

**A LOCAL LAW** to amend Russell Gardens Code Chapter 50A entitled “Telecommunications:”

Section One. Russell Gardens Code Chapter 50A entitled “Telecommunications” is hereby repealed in its entirety and replaced with a new Chapter 50A entitled “Siting of Wireless Telecommunications Facilities” to read as follows:

## **Chapter 50A**

### **SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES**

#### **§ 50A-1. Legislative intent.**

- A. The Telecommunications Act of 1996 affirmed the Village’s authority concerning the placement, construction, and modification of wireless telecommunications facilities. The Board of Trustees finds that wireless telecommunications facilities may pose a unique hazard to the health, safety, public welfare, and environment of the Village of Russell Gardens and its inhabitants. The Board of Trustees also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Village and of significant benefit to the Village and its residents. In order to ensure that the placement, construction, or modification of wireless telecommunications facilities is consistent with the Village’s land use policies, the Board of Trustees is revising its single, comprehensive wireless telecommunications facilities application and permit process. The intent of this section is to minimize the negative impact of wireless telecommunications facilities, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental and aesthetic impacts of such facilities, acknowledge changes in technologies and commercial carrier needs, and protect the health, safety, and welfare of the Village. Moreover, in November 2009 the Federal Communications Commission (FCC) adopted Declaratory Ruling (WT Docket No. 08-165), which sets forth time frames in which a local authority must act on a wireless facility siting application ("shot clock"), and in 2012 Congress enacted the Middle Class Tax Relief and Job Creation Act ("TRA"), which under Section 6409 imposes additional limitations on state and local laws and regulations pertaining to the siting and modification of wireless telecommunications facilities and defines eligible facilities requests (EFR) to modify an existing wireless tower or base station within certain time frames. The FCC's October 21, 2014, Wireless Infrastructure Report and Order defines substantial and nonsubstantial modifications to existing cell sites and provides information on small cells and DAS and work in the public rights-of way, and the September 26, 2018, Declaratory Ruling and Third Report and Order (FCC 18-133) further addresses the deployment of infrastructure, including small cells necessary for network densification, 5G, and other advanced wireless services. This Order also discusses local, environmental, and historic reviews of wireless facilities, including small cells, and offers criteria for aesthetics and fees that local municipalities can charge. In recognition of changes in wireless technology and evolving federal and state legislation and regulations, the Village has adopted amendments to Chapter 50A to better assist in the processing and review of proposed new wireless telecommunications facility applications and in the management of existing facilities within the Village's borders.

- B. The purpose of this section is also to provide specific procedures to better assist in the processing and review of applications for proposed modifications and changes to existing wireless telecommunications facilities, inclusive of small cells, and to process and assess proposals for new small cell technology within the Village and the public ROWs in the Village. This section shall not apply to wireless telecommunications services facilities installed wholly within a principal or accessory building, such as but not limited to indoor distributed antenna systems, direct-to-home satellite services or direct broadcast service (DBS), signal repeaters, baby monitors, heart monitors, garage door openers and burglar alarm transmitters, and serving only that building.
- (1) Implementing application processes for person(s) seeking a special use permit and/or a building permit for placement and construction and maintenance of wireless telecommunications facilities;
  - (2) Establishing a policy for examining an application for and issuing the necessary permits for wireless telecommunications facilities that is both fair and consistent to all licensed wireless telecommunications providers and in accordance with applicable time frames and fees;
  - (3) Promoting and encouraging the sharing and/or co-location of wireless telecommunications facilities among service providers;
  - (4) Promoting and encouraging the placement, height and quantity of wireless telecommunications facilities in such a manner, including but not limited to the use of stealth and other innovative design, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities;
  - (5) Promoting and encouraging the implementation of alternatives where reasonable to meet the aforementioned legislative intent to minimize the adverse visual and physical effects of wireless telecommunications facilities and to protect the natural features, aesthetics, and the unique residential character of the Village. Recognizing the needs for network densification and service in high-use areas along state highways and roads, the South Middle Neck Road and Northern Boulevard corridors and commercial/industrial areas;
  - (6) Promoting and encouraging the priority of siting of wireless telecommunications facilities to minimize the adverse visual and physical effects of wireless telecommunications facilities and to protect the natural features, aesthetics, and unique residential character of the Village. Aesthetic impacts and sight lines should be shown and considered from the perspective of nearby residences as well as street views. Aesthetic impact evaluation includes consideration of adverse visual impacts on the character of the area, the area's existing features and land use and how it appears, and the existence of similar structures in the area;
  - (7) To minimize the impact of such facilities on residential properties;
  - (8) To encourage the siting of wireless telecommunications services facilities on properties and areas which are not used for residential purposes;

- (9) To avoid potential damage to property caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or they are determined to be structurally unsound;
- (10) To ensure that towers and telecommunications facilities are compatible with surrounding land uses;
- (11) The Village has determined that effective means of consistently and fairly evaluating proposed wireless transmission facility sites while at the same time evaluating the cumulative effects of site applications are:
  - (a) To create an Antenna Advisory Board whose sole responsibilities shall be to monitor developments in wireless telecommunications, monitor the cumulative effects of wireless transmission facilities upon the landscape and character of the Village, and to advise the Board of Trustees concerning individual wireless site applications, including the aesthetic aspects of proposed facilities, the identification of potential alternate sites that may be considered, and other items;
  - (b) To vest the ~~ARB or BOT~~ Board of Trustees with the authority to rule upon special use permit applications for wireless transmission facilities, as well as related matters;
  - (c) To require applicants for such special use permits to provide the Board of Trustees with sufficient data and information to allow it to render an informed decision upon applications; and
  - (d) To promote and encourage comprehensive consideration and understanding of the potential impacts associated with each wireless transmission facility application, including potential mitigation measures that could be implemented to minimize adverse effects on the community. Proposed mitigation would include the use of stealth design and/or landscaping and other approaches such as co-location.
- (12) The Village's Design Review Board shall have the authority to act as the Antenna Advisory Board ~~will consist of five members. Its individual members shall be appointed or removed by the Board of Trustees.~~ It shall serve in an advisory capacity only. If requested by the ~~ARB or BOT~~ Board of Trustees, the Antenna Advisory Board may perform an advisory review of aesthetic aspects of proposed sites, comment on possible alternates that may be considered, or assist with other permit application review items.

**§ 50A-2. Definitions.**

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meanings given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural include words in the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

ABANDONED — Any telecommunications facility which has not been operational for a

period of six consecutive months.

**ACCESSORY FACILITY OR STRUCTURE** — An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities and located on the same property or lots as the wireless telecommunications facilities, including, but not limited to, utility or transmission equipment storage sheds or cabinets or emergency back-up power generators.

**AESTHETICS** — Outward appearance: the way something looks, especially when considered in terms of style, color, texture, finish, and material; including but not limited to towers, poles or other support structures, antennas, antenna mounts and cabling, equipment shelters, ancillary support equipment such as meters and radio shrouds, generators or battery backup, fencing, and landscaping. Aesthetic standards and samples of wireless facility aesthetic designs that are preferred in the Village will be kept on file with the Building Department in electronic format.

**ANTENNA** — A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to, radio, television, cellular, LTE, 4G, 5G, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Village's siting, building and permitting authority.

**ANTENNA ARRAY** — A set or group of antennas associated with a single wireless telecommunications facility (e.g., a group of panel antennas located at the same height on a tower structure for use by a particular carrier of telecommunications wireless services).

**APPLICANT** — Any person submitting an application to the Village of Russell Gardens for a special use permit and/or building permit for wireless telecommunications facilities.

**APPLICATION** — All the necessary and appropriate documentation that an applicant is required to submit for consideration of a special use permit and/or a building permit for wireless telecommunications facilities as specifically set forth in this chapter.

**BOARD OF TRUSTEES** — The Board of Trustees of the Incorporated Village of Russell Gardens.

**CAMOUFLAGED FACILITY** — A wireless telecommunications facility in which antennas and other equipment is disguised or shielded from views by use of colors and textures that blend with the environment, or is placed within or behind an enclosure, cover, or screening wall or otherwise hidden by surrounding vegetation, such that it is essentially screened from public views and adequately disguised as part of a building or other structure. Aesthetic standards and samples of preferred wireless facility aesthetic designs, including camouflaging, will be kept on file with the Village Building Department. Camouflaging also pertains to the stealth tree monopole configuration, in terms of pole color/texture; branch style, taper, and density.

**CO-LOCATION** — The use of a wireless telecommunications facility that accommodates two or more wireless facilities, or the use of a non-telecommunications facility structure that supports one or more facilities for wireless services by two or more

carriers.

**COMPLETED APPLICATION** — An application that contains all the information and/ or data required by this chapter necessary to enable an informed decision to be made with respect to an application.

**DIRECT-TO-HOME SATELLITE SERVICES OR DIRECT BROADCAST SERVICE or DBS** — Only programming transmitted or broadcast by satellite directly to subscribers' premises without the use of ground-receiving equipment, except at the subscribers' premises or in the uplink process to the satellite.

**DISTRIBUTED ANTENNA SYSTEM (DAS)/DAS NODE** — A wireless technology consisting of a network of antenna nodes, typically affixed to existing utility poles or other low-elevation structures and installed lower to the ground than conventional panel antennas on telecommunications towers and supporting equipment to provide wireless services within a specific geographic area. DAS has sometimes been used to provide wireless services for more than one provider. A single DAS installation (e.g., one antenna and supporting equipment on a given utility pole or other structure) is referred to as a DAS node.

**ENGINEER** — Any person licensed by the State of New York to practice engineering services.

**ENVIRONMENTAL ASSESSMENT FORM (EAF)** — The environmental assessment form approved by the New York State Department of Environmental Conservation.

**EQUIPMENT** — Computers, batteries, generators, transmission equipment, cabinets, etc., which are utilized to power and/or operate a wireless telecommunications facility.

**FACILITY** — See definition for "wireless telecommunications facilities."

**FALL ZONE** — The area on the ground within a prescribed radius from the base of a wireless telecommunications facility, tower, or small cell or DAS node. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material (such as the support structure itself). For new towers, a hinge-point is at times incorporated into the design to reduce the structure's potential area of collapse in the case of a catastrophic failure.

**FEDERAL AVIATION ADMINISTRATION (FAA)** — The Federal Aviation Administration or its duly designated and authorized successor agency.

**FEDERAL COMMUNICATIONS COMMISSION (FCC)** — The Federal Communications Commission or its duly designated and authorized successor agency.

**FREESTANDING TOWER** — A tower that is not supported by guy wires and ground anchors or other means of attached or external support.

**GUYED TOWER** — A tower that is tied to the ground or other surface by diagonal cables.

**HEIGHT** — When referring to a tower or structure, the distance measured from the preexisting grade level to the highest point, even if said highest point is an antenna, lightning rod or camouflaged element.

**LATTICE TOWER** — A self-supporting structure constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

**MODIFICATION, MAJOR** — Modification or upgrade to an existing wireless telecommunications facility that substantially changes (see definition) the physical dimensions or visual impact of any aspect of the facility, as determined by the ~~Board of Trustees and/or~~ Building Inspector. Major modifications may include, but are not necessarily limited to, replacement of existing antennas with new models resulting in an increase to the number and/or height of the existing antennas in the array or on a utility pole; an increase of the overall tower height by more than 10% of the originally approved and/or constructed tower or support structure height (whichever is less); or an increase to the dimensions of the existing ground-based, rooftop, pole-mounted, or other equipment area (as determined by existing perimeter fencing, existing heights of equipment shelters, aggregate volume of utility-pole-mounted equipment, or other criteria) or proposed lighting or beacon where one does not currently exist.

**MODIFICATION, MINOR** — Modification or upgrade to an existing wireless telecommunications facility that does not substantially change (see definition) the physical dimensions or visual impact of any aspect of the facility, as determined by the ~~Board of Trustees and/or~~ Building Inspector (i.e., other than a major modification). Minor modifications may include, but are not necessarily limited to, replacement of existing antennas with new models that results in equal or lesser number and/or equal or lesser height of the existing antennas in the array or on the utility pole; no increase to the overall tower or support structure height (or an increase in tower/support structure height of less than 10% of the originally approved and/or constructed height (whichever is less)); or no changes to the existing dimensions of the ground-based, rooftop, pole-mounted, or other equipment area (as determined by existing perimeter fencing, existing heights of equipment shelters, aggregate volume of utility-pole-mounted equipment or other criteria). For modifications to permitted rooftop or other structure (non-tower, non-small cell) facilities, the height shall not be increased above five feet of the existing facility's tallest element.

**MONOPOLE** — A streamlined, self-supporting pole structure constructed of wood, steel or concrete with below-grade foundations and with no exterior guy cables or anchors.

**MOUNT** — The structure or surface upon which antennas and ancillary equipment are mounted and likely to be visible to the general public, including but not limited to the following four types of mounts:

- A. **ROOF-MOUNTED** — Mounted on the roof of a building.
- B. **SIDE-MOUNTED** — Mounted on the side of a building.
- C. **STRUCTURE-MOUNTED** — Mounted on a telecommunications tower structure or structure other than a building, such as a utility pole. This may include an antenna array frame system, antennas mounted flush to the structure surface for tower systems, and small cells.

**NON-IONIZING ELECTROMAGNETIC RADIATION (NIER)** — Non-ionizing 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.

**PERSONAL WIRELESS FACILITY** — See definition for "wireless"

telecommunications facilities."

**PERSONAL WIRELESS SERVICES or PWS or PERSONAL TELECOMMUNICATIONS SERVICE or PCS** — Shall have the same meaning as defined and used in the 1996 Telecommunications Act, or subsequent FCC rulings.

**RADIO FREQUENCY (RF) RADIATION** — The transmission RF emissions from operational wireless telecommunications facilities.

**RADIO FREQUENCY (RF) TECHNICAL EXPERT** — A certified or licensed radio frequency (RF) engineer specializing in electrical or microwave engineering, specifically the study of radio frequencies.

**REPEATER** — A small receiver/relay transmitter designed to provide service to areas that are not able to receive adequate coverage directly from a primary sending and receiving site in a wireless communication network.

**SENSITIVE RECEPTOR** — A place/land use (e.g., historic property, scenic overlook, wetland) that may have an increased sensitivity to views or noise generated by a wireless telecommunications facility.

**SEPARATION** — The distance between one carrier's antenna or array of antennas and another carrier's antenna or array of antennas.

**SETBACK** — The distance in feet between a structure or element of a wireless telecommunications facility (e.g., tower, equipment shelter, ground-based compound fencing) and a property line, right-of-way (ROW) boundary, or an identified physical feature such as a structure on the property or a natural feature such as a watercourse or regulated wetland.

**SMALL CELLS/SMALL CELL NODE** — Low-powered wireless antennas and base stations that function like cells in a mobile wireless network, typically covering localized outdoor areas such as traffic and transit corridors, commercial or shopping districts, and other places of congregation, and in areas where additional network coverage and capacity may be required to supplement existing wireless service. Small cell antennas and supporting equipment are typically affixed to new or existing utility poles or other structures and installed lower to the ground than conventional panel antennas on telecommunications towers to provide wireless services within a specific geographic area. Small cells are typically used to provide wireless services for one provider. A single small cell installation (e.g., one antenna and supporting equipment on a given utility pole or other structure, with a maximum height from the grade to the highest element of no greater than 50 feet) is referred to as a "node." Any new support structures for a small cell will be 50 feet or less in height above ground level.

**SPECIAL USE PERMIT** — The official document or permit issued by the Board of Trustees pursuant to which an applicant is permitted to construct, maintain, and use a wireless telecommunications facility as granted or issued pursuant to this chapter. The Board of Trustees is hereby authorized to review and approve, approve with modifications, or disapprove special use permit applications and site plans consistent with Village Law §§ 7-725-a and 7-725-b.

**STATE** — The State of New York.

**STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA or SEQR)** — The State Environmental Quality Review Act of New York State as codified in 6 NYCRR 617.

**STEALTH OR STEALTH TECHNOLOGY** — A method of installing and/or constructing wireless telecommunications facilities with designs that conceal or disguise their presence (see "camouflaged facility" definition). This may include but is not limited to the use of color-matching, antenna concealment systems for small cells and rooftop proposals, screening walls, artificial tree limbs for new telecommunications towers, landscaping around ground-based equipment areas, and installing ancillary equipment underground.

**STRUCTURE** — A pole, tower, ground-based equipment, 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).

**SUBSTANTIAL CHANGE** — An increase in the size of an existing telecommunications tower; other structure such as a rooftop, water tank, or utility pole that accommodates a permitted antenna facility; or ground-based equipment consisting of one or more of the following unless otherwise required by law:

A. Height/antenna placement.

- (1) The mounting of antennas on a tower greater than 50 feet tall or structure that would:
  - (a) Increase structure height by more than 10% of the tower height or antenna height originally approved or constructed (whichever is less); or
  - (b) The mounting of one additional antenna array with vertical separation from the nearest existing antenna of up to 20 feet, if resulting tower or structure height is increased by more than 10% of the height originally approved or constructed.
- (2) The mounting of the proposed antenna may exceed the size limits set forth in this Subsection A if necessary, to avoid interference with existing antennas. For modifications to permitted DAS or small cell sites, the pole shall not be increased above 50 feet in height, and the aggregate volume of all antennas and ancillary equipment shall be a maximum of 40 cubic feet at any node. For modifications to permitted rooftop or other structure (non-tower, non-small cell) facilities, the height shall not be increased above five feet of the facility's tallest element;

B. Ground-based and ancillary equipment: the installation of additional equipment cabinets or shelters that would increase the overall dimension of the existing ground-based compound, rooftop, or other equipment compound by more than 10% of the existing. This is including but not limited to the perimeter of existing security fencing or the height of the tallest existing element (e.g., top of ice bridge or shelter) as measured from surrounding grade or other markers. New equipment proposed at a small cell site that exceeds the aggregate volume noted above may be proposed to be placed below grade;

C. Ground-based equipment: the excavation outside the current tower or other structure site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site. For small cell sites, no equipment shall be installed at grade;

D. Ancillary equipment: the installation of new or additional generators, resulting in



increases to noise at the property line by more than conditions stipulated in the Village code;

- E. Lighting: the installation of new FAA- or FCC-required or other lighting on the tower structure, or an increase in ground-based, rooftop, or other lighting that increases impacts by more than 10% from permitted conditions. Strobe or flashing lighting will not be permitted without documentation of FAA or other applicable requirements; or
- F. The addition of an appurtenance to the body of the tower or structure that would protrude horizontally from the edge of the existing support structure by three feet or more than the distance that existing appurtenances protrude from the edge of the existing support structure, except that the mounting of the proposed antenna may exceed the size limits set forth in this Subsection F if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.

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

**TELECOMMUNICATIONS SITE** —

- A. See definition for "wireless telecommunications facilities."
- B. A structure used in providing the services described in the definition of "wireless telecommunications facilities."

**TEMPORARY** — Temporary in relation to all aspects and components of this chapter, something intended to, or that does, exist for less than 180 days.

**VILLAGE** — The Incorporated Village of Russell Gardens.

**WIRELESS CARRIER/SERVICE PROVIDER** — Any company which is licensed by the FCC to operate wireless telecommunications facilities.

**WIRELESS TELECOMMUNICATIONS FACILITIES or TELECOMMUNICATIONS TOWER or TELECOMMUNICATIONS SITE or PERSONAL WIRELESS FACILITY** — An existing, replacement, or new structure, facility, or location designed or intended to be used as, or used to support, antennas and ancillary or accessory equipment. It includes, without limit, freestanding towers, lattice towers, guyed towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign, utility poles, or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal telecommunications services (including 4G-, LTE- and 5G-licensed frequencies), emergency services, or microwave telecommunications, but excluding those used exclusively for Village fire, police and other dispatch telecommunications, or exclusively for private radio and private citizen's bands, amateur radio and other similar telecommunications.

**WIRELESS TRANSMITTER** — For purposes of this chapter, wireless transmitters are broadly defined as any and all equipment, such as antennas, receivers, repeaters, and meters, installed on a utility pole or other structure for purposes of communications or data transmission. These include equipment utilized by wireless carriers/service providers, public utility companies, and other entities to render services to customers or provide

communication/data transfers among its personnel in accordance with all applicable licenses and permits to operate such systems. Wireless transmitters located in the ROWs shall be subject to the requirements of this chapter.

**§ 50A-3. Policy and goals for special use permits and building permits.**

- A. In order to ensure that the placement, construction, and modification of wireless telecommunications facilities protects the Village's health, safety, public welfare, environmental features and other aspects of the quality of life specifically listed elsewhere in this section, the Board of Trustees hereby adopts an overall policy with respect to a special use permit and/or building permit for wireless telecommunications facilities for the express purpose of achieving the following goals:
- (1) Implementing an application process for person(s) seeking a special use permit for wireless telecommunications facilities.
  - (2) Implementing an application process for person(s) seeking a building permit for:
    - (a) A minor modification (see definition) or co-location to an existing wireless telecommunications facility with an existing special use permit; or
    - (b) Other wireless facilities (new or major modification) with an existing special use permit.
  - (3) Establishing a policy for examining an application for issuing a special use permit or building permit for wireless telecommunications facilities that is both fair and consistent, and in accordance with applicable laws and regulations.
  - (4) Establishing a policy for examining a building permit application that is both fair and consistent.
  - (5) Establishing reasonable time frames for granting or not granting a special use permit for wireless telecommunications facilities, or recertifying or not recertifying or revoking the special use permit granted under this section.
  - (6) Establishing reasonable timeframes for granting or not granting a building permit for a wireless telecommunications facility.
  - (7) Promoting and encouraging, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers.
  - (8) Promoting and encouraging, wherever possible, the placement, height and quantity of wireless telecommunications facilities in such a manner as to minimize adverse aesthetic impacts to the property, buildings and other land uses adjacent to, surrounding and, in general, the same area as the requested location of such wireless telecommunications facilities. Recognizing the needs for network densification and service in high-use areas along state highways and roads, the South Middle Neck Road and Northern Boulevard corridors and commercial/industrial areas.
- B. With respect to this application process, the Board of Trustees shall designate itself as the lead agency, pursuant to the New York State Environmental Quality Review Act (SEQRA), unless otherwise provided by SEQRA or other applicable law. The Board of Trustees shall conduct an environmental review of the proposed project in combination

with its review of the application under this chapter.

**§ 50A-4. Special use and building permit application and other requirements.**

No person shall build, erect, or construct a wireless telecommunications facility upon any parcel of land within any zoning district within the Village unless a special use permit or building permit shall have been issued in accordance with this Chapter 50A. The Board of Trustees is hereby authorized to review special use permit applications submitted pursuant to this section as set forth herein. The Building Inspector is hereby authorized to review building permit applications submitted pursuant to this section as set forth herein.

- A. All applicants for a special use permit or building permit for wireless telecommunications facilities or any modification (major or minor) of such facility shall comply with the requirements set forth in this section. Applications for a special use permit for wireless telecommunications facilities shall be made to the Board of Trustees. Applications for a building permit for wireless telecommunications facilities shall be made to the Building Inspector. Said Board of Trustees or Building Inspector is the officially designated agency that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use or building permits for wireless telecommunications facilities. The Village may, at its discretion, delegate or designate other official agencies of the Village to accept, review, analyze, evaluate and make recommendations to the Board of Trustees or Building Inspector with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for wireless telecommunications facilities.
- B. An applicant shall submit to the Village the number of completed applications determined to be needed. The applicant may elect to schedule a preapplication meeting to discuss the proposed facility and solicit feedback from the Board of Trustees and AAB prior to submitting the full application.
- C. An application for a special use permit or building permit for wireless telecommunications facilities 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, or ROW entity/ pole owner, if different from the applicant, shall also sign the application. At the discretion of the Board of Trustees or Building Inspector, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- D. Applications not meeting the requirements stated herein, or which are otherwise

incomplete, may be rejected by the Board of Trustees or Building Inspector.

- E. The applicant shall include with the application a written certification:
- (1) That the applicant's proposed wireless telecommunications facilities will be maintained in a safe manner, and in compliance with all conditions of the special use or building permit, without exception, as well as with all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Village, state and federal laws, rules and regulations.
  - (2) That the applicant is authorized to do business in the State of New York.
  - (3) That the facility will be completed and will provide service within 180 days of the date of the grant of the special use permit.
  - (4) There is nothing in the agreement between the applicant and property owner/ ROW owner that would limit or preclude the ability of the applicant to share any new telecommunications tower or support structure that it constructs.
- F. DAS, small cell nodes and wireless transmitters shall require a special use permit unless the proposal is in accordance with the co-location and minor modification definitions of the code, as determined by the Village Board. For all proposed small cell/DAS nodes, the aggregate volume of the antenna at each node, including antenna enclosure and mount, will not exceed three cubic feet. The aggregate volume of all other visible equipment, including but not limited to meter boxes, radio shrouds, and conduits affixed to the utility pole, will not exceed 28 cubic feet at each node. The maximum height (measured from surrounding grade to top of the highest proposed element) shall not exceed 50 feet for small cells, except as otherwise permitted by the Board of Trustees based on a review of supporting technical information (e.g., height of an existing utility pole or structure on which small cell equipment is proposed is greater than 50 feet). The minimum height of any pole-mounted equipment shall not be less than eight feet above surrounding grade. No at-grade equipment shall be permitted at small cells or DAS nodes.
- G. The Board of Trustees shall be empowered to request supporting information on agreements between the applicant and pole owner (structural analysis, communication zone where small cell equipment is allowed); information on the FCC-licensed provider(s) of wireless services utilizing DAS and small cells, including coverage and/or capacity need documentation; and technical information and samples of specifications, cut sheets, aggregate equipment volumes, heights of mounted equipment, and color/texture options for such DAS and small cell antennas and ancillary equipment, and to condition the issuance of a special use permit upon implementation of stealth installation or other measures which mitigate visual effects to the maximum extent possible. No more than five small cell nodes involving locations in county or state rights-of-way, inclusive of the areas noted in § 85-3A(8), shall be submitted in a single application to the Board of Trustees, and no more than three small cell nodes involving other locations shall be submitted in a single application. DAS and small cell nodes located on structures other than utility poles (e.g., rooftops, water tanks, large commercial signage) shall require a special use permit. A

building permit will be required for all small cell and DAS nodes located in the Village.

H. Special use permit application requirements. All applications shall contain the following:

- (1) Permit application form and checklist.
- (2) Visual and aesthetic details.
- (3) The name, address and phone number of the person submitting the application.
- (4) The name, address and phone number of the property owner, operator and applicant and, if applicable, utility pole owner and ROW holder.
- (5) The postal address and tax map designation of the property and/or right-of-way information such as utility pole number and coordinates.
- (6) The zoning district or designation in which the property is situated.
- (7) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines. For sites proposed within the right-of-way, the dimensions of the right-of-way and locations of existing and proposed overhead/subsurface utilities and adjoining property lines shall be indicated.
- (8) The location of the nearest residential structure.
- (9) The location of the nearest habitable structure.
- (10) A radius map, certified by its preparer, showing the name, address, section, block and lot number on all property located within 500 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located.
- (11) The location, size and height of all structures on the property.
- (12) The location, size and height of all proposed and existing antennas and all appurtenant structures, including support structures and accessory equipment
- (13) The type, location and size of all proposed and existing landscaping and fencing.
- (14) The number, type and design of the antenna(s) proposed.
- (15) The make, model and manufacturer of the tower/pole, antenna(s) and all ancillary equipment.
- (16) A description of the proposed wireless telecommunications facility and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including heights above existing grade, materials, color and lighting.
- (17) Documentation that demonstrates the need for the wireless telecommunications facility to provide service and eliminate a substantial gap in service. The location(s) of the service gap areas shall be documented and described with supporting technical information outlined below. If the applicant is a tower or infrastructure company and not an FCC-licensed wireless carrier, the name(s) of

the wireless carrier(s) and associated information for the carrier(s).

- (18) Documentation as a report with narrative and graphical representation that describes the need for service, with inclusion of existing cell sites and justification of why the proposed site is necessary.
- (19) Signal propagation and/or capacity studies for the proposed site and all adjoining proposed, in-service, or existing sites of that wireless carrier that demonstrate service shortfalls and the need for the proposed facility. The submitted technical information shall include all FCC-licensed frequencies that are proposed in the application along with In-Building and In-Vehicle (or comparable) signal strengths for low-band and high-band frequencies that are proposed. Signal strength used in the modeling (e.g., RSRP) shall also be noted and disclosed. A report certified by a qualified RF engineer shall be provided which describes the technical submittals and describes why a higher- priority location is not available or technically feasible. Name and description of modeling software and a description of the model inputs (e.g., level of service), shall be provided.
- (20) To corroborate signal propagation maps and need for a new facility, drive testing data and associated maps capturing signal provided from existing sites in the area shall be required for the application. The drive test data shall include a description of the methods and instrumentation used.
- (21) The actual intended transmission and the maximum effective radiated power in watts of the antenna(s) and antenna sectors.
- (22) Direction of maximum lobes and associated radiation of the antenna(s) and antenna sectors.
- (23) The frequency, modulation and class of service of radio or other transmitting equipment, inclusive of licensed cellular, PCS, 4G, LTE, AWS, 5G and other technologies.
- (24) Certification that the NIER levels at the proposed site are within the permissible threshold levels adopted by the FCC, with supporting modeling, data, and other calculations that demonstrate the current FCC health-based criteria.
- (25) Certification that the proposed antenna(s) will not cause interference with other telecommunications devices.
- (26) Copy of lease or other agreement between the applicant and the property or ROW owner.
- (27) Structural analysis or certification by a New York State PE that an existing or new structure on which a wireless telecommunications facility is proposed has adequate structure capacity to accommodate such installation.
- (28) A noise analysis, defining sound in dBA from the proposed facility to the nearest property line.
- (29) Site plan. An applicant shall be required to submit a site plan as follows: The site plan shall show all existing and proposed structures and improvements, including

roads, access, existing ROWs, property lines, and shall include grading plans for new facilities, roads, parking areas, landscaping, and fencing. The site plan shall also include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower or antennas and justification for any land or vegetation clearing required. Additionally, the Board of Trustees shall require that the site plan and landscaping plan addresses other standards listed within this section, with particular attention to visibility from key viewpoints within and outside of the municipality.

- (30) Applicant's and/or owner's proposed tower/pole maintenance and inspection procedures and related system of records.
- (31) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities. For DAS and small cell facilities in a ROW, a copy of the New York State Power Service Commission license to locate within the right-of-way shall also be submitted.
- (32) A written report demonstrating the applicant's meaningful efforts to secure shared use of existing wireless telecommunications facilities, or the use of alternative buildings, existing small cell sites or other existing structures within or adjoining the Village. Copies of written requests and responses for shared use shall be provided to the Board of Trustees as part of the application, along with any letters of rejection stating the reason for rejection. If co-locating at existing cell sites cannot work from a technical basis, the applicant shall submit a technical report describing these supporting analyses. A written technical report from an engineer that the proposed tower or telecommunications facilities cannot be installed or co-located on another existing tower or usable antenna support structures owned by others located within a one-half-mile radius of the proposed facility.
- (33) Certify that the wireless telecommunications facility, foundation and attachments are designed and will be constructed to meet all local, Village, state and federal structural requirements for loads, including wind and ice loads. The New York State Uniform Building Code and the latest release of TIA-222 shall be utilized and referenced on drawings and in the structural analyses.
- (34) Certify that the wireless telecommunications facility will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- (35) Long-form EAF with visual analysis.
- (36) Demonstrate and provide in writing and/or by drawing effective screening from view the ground-based equipment, pole-mounted equipment, and all related facilities and structures of the proposed facility.
- (37) Visual impact assessment which shall include:
  - (a) A Zone of Visibility Map shall be provided in order to determine locations from which the wireless telecommunications facility may be seen.
  - (b) Pictorial representations of before and after views (photosimulations) from key viewpoints both inside and outside (if applicable) of the Village as may be appropriate, including, but not limited to, state highways and other major

roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; residential properties from which the site is visible, and from any other location where the site is visible to a large number of visitors, travelers or residents. The applicant may elect to determine the appropriate key sites prior to a balloon test.

- (c) An assessment of the visual impact of the wireless telecommunications facility ground-based equipment, small cell equipment mounted to the pole, at street level, from abutting and adjacent properties and streets which will demonstrate the need or appropriateness of screening of said structures.
  - (d) Aesthetic impacts and sight lines should be shown and considered from the perspective of nearby residences as well as street views. Aesthetic impact evaluation includes consideration of adverse visual impacts on the character of the area, the area's existing features and land use and how it appears, and the existence of similar structures in the area.
  - (e) Photo examples of existing wireless facilities (such as monopoles, stealth tree monopoles, other structures, small cell nodes) that are similar in appearance and height to what is being proposed.
- (38) Demonstrate that the facility has been sited to minimize the adverse visual and physical impacts and effect on the environment, the adjacent neighborhood, and the Village and its character.
  - (39) In order to better inform the public of the potential visual impact of a new wireless telecommunications facility, the applicant shall, at the discretion of the Board of Trustees, conduct a balloon test prior to the public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a brightly colored balloon a minimum of three feet in diameter, at the maximum height of the proposed new wireless telecommunications facility. The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be published in the official newspaper of the Village. The applicant shall inform the Village, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least three consecutive hours between 9:00 a.m. and 4:00 p.m. on the initial date. The secondary date may be on a weekday.
  - (40) An analysis, completed by a qualified individual or entity, to determine if the wireless telecommunications facility or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration Regulation Part 77. This requirement shall be for any new wireless telecommunications facility or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided to the Village in a timely manner.
- I Any and all representations made by the applicant or its counsel to the Board of Trustees, on the record or otherwise, during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith



by the Board of Trustees.

- J. All utilities at a wireless telecommunications facilities site shall be installed underground unless otherwise required by law, and in compliance with all applicable ordinances, rules and regulations of the Village, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate. The Board of Trustees may waive or vary the requirements of undergrounding installation of utilities whenever, in the opinion of the Board of Trustees, such variance or waiver shall not be detrimental to the health, safety, general welfare and environment, including the visual and scenic characteristics of the area. For small cells, no equipment shall be situated at grade unless approved by the Board of Trustees or Building Inspector.
- K. Both the wireless telecommunications facility and any and all accessory or associated facilities shall maximize the 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, which shall include the utilization of stealth or concealment technology as may be required by the Board of Trustees.
- L. Telecommunications sites shall provide an access road, turnaround space, and parking to assure adequate emergency and service access. Existing roads, whether public or private, shall be used to the maximum extent possible. Road construction shall, at all times, minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. No access road or parking shall be proposed for DAS or small cell sites located in a right-of-way.
- M. A person who holds a special use permit or building permit for wireless telecommunications facilities shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted wireless telecommunications facilities in strict compliance with all then-current, applicable technical, safety and safety-related codes adopted by the Village, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code, the National Electrical Code, FAA, and FCC, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors as modified and updated from time to time. The codes referred to are codes that include, but are not limited to, use, construction, building, electrical, fire, safety, health and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- N. A holder of a special use permit granted under this chapter shall obtain, at its own expense, all permits, including a building permit from the Village, and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Village or other governmental entity or agency having jurisdiction over the permittee.
- O. With respect to the application process, the Board of Trustees will seek lead agency status pursuant to SEQRA. The Board of Trustees shall conduct an environmental review of the proposed project pursuant to SEQRA in combination with its review of the application and site plan pursuant to this chapter. Other building permit applications associated with new wireless telecommunications facilities which have

obtained a special use permit will not require a separate SEQRA submittal unless otherwise required by law.

- P. Shared use of facility.
- (1) The owner of the proposed new wireless telecommunications facility, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed wireless telecommunications facility by other wireless service providers in the future. Copies of correspondences soliciting co-location interest from other commercial carriers shall be submitted with the letter to the Board of Trustees. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. The letter shall commit the new tower owner or wireless facility operator and their successors in interest to respond within 60 days to a request for information from a potential shared-use applicant.
  - (2) The applicant shall disclose, in writing, any agreement in existence prior to submission of the application that would limit or preclude the ability of the applicant to share:
    - (a) Any new telecommunications tower; or
    - (b) New small cell or DAS facility that it constructs.
- Q. Negotiate in good faith concerning future requests for shared use of the new wireless telecommunications facility by other telecommunications providers.
- (1) Allow shared use of the new wireless telecommunications facility if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the wireless telecommunications facility or equipment to accommodate a shared user without causing electromagnetic interference.
  - (2) Failure to abide by the conditions outlined above shall be grounds for revocation of the special use permit for the wireless telecommunications facility.
- R. The holder of a special use permit shall notify the Village of any intended modification of a wireless telecommunications facility and shall apply to the Board of Trustees to modify, relocate or rebuild a wireless telecommunications facility.

**§ 50A-5. Building permit application for minor modifications; co-locations for existing wireless telecommunications facilities; other requirements.**

- A. The Building Department may issue building permits for proposed minor modifications and proposed co-locations at existing, permitted wireless telecommunications facilities and for proposed co-locations at other structures (e.g., rooftops, water tanks) after the first such co-location; provided that all of the requirements set forth herein are met.

With the Building Department's building permit approval, a new or amended special use permit or site plan shall not be required for the below-specified minor modifications and co-locations:

- (1) If the applicant is proposing minor modifications to an existing permitted wireless facility, as defined in this section, and:
  - (a) It is demonstrated that transmit power, frequency/class of service, and NIER levels remain within FCC MPE criteria; and
  - (b) It is demonstrated that the proposed modification equipment and installation would not exceed the structural capacity of the existing facility or structure, including but not limited to foundations, supports, and existing antenna mounts; and
  - (c) No additional local, county, or state approvals/permits are required (e.g., FAA, NYSDOT, NYSDEC), other than a building permit; and
  - (d) The existing wireless telecommunications facility or structure complies with the provisions of Chapter 50A and all other provisions of law outside of this section including, but not limited to, all applicable zoning restrictions and building permit requirements.
- (2) If the applicant is proposing co-location of new wireless equipment at an existing wireless telecommunications facility as defined in this chapter, and:
  - (a) For proposed co-locations at an existing wireless telecommunications facility where the proposed co-location is on a permitted tower/pole which contains one or more telecommunications facilities that have been approved in accordance with this section, provided that: the height of the existing structure is not increased by more than 10% of the originally approved tower height at time of construction and provided that it does not increase the overall tower height to over 150 feet; there is no change to the lighting scheme at the site or noise at the nearest property line; and all height, setback and design requirements as set forth in this section or in the original site plan approval are met. All accessory structures, including, but not limited to, equipment, equipment cabinets, equipment sheds/shelters, and generators, must also comply with the standards set forth in this section; and
  - (b) For proposed co-locations on a rooftop or other structure, including, but not limited to, water tanks, and utility poles where one or more wireless telecommunications facility exists at the time of application and where no increase in height is proposed (as determined by the existing rooftop element with the highest elevation or the existing antenna height on the support structure), provided that there is no change to the lighting scheme at the site or noise at the nearest property line, and provided that all height, setback, and design requirements as set forth in this section or in the original site plan approval are met. Antennas and all accessory structures, including, but not limited to, equipment, cables, equipment cabinets, equipment sheds/shelters, and generators, must also comply with the standards set forth in this section, and all other provisions of law in this chapter and outside of this chapter. Co- location of small cells/DAS on a common utility pole may be entertained to reduce the proliferation and consolidate

these cell sites; however, the height of any utility pole may not be increased, and the aggregate volume of the antenna and visible ancillary equipment at each node location shall not increase above that which was approved by more than 25%. The Building Inspector will determine if additional bulk, height, or other potential visual impacts will necessitate referral of such co-location applications to the Village Board; and

- (c) Documentation that demonstrates the need for the wireless telecommunications facility to provide service and eliminate a substantial gap in service is provided; and
  - (d) It is demonstrated that transmit power, frequency/class of service, and NIER levels remain within FCC MPE criteria; and
  - (e) It is demonstrated that the proposed co-location equipment and installation would not exceed the structural capacity of the existing wireless facility or other support structure, including but not limited to foundations, supports, and existing antenna mounts; and
  - (f) No additional local, county, or state approvals/permits are required (e.g., FAA, NYSDOT, NYSDEC), other than a building permit; and
  - (g) The existing wireless telecommunications facility or structure complies with the provisions of this section and all other provisions of law in this chapter and outside of this chapter, including but not limited to all applicable zoning restrictions and building permit requirements.
- B. The issuance of a building permit for a minor modification or co-location as described above is a Type II Action under SEQR.
- C. Building permit application requirements. A current building permit application form and checklist shall be submitted to the Building Department and Board of Trustees, which shall certify that the application is complete before the application is reviewed. Waivers from certain application items may be proposed in writing at the time of the application.
- D. The Building Department may refer minor modification and co-location applications to the Board of Trustees for review of and recommendation on visual effects, proximity to sensitive receptors, safety considerations, or other reasons in accordance with this chapter. The Board of Trustees may recommend that an application be considered a major modification or otherwise require a special use permit, provided that it finds and states that the facility for which the permit is requested would, if erected, constructed, or altered as proposed, cause one or more harmful visual effects under guidelines herein. Prior to recommendation that an application be considered as a major modification or for a special use permit, the Board of Trustees shall afford the applicant an opportunity to meet with it and discuss suggestions for changes in the application. The Board of Trustees may determine the application to be a minor modification upon finding that the facility or structure for which the permit is requested, if erected or altered in accordance with the submitted plan, would be in harmony with this chapter. If the Building Department determines that a minor modification, co-location, or DAS/small cell application is a major modification or Board

of Trustees review is requested, then the applicant will be notified within 30 business days of receipt of the application, notwithstanding all other provisions of law outside of this chapter.

**§ 50A-6. Location of wireless telecommunications facilities.**

- A. Applicants for wireless telecommunications facilities shall locate, site and erect said wireless telecommunications facilities in accordance with the following priorities, one being the highest priority and six being the lowest priority. The applicant shall demonstrate to the Board of Trustees its attempts to locate on the highest- priority sites available.
1. On existing nonresidential structures such as multistory buildings and existing telecommunications towers or other similar nonresidential structures when placement of wireless facilities, including but not limited to antennas, does not increase the height of the structure and fronting on the following major thoroughfares: Northern Boulevard and South Middle Neck Road;
  2. On electric, telephone and any other existing utility poles outside of Residentially-zoned areas and on the following major thoroughfares: Northern Boulevard and South Middle Neck Road.
  3. On existing business and commercial properties;
  4. On Village-owned properties or facilities;
  5. On other properties in the Village. No existing structure shall be modified to serve as a transmission tower unless in conformity with the regulations established herein.
  6. Other locations not meeting the above priority criteria shall only be permitted by the Board of Trustees when the applicant demonstrates to the Board's satisfaction that a priority site is not available and the alternative site, to the maximum extent practicable, protects and preserves the aesthetic qualities, open space characteristics of the Village, the property values of the community and the health, safety, and welfare of Village residents.
- B. Towers shall be permitted only as a last alternative after all other transmission alternatives have been proven not to be effective to eliminate substantial gaps in service. Guy wire towers shall not be permitted.
- C. If the need for a new tower is proven, the tower shall be no taller than the minimum

height necessary to eliminate substantial gaps in service in the area.

- D. If the proposed site is not the highest priority listed in Subsection A of this section, then a detailed explanation must be provided as to why any individual site(s) of any higher priority type was not selected or available. The applicant seeking such an exception must satisfactorily demonstrate the reason or reasons why such a 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.
- E. An applicant may not bypass sites of higher priority by stating that the site proposed is the only site leased or selected. An application shall always address co-location as the first preference of the Village. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Board why co-location is not feasible.
- F. Notwithstanding the above, the Village may approve any site located within an area in the above list of priorities, provided that the Village finds that the proposed site is in the best interest of the health, safety and welfare of the Village and its inhabitants and will not have a deleterious effect on the aesthetic nature and character of the community, the neighborhood and on nearby property values. Notwithstanding the above, the Village may disapprove any site located within an area in the above list of priorities, provided that the Village finds that the proposed site is not in the best interest of the health, safety and welfare of the Village and its inhabitants and will have a deleterious effect on the aesthetic nature and character of the community, the neighborhood and on nearby property values.
- G. The applicant shall submit a written report demonstrating the applicant's review of the above categories of locations in order of priority, demonstrating the reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation shall be included with the application, explaining why categories of sites of a higher priority were not selected or available.
- H. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Village may disapprove an application for any of the following reasons:
  - (1) Conflict with safety and safety-related codes and requirements;
  - (2) Conflict with the historic nature or aesthetic character of a neighborhood or historical district;
  - (3) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a master plan or specific zoning or land use designation;
  - (4) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Village, or employees of the service provider or other service providers; or

- (5) Conflicts with the provisions of this chapter or any applicable laws and regulations.

**§ 50A-7. Shared use of wireless telecommunications facilities and other structures.**

- A. Co-locating on existing wireless telecommunications facilities or other structures without increasing the height, as opposed to the construction of a new wireless telecommunications facility or increasing the height of the existing facility, shall be preferred by the Village. The applicant shall submit a comprehensive report inventorying existing wireless telecommunications facilities and other suitable alternative structures within a two-mile radius of the location of any proposed new site, major modification, or wireless telecommunications facilities, and demonstrate conclusively why an existing wireless telecommunications facility or other suitable structure cannot be used.
- B. An applicant intending to locate on an existing wireless telecommunications facility or other suitable structure shall be required to document the consent of the existing owner to permit its use by the applicant.
- C. Such shared use shall consist only of the minimum antenna array necessary to provide service primarily and essentially within the Village.

**§ 50A-8. Height of telecommunications tower(s) and antennas.**

- A. The applicant shall submit documentation justifying the total height of any wireless telecommunications facility and/or antenna or antenna array. Such documentation will be analyzed in the context of the justification of the height needed to provide service to the Village and surrounding area. Any new support structures for DAS or small cells will be 50 feet or less in height above ground level. No small cell or DAS antenna or supporting element shall extend more than six feet above the height of the structure.
- B. If the need for a new wireless telecommunications facility can be proven, the maximum permitted height of a wireless telecommunications facility shall be no higher than the minimum height necessary to eliminate substantial gaps in service, whether in whole or in part.
- C. Antennas and accessory equipment of wireless telecommunications facilities situated on existing building roofs shall not extend greater than 15 feet above the roofline or 10 feet above the highest existing rooftop element.

**§ 50A-9. Appearance and visibility of wireless telecommunications facilities.**

- A. All wireless telecommunications facilities shall employ stealth design measures, as determined by the Board of Trustees or Building Inspector. This may be determined based on before and after simulation provided by the applicant.
- B. Wireless telecommunications towers shall not be artificially lighted or marked, except as required by law, or as part of a stealth design measure such as a street lamp.
- C. Wireless telecommunications facilities shall be galvanized or, if deemed necessary, painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this chapter.

- D. 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 applicable regulations, and an artist's rendering or other visual representation showing the effect of light emanating from the site on neighboring habitable structures within 1,500 feet of all property lines of the parcel on which the wireless telecommunications facilities are located.
- E. Wireless telecommunications facilities and all related cabling that are co-located on a structure other than a wireless telecommunications facility shall be of a color that matches the color of the structure to which the facilities are attached.
- F. In all cases, structures offering slender silhouettes (i.e., monopoles) shall be preferable to freestanding structures (i.e., lattice), except where such freestanding structures offer capacity for future co-location. Towers should be designed and sited to avoid, whenever possible, application of FAA lighting and painting requirements.
- G. The Village's Aesthetic Guidelines for Wireless Telecommunications Facilities shall be consulted for preferred aesthetic and mitigation techniques, including, but not limited to, colors, textures, mounting options, small cell and DAS node configurations, stealth tree design criteria such as branch density and taper, ground-based equipment, and stealth options. The guidelines will be kept on file at the Building Department.

**§ 50A-10. Security of wireless telecommunications facilities.**

Security of facilities. All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner which prevents unauthorized access, specifically as follows:

- A. All antennas, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be run into or climbed.
- B. Transmitters and telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.
- C. A monitor process or security alarm system shall be provided that will be contracted with an alarm company to contact Village of Lake Success Police Department.

**§ 50A-11. Signage.**

Wireless telecommunications facilities shall contain a sign no larger than is required to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be placed on the equipment shelter or cabinet located on the premises and be visibly able to be read from the access point of the site. Smaller signage for small cell and DAS nodes shall be affixed to the subject pole or pole-mounted equipment, or otherwise as determined by the Board of Trustees or Building Inspector in accordance with FCC regulations. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. The sign shall be approved by the Board of Trustees or Building Inspector before installation. No other signage, including advertising, shall be permitted on any facilities, antennas, antenna supporting structures or antenna towers, unless required by law.



**§ 50A-12. Lot size and setbacks.**

- A. All proposed structures associated with a wireless telecommunications facility shall be set back to comply with applicable minimum setback requirements for the zoning district in which the property is situated. On poles or other public utility structures on public utility rights-of-way, the setback shall be as required by the utility or any existing or future governing law or regulation. Proposed towers and their associated equipment shall be set back a minimum of 110% of the height of the tower above finished grade, from all property lines and existing structures. Additional setbacks may be required by the Board of Trustees to contain, on-site, substantially all ice-fall or debris from tower failure, and/or to preserve privacy of adjoining residential and public property. Setbacks shall apply to all tower parts and to any accessory facilities.
- B. Setbacks for antennas and accessory structures associated with wireless telecommunications facilities located on existing rooftops shall be set back at least 10 feet from the building edge or flush-mounted to the sides of the building.
- C. Small cell/DAS facilities, wireless transmitters, or associated equipment shall not obstruct pedestrian or vehicular traffic in any way including, but not limited to, compliance with the Americans with Disabilities Act.<sup>1</sup>

**§ 50A-13. Visual mitigation.**

- A. Landscaping and/or other screening and visual mitigation treatments, including, but not limited to, the use of camouflage, stealth or concealment technologies or treatments, shall be required to minimize the visual and aesthetic impact of such facility.
- B. All ground-based equipment and structures shall be placed so as not to be directly or easily visible from any property line.
- C. Accessory and ground-based equipment facilities shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.
- D. 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 take place without prior approval of the Board of Trustees. All existing trees over four inches in diameter shall be located on the site plan. Clearcutting of all trees in a single contiguous area exceeding 2,000 square feet shall be prohibited.
- E. Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important viewsheds or vistas. Where the site abuts residential or public

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1. Editor's Note: See 42 U.S.C. § 12101 et seq.

property, including streets, the vegetative screening shall be required. Plantings consisting of at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the ground-based equipment and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall exclude the height of any berm. Required vegetation shall be maintained as a condition of the special use permit.

**§ 50A-14. Noise.**

Noise-producing equipment shall be sited and/or insulated to minimize any increase in noise above ambient levels as measured at the property line.

**§ 50A-15. Retention of expert assistance and reimbursement by applicant.**

- A. The Board may retain any attorney, consultant and/or expert necessary to assist it in reviewing and evaluating the application, including the construction, modification and inspection of the site, once permitted, and any requests for recertification.
- B. An applicant shall deposit with the Village funds sufficient to reimburse the Village for all reasonable costs of such attorney, consultant and expert evaluation and consultation to the Board in connection with the review of any application, including the construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Village shall precede any work related to or necessitated by the applicant's contact with the Village. The Village will maintain a separate escrow account for all such funds. In reviewing the application, the Village's consultants/experts shall invoice the Village for their services at the consultant's/expert's standard rates, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Village, replenish said escrow account so that it has a balance of at least \$5,000 as determined by the Village. Such additional escrow funds shall be deposited with the Village before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Village is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. In the event the amount deposited by the applicant is insufficient to pay the actual cost of the Village consultants, the applicant shall pay any additional amount due prior to the issuance or denial of the special use permit.
- C. The total amount of the funds needed as set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.
- D. The applicant shall also reimburse the Village for the actual and necessary charges for legal fees which have been incurred by the Village in connection with the application.
- E. Any application submission shall be simultaneously submitted to the Board of

Trustees' consultants by the applicant.

**§ 50A-16. Exceptions from special use permit and building permit requirement.**

- A. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities as of the effective date of this chapter without having first obtained a special use permit or building permit for wireless telecommunications facilities. Notwithstanding anything to the contrary in this section, no special use permit or building permit shall be required for those exceptions noted in the definition of "wireless telecommunications facilities."
- B. All wireless telecommunications facilities legally existing on or before the effective date of this chapter shall be allowed to continue as they presently exist; provided, however, that any modifications (minor or major; co-location) of an existing wireless telecommunications facility must comply with the provisions of this chapter.

**§ 50A-17. Public hearing and notification requirements.**

- A. Prior to the approval of any application for a special use permit for wireless telecommunications facilities, a public hearing shall be held by the Board of Trustees, notice of which shall be published in the official newspaper of the Village no less than 15 calendar days prior to the scheduled date of the public hearing. The applicant shall notify all landowners, in writing, whose property is located within 500 feet of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located, and any property owner or organization directly impacted by the proposed facility as determined by the Board of Trustees, by certified mail, return receipt requested, no less than 15 calendar days prior to the scheduled date of the public hearing.
- B. There shall be no public hearing required for an application to co-locate on an existing wireless telecommunications facility or other structure or minor modifications, provided that there is no proposed increase in the height of the wireless telecommunications facility or other structure, including attachments thereto.
- C. The Board of Trustees shall schedule the public hearing referred to in Subsection A of this section once it determines that the application is complete. The Village, at any stage prior to issuing a special use permit, may require such additional information as it deems necessary. The Board of Trustees may waive any part or item to be contained in the application upon written request of the applicant for good cause shown, as determined by the Board.

**§ 50A-18. Action on an application for special use permit.**

- A. The Board of Trustees will undertake a review of an application pursuant to this chapter in a timely manner, consistent with its responsibilities with SEQRA, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest.

The Board may refer any application or part thereof to any advisory or other committee for a nonbinding recommendation.

- B. After the public hearing and after formally considering the application, the Board of Trustees may approve, approve with conditions, or deny a special use permit. The Board of Trustees' decision shall be in writing and shall be supported by substantial evidence contained in the record. The burden of proof for the grant of the permit shall be upon the applicant.
- C. Construction of a wireless telecommunications facility permitted under this chapter shall be started within 90 days of the date of the grant of the special use permit and be completed, obtain a certificate of completion, and provide service within 180 days of the date of the grant of the special use permit. If the requirements of this Subsection D are not complied with, the wireless telecommunications facility shall be deemed to have been abandoned, the special use permit shall be revoked, and the provisions of § 50A-28 shall be enforced.

**§ 50A-19. Recertification of special use permit or building permit.**

- A. Expiration; recertification request.
  - (1) All special use permits approved pursuant to this chapter shall expire five years from the date of issuance, unless between 12 months and six months prior to the five-year anniversary date of the special use permit, and all subsequent five-year anniversaries of the issuance of the original special use permit for wireless telecommunications facilities, the holder of a special use permit for such facility shall submit a signed, written request to the Board of Trustees for recertification. For sites that accommodate equipment of more than one FCC-licensed commercial carrier, a single recertification for the site, encompassing all carrier information, shall be submitted for recertification. Each small cell or DAS node shall be recertified individually by the Building Department. The Board of Trustees may reserve the right to assign recertification reviews to the Building Inspector.
  - (2) For wireless telecommunications facilities that were approved in accordance with this chapter via a building permit (and where a special use permit was not required), the Building Inspector will issue recertifications.
  - (3) In the written request for recertification, the holder of such special use permit or building permit shall include the following:
    - (a) The name of the holder of the permit for the wireless telecommunications facility, the tower owner/operator if not the same as the permit holder, and the property owner;
    - (b) If applicable, the number or title of the permit;
    - (c) The date of the original granting of the permit;
    - (d) Whether the wireless telecommunications facility or support structure has been moved, relocated, rebuilt, or otherwise modified since the issuance of the permit and, if so, in what manner;

- (e) If the wireless telecommunications facilities or support structure have been moved, relocated, rebuilt or otherwise modified, then whether the Board of Trustees or Building Department approved such action, under what terms and conditions, and whether there has been compliance with the terms and conditions;
  - (f) Any requests for waivers or relief of any kind from the requirements of this section and any requirements for a permit;
  - (g) That the wireless telecommunications facility or support structure is in compliance with the permit and all applicable codes, laws, rules and regulations;
  - (h) Recertification that the wireless telecommunications facility and attachments are designed and constructed and continue to meet all local, Village, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be made by a professional engineer, licensed in the state, the cost of which shall be borne by the applicant; and
  - (i) RF emissions compliance statement (cumulative, including all co-locators, if applicable).
- B. The facility is subject to an annual inspection by the Building Inspector to make certain that the facility conforms to all safety and building codes.
- C. If, after such review, the Board of Trustees or Building Inspector determines that the permitted wireless telecommunications facility is in compliance with the permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Board of Trustees or Building Inspector shall issue a recertification permit for the wireless telecommunications facility, which may include any new provisions or conditions that are mutually agreed upon with the permit holder or required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review, it is determined that the permitted wireless telecommunications facility is not in compliance with the permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Board of Trustees or Building Inspector may refuse to issue a recertification of the permit for the wireless telecommunications facility, and in such event such wireless telecommunications facility shall not be used after the date that the applicant receives written notice of the decision from the Village. Any decision requiring the cessation of use of the facility or imposing a penalty shall be in writing and supported by substantial evidence contained in the record and shall be promptly provided to the owner of the facility. In the event the wireless telecommunications facility shall not be brought into compliance within 90 days from the date of the decision of the Board of Trustees or Building Inspector, the facility shall be removed by the permittee in accordance with **§ 50A-29**.
- D. If the applicant represents that the wireless telecommunications facility can be replaced by a facility of improved visual appearance through the use of stealth technology, the permit shall be renewed on the condition that the wireless telecommunications facility shall be replaced by a wireless telecommunications

facility of improved stealth screening as approved by the Board of Trustees or Building Inspector prior to the expiration of the conditional renewal.

- E. If the applicant has submitted all of the information requested and required by this chapter, and if the review is not completed, as noted in Subsection B of this section, prior to the five-year anniversary date of the permit, or subsequent five-year anniversaries, then the applicant for the permitted wireless telecommunications facility shall receive an extension of the permit for up to six months, in order to complete the recertification review.
- F. If the holder of a permit for a wireless telecommunications facility does not submit a request for recertification of such permit within the time frame noted in Subsection A of this section, then such permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the permit, or subsequent five-year anniversaries.

**§ 50A-20. Extent and parameters of permits for wireless telecommunications facilities.**

The extent and parameters of a permit for wireless telecommunications facilities shall be as follows:

- A. Such permit shall be nonexclusive.
- B. Such permit shall not be assigned, transferred or conveyed without the express prior written consent of the Village of Russell Gardens, and such consent shall not be unreasonably withheld or delayed.
- C. Such permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled or terminated for a violation of the conditions and provisions of the permit for wireless telecommunications facilities or for a material violation of this law after prior written notice to the applicant and the holder of the permit.

**§ 50A-21. Application fee.**

- A. At the time of submission of an application for a special use permit for a new wireless telecommunications facility, a nonrefundable application fee of \$5,000 shall be paid to the Village. For small cells and DAS applications that include a new utility pole, the application fee shall be \$1,000 per node. For small cells and DAS applications that propose to utilize an existing utility pole, the application fee shall be \$500 per application. If the application is for a building permit for co-locating on or major modification of an existing wireless telecommunications facility or other structure, the nonrefundable fee shall be \$3,500. If the application is for a building permit (e.g., for co-locating on an existing telecommunications tower or structure where no substantial changes are proposed, or for a minor modification), the application fee shall be \$2,000. Joint applications for co-location on one site shall be treated as separate applications. The application fee may be changed by the Village from time to time by resolution of the Board of Trustees.
- B. The application fee for recertification of a special use permit for a wireless telecommunications facility shall be \$1,500 unless there has been a major or minor modification of the wireless telecommunications facility since the date of the issuance of the original special use permit for which the conditions of the special

use permit have not previously been modified. In the case of any modification, the fees provided in Subsection A shall apply. Any submissions or information provided of any kind shall simultaneously be provided to the Village's consultant.

**§ 50A-22. Performance security.**

The applicant and the property owner of record of any wireless telecommunications facilities site shall, at its cost and expense, be jointly required to execute and file with the Village a bond or other form of security acceptable to the Village, in an amount of \$100,000 for new tower structures greater than 50 feet in height and with such sureties as are deemed acceptable by the Village to assure the faithful performance of the terms and conditions of this chapter, and conditions of any permit issued pursuant to this chapter. For co-locations that do not increase the height of the structure attached to, the bond or other security shall be \$25,000. The full amount of the bond or security shall remain in full force and effect throughout the term of the permit, recertification 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 permit. No bond shall be required for small cells located on an existing utility pole in a public ROW.

**§ 50A-23. Reservation of authority to inspect wireless telecommunications facilities.**

- A. In order to verify that the holder of a special use permit or building permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building and zoning codes, laws, ordinances and regulations and other applicable requirements, the Village may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas, mitigation features such as stealth tree branching or other stealthing, small cell/ DAS nodes, and buildings or other accessory structures constructed or located on the permitted site.
- B. The holder of a wireless telecommunications facility permit shall at all times keep on file with the Building Department the name, address, and telephone number of the owner and operator of the permitted facility to arrange for Village inspections and required maintenance and reporting.

**§ 50A-24. Annual NIER and structural certifications.**

The holder of the special use permit or building permit for certain wireless telecommunications facilities shall, annually, certify to the Village that NIER levels at the site are within the threshold levels then currently adopted by the FCC and that the tower, utility pole, or other structure and all mounts for antennas and ancillary equipment are adequate for code compliance and public safety. Said certification shall include a report prepared in accordance with the FCC Office of Engineering and Technology Bulletin 65, as amended. The Village may hire a consultant of its choosing to analyze and verify such certification; the cost of such consultant shall be reimbursed by the applicant or permit holder. The certifying engineer shall file a copy of its license with the Village.

**§ 50A-25. Liability insurance.**

- A. The holder of a permit for a wireless telecommunications 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:
  - (1) Commercial general liability covering personal injuries, death and property damage: \$2,000,000 per occurrence, \$5,000,000 aggregate; extensions: waiver of subrogation in favor of the Village.
  - (2) Automobile coverage: \$1,000,000 per occurrence, \$2,000,000 aggregate.
  - (3) Workers' compensation and disability: statutory amounts; extensions: voluntary compensation: all states coverage, employer's liability: unlimited.
  - (4) Umbrella liability: umbrella form: \$5,000,000.
- B. The commercial general liability, automobile and umbrella insurance policies shall specifically include the Village and all elected and appointed officials, and its employees, volunteers, committee members, attorneys, agents and consultants as additional named insureds by endorsement to the policy of insurance.
- C. 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.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least 30 days' prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Village at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted wireless telecommunications facility is initiated, but in no case later than 15 days after the grant of the special use permit or building permit, the holder of the permit shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.

**§ 85-26. Indemnification.**

- A. Any application for wireless telecommunications facilities that is proposed for property located within the Village pursuant to this chapter shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, and hold harmless, and exempt the Village, and its officers, boards, 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, products performance, use, operation, maintenance, repair, installation, replacement,



removal, or restoration of said facility. 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 Village. Said indemnity shall be signed by a duly authorized corporate officer or representative of the applicant.

- B. Notwithstanding the requirements noted in Subsection A of this section, an indemnification provision will not be required in those instances where the Village itself applies for, and secures, a special use permit or building permit for wireless telecommunications facilities.

**§ 50A-27. Penalties for offenses.**

- A. In the event of a violation of this chapter or any permit issued pursuant to this chapter, the Village may impose and collect, from the property owner and/or holder of a permit for wireless telecommunications facilities, the fines or penalties as set forth below. A violation of this chapter is hereby declared to be an offense, punishable by a fine not exceeding \$350 per day, per occurrence, 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 per day 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 per day nor more than \$1,000 per day or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this chapter or of such ordinance or regulation shall be deemed misdemeanors, and for such purpose only, all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.
- B. Notwithstanding anything in this chapter to the contrary, the holder of a permit for a wireless telecommunications facility may not use the payment of fines, liquidated damages or other penalties to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the permit to termination and revocation of the permit. The Village may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the Village.

**§ 50A-28. Default and/or revocation.**

- A. If wireless telecommunications facilities are repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the permit, then the Board of Trustees or Building Inspector shall notify the holder of the permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance and that the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this chapter, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Village may, at its sole discretion, order the violation remedied within 24 hours.

- B. If within the period set forth in Subsection A above the wireless telecommunications facilities are not brought into compliance with the provisions of this chapter, or of the permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facility into compliance, then the Village may revoke such permit for such wireless telecommunications facility, and shall notify the holder of the permit within 48 hours of such action.

**§ 50A-29. Repair or removal of wireless telecommunications facilities.**

- A. Under the following circumstances, the Board of Trustees or Building Inspector may determine that the health, safety, and welfare interests of the Village warrant and require the repair or removal of wireless telecommunications facilities.
  - (1) Wireless telecommunications 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.
  - (2) Permitted wireless telecommunications facilities fall into such a state of disrepair that they create a health or safety hazard or visual blight or that the mitigation measures of the permit are no longer effective or functioning as intended.
  - (3) Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, building permit, or any other necessary authorization.
- B. If the Board of Trustees or Building Inspector makes such a determination as noted in Subsection A of this section, then the Board of Trustees or Building Inspector shall notify the holder of the special use permit for the wireless telecommunications facility within 48 hours that said wireless telecommunications facility is to be repaired or removed.
- C. The holder of the permit, or its successors or assigns, shall repair or dismantle and remove such wireless telecommunications facility, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible within 90 days of receipt of written notice from the Board of Trustees or Building Inspector. However, if the owner of the property upon which the wireless telecommunications facility is located wishes to retain any access roadway to the wireless telecommunications facility, the owner may do so with the approval of the Board. The property owner, as a condition of the special use permit, shall permit access to the property by the Village or its representatives for the purpose of implementing this section.
- D. If a wireless telecommunications facility is not repaired or removed or substantial progress has not been made to remove the wireless telecommunications facility within 90 days after the permit holder has received notice, then the Village or Building Inspector may order officials or representatives of the Village to remove the wireless telecommunications facility at the sole expense of the owner and/or permit holder. The Village may utilize the proceeds of the bond provided in § 50A-22 for

removal or maintenance of the structures authorized by this chapter.

- E. If the Village repairs, removes, or causes to be removed a wireless telecommunications facility, and the owner of the wireless telecommunications facility does not claim and remove it from the site to a lawful location within 10 days, then the Village may take steps to declare the wireless telecommunications facility abandoned, and sell it and its components.
- F. Notwithstanding anything in this section to the contrary, the Board of Trustees or Building Inspector may approve a temporary use permit/agreement for the wireless telecommunications facility, for no more than 90 days, during which time a suitable plan for repair, removal, conversion, or relocation of the affected wireless telecommunications facility shall be developed by the holder of the permit, subject to the approval of the Board of Trustees or Building Inspector, and an agreement to such plan shall be executed by the holder of the permit and the Village. If such a plan is not developed, approved and executed within said ninety-day time period, then the Village may take possession of, and dispose of, the affected wireless telecommunications facility in the manner provided in this section. The Village may approve an interim temporary use agreement/permit, such as to enable the sale of the wireless telecommunications facility.

**§ 50A-30. Adherence to state and/or federal rules and regulations.**

- A. To the extent that the holder of a permit for a wireless telecommunications facility has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, security and RF emissions standards, are changed and/or are modified during the duration of a permit for a wireless telecommunications facility, then the holder of such permit shall conform the permitted wireless telecommunications facility to the applicable changed and/or modified rule, regulation, standard, or provision within 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.

**§ 50A-31. Conflict with other laws.**

Where this chapter differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by state or federal law, this chapter shall apply.

**§ 50A-32. Waiver or modification.**

The Board of Trustees may waive or modify any of the provisions and requirements

contained herein upon application of the applicant to the Board showing just cause for such waiver or modification in order to further the purposes and intent of this chapter and compliance with the Telecommunications Act of 1996.

**§ 50A-33. Severability.**

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is held to be void, unconstitutional or invalid by a court of competent jurisdiction, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
- B. Any special use permit or building permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a court of competent jurisdiction, or is overturned by a court of competent jurisdiction, the permit shall be void in total, upon determination by the Board of Trustees or Building Inspector.

Section Two. This local law shall become effective upon filing with the Secretary of State.