



TOWN OF ITHACA
215 N. Tioga Street, Ithaca, N.Y. 14850
www.town.ithaca.ny.us

08/18/2021

TO: Codes and Ordinances Committee:

William Goodman, Chair
Patricia Leary
Eric Levine
Eva Hoffmann
Bill King
Yvonne Fogarty

FROM: Christine Balestra, Planner

RE: Next Codes and Ordinances Committee Meeting – August 25, 2021

The next meeting of the Codes and Ordinances Committee is scheduled for Wednesday, August 25th at 5:30pm in the Aurora Conference Room at Town Hall, 215 North Tioga Street. A quorum of the Town of Ithaca Town Board may be present at this meeting. However, no official Town Board business will be conducted.

The following item is attached:

- Meeting minutes from the June 9, 2021, COC meeting
- *Draft* Local Law – Town of Ithaca Wireless Telecommunications Facilities, redlined and highlighted, dated “for 8/11/21 COC meeting, rescheduled to 8/25/21”

If you cannot attend this meeting, please notify Christine Balestra as soon as possible at (607) 273-1747 or cbalestra@town.ithaca.ny.us.

cc: Susan H. Brock, Attorney for the Town
Susan Ritter, Director of Planning
Marty Moseley, Director of Code Enforcement
Paulette Rosa, Town Clerk
Town Administrative staff (email)
Town Board Members (email)
Town Code Enforcement staff (email)
Town Planning staff (email)
Town Public Works staff (email)
Media

TOWN OF ITHACA CODES AND ORDINANCES COMMITTEE

215 North Tioga Street
Ithaca, New York 14850
(607) 273-1747

PLEASE NOTE: Members of the public who wish to attend the meeting via Zoom may call in on a cell phone or landline at (929) 436-2866 and enter the Meeting ID: 675 059 3272; or may view the meeting by computer at <https://zoom.us/j/6750593272>. Once on Zoom, click on “Join A Meeting” and enter the Meeting ID: 675 059 3272. The meeting will also be recorded on the Town of Ithaca YouTube Channel.

Meeting of August 25, 2021 – 5:30 P.M.

AGENDA

1. Member comments/concerns.

2. Minutes from June 9, 2021, COC meeting.

3. Begin review of Draft Local Law - Town of Ithaca Wireless Telecommunications Facilities, redlined and highlighted version.

4. Other business.

TOWN OF ITHACA CODES AND ORDINANCES COMMITTEE (COC)

Meeting of June 9, 2021 – 5:32pm – [Via Zoom Video Conference \[also live on YouTube\]](#)

Draft Minutes

Digitally Present: Bill Goodman, Chair; Pat Leary, Eric Levine, Eva Hoffmann, Bill King, Members; Marty Moseley, Director of Code Enforcement; Susan Ritter, Director of Planning; Chris Balestra, Planner; Paulette Rosa, Town Clerk; Susan Brock, Counsel.

Absent: Yvonne Fogarty

1. Member comments/concerns. Bill G. notified everyone that the meeting was being broadcast on the Town of Ithaca YouTube channel. The City of Ithaca broadcasts most of their meetings via YouTube and the town will be doing that as well going forward. Bill indicated that he'd let members of the public speak to the committee, then invite them to leave Zoom and watch the rest of the meeting on YouTube.

Marie Molnar addressed the committee about telecommunications, specifically a recent email related to 5G that she and Andrew sent to the Town Board. She reiterated that the Town Board should require telecommunications companies to prove that there is a significant gap in coverage and that the location proposed for facilities is the least intrusive location. She asserted that the municipality got to decide what evidence should be submitted to prove these things and whether they've been proven satisfactorily. She explained that telecommunications companies have supplied falsified propagation maps as proof, and that proof should be in the form of drive test data and dropped call data. Marie went on to request an increase in the town's proposed setback distances between a 5G facility and residences, from 250 feet to at least 1500 feet. She mentioned that the town can set the distance if there is a way for the applicant to seek relief from the law.

Andrew Molnar spoke to the committee about the 5G topic as well. He asked the committee to embrace Andrew Campanelli's report that was created for the City of Ithaca and shared with the Town of Ithaca. He asked that the town move to adopt all the recommendations in the report, especially on page 23 under "Local Zoning Determinations." In addition, he reiterated the following requests from his recent email on items to include in a revised telecommunications law: require general liability insurance without a pollution exclusion, make sure that insured is the telecom company and not the citing company, mandate random annual radiation testing for all facilities (not just towers) – have this testing done by the municipality and paid for by the telecommunications company - include a revocability clause, send notifications of proposals via certified mail to people living within 1500 feet of a facility (paid for by applicant, not the town), and establish a procedure for any disabled persons suffering from electro-sensitivity syndrome to submit grievances in accordance with the ADA.

2. Minutes from May 12, 2021, COC meeting. The committee approved the minutes with minor changes. Eva moved and Pat seconded. All who were present were in favor (Yvonne was absent).

3. Continued discussion of Telecommunications Law update. The COC was provided with Andrew Campanelli's report to the city after the May COC meeting. Bill mentioned that Andrew Campanelli talked to the City of Ithaca Administration Committee at their May meeting. Since the city records their

meetings on YouTube, Bill encouraged members to view the city's channel to listen to the meeting related to the Campanelli report.

Bill reported on a new expanded FCC ruling related to telecommunications. The ruling amended the "OTARD – Over-The-Air-Reception-Devices" rule, which has been in place by the FCC for decades [*staff note: The FCC website states that the OTARD rule "protects the rights of property owners or tenants to install, maintain or use an antenna to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations in areas within the owner's or tenant's exclusive use."*] Susan Brock explained that the FCC recently expanded the OTARD rule to allow owners to receive broadband internet services to facilitate the roll out of 5G broadband networks. The amendment to OTARD will now allow telecommunications companies to contract with property owners/tenants to directly place 5G facilities on private property.

Susan noted that the OTARD rule prohibits local governments from preventing facilities that are covered under the rule, but that the language is a little confusing (e.g., the OTARD rule apparently does not cover wireless facilities that are operating primarily as "hub and ray antennas" if they provide telecommunication services.) She suggested talking about this with Andrew Campanelli to get more clarity on the subject, as it may change the parameters of what the town was working on in terms of following the 1996 Telecommunications Act. The town might not have the legal authority to regulate facilities on private properties that are covered under the new OTARD rule.

Bill G moved on to the Campanelli & Associates report to the city titled "Federal Law Based Analysis of the Code of the City of Ithaca, NY, Chapter 325, Article VA-Telecommunications Facilities and Services, and Chapter 152, Article II- Telecommunications," dated March 1, 2021. Eva wondered if the recommendations listed in the report for the city would also apply to the town. Susan stated that yes, the types of things talked about in the report could be applied to the town as well. She explained that the main municipal structure difference between the city and the town was the ability to regulate what happens in the road rights of way, as the city owns and controls all the roads in their municipal jurisdiction, but the town only has control over its own local roads. We cannot regulate the rights of way of the state and county roads in our jurisdiction.

Bill G then directed the committee to page 23 in the Campanelli report, titled "Local Zoning Determinations," where Campanelli suggested that the City of Ithaca make findings "a-h" to determine whether a telecommunications application met certain requirements noted in the city's law. Chris stated that some of the suggested language was already in the town's telecommunications law - that some of the language was like the town's special permit criteria, and some of it was like our site plan criteria. Chris mentioned that it would be easy to establish more specific criteria as a set of findings that need to be made before special permit or site plan approval is granted for a telecommunications facility. The committee supported this.

Bill G stated that there were some suggestions at the top of page 25 of the report that could be added to a law and would assist the board in determining whether a provider has met the burden of proof, based upon evidence presented for various claims. The first claim (listed as "a" on page 25) stated that the provider "suffers from a significant gap in coverage." The recommendation would be to get proper evidence to support the claim, and not just rely on propagation maps. Bill went through the remaining claims and recommendations listed in "b-f" on page 25. The committee was supportive of the

recommendations. Bill G noted that the next iteration of a draft law would likely contain these recommended sections.

The committee then discussed their previous decisions to handle certain wireless facilities in the law administratively by staff and others by a board review. The Campanelli report recommended issuing permits for *all* facilities, following the findings mentioned above. Considering the new information in the report, Susan Brock wanted to know if the committee wanted to take the approach to have staff issue permits for all facilities and make findings internally. Chris summarized the COC's previous decisions, which included requiring Planning Board site plan approval and special permit for new towers (the typical 150-ft tall ones), collocations on towers deemed substantial by FCC Order, and small cell DAS systems (the networks of poles, not individual poles). The committee also previously decided to have administrative staff review for collocations on individual small cell facilities and towers deemed non-substantial by FCC Order. Chris noted that it would be a good idea for planning and codes staff to meet and talk about whether it would be appropriate for staff to take on the task of issuing findings.

Bill mentioned that the city has been trying to figure out the process of approval as well. Bill will follow up with JoAnn Cornish to see where the city is with their decision. Chris will talk with fellow planning and codes staff.

The committee had no other comments related to the Campanelli report, so they moved on to discuss the recent email that was received from Andrew and Marie Molnar that contained additional suggestions for the new law. The committee expressed support for both the Campanelli report and the email suggestions from the Molnar's.

Bill asked the committee their opinions on increasing the distance between residences and wireless facilities to something more than 250-feet. Pat, Bill K, and Eva supported an increase in the distance. Eric wanted to know what a proper distance really was. He didn't know how much distance would be too much where 5G would be unable to locate anywhere in the town. His desire would be to balance the aesthetic impacts of a facility with the utility of it and would need to think about it more before supporting a significantly increased distance. Bill G wanted to see where the city would go with this. The next City of Administration Committee is meeting on June 23, 2021.

The next step in the process is to revise the town telecommunications law based on the Campanelli and Molnar recommendations and to leave blanks so the committee can discuss and decide on specific items, such as the distance between residences and telecommunications facilities. Staff will work on a revised draft and present it to the committee for review at the next COC meeting.

4. Other Business.

- Next meeting: August 11, 2021 (July meeting cancelled due to vacations)
- Agenda: Telecommunications Law - Report on City Administration Committee meeting, Discussion of new draft law.

Meeting was adjourned at 7:48pm.

This document was originally modeled on the Wireless Telecommunications Facilities law passed by the Town of Bedford, NY in December 2018. In 2020, COC discussed proposed changes presented in several drafts (last COC discussion was on 4/29/20). Changes agreed on by COC at its 4/29/20 meeting are shown in red-line so COC can review its changes in print. Also shown in red-line are changes COC requested at its 6/9/21 meeting be made so it could review them.

A. Purpose and legislative intent.

- (1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless telecommunications facilities in the Town of Ithaca. While the Town recognizes the importance of wireless communications facilities in providing high-quality communications service to its residents, businesses and institutions, the Town also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities.
- (2) By enacting this section, the Town intends to:
 - (a) Provide for the managed development of wireless telecommunications facilities in a manner that accommodates the needs of Town residents, businesses and institutions to receive, and wireless carriers to provide, communication signals without interference from other communication providers, in accordance with federal, state and local laws and regulations;
 - (b) Establish fair and efficient processes for review and approval of applications;
 - (c) Establish procedures for the design, siting, construction, installation, maintenance and removal of wireless telecommunications facilities in the Town;
 - (d) Address and provide for new wireless technologies, including, but not limited to, microcell and distributed antenna systems ("DAS") technologies;
 - (e) Encourage the co-location of wireless communications facilities on existing structures rather than the construction of new support structures;
 - (f) Protect Town residents, businesses and institutions from potential adverse impacts of wireless communications facilities, to the maximum extent permitted under law;
 - (g) Avoid and minimize safety hazards and avoid potential damage to adjacent properties through proper locational, engineering and operational requirements;
 - (h) Protect the physical appearance of the Town and preserve its scenic and natural beauty by avoiding and minimizing adverse visual and aesthetic impacts of wireless

telecommunications facilities to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;

- (j) Protect the public health, safety and welfare;
- (k) Protect property values of the community;
- (l) Minimize the impact of such facilities on residential properties; and
- (m) Encourage the siting of wireless telecommunications services facilities on properties and areas which are not used exclusively for residential purposes. **[Does this make sense for DAS located in ROWs on residential properties?] [On 4/29/20, COC decided to hold this question until it discussed siting priority, which is later in the document.]**

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

[Staff and Susan still need to comprehensively review and revise the definitions, so COC should not spend time discussing them at its 8/11/21 meeting. Most definitions will end up in §270-5 Definitions.]

ACCESSORY OR ANTENNA EQUIPMENT

Any equipment serving or being used in conjunction with wireless telecommunications facilities and located on the same property or lot as the wireless telecommunications facilities, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, buildings and similar structures, and, when co-located on a structure, which is mounted or installed at the same time as an antenna.

ANTENNA

An apparatus designed for the purpose of emitting radio frequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service (whether on its own or with other types of services). For purposes of this definition, the term "antenna" does not include an unintentional radiator, mobile station, or device authorized under Part 15 of Title 47 of the United States Code.

Keep this definition in the Wireless Telecommunications Facilities section, as we do not want it to apply throughout the Zoning Chapter.

BASE STATION

A structure or equipment at a fixed location that enables Commission-licensed or -authorized wireless communications between user equipment and a communications network.

- (1) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and microcell networks).
- (3) The term includes any structure that supports or houses equipment described in Subsections (1) and (2) of this definition that has been reviewed and approved under the applicable zoning or siting process, even if the structure was not built for the sole or primary purpose of providing such support.
- (4) The term does not include any structure that, at the time the relevant application is filed with the Town under this section, does not support or house equipment described in Subsections (1) and (2) of this definition.

CO-LOCATION

Consistent with the Nationwide Programmatic Agreement (NPA) for the co-location of wireless antennas:

- (1) Mounting or installing an antenna facility on a preexisting structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

DISTRIBUTED ANTENNA SYSTEM (DAS)

A network of spatially separated antenna sites connected to a common source that provides wireless communications service within a geographic area or structure.

EAF

The environmental assessment form approved by the New York State Department of Environmental Conservation.

FAA

The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC

The Federal Communications Commission, or its duly designated and authorized successor agency.

HEIGHT

When referring to a structure, the distance measured from the preexisting grade level to the highest point on the structure, including the antenna and any other appurtenances.

Keep this definition in the Wireless Telecommunications Facilities section, as we do not want it to apply throughout the Zoning Chapter.

LEAST INTRUSIVE MEANS [possibly add definition]

LARGE WIRELESS FACILITY

Any wireless telecommunications facility that is not a small wireless facility.

MICROCELL FACILITY

Microcells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. A microcell facility meets both the following qualifications: each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed element, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and all other wireless equipment associated with the facility is cumulatively no more than 17 cubic feet in volume.

MODIFICATION

The improvement, upgrade or expansion of existing wireless communications facilities, or the improvement, upgrade or expansion of the wireless communications facilities located within an existing equipment compound if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless communications facilities.

Keep this definition in the Wireless Telecommunications Facilities section, as we do not want it to apply throughout the Zoning Chapter.

MONOPOLE

A wireless communications support structure which consists of a single pole, designed and erected on the ground or on top of a structure, to support a wireless communications antenna and accessory equipment.

NIER

Nonionizing electromagnetic radiation.

PERSON

Any individual, corporation, estate, trust, partnership, joint-stock company, association of two or more persons having a joint common interest, or any other entity.

PUBLIC RIGHT-OF-WAY

Any way over which the public possesses the right to travel, which heretofore has been duly laid out, adopted and established by law, whether publicly owned or not. The term "road" includes state, county and Town highways and roads, streets, squares, places, courts, boulevards, parkways and other ways, however designated, to which the public has access.

Use a different term, or keep this definition in the Wireless Telecommunications Facilities section, as we do not want it to apply throughout the Zoning Chapter.

REPLACEMENT

The replacement of existing wireless communications antenna on any existing support structure or on existing accessory equipment for maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading that is substantially similar in size, weight, and height as the existing wireless communications antenna and which does not substantially change the physical dimensions of any existing support structure.

Keep this definition in the Wireless Telecommunications Facilities section, as we do not want it to apply throughout the Zoning Chapter.

SIGNIFICANT GAP IN COVERAGE [possibly add definition]

SMALL WIRELESS FACILITY

A wireless telecommunications facility, including, but not limited to, DAS and microcells, that meets each of the following conditions:

- (1) The structure on which antenna facilities are mounted:
 - (a) Is 50 feet or less in height; or
 - (b) Is no more than 10% taller than other adjacent structures; or
 - (c) Is not extended to a height of more than 10% above its preexisting height as a result of the co-location of new antenna facilities; and
- (2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
- (3) All antenna equipment associated with the facility (excluding antennas and backup power

and related backup power equipment) is cumulatively no more than 28 cubic feet in volume; and

- (4) The facility does not require antenna structure registration under Part 17;
- (5) The facility is not located on tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facility does not result in human exposure to radio-frequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b).

STEALTH TECHNOLOGY

Camouflaging methods applied to wireless communications facilities which render them more visually appealing or which serve to blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted facilities, building-mounted antennas painted to match the existing structure, and facilities constructed to resemble trees, shrubs, light poles, and the like.

STRUCTURE

A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services).

Keep this definition in the Wireless Telecommunications Facilities section, as we do not want it to apply throughout the Zoning Chapter.

SUBSTANTIAL CHANGE Will revise definition to be consistent with FCC's 2014 Order both in and out of ROW

A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) The mounting of a proposed antenna on existing towers that would increase the original height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater.
- (2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter.
- (3) The mounting of the proposed antenna would involve adding an appurtenance to the body

of an existing wireless telecommunications support structure that would protrude from the edge of the original support structure more than 20 feet, or more than the original width of the support structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet, except that the mounting of the proposed antenna may exceed the size limits herein if necessary to shelter the antenna from inclement weather or to connect the antenna to the support structure via cable.

- (4) The mounting of the proposed antenna would involve excavation outside the current existing structure site, defined as the current boundaries of the leased or owned property surrounding the existing structure and any access or utility easements currently related to the site.
- (5) The modification defeats concealment and/or stealth elements of the support structure.
- (6) The modification does not comply with prior conditions of the approval for the existing structure and/or site; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

Add a definition for “tower,” which the FCC defined in its 2014 Order. The following is the definition from a National League of Cities model provision:

TOWER

Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

TRANSMISSION EQUIPMENT

Equipment that facilitates transmission for any Commission-licensed or -authorized wireless communications service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

UTILITY POLE

A pole or similar structure that is used in whole or in part for the purpose of carrying

electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function, regardless of ownership, including Town-owned poles or poles owned by other utility companies. Any utility pole in excess of 50 feet shall be deemed a tower.

WIRELESS TELECOMMUNICATIONS FACILITY

A structure, facility or location designed or intended to be used as, or used to support, antennas, along with any antennas located on such structure and any accessory equipment. It includes, without limit, freestanding towers, guyed towers, monopoles, DAS, microcell or small wireless facilities on utility poles in the public right-of-way or property of the Town or within the Town and similar structures that employ stealth technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It includes any structure, antennas and accessory equipment intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave telecommunications or other cellular communications technologies, but excluding those used exclusively for the Town's fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications. **[What about private phone and internet connections? Staff will research.]**

WIRELESS TELECOMMUNICATIONS PROVIDER

A wireless telecommunications infrastructure provider or a wireless telecommunications services provider.

C. General approval and permit requirements for wireless telecommunications facilities.

- (1) Subject to the provisions of this section, wireless telecommunications facilities are allowed in every zoning district in the Town. Wireless telecommunications facilities may not be located in an historic district that has been listed in the State or National Registers of Historic Places.
- (2) Except as otherwise provided by this section, no person shall be permitted to site, place, build, construct, modify, operate or prepare any site for the placement or use of wireless telecommunications facilities without having first obtained the approvals and permits required by this section.
- (3) Notwithstanding anything to the contrary in this section, any application for a wireless telecommunications facility that does not substantially change the dimensions of an existing

tower or base station and involving:

- (a) collocation of new transmission equipment;
- (b) removal of transmission equipment; or
- (c) replacement of transmission equipment

shall not require site plan approval or a special permit. All that shall be required are a small wireless facility permit and a building permit from a Code Enforcement Officer. The term for a small wireless facility permit issued under this subsection (3) shall be coterminous with the term of the underlying permit or other prior regulatory authorization for the subject tower or base station.

- (4) Repair and/or maintenance of an existing wireless telecommunications facility shall not require site plan approval, a special permit or a small wireless facility permit.
- (5) In addition to the requirements set forth for the issuance of a small wireless facility permit or special permit for a wireless telecommunications facility to be located in a public right-of-way as set forth in this section, any telecommunications provider seeking to place a wireless telecommunications facility in the public right-of-way shall also comply with the procedures and requirements set forth in Chapter 230 (Streets and Sidewalks) of the Town Code relating to conducting construction activities within the public right-of-way. To the extent any provisions in Chapter 230 are inconsistent with the provisions set forth in this section, the provisions in this section shall control.
- (6) Notwithstanding the provisions set forth in this § _____, in the event an application seeks to place a wireless telecommunications facility on property owned or controlled by the Town, other than within a ~~Town-owned public right-of-way~~ Town road by use where the Town does not own the underlying property, **[COC did not discuss this change, but Susan recommends it]** such application shall be exempt from the requirements of this section. The Town Board has sole and absolute discretion to determine whether to allow an applicant to place a wireless telecommunications facility on such Town property, and the Town Board may impose such conditions on any such placement and use as it deems appropriate. Nothing herein shall be deemed to create any right or entitlement to use Town property for such wireless telecommunications facility. **[Still need to research whether the Town may require the applicant to enter into a franchise or license agreement with the Town for facilities in the ROW.]**

D. Approvals and permits required for small wireless facilities.

- (1) All small wireless facilities shall require a small wireless facility permit and a building

permit issued by a Code Enforcement Officer. Additional required approvals and permits are described below in this subsection D.

- (2) Small wireless facilities that are collocated on or modify a communications tower or base station and that constitute a substantial change (as defined by the FCC in 47 C.F.R. §1.40001(b)(7), as may be amended) shall require site plan approval and a special permit issued by the Planning Board pursuant to the requirements of this section and in accordance with Chapter 270 (Zoning), Article XXIII (Site Plan Review and Approval Procedures) and Article XXIV (Special Permits and Special Approvals).
- (3) Two or more small wireless facilities that constitute all or part of a system (e.g., DAS) shall require site plan approval and a special permit issued by the Planning Board pursuant to the requirements of this section and in accordance with Chapter 270 (Zoning), Article XXIII (Site Plan Review and Approval Procedures) and Article XXIV (Special Permits and Special Approvals), except as follows. No site plan approval or special permit is required for such a system that is located at least 500 feet from a public right-of-way and from the lot line of any adjoining owner. **[COC to decide whether to include the lot line distance criteria]**

E. Applications for small wireless facilities.

- (1) Upon receipt of an application for a small wireless facility, the Code Enforcement Officer shall review said application and plans in accordance with the standards and requirements set forth in this section.
- (3) No application shall be accepted, and no small wireless facilities permit or building permit shall be issued, except pursuant to written order of the Board of Appeals, where the proposed construction, alteration, or use would be in violation of any provision of this chapter or would occur on a parcel on which a violation of any provision of this chapter exists.
- (5) An application for a small wireless facilities permit shall be signed by the applicant and shall be accompanied by a sworn affidavit, signed by a person with legal authority to bind the applicant, stating the affiant has knowledge of the contents and representations made in the application and attests to the truth and completeness of the application's contents and representations. ~~signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, The property owner,~~ if different than the applicant, shall also sign the application and indicate consent to placement and operation of the facilities on its property. At the discretion of the Code Enforcement Officer (or Planning Board or Board of Appeals, if an application must come before them), any false or

misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction. The Town may also pursue all legal remedies for perjury or other violations of law associated with false or misleading statements.

- (6) The applicant must provide documentation to verify it has a legal interest in the site, **if not within the public right of way.** Said documentation may be in the form of a deed, contract ~~of~~ sale or lease for the property, depending on whether the applicant is the property owner, contract vendee or lessee or a party to a contract of sale or lease. The applicant must also provide signed consents to the application from the owner of any fixture or structure to which the small wireless facility will be attached. **[COC requested this at a meeting after 4/29/20.]**
- (7) The applicant shall include a statement, in writing, that:
 - (a) The applicant's proposed small wireless facility shall be maintained in a safe manner and in compliance with all conditions of the small wireless facility permit, without exception, as well as all applicable and permissible federal, state and local laws, statutes, codes, rules and regulations; and
 - (b) The construction of the small wireless facility is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in New York State.
- (8) If proposing a new structure for the purpose of supporting a small wireless facility, the application shall be accompanied by a map which shows the applicant's existing and proposed area of coverage. Such map should locate all existing wireless telecommunications facility sites within 1/2 mile of the proposed small wireless facility.
- (9) In addition to all other required information as stated in this section, all applications for the construction or installation of a new small wireless facility or modification of an existing small wireless facility shall contain the following information:
 - (a) A descriptive statement of the objective(s) for the new facility or modification, including and expanding on **??** a need such as coverage and/or capacity requirements; **[Verify Town can require a showing of need in all situations, including non-substantial collocations under §6409(a) that the Town must approve.]**
 - (b) Documentation that demonstrates and proves the need for the small wireless facility to provide service primarily and essentially within the Town. Such documentation shall include, but not be limited to: **[Verify Town can require showing of need in this way.]**

[1] Information relating to all other wireless telecommunications facilities or antennas

associated with such wireless telecommunications facilities that are to be utilized in the Town in conjunction with the proposed small wireless facility; and

[2] ~~Propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage; [Verify Town can require this.]~~ Information demonstrating a significant gap in coverage and that the proposed facilities are the least intrusive means to address the gap. A significant gap in coverage must be demonstrated through submission of reliable drive test data and, where the applicant claims insufficient current capacity, dropped call records. The applicant shall provide the location and geographic boundaries of such data and records. Data shall be statistically appropriate for the area tested. If a claimed gap is for in-building coverage, then in-building call testing must be performed to establish the existence or absence of such a gap unless the applicant provides a sworn affidavit demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing and the circumstances that prevented the applicant from conducting such testing. Claimed gaps in service for in vehicles or open-air service may be demonstrated by call testing performed in vehicles or in the open.

- (c) The name, address and phone number of the person preparing the report;
- (d) The name, address, and phone number of the property owner, operator and applicant;
- (e) The postal address and Tax Map parcel number of the **property**;
- (f) The zoning district in which the property is situated;
- (g) The size of the **property**, stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines, if the proposed small wireless facility is located **outside the public right-of-way**;
- (h) The location of the nearest residential structure;
- (i) The location, size and height of all existing and proposed structures on the property which is the subject of the application;
- (j) The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed small wireless facility is located outside the public right-of-way;
- (k) The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
- (l) The make, model, type and manufacturer of the utility pole, monopole or other structure on which any antenna or accessory equipment for a small wireless facility is to be located and a design plan stating the structure's capacity to accommodate multiple users;

- (m) A site plan describing any new proposed structure and antenna(s) and all related fixtures, accessory equipment, appurtenances and apparatus, including, but not limited to, height above preexisting grade, materials, color and lighting;
 - (n) The frequency, modulation and class of service of radio or other transmitting equipment;
 - (o) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
 - (p) Direction of maximum lobes and associated radiation of the antenna(s);
 - (q) Applicant's proposed maintenance and inspection procedures and related system of records;
 - (r) Documentation justifying the total height of any proposed antenna and structure and the basis therefor. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown; **[Does COC want the last sentence? If so, need to verify the Town can require this]**
 - (s) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC;
 - (t) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - (u) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
 - (v) Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the subsurface and substrate and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site; and
 - (w) Information relating to the expected useful life of the proposed small wireless facility.
- (10) The applicant shall furnish written certification that the small wireless facility and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the wireless facility is subsequently approved and constructed, as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished to the Town prior to issuance of any certificate of occupancy or compliance. **[Does the Town require a COO or a COC?] [Marty Mosely had recommendations at 4/29/20 COC meeting and will work on this with Susan.]**

- (11) At the time of submittal of an application for a small wireless facility, the applicant shall pay a nonrefundable application fee in an amount as determined by the Town Board and as set forth in the Town Fee Schedule, as it may be amended from time to time, in addition to any other fee required by law.

[Work with staff to add any existing TOI application requirements not already covered]

- (11) The application shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, and will have the least-adverse visual effect on the environment, the character of the community, surrounding properties and on the residences in the area of the wireless telecommunications facility.

() The application shall contain consents by the owner, operator and property owner for the Town to enter onto the property without notice throughout the duration of the permit to conduct tests of radiofrequency emissions from each facility.

F. Engineering, Safety and Maintenance Requirements.

- (1) Design. All small wireless facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most-recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. All small wireless facilities shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the safety or life of any person or any property in the Town.
- (2) Wind and ice. All small wireless facilities structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- (3) Aviation safety. Small wireless facilities shall comply with all federal and state laws and regulations concerning aviation safety.
- (4) Public safety communications. Small wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- (5) Radio frequency emissions. (a) A small wireless facility shall not, by itself or in conjunction with other wireless communication facilities, generate radio frequency emissions in excess

of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as it may be amended or replaced from time to time. When a small wireless facility is complete, as-built radiofrequency emissions readings will must be taken and submitted to the Town in a sworn affidavit signed by a licensed radiofrequency engineer within ___ days of the facility becoming operational. **[How many days?]** prior to the Town's consideration of issuance of a certificate of compliance. The sworn affidavit must identify which limits codified in the Code of Federal Regulations apply to the facility, specify the minimum distance factor (measured in feet) used to calculate the radiofrequency emission levels to which the proposed facility would expose members of the general public or others, and attest that emissions from the facility do not and will not exceed the identified limits.

(b) The owner and/or operator of a small wireless facility shall thereafter take radiofrequency emission readings for each facility no more than [] days and no less than [] days prior to each annual anniversary date of the issuance of the certificate of compliance. The owner and/or operator shall submit the readings to the Town in a sworn affidavit signed by a licensed radiofrequency engineer that contains the information and attestation described in subsection ___ above. In the event that such testing reveals that any small wireless facilities are emitting radiofrequency radiation in excess of the identified limits, the owner and/or operator shall upon receipt of the test report immediately submit the report to the Town and immediately cease operation of the violating facility or facilities. The owner and/or operator shall not thereafter restart operation of the violating facility or facilities until submission to the Town of a sworn affidavit signed by a licensed radiofrequency engineer that contains the information and attestation described in subsection ___ above and that demonstrates to the Town's satisfaction the applicable limits are being and will continue to be met.

(c) In addition, the Town may conduct its own certification test of the radiofrequency emission levels at the site where any small wireless facility is located, with or without notice to the wireless telecommunications owner or operator or property owner. **[Discuss who pays—the City of Ithaca is paying for its random tests.]**

(6) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:

(a) Small wireless facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

(b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Town's residents and nearby properties.

(c) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

~~(d) The owner or operator of a small wireless facility shall maintain standby power generators or batteries capable of powering the small wireless facility for at least 12 hours without additional public utility power and indefinitely with a continuous or replenished fuel supply, where appropriate. Such standby power shall activate automatically upon the failure of public utility power to the site. Notwithstanding the foregoing, the Planning Board or Code Enforcement Officer may waive the requirement for backup power, where appropriate, including, but not limited to, when a small wireless facility is not located in a densely populated area or on a major thoroughfare. [Does COC want to include this backup power requirement for SWFs?] [COC stopped here on 04/29/20]~~

[Work with staff to add any additional requirements from existing TOI law]

G. Approval procedures. [Staff to recommend whether process should change from that set out below, including whether staff would make findings or whether all findings and decisions should be made by the Planning Board.]

(1) Time frames for approval.

(a) Within 60 days of receipt of a complete application for the co-location of a small wireless facility on a preexisting utility pole, monopole or other existing wireless telecommunications facility support structure, the Planning Board (or Code Enforcement Officer, where site plan approval and a special permit are not required) shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

(b) Within 90 days of receipt of a complete application for a small wireless facility on a new utility pole, monopole or other new wireless telecommunications facility support structure, the Planning Board (or Code Enforcement Officer, where site plan approval and a special permit are not required) shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

(c) Within 10 days of receipt of an incomplete application for a small wireless facility, the Town shall notify the applicant in writing of any supplemental information required to complete the application. Upon receipt of an applicant's supplemental information in response to the initial notification of incompleteness by the Town, the applicable shot clock will reset to zero, and the Town shall have the full 60 days or 90 days permitted by law to act on the completed application.

- (d) For any subsequent determinations of incompleteness beyond the initial, the Town shall notify the applicant of any required supplemental information within 10 days of receipt of the supplemental submission, and such notice shall toll the applicable shot clock until the applicant submits the required supplemental information.
- (e) All time periods set forth in this section reference calendar days.

(2) Findings and decisions.

All decisions resulting in approvals or denials by the Planning Board or official shall be in writing and supported by findings of fact based upon competent substantial evidence in the record. For facilities that require a special permit, no special permit shall be granted unless the Planning Board finds the following criteria, as well as the special permit criteria in §270-200, are met. For facilities that do not require a special permit, no wireless facilities permit shall be issued unless the Code Enforcement Officer finds the following criteria are met.

- (a) The applicant has proven that an identified wireless carrier suffers from a significant gap in its personal wireless service coverage. A significant gap in coverage must be demonstrated through submission of reliable drive test data and/or dropped call records, including the location and geographic boundaries of such.
- (b) The applicant has proven that the proposed installation will remedy any such significant gap in coverage.
- (c) The proposed facility presents a minimal intrusion on the community.
- (d) The applicant has proven that its proposed installation is the least intrusive means of remedying any such significant gap in coverage.
- (e) The applicant has proven there are no potential, less intrusive, alternative locations for the placement of the installation which would fill any such significant gap in coverage.
- (f) The applicant has proven the height proposed for the small wireless facility is the minimum height necessary to remedy any such significant gap in coverage.

[(a)-(f) above largely follow Andrew Campanelli's recommendations for findings. The City of Ithaca's draft contains the following additional findings that Campanelli suggested based on the City's law. COC should discuss whether to incorporate any of these, in which case they will be reworded as criteria that must be met:]

- (g) Whether or not any gaps in coverage are limited in size, or confined to a limited number of homes, or are situated in a rural sparsely populated area, or that any lack in coverage would

be de minimis, **[this goes to whether there is a significant gap in coverage]**

b. whether or not the proposed installation will, or will not, inflict a significant adverse aesthetic impact upon adjacent or nearby properties or surrounding neighborhood or community, specifically:

(i) inflict a significant adverse impact to the property values of adjacent or nearby properties;

(ii) inflict a significant adverse impact upon historic resources or scenic views;

(iii) whether the proposed siting of the PWSF, both in terms of site location and the specific area upon the site where the installation is proposed, would minimize the adverse visual impact of the facility;

(iv) whether or not the proposed installation will, or will not, provide and maintain a sufficient fall zone and/or safe zone around the facility to protect the public from the potential dangers of structural failures, icefall, debris fall and/or fire;

(4) Whether or not the granting of the application at issue would be consistent with the legislative intent of the Telecommunications Facilities and Services section.

[Here are criteria from the Town's current §270-219 that should be modified and carried over into the new law (if not already covered):]

(2) Conforms with all federal and state laws and all applicable rules or regulations promulgated by the Federal Communications Commission (the FCC), Federal Aviation Administration (the FAA), or any other federal agencies having jurisdiction;

(3) Is considered a public utility in the State of New York;

(4) Is sited, designed and constructed in a manner which minimizes i) visual impact to the maximum extent ~~practical~~-practicable and ii) adverse impacts upon migratory and other birds and other wildlife;

(5) Complies with all other requirements of this section and chapter, unless expressly superseded herein;

H. Location. [See Town of Ithaca's language below—COC may prefer to revise Ithaca's rather than use the following]

(1) Applications for small wireless facilities shall locate and site said facility in accordance with the following priorities, (a) being the highest priority and (g) being the lowest priority.

- (b) Co-location on a site with existing wireless telecommunications facilities or other wireless telecommunications facility structures in the Town;
- (e) On nonresidential zoned properties;
- (f) On residential zoned properties

Use the priority provisions from the Town of Ithaca’s current telecommunications law, or revise Bedford’s to include some of Ithaca’s provisions? If we use Ithaca’s, expand collocation to cover structures besides towers. Ithaca’s law states:

“E. Priority of siting locations. In determining whether a site is appropriate, and if it is determined a need exists for the telecommunications facility, the preferential order of location, to the extent the same may be, or may be made, technically feasible, is as follows:

- (1) Co-located on existing telecommunications towers;**
- (2) Co-located on any other existing radio or other tower that would not require any increase in height nor significant noticeable structural additions to accommodate the telecommunications facility;**
- (3) Within any industrial zones or existing planned development zones that permit industrial activities;**
- (4) Within any light industrial zones or existing planned development zones that permit light industrial activities;**
- (5) Within any existing community commercial zones or existing planned development zones which permits all of the activities permitted in a community commercial zone;**
- (6) On any other property in the Town.”**

- (2) If the highest priority listed above is not selected for the proposed site, then a detailed explanation must be provided as to why no higher priority sites were selected.
- (3) An applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. A renewal shall include proof that reasonable efforts have been made to co-locate on an existing telecommunications facility or on another existing structure.

I. Height.

(1) Small wireless facilities shall be no higher than the minimum height necessary. The proposed height, which may be in excess of the maximum height permitted for other structures in the applicable zone, shall address any additional height necessary to accommodate co-location by additional antenna arrays, but under no circumstances is the height to be in excess of what is permitted under federal requirements for small wireless facilities.

J. Setback. All wireless telecommunications support structures for small wireless facilities located outside the public right-of-way shall be set back from the property line of the lot on which they are located a distance equal to not less than the total height of the facility, including the support structure, measured from the highest point of such support structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. For facilities subject to site plan approval and special permit, the Planning Board may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, other forms of screening and/or structural characteristics of the proposed support structure. **[Revise this after COC decides the purpose of the setback requirement—safety, aesthetic impact on neighbors, both?]**

K. Visibility and Aesthetics. **[Substituted K with the most recent aesthetic requirements that Chris Balestra prepared after the June 2020 COC meeting.]**

(1) All small wireless telecommunications facilities shall be sited so as to have the least-adverse visual effect on the environment and on the residents in the area of the wireless telecommunications facilities sites, to the maximum extent practicable.

(2) For small wireless facilities that are collocated on or modify a communications tower or base station and that constitute a substantial change (as defined by the FCC in 47 C.F.R. §1.40001(b)(7), as may be amended), the following requirements apply:

- ~~a) There shall be no exposed wires. All cables and wires associated with the facility leading to and away from the facility must be fully concealed and shall match the color of the structure on which the facility is located. There shall be no external cables and wires related to the facility hanging off or otherwise exposed.~~
- ~~b) Each antenna shall be located within a stealth enclosure that matches the materials, color and design of the tower on which the antenna is located.~~
- ~~c) All equipment enclosures shall be as small as possible and undergrounded when possible. Building mounted enclosures shall be located within a stealth enclosure that matches the materials, color and design of the structure on which the enclosure is located. Ground mounted enclosures shall have appropriate vegetative buffering to buffer the view from neighboring residences, recreation areas and public roads. The Planning Board may require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public. Collocations along New York State~~

~~designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of wireless facilities.~~

- ~~d) There shall be no illumination, except in accord with and as required by state or federal regulations.~~
- ~~e) No portion of the wireless support structure or its accessory structures shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers and balloons.~~
- ~~f) Access to the facility shall be achieved by using existing public or private roads; no new accessway, driveway or parking area shall be constructed. Equipment or vehicles not used in direct support, renovations, additions or repair of any wireless facility shall not be stored or parked on the facility site.~~
- a) There shall be no exposed wires. All cables and wires associated with the facility leading to and away from the facility must be fully concealed and shall match the color of the structure on which the facility is located. There shall be no external cables and wires related to the facility hanging off or otherwise exposed.
- b) Each antenna shall be located within a stealth enclosure that matches the materials, color and design of the tower on which the antenna is located.
- c) All equipment enclosures shall be as small as possible and undergrounded when possible. Building-mounted enclosures shall be located within a stealth enclosure that matches the materials, color and design of the structure on which the enclosure is located. Ground-mounted enclosures shall have appropriate vegetative buffering to buffer the view from neighboring residences, recreation areas and public roads. The Planning Board may require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public. Collocations along New York State-designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of wireless facilities.
- d) There shall be no illumination, except in accord with state or federal regulations.
- e) No portion of the wireless support structure or its accessory structures shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers and balloons.
- f) Access to the facility shall be achieved by using existing public or private roads; no new accessway, driveway or parking area shall be constructed. Equipment or vehicles not used in direct support, renovations, additions or repair of any wireless facility shall not be stored or parked on the facility site.

- (3) For two or more small wireless facilities that constitute all or part of a system (e.g., DAS), the following requirements apply: **[Probably delete all references to DAS. Verizon told some of us that its systems are not DAS.]**

- a) ~~The DAS must be collocated on existing utility poles or other structures, where possible. If such collocation is not possible, then all new poles and equipment located within a public right of way must be the same height, color and finish as surrounding poles.~~
- b) ~~There shall be no exposed wires. All cables and wires associated with the facility leading to and away from the facility shall be installed underground. If undergrounding is not possible, then all cables, wires and connectors must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the DAS facility hanging off or otherwise exposed on the wireless support structure.~~
- c) ~~Each DAS antenna shall be located entirely within a shroud or canister type enclosure or a stealth facility. The diameter of an antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure.~~
- d) ~~All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the support structure or mounted to the side of the structure such that the vertical centerline of the antenna enclosure will be parallel with the wireless support structure. Stealth enclosures shall match the architecture, materials, color and design of the structure on which they are located (e.g. streetlight pole, building rooftop chimney, cupolas, etc.) Photo examples of stealth applications include the following (source: stealthconcealment.com):~~



- e) ~~All equipment enclosures shall be as small as possible and undergrounded when possible. Ground mounted equipment shall incorporate concealment elements into the proposed design, matching the color and materials of the wireless support structure. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture (see photo example of stealth pole above).~~
- f) ~~Tree “topping”, or the improper pruning of trees is prohibited. Any proposed pruning or removal of trees, shrubs or other landscaping already existing in the ROW must be noted in the site plan application and must be approved by the Planning Board.~~
- g) ~~There shall be no illumination, except in accord with and as required by state or federal regulations, or unless the illumination is integral to the camouflaging strategy (e.g. design intended to look like a streetlight pole).~~
- h) ~~Guidelines on placement: DAS facilities and wireless support structures shall be located:-~~
 1. ~~No closer than 250 feet away, radially, from another small wireless facility and support structure.~~
 2. ~~In alignment with existing trees, utility poles, and streetlights.~~

3. ~~Equal distance between trees, when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.~~
4. ~~So as to not be located along the frontage of any building deemed to be of historic significance on a federal, state, or local level. **[What does historic significance at the local level mean? Town's historic survey included all buildings at least 50 years old.]**~~
5. ~~New wireless support structures shall not be located directly in front of any existing residential or commercial structure. **[Is this possible?]**~~
6. ~~Facilities along New York State designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of such facilities.~~
7. ~~If a streetlight is present, a combination wireless support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a location where it has been identified that a streetlight is necessary. **[Clarify—the last part does not follow from the first]**~~
 - a) ~~If the DAS is located within a public ROW, then the preferable placement locations are the same as in the existing law for towers (e.g. most preferred= collocation on existing towers, utility poles or other structures; least preferred= installing all new poles)~~
 - b) ~~If collocation is not possible, then all new poles and equipment must be the same height, color and finish as surrounding poles.~~
 - c) ~~There shall be no exposed wires. All cables and wires associated with the facility leading to and away from the facility shall be installed underground. If undergrounding is not possible, then all cables, wires and connectors must be fully concealed on the wireless support structure and shall match the color of the wireless support structure. There shall be no external cables and wires related to the DAS facility hanging off or otherwise exposed on the wireless support structure.~~
 - d) ~~Each DAS antenna shall be located entirely within a shroud or canister type enclosure or a stealth facility. The diameter of an antenna enclosure at its widest point should not be wider than two times the diameter of the top of the wireless support structure.~~
 - e) ~~All antenna enclosures shall either be mounted to the top of the wireless support structure pole and aligned with the centerline of the support structure or mounted to the side of the structure such that the vertical centerline of the antenna enclosure will be parallel with the wireless support structure. Stealth enclosures shall match the architecture, materials, color and design of the structure on which they are located (e.g. streetlight pole, building rooftop chimney, cupolas, etc.) Photo examples of stealth applications include the following (source: stealthconcealment.com):~~



- f) All equipment enclosures shall be as small as possible and undergrounded when possible. Ground-mounted equipment shall incorporate concealment elements into the proposed design, matching the color and materials of the wireless support structure. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture (see photo example of stealth pole above).
- g) Tree “topping”, or the improper pruning of trees is prohibited. Any proposed pruning or removal of trees, shrubs or other landscaping already existing in the right-of-way must be noted in the site plan application and must be approved by the Planning Board.
- h) There shall be no illumination, except in accord with state or federal regulations, or unless the illumination is integral to the camouflaging strategy (e.g. design intended to look like a streetlight pole).
- i) *Guidelines on placement:* DAS facilities and wireless support structures shall be located:
1. No closer than 1,500 feet away, radially, from another small wireless facility and support structure, unless the telecommunications provider can prove that the facilities need to be closer together to meet a specified legal standard.
 2. In alignment with existing trees, utility poles, and streetlights.
 3. Equal distance between trees, when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
 4. So as to be not located along the frontage of any building that is listed on the National or State Register of Historic Places, or has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.
 5. At least 250 feet away from a structure that contains a dwelling unit.
 6. Facilities along New York State-designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of such facilities.
 7. If a streetlight is present, a combination wireless support structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a location where it has been identified that a streetlight is necessary.
- j) Internal **administrative staff review by Planning staff** is permitted only if a DAS system is located at least 500 feet from a public right-of-way and from the lot line of any adjoining owner.

k) No portion of the wireless support structure or its accessory structures shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers and balloons.

(4) For individual small wireless facilities (they do not constitute all or part of a system), the following requirements apply:

- ~~a) The small wireless facility must be collocated on an existing utility pole or other structure, where possible.~~
- ~~b) There shall be no exposed wires. All cables and wires associated with the facility leading to and away from the facility shall be installed underground. If undergrounding is not possible, then all cables, wires and connectors must be fully concealed and shall match the color of the structure on which the small wireless facility is located. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed.~~
- ~~c) Each small wireless antenna shall be located within a stealth enclosure that matches the architecture, materials, color and design of the structure on which the antenna is located (e.g. streetlight pole, building rooftop chimney, cupola, etc.). Photo examples of stealth applications include the following (source:stealthconcealment.com):-~~



- ~~d) All equipment enclosures shall be as small as possible and undergrounded when possible. Building mounted enclosures shall be located within a stealth enclosure that matches the architecture, materials, color and design of the structure on which the enclosure is located (see photo examples above). Ground mounted enclosures shall have appropriate vegetative buffering to buffer the view from neighboring residences, recreation areas and public roads. Planning staff may require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public. Collocations along New York State designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of such facilities.~~
- ~~e) There shall be no illumination, except and in accord with and as required by state or federal regulations, or unless the illumination is integral to the camouflaging strategy (e.g. design intended to look like a streetlight pole).~~
- ~~f) No portion of the wireless support structure or its accessory structures shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers and balloons.~~

~~g) Access to the small wireless facility shall be achieved by using existing public or private roads; no new accessway, driveway or parking area shall be constructed. Equipment or vehicles not used in direct support, renovations, additions or repair of any wireless facility shall not be stored or parked on the facility site.~~

a) There shall be no exposed wires. All cables and wires associated with the facility leading to and away from the facility shall be installed underground. If undergrounding is not possible, then all cables, wires and connectors must be fully concealed and shall match the color of the structure on which the small cell facility is located. There shall be no external cables and wires related to the small wireless facility hanging off or otherwise exposed.

b) Each small wireless antenna shall be located within a stealth enclosure that matches the architecture, materials, color and design of the structure on which the antenna is located (e.g. streetlight pole, building rooftop chimney, cupola, etc.). Examples of stealth applications include the following. Photo examples of stealth applications include the following (source: stealthconcealment.com):



c) All equipment enclosures shall be as small as possible and undergrounded when possible. Building-mounted enclosures shall be located within a stealth enclosure that matches the architecture, materials, color and design of the structure on which the enclosure is located (see photo examples above). Ground-mounted enclosures shall have appropriate vegetative buffering to buffer the view from neighboring residences, recreation areas and public roads. Planning staff may require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public. Collocations along New York State-designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such structures, districts, and corridors shall not be impaired or diminished by the placement of such facilities.

d) There shall be no illumination, except in accord with state or federal regulations, or unless the illumination is integral to the camouflaging strategy (e.g. design intended to look like a streetlight pole).

e) No small cell wireless facility shall be located in a historic district that has been listed in the State or National Registers of Historic Places.

f) No portion of the wireless support structure or its accessory structures shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers and balloons.

g) Access to the small cell wireless facility shall be achieved by using existing public or private roads; no new accessway, driveway or parking area shall be constructed. Equipment or vehicles not used in direct support, renovations, additions or repair of any wireless facility shall not be stored or parked on the facility site.

L. Security.

- (1) All small wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - (a) All antennas and other supporting structures shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
 - (b) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

M. Recertification of small wireless facilities permit.

- (1) At least sixty (60) days before the five-year anniversary date after the effective date for the small wireless facility permit, and at least sixty (60) days before all subsequent fifth anniversaries of the effective date of the original permit for small wireless telecommunications facilities, the holder of the small wireless facility permit shall submit a signed, written document with the following information to the Town Department of Code Enforcement (or its successor department) confirming the compliance of the small wireless facility with the small wireless facility permit. Such submission shall include the following:
 - (a) The name of the holder of the small wireless facilities permit for the wireless telecommunications facilities.
 - (b) The date of the original granting of the small wireless facilities permit.
 - (c) Whether the small wireless facility has been modified since the issuance of the small wireless facilities permit and, if so, in what manner.
 - (d) Any requests for waivers or relief of any kind whatsoever from the requirements of this section and any requirements for a small wireless facilities permit.
 - (e) Certification that the small wireless facilities are in compliance with the original small wireless facilities permit and in compliance with all applicable codes, laws, rules, regulations, and federal certification requirements, including, but not limited to, this section.
 - (f) Certification that the wireless telecommunications facility support structure, attachments and accessory equipment have been designed and constructed (as built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such certification shall be by a qualified New York State licensed

professional engineer.

- (2) If the holder of a small wireless facility permit does not submit the certifications in this Subsection ___ within the time frame noted in Subsection ___, then such small wireless facilities permit shall terminate and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the effective date of the small wireless facility permit, or subsequent fifth anniversaries, unless the holder of the small wireless facilities permit adequately demonstrates to the Director of Code Enforcement prior to the relevant fifth anniversary that extenuating circumstances prevented a timely submission of such written certification. If the Director of Code Enforcement agrees that there were extenuating circumstances, then the holder of the expired small wireless facilities permit may submit a late recertification request or application for a new small wireless permit.

O. Performance security for small wireless facilities. The applicant and the owner of record of any proposed small wireless facilities property site shall comply with any requirements set forth in Chapter 230 (Streets and Sidewalks) of the Town Code regarding the posting of security to place a small wireless facility in the public right-of-way.

P. Authority to inspect. In order to verify that the holder of a small wireless facilities permit and any and all lessees, renters, and/or licensees of small wireless facilities place and construct such facilities, including supporting structures, accessory equipment and antennas, in accordance with all applicable technical, safety, fire, building, and zoning laws, statutes, codes, rules, regulations and other applicable requirements, the Town may inspect at any time, upon providing reasonable notice, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, structures, antennas, accessory equipment and electromagnetic output.

Q. Liability insurance.

(1) An applicant for a small wireless facility permit shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the small wireless facilities permit in amounts as set forth below:

(a) For co-location on an existing wireless telecommunications facility structure, the insurance policies shall be in the following amounts:

[1] Commercial general liability covering personal injuries, death and property damage:
\$1,000,000 per occurrence/\$2,000,000 aggregate;

- [2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - [3] Workers' compensation and disability: statutory amounts.
- (b) For a small wireless facility located on a new wireless telecommunications structure, the insurance policies shall be in the following amounts:
- [1] Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence;
 - [2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - [3] Workers' compensation and disability: statutory amounts.
- (2) For a small wireless telecommunications facility on Town property, the commercial general liability insurance policy shall specifically include the Town, the Town Board, other elected officials, and the Town's officers, board members, employees, committee members, attorneys, agents and consultants as additional insureds.
 - (3) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.
 - (4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance.
 - (5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration or termination of the insurance that such policies are to renew or replace.
 - (6) Prior to the issuance of a permit for a small wireless facility, the applicant shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

[This is similar to the Town's standard insurance language, but not as detailed. Will ask Town's insurance agent to review]

R. Indemnification. Any approval for small wireless facilities that is proposed for Town property or in a public right-of-way pursuant to this section shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times fully defend, indemnify, and hold harmless the Town, its elected officials, public officers, board members, employees, committee members,

attorneys, agents and consultants from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, penalties, settlements, judgments, costs and expenses (including without limitation reasonable attorney's fees and costs) (collectively referred to as the "Claims"), whether or not involving a third party claim, which any or all of them may incur, resulting from bodily injuries (or death) to any person, damage (including loss of use) to any property, other damages, or contamination of or adverse effects on the environment, arising out of or caused by the placement, construction, erection, modification, location, product performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility; excepting, however, any portion of such Claims as may be attributable to the negligent or intentional wrongful acts or omissions of the Town or its servants or agents.

S. Annual NIER certification. The holder of any small wireless facilities permit shall, annually, certify to the Director of Code Enforcement, or their authorized designee, that NIER levels at the site where a small wireless facility is located are within the threshold levels adopted by the FCC. In addition, the Town, at its own cost and expense, shall be permitted to conduct its own certification test of the NIER levels at the site where any small wireless facility is located, with or without notice to the wireless telecommunications provider. Once operational, but prior to providing service to customers, as-built readings will be provided to the Town.

T. Default and/or revocation of small wireless facilities permit.

- (1) If any small wireless facilities are constructed, repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this section or of the small wireless facility permit conditions and requirements, or it is determined conclusively that the applicant made materially false or misleading statements during the application process, then the Code Enforcement Officer shall notify the holder of the small wireless facilities permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. **Adjust timing?** Notwithstanding anything to the contrary in this subsection or any other subsection of this section, if the violation or noncompliance causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Code Enforcement Officer may, at their sole discretion, order the violation remedied within 24 hours.
- (2) If, within the period set forth in Subsection ___ above, the small wireless facilities are not brought into compliance with the provisions of this section, or of the permit, or substantial steps are not taken in order to bring the affected small wireless facilities into compliance, then the Code Enforcement Officer may revoke such small wireless facility permit and

require removal of such small wireless facility pursuant to § ____ below.

U. Removal.

- (1) Under the following circumstances, the Town **[which board or officer?]** may determine that the safety, public welfare, character and environment of the Town warrant and require the removal of small wireless facilities, under the following circumstances:
 - (a) The small wireless facility has been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case repair or removal shall be completed within 90 days of receipt of written notice from the Town to remove such small wireless facilities;
 - (b) A permitted small wireless facility falls into such a state of disrepair that it creates a safety hazard;
 - (c) The small wireless facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required small wireless facilities permit, or any other necessary authorization; or
 - (d) Any small wireless facility is determined to be in violation pursuant to § ____ above and the holder of the small facilities permit fails to cure such violation within the time set forth in that section.
- (2) If the Planning Board **[list board or officer listed in (1) above]** makes a determination as noted in Subsection __**(1)** of this section, then it shall notify the holder of the small facilities permit and the owner of the property in writing that said small wireless facilities must be removed.
- (3) The holder of the small wireless facilities permit or the owner of the property shall be required to dismantle and remove such small wireless facilities, and all accessory equipment and associated structures, from the site and return the site to its original condition and certify through soils or other testing that no contamination has been created by the facility, such restoration being completed, limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town to remove such small wireless facilities. However, if the owner of the property upon which the small wireless facilities are located wishes to retain any access roadway to the small wireless facilities, the owner may do so with the approval of the Town.
- (4) If the small wireless facilities are not removed or substantial progress has not been made to remove the small wireless facilities within 90 days after the small facility permit holder and

owner of the property have received such written notice of removal, then the Town may remove the small wireless facilities at the sole expense of the property owner and/small wireless facility permit holder.

- (5) If the Town removes or causes to be removed the small wireless facilities, and the owner of the wireless telecommunications facilities does not claim and remove them to a lawful location within 10 days, then the Town may take steps to declare the small wireless facilities abandoned and dispose of or sell them and their components and retain the proceeds therefrom. For removal actions on private property, the Town shall present the owner of the wireless telecommunications facilities and the property owner with a bill for all costs and expenses incurred by the Town in connection with removal. If neither the owner of the wireless telecommunications facility nor the property owner pay such costs and expenses within 15 days after the demand for same, or within 30 days of the final decision on any administrative or judicial contest either may pursue, then such unpaid costs, expenses and interest (at the statutory interest rate for money judgments in New York State courts) incurred from the date of the removal measures shall constitute a lien upon the land on which such measures were undertaken. A legal action or proceeding may be brought to collect such costs, expenses, interest, and recoverable attorney's fees or to foreclose such lien. As an alternative to the maintenance of any such action, the Town may file a certificate with the Tompkins County Department of Assessment stating the costs and expenses incurred and interest accruing as aforesaid, together with a statement identifying the property and landowner. The Tompkins County Department of Assessment shall in the preparation of the next assessment roll assess such unpaid costs, expenses and interest upon such property. Such amount shall be included as a special ad valorem levy (administered as a move tax) against such property, shall constitute a lien, and shall be collected and enforced in the same manner, by the same proceedings, at the same time, and under the same penalties as are provided by law for collection and enforcement of real property taxes in the Town of Ithaca. The assessment of such costs, expenses and interest shall be effective even if the property would otherwise be exempt from real estate taxation.
- (6) The Town's rights to undertake removal measures and recover the costs from the owner of the wireless telecommunications facility and the property owner are in addition to all other rights and remedies allowed by this chapter or by law or in equity.
- (7) Relocation or removal of small wireless facilities in the public right-of-way. In addition to the removal provisions set forth above, within the number of days that the Town reasonably determines is necessary and specifies in a written notice to an owner of a small wireless facility in the public right-of-way, said owner shall, at its own expense, temporarily or permanently remove, relocate, or change the position of any small wireless facility (including accessory equipment) when the Town, consistent with its police powers and any applicable Public Service Commission regulations, shall have determined that such

removal, relocation, or change is reasonably necessary under the following circumstances:

- [1] To construct, repair, maintain or install any Town or other public improvement located in the public right-of-way;
- [2] To prevent interference with the operations of the Town or other governmental entity, in the public right-of-way;
- [3] Public abandonment of a street or road or public release of a utility easement; or
- [4] An emergency as determined by the Town Board. **[Change to Director of Public Works?]**

X. Reimbursement for the use of the public right-of-way. In addition to permit fees for a small wireless facility permit, every small wireless facility located in the public right-of-way is subject to the Town's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way. Such compensation for use of the public right-of-way shall be directly related to the Town's actual public right-of-way management costs, including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other public right-of-way management activities by the Town. The owner of each small wireless facility permit shall pay an annual fee to the Town to compensate the Town for the Town's costs incurred in connection with the activities described above as determined by the Town Board and as set forth in the Town Fee Schedule, as it may be amended from time to time.

[STOPPED REVISING LAW HERE FOR 4/29/20 AND 8/11/21 COC MEETINGS. RED-LINING AND NOTES PAST THIS POINT WERE FOR 1/29/20 COC MEETING. CHANGES WILL BE MADE LATER TO THE REST OF THE LAW, WHICH DEALS WITH LARGE WIRELESS FACILITIES]

Y. Special ~~use~~-permit applications for large wireless facility applications.

- (1) Except as otherwise provided by this section, no large wireless facilities shall be installed, constructed or substantially changed until a special ~~use~~-permit application is reviewed and approved by the Planning Board and ~~a special-use permit has been issued~~all Planning Board conditions are met.
- (2) Upon receipt of an application for a large wireless facility, the Planning Board shall review said application and plans in accordance with the standards and requirements set forth in this section. However, notwithstanding anything to the contrary, where appropriate, the Planning Board shall have the authority to waive any requirements set forth in this section relating to the an application for, or approval of, a special ~~use~~-permit for a large wireless

facility, provided that it would further the purposes of this section.

- (3) The Planning Board may attach such conditions and safeguards to any permit and site development plan as are, in its opinion, necessary to ensure initial and continued conformance to all applicable standards and requirements.
- (4) No application shall be accepted and no permit shall be issued for a large wireless facility on a property where ~~the Building Inspector~~ a Code Enforcement Officer has found, or there exists, a violation of the Town Code and where such violation has not been corrected.
- (5) Granting a special ~~use~~ permit shall not waive the requirement for final site plan approval, including fees, in accordance with ~~Chapter 125, Chapter 270 (Zoning), Article IX XXIII,~~ (Site Plan Review and Approval Procedures).
- (6) An application for a special ~~use~~ permit for a large wireless facility shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- (7) The applicant must provide documentation to verify it has a legal interest in the site where the large wireless facility is to be located. Said documentation may be in the form of a deed, contract for sale or lease for the property, depending on whether the applicant is the property owner, contract-vendee or lessee.
- (8) The applicant shall include a statement, in writing, that:
 - (a) The applicant's proposed large wireless facility shall be maintained in a safe manner and in compliance with all conditions of the special ~~use~~ permit, without exception, as well as all applicable and permissible federal, state and local laws, statutes, codes, rules and regulations; and
 - (b) The construction of a large wireless facility is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in the New York State.
- (9) The application shall be accompanied by a map, in graphical form and in AutoCAD® or compatible drawing exchange file format, which shows the applicant's existing and proposed area of coverage. Such map should locate all existing facility sites within the Town and within one mile of the Town in bordering communities.

- (10) In addition to all other required information as stated in this section, all applications for the construction or installation of new large wireless facilities, or any substantial change to an existing large wireless facility, shall contain the following information:
- (a) A descriptive statement of the objective(s) for the new facility or modification, including and expanding on a need such as coverage and/or capacity requirements;
 - (b) Documentation that demonstrates and proves the need for the large wireless facility to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;
 - (c) The name, address and phone number of the person preparing the report;
 - (d) The name, address, and phone number of the property owner, operator and applicant;
 - (e) The postal address and Tax Map parcel number of the property;
 - (f) The zoning district or designation in which the property is situated;
 - (g) The size of the property stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines;
 - (h) The location of the nearest residential structure;
 - (i) The location, size and height of all existing and proposed structures on the property which is the subject of the application;
 - (j) The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed facility is located outside the public rights-of-way;
 - (k) The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
 - (l) The make, model, type and manufacturer of the support structure and a design plan stating the support structure's capacity to accommodate multiple users;
 - (m) A site plan describing the proposed support structure and antenna(s) and all related accessory equipment, fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting;

- (n) The frequency, modulation and class of service of radio or other transmitting equipment;
 - (o) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
 - (p) Direction of maximum lobes and associated radiation of the antenna(s);
 - (q) Applicant's proposed support structure and accessory equipment maintenance and inspection procedures and related system of records;
 - (r) Documentation justifying the total height of any wireless telecommunications facility support structure and the basis therefor. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown;
 - (s) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC;
 - (t) A signed statement that the proposed installation will not cause physical or RF interference with other telecommunications devices;
 - (u) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
 - (v) Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the subsurface and substrate, and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site;
 - (w) Identify the proposed location of emergency power supply and the decibel level emitted during testing and operation;
 - (x) Information relating to the expected useful life of the proposed large wireless facility;
 - (y) Construction details for the proposed tower, supporting structure, and base, including specifications for the maximum height of the tower or structure the proposed base could support; and
 - (z) Information relating to intended future co-locations on the large wireless facility that may result in a further increase in the size or height of the proposed large wireless facility.
- (11) In the case of a new wireless telecommunications facility support structure for a large wireless facility, the applicant shall be required to submit a written report demonstrating its

meaningful efforts to secure shared use of existing wireless telecommunications support structure(s) or the use of alternative existing buildings or other structures within a 1/2-mile radius of the site proposed. Copies of written requests and responses for shared use shall be provided to the Planning Board with the application, along with any letters of rejection, stating the reason for rejection. Acceptable reasons for rejection include:

- (a) The proposed antenna and accessory equipment would exceed the structural capacity of the existing building or other structure, and its reinforcement cannot be accomplished at a reasonable cost.
 - (b) The proposed antenna and accessory equipment would cause radio frequency interference with other existing equipment for that existing building or other structure, and the interference cannot be prevented at a reasonable cost.
 - (c) Such existing buildings or other structures do not have adequate location, space, access, or height to accommodate the proposed equipment or to allow it to perform its intended function.
 - (d) A commercially reasonable agreement could not be reached with the owner of such building or other structure.
- (12) The applicant shall furnish written certification that the wireless telecommunications facility, structure, foundation, attachments and accessory equipment are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the large wireless facility is subsequently approved and constructed, as-built certification indicating that the large wireless facility has been constructed in accordance with all standards shall be furnished to the Town prior to issuance of any certificate of occupancy or compliance.
- (13) The applicant shall submit a completed long-form EAF. Based on circumstances of each application for a large wireless facility, the Planning Board may require submission of a detailed visual analysis.
- (14) All proposed large wireless facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, will employ stealth technologies where appropriate, and will thereby have the least-adverse visual effect on the environment, the character of the community, surrounding properties and on the residences in the area of the large wireless facility.
- (15) The applicant shall, in writing, identify and disclose the number and locations of any

additional sites that the applicant has been, is or will be considering, reviewing or planning for wireless telecommunications facilities in the Town, and all municipalities adjoining the Town, for a two-year period following the date of the application.

Z. General and specific requirements for large wireless facilities. Large wireless facilities are permitted in all zones, subject to the restrictions and conditions prescribed below:

- (1) Construction and design. All large wireless facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most-recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any large wireless facilities shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Town.
- (2) Wind and ice. All large wireless facilities structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- (3) Aviation safety. Large wireless facilities shall comply with all federal and state laws and regulations concerning aviation safety.
- (4) Public safety communications. Large wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- (5) Radio frequency emissions. A large wireless facility shall not, by itself or in conjunction with other ~~WCF~~wireless communication facilities, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended. When a small wireless facility is complete, as-built readings will be taken and submitted to the Town.
- (6) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:
 - (a) Large wireless facilities shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

- (b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Town's residents.
- (c) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- (d) The owner or operator of a large wireless facility shall maintain standby power generators capable of powering the wireless telecommunications facility for at least 24 hours without additional public utility power, and indefinitely with a continuous or replenished fuel supply. Such standby power shall activate automatically upon the failure of public utility power to the site. Notwithstanding the foregoing, the Planning Board may require standby power longer than 24 hours where circumstances indicate sufficient space exists to accommodate longer periods of backup power.

Add the Town of Ithaca’s access and parking requirements from its current law? They are:

“(1) Accessways shall make maximum use of existing public or private roads to the extent practicable. New accessways constructed solely for telecommunication facilities must be at least 12, but no more than 24 feet wide, and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(2) The road surface (driveways) shall be centered within accessways and shall not comprise more than 60% of the width of the accessway.

(3) Parking areas shall be sufficient to accommodate the usual number of service vehicles expected on the premises at any one time. Space off of public highways shall be provided (not necessarily in parking areas) to accommodate the greatest number of service vehicles expected on the premises at any one time.

(4) Driveways or parking areas shall provide adequate interior turnaround, such that service vehicles will not have to back out onto a public thoroughfare.”

AA. Approval procedures.

- (1) For any special ~~use~~-permit application, the Planning Board shall hold a public hearing on due notice within 60 days after submission of a formal completed application, including such technical information from the applicant as may be required by the Planning Board for a special ~~use~~-permit under the provisions of this section.
- (2) Notice of the public hearing shall be by publication in the official newspaper of the Town at least 10 days in advance of the hearing. The hearing notice shall indicate that the application

may be examined and further information is available from the Planning Board office during regular business hours. Copies of the publication order shall be mailed by the applicant to the owners of property within 1,000 feet of the property which is the subject of the application, and an affidavit of service thereof shall be filed with the Planning Board due on or before the date of the hearing.

- (3) In any district, the Planning Board may grant a special ~~use~~-permit for the construction of the large wireless facilities for a period of five years.
- (4) All decisions of the Planning Board involving applications for large wireless facilities shall be in writing and supported by substantial evidence contained in a written record.
- (5) Time frames for approval.
 - (a) Within 30 days of receipt of any application for a large wireless facility, the Town shall notify the applicant in writing of any supplemental information required to complete the application. Such notification shall toll the applicable shot clock until the applicant submits the required supplemental information.
 - (b) Within 90 days of receipt of an application for a co-located large wireless facility or 150 days of receipt of an application for a new large wireless facility with accompanying support structure, including such technical information from the applicant as may be required by the Planning Board for a special ~~use~~-permit under the provisions of this section, the Town shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
- (6) All time periods set forth in this section reference calendar days.

BB. Location.

- (1) Applications for special ~~use~~-permits for large wireless facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, (a) being the highest priority and (g) being the lowest priority.
 - (a) Co-location on existing wireless telecommunications facilities on lands owned or controlled by the Town, not including the public right-of-way;
 - (b) Co-location on a site with existing wireless telecommunications facilities or other tall structures in the Town;
 - (c) On other lands owned or controlled by the Town, including, but not limited to, the Town public right-of-way;

- (d) On lands owned or controlled by other municipal corporations within the Town, to the extent permitted by such other municipal corporation;
- (e) On nonresidential zoned properties;
- (f) On residential zoned properties; and
- (g) No large wireless facilities shall be permitted in the ~~Bedford-Forest Home~~ Historic District,⁵ ~~Katonah Historic District, or on any property designated as a Tier I or Tier II property, unless the applicant demonstrates to the Planning Board's satisfaction that the selected site is necessary to provide adequate service and no feasible alternative site exists. Approval shall be required from the Bedford Village Historic District Review Commission, the Katonah Historic District Advisory Commission, or the Historic Building Preservation Commission, as appropriate, before any large wireless facility is approved in the Bedford Historic District, Katonah Historic District, or on any property designated as a Tier I or Tier II property.~~

See the Town of Ithaca's priority provisions under H above. Use the Town's provisions instead or revise Bedford's provisions to incorporate some of the Town's provisions?

- (2) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a special ~~use~~ permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
- (3) An applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Planning Board why co-location is commercially impracticable.
- (4) Notwithstanding the above, the Town may approve any site located within the Town, provided that the Town finds that the proposed site is in the best interest of the safety, public welfare, character and environment of the Town and will not have a deleterious effect on the nature and character of the community and surrounding properties.

CC. Height. Wireless telecommunications facility support structures shall be no higher than the minimum height necessary. The proposed height, which may be in excess of the maximum height permitted for other structures in the applicable zone, shall address any additional height necessary to accommodate co-location by additional antenna arrays, but under no circumstances is the height to be in excess of 150 feet.

DD. Setback. All large wireless facilities, including any support structures and accessory equipment, located outside the public right-of-way shall be set back from the property line of the lot on which they are located a distance equal to not less than the total height of the facility, including support structure, measured from the highest point of such support structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. The Planning Board may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, other forms of screening and/or structural characteristics of the proposed support structure.

Compare with Town of Ithaca's current fall zone and other dimensional requirements below—retain Ithaca's? Add any portion of Bedford's requirements?

“(1) A fall zone around any tower constructed as part of a telecommunications facility must have a radius at least equal to the height of the tower and any attached antennae. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not, except as set forth below, contain any structure other than those associated with the telecommunications facility. If the facility is attached to an existing structure, relief may be granted by specific permission of the Planning Board on a case-by-case basis if it is determined by such Board after submission of competent evidence, that the waiver of this requirement will not endanger the life, health, welfare or property of any person. In granting any such waiver, the Board may impose any conditions reasonably necessary to protect the public or other property from potential injury.

(2) All telecommunication facilities shall be located on a single parcel.

(3) All telecommunication facilities shall comply with the setback, frontage, minimum lot size, and yard standards of the underlying zoning district and the fall zone requirements of this article. To the extent there is a conflict, the more restrictive provision shall govern. The size of the leased or owned lot, together with any land over which the applicant has obtained an easement, shall be, at a minimum, sufficiently large to include the entire fall zone. All lots leased or owned for the purpose of construction of a tower as part of telecommunications facility shall conform, at a minimum, to the lot size requirements of the underlying zoning district or the size of lot necessary to encompass the entire fall zone (to the extent easements for any part of the fall zone that extends outside the minimum lot size permitted in the zoning district have not been obtained), whichever requirement results in a larger lot.

(4) Notwithstanding provisions to the contrary of any other article of this chapter, the front, side, and rear yard requirements of the underlying zoning district in which a

telecommunications facility is erected shall apply not only to a tower, but also to all tower parts including guy wires and anchors, and to any accessory buildings.”

EE. Visibility.

- (1) All large wireless facilities shall be sited so as to have the least-adverse visual effect on the environment and its character, on existing vegetation and on the residents in the area of the wireless telecommunications facilities sites. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under federal, state and local laws, statutes, codes, rules or regulations.
- (2) Both the large wireless facility and any and all accessory equipment shall maximize use of building materials, colors and textures designed to blend with the structure to which they may be affixed and/or to harmonize with the natural surroundings.
- (3) Large wireless facilities shall not be artificially lighted or marked, except as required by law.
- (4) Wireless telecommunications facility support structures for large wireless facilities shall be galvanized and/or painted with a rust-preventive paint of an appropriate color as specified by the Planning Board to harmonize with the surroundings and shall be maintained in accordance with the requirements of this section.
- (5) Electrical and land-based telephone lines extended to serve the large wireless facility sites shall be installed underground.
- (6) Stealth technologies shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.

Does COC want to require stealth technologies for all large facilities?

- (7) Landscaping shall be provided, if appropriate.

Compare with Town of Ithaca’s current requirements below. Planning staff will be reviewing and possibly revising standards for large facilities. Add any portion of Bedford’s requirements?

“G. Lighting and marking.

- (1) **Towers shall not be artificially lighted and marked beyond the requirements of the FAA.**

- (2) Notwithstanding the preceding subsection, an applicant may be compelled to add FAA-style lighting and marking, if in the judgment of the Planning Board, such a requirement would be of direct benefit to public safety and would not unduly adversely affect residents of any surrounding property.

H. Appearance and buffering.

- (1) The use of any portion of a telecommunications facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited.
- (2) The facility shall have the least practical visual effect on the environment, as determined by the Planning Board. Any tower that is not subject to FAA marking as set forth above shall otherwise:
 - (a) Have a galvanized finish, or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board, or
 - (b) Be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the facility to perform its designed function.
- (3) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
- (4) Each application for a proposed facility shall be accompanied by a SEQR full environmental assessment form ("full EAF"). A visual environmental assessment form ("visual EAF") shall be required as an addendum to the full EAF. The Planning Board may require submittal of a more detailed visual analysis based on the contents of the visual EAF.
- (5) The facility shall have appropriate vegetative buffering, reasonably satisfactory to the Planning Board, around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, or public roads. The Planning Board may similarly require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public.
- (6) Without limiting the requirements of the preceding subsection, existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall occur in connection with the telecommunications facility prior to the granting of special permit and site plan approval. Clear cutting of all trees in a single contiguous

area exceeding 20,000 square feet shall be prohibited.

- (7) The Planning Board may require additional information, such as line-of-sight drawings, detailed elevation maps, visual simulations, before and after renderings, and alternate tower designs to more clearly identify adverse impacts for the purpose of their mitigation.
- (8) Equipment or vehicles not used in direct support, renovations, additions or repair of any telecommunications facility shall not be stored or parked on the facility site.”

FF. Security.

- (1) All large wireless facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:
 - (a) All antennas and supporting structures, including guy anchor points and wires and accessory equipment, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
 - (b) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

Revise the above to add one or more of the Town of Ithaca’s security provisions below?

- “(1) Towers, anchor points of guyed towers, and accessory structures shall each be surrounded by fencing at least eight feet in height, the top foot of which may, at the discretion of the Planning Board in deference to the character of the neighborhood, be comprised of three-strands of barbed wire to discourage unauthorized access to the site. The Planning Board may waive the requirement of fencing if, in its discretion, it determines that other forms of security are adequate, or that, by reason of location or occupancy, security will not be significantly compromised by the omission, or reduction in size, of the otherwise required fencing.
- (2) Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site. Such lighting should only occur when the area within the fenced perimeters has been entered.
- (3) There shall be no permanent climbing pegs within 15 feet of the ground of any tower.
- (4) A locked gate at the junction of the accessway and a public thoroughfare may be required to obstruct entry by unauthorized vehicles. Such gate must not protrude into

the public right-of-way.”

GG. Escrow for review costs. In accordance with the procedures set forth in Chapter 47153 (Fees) of the Town Code, and to the extent permissible under federal law, for large wireless facility applications, the applicant shall be required to provide funds to an escrow account held by the Town to allow the Planning Board to retain such technical experts and other consultants as may be necessary to review the proposal, including, but not limited to, the review of financial and technical aspects of the proposal and of the financial, legal and technical practicability of alternatives which may be available to the applicant.

HH. Recertification of special ~~use~~-permit.

- (1) At any time between 12 months and six months prior to the five-year anniversary date after the effective date for the special ~~use~~-permit for large wireless facilities and all subsequent fifth anniversaries of the effective date of the original special ~~use~~-permit for large wireless facilities, the holder of a special ~~use~~-permit for such large wireless facilities shall submit a signed, written request to the Planning Board for recertification. In the written request for recertification, the holder of such special ~~use~~-permit shall note the following:
 - (a) The name of the holder of the special ~~use~~-permit for the wireless telecommunications facilities.
 - (b) The date of the original granting of the special ~~use~~-permit.
 - (c) Whether the large wireless facility has been modified since the issuance of the special ~~use~~-permit and, if so, in what manner.
 - (d) Any requests for waivers or relief of any kind whatsoever from the requirements of this section and any requirements for a special ~~use~~-permit.
 - (e) Certification that the large wireless facilities are in compliance with the special ~~use~~-permit and in compliance with all applicable codes, laws, rules, regulations and federal certification requirements.
 - (f) Certification that the wireless telecommunications support structure, base station and accessory equipment are designed and constructed (as built) and continue to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a qualified New York State licensed professional engineer.
- (2) If, after such review, the Planning Board determines the permitted large wireless facility is in compliance with the special ~~use~~-permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Planning Board shall recertify the special

~~use~~-permit for the large wireless facility, which may include any new provisions or conditions that are mutually agreed upon or required by applicable statutes, laws, local laws, ordinances, codes, rules and regulations. If, after such review, the Planning Board determines that the permitted large wireless facility is not in compliance with the special ~~use~~ permit and all applicable statutes, local laws, ordinances, codes, rules and regulations, then the Planning Board may refuse to issue a recertification of the special ~~use~~-permit for the large wireless facility, and, in such event, such large wireless facility shall not be used after the date that the applicant receives written notice of such decision by the Planning Board unless and until any deficiencies determined by the Planning Board are cured. Any such decision shall be in writing and supported by substantial evidence contained in a written record.

- (3) If the applicant has submitted all of the information requested by the Planning Board and required by this section, and if the Planning Board does not complete its review, as noted in Subsection ~~HH(2)~~ ___ of this section, prior to the five-year anniversary date of the special ~~use~~-permit, or subsequent fifth anniversaries, then the applicant for the permitted large wireless facility shall receive an extension of the special ~~use~~-permit for up to six months in order for the Planning Board to complete its review.
- (4) If the holder of a special ~~use~~-permit for a large wireless facility does not submit a request for recertification of such special ~~use~~-permit within the time frame noted in Subsection ~~HH(1)~~ ___ of this section, then such special ~~use~~-permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special ~~use~~-permit, or subsequent fifth anniversaries, unless the holder of the special ~~use~~-permit adequately demonstrates to the Planning Board that extenuating circumstances prevented a timely recertification request. If the Planning Board agrees that there were extenuating circumstances, then the holder of the special ~~use~~-permit may submit a late recertification request or application for a new special ~~use~~-permit.

II. Application fees. At the time that an application for a special ~~use~~-permit is submitted for a large wireless facility, or to renew any such application, a nonrefundable application fee shall be paid in an amount as determined by the Town Board and as set forth in the Town Fee Schedule, in addition to any other fee required by law.

JJ. Performance security for special permits. The applicant and the owner of record of any proposed large wireless facilities property site shall, at their cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000 for a large wireless facility on a new wireless telecommunications support structure and \$25,000 for a co-location on an existing wireless telecommunications facility support structure or other existing structure; and with such sureties as are deemed sufficient

by the Planning Board to assure the faithful performance of the terms and conditions of this section and conditions of any special ~~use~~-permit issued pursuant to this section. The full amount of the bond or security shall remain in full force and effect throughout the term of the special ~~use~~-permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special ~~use~~-permit.

KK. Authority to inspect. In order to verify that the holder of a special ~~use~~-permit for a large wireless facility and any and all lessees, renters, and/or licensees of large wireless facilities place and construct such facilities, including the wireless telecommunications support structure, accessory equipment and antennas, in accordance with all applicable technical, safety, fire, building, and zoning laws, statutes, codes, rules, regulations and other applicable requirements, the Town may inspect at any time, upon providing reasonable notice, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, wireless telecommunications support structures, antennas, accessory equipment, electromagnetic output and buildings.

LL. Liability insurance.

(1) An applicant for a special ~~use~~-permit for a large wireless facility shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the special ~~use~~-permit in amounts as set forth below:

(a) For co-location on any existing large wireless facility or other wireless telecommunications facility support structure, including existing utility poles or monopoles, the required insurance policies shall be in the following amounts:

[1] Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

[3] Workers' compensation and disability: statutory amounts.

(b) For all other large wireless facilities, the required insurance policies shall be in the following amounts:

[1] Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence;

- [2] Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- [3] Workers' compensation and disability: statutory amounts.
- (2) For a large wireless facility on Town property, the commercial general liability insurance policy shall specifically include the Town, the Town Board, other elected officials, and the Town's officers, board members, employees, committee members, attorneys, agents and consultants as additional insureds.
- (3) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.
- (4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' prior written notice in advance of the cancellation of the insurance.
- (5) Renewal or replacement policies or certificates shall be delivered to the Town at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- (6) Prior to the issuance of a special ~~use~~-permit for a large wireless facility, the applicant shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

MM. Indemnification. Any special ~~use~~-permit for a large wireless facility that is proposed for Town property or in the public right-of-way, pursuant to this section, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town and its elected officials, officers, board members, employees, committee members, attorneys, agents and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, product performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility; excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

The Town of Ithaca's current telecommunications law does not contain indemnification

requirements.

NN. Regulations applicable to large wireless facilities in the public right-of-way.

- (1) In addition to the applicable special permit provisions and requirements listed in this section, all large wireless facilities located in the public right-of-way shall be required to comply with the following regulations:
 - (a) Location. Large wireless facilities in the public right-of-way shall be co-located on an existing wireless telecommunications facility whenever possible. If co-location is not technologically feasible, the applicant shall locate its large wireless facility on existing utility poles, monopoles or other structures that do not already act as wireless telecommunications facility support structures.
 - (b) Design requirements:
 - [1] All accessory equipment shall be the smallest and least-visibly-intrusive equipment feasible.
 - [2] Antennas and accessory equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
 - (c) Equipment location. Large wireless facilities, which include wireless telecommunications support structures and accessory equipment in the public right-of-way, shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the right-of-way as determined by the Town. In addition:
 - [1] In no case shall ground-mounted accessory equipment, walls, or landscaping be located within 18 inches of the face of the curb, within four feet of the edge of the cartway, or within an easement extending onto a privately owned lot.
 - [2] To the extent feasible, accessory equipment shall be placed underground. Ground-mounted accessory equipment that cannot be placed underground shall be screened from surrounding views, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Town. Ground-mounted accessory equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted accessory equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology to the satisfaction of the Town.

- [3] Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Town.
- [4] Any graffiti on any large wireless facility support structure, base station or any accessory equipment shall be removed within 30 days upon notification by the Town, at the sole expense of the owner.
- [5] Any proposed underground vault related to large wireless facilities shall be reviewed and approved by the Town.
- [6] Accessory equipment attached to a large wireless facility support structure shall have such vertical clearance as the Planning Board may determine.
- (d) Relocation or removal of large wireless facilities in the public right-of-way. In addition to the removal provisions set forth in § ~~125-85.2RR~~ _____ below, within 90 days' following written notice from the Town, or such longer period as the Town determines is reasonably necessary, or such shorter period in the case of an emergency, an owner of a small wireless facility and any accessory equipment in the right-of-way shall, at its own expense, temporarily or permanently remove, relocate, or change the position of any large wireless facility or accessory equipment when the Town, consistent with its police powers and any applicable Public Service Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
 - [1] To construct, repair, maintain or install any Town or other public improvement located in the right-of-way;
 - [2] To prevent interference with the operations of the Town or other governmental entity in the right-of-way;
 - [3] Abandonment of a street or road or the release of a utility easement; or
 - [4] An emergency as determined by the Town Board.

OO. Reimbursement for the use of the public right-of-way. In addition to permit fees for a large wireless facility permit, every large wireless facility located in the Town public right-of-way is subject to the Town's public right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way and for any applicable permitting fees set forth in Chapter ~~104~~153 (Fees) of the Town Code. Such compensation for use of the public right-of-way shall be directly related to the Town's actual public right-of-way management costs, including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other public right-of-

way management activities by the Town. The owner of each large wireless facility permit shall pay an annual fee to the Town to compensate the Town for the Town's costs incurred in connection with the activities described above as determined by the Town Board and as set forth in the Town Fee Schedule.

The Town of Ithaca's current telecommunications law does not have a fee provision for use of the Town's ROW.

PP. Annual NIER certification. The holder of any special ~~use~~-permit shall, annually, certify to the Planning Board or its authorized designee that NIER levels at the site where the large wireless facilities are located are within the threshold levels adopted by the FCC. In addition, the Town, at its own cost and expense, shall be permitted to conduct its own certification test of the NIER levels at the site where any large wireless facility is located, with or without notice to the wireless telecommunications provider. Once operational, but prior to providing service to customers, as-built readings will be provided to the Town.

QQ. Default and/or revocation of special ~~use~~-permit.

- (1) If large wireless facilities are constructed, repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this section or any special ~~use~~-permit requirement, or it is determined conclusively that the applicant made materially false or misleading statements during the application process, then ~~the Planning Board or the Building Inspector~~ a Code Enforcement Officer shall notify the holder of the special ~~use~~-permit, in writing, of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this section, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Planning Board may, at its sole discretion, order the violation remedied within 24 hours.
- (2) If, within the period set forth in Subsection ~~QQ(1)~~ above, the large wireless facilities are not brought into compliance with the provisions of this section, or of the special ~~use~~-permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then ~~the Planning Board or the Building Inspector~~ the Code Enforcement Officer may revoke such special ~~use~~-permit for the wireless telecommunications facility and may require the removal of such large wireless facility.

RR. Removal.

- (1) Under the following circumstances, the Town may determine that the safety, public welfare, character and environment of the Town warrant and require the removal of a large wireless facilities:
 - (a) Large wireless facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;
 - (b) Permitted large wireless facilities fall into such a state of disrepair that they create a safety hazard;
 - (c) Large wireless facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special ~~use~~-permit, or any other necessary authorization; or
 - (d) Any large wireless facility is determined to be in violation pursuant to § ~~125-85.2PP~~ ___ above and fails to cure such violation within the time set forth in that section.
- (2) If the Planning Board makes such a determination as noted in Subsection ~~RR(1)~~ ___ of this section, then it shall notify the holder of the special ~~use~~ permit and the owner of the property that the large wireless facilities are to be removed.
- (3) The holder of the special ~~use~~-permit or the owner of the property shall dismantle and remove such large wireless facilities, and all accessory equipment, antennas, support structures and other associated structures and facilities, from the site and return the site to its original condition and certify through soils or other testing that no contamination has been created by the facility, such restoration being completed, limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town. However, if the owner of the property upon which the large wireless telecommunications facilities are located wishes to retain any access roadway to the large wireless facilities, the owner may do so with the approval of the Town.
- (4) If the large wireless facilities are not removed or substantial progress has not been made to remove the large wireless facilities within 90 days after the special ~~use~~-permit holder has received notice, then the Planning Board may order officials or representatives of the Town to remove the large wireless facilities at the sole expense of the property owner and/or special ~~use~~-permit holder.
- (5) If the Town removes or causes to be removed the large wireless facilities, and the owner of the large wireless facilities does not claim and remove any equipment or materials to a

lawful location within 10 days, then the Town may take steps to declare the large wireless facilities abandoned and sell them and their components and retain the proceeds therefrom. The Town may also cause the costs associated with the removal and disposal of the large wireless facilities to be assessed on the property in the same manner as a tax or assessment.

Does COC want to retain any part of the Town of Ithaca's removal provisions below?

- “(1) At the time of submittal of the application for a special permit for a telecommunications facility, the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower(s) dedicated solely for use within a telecommunications facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than 12 consecutive months. Upon removal of said facility, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.**
- (2) At the time of obtaining a building permit, the applicant must provide a financial security bond for removal of the telecommunications facility and property restoration, with the municipality as the assignee, in an amount approved by the Planning Board, but not less than \$50,000.**
- (3) At times of modification of the special permit, the Planning Board may adjust the required amount of the financial security bond to adequately cover increases in the cost of removal of the telecommunications facility and property restoration.”**

SS. Penalties for offenses. In addition to any other remedies in this section, a violation of any provision of this section with respect to either large wireless facilities or small wireless facilities is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Each continued violation shall constitute a separate additional violation.

If this law remains in the Town of Ithaca's Zoning Chapter, delete section SS. (Penalties for offenses) above.

TT. Adherence to state and/or federal rules and regulations.

- (1) The holder of a special ~~use~~-permit or small wireless facility permit issued pursuant to this section shall adhere to and comply with all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- (2) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security, are amended and/or are modified during the duration of a special ~~use~~-permit for large wireless facilities and a small wireless facility permit for small wireless facilities, then the holder of such a special ~~use~~-permit or small wireless facility permit shall conform the permitted wireless telecommunications facilities to the applicable amended and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.