSERT EXHIBIT 1]