

# LOCAL LAW NUMBER 3 OF 2002

## OF THE VILLAGE OF BROOKVILLE

### A LOCAL LAW REGULATING THE SITING OF WIRELESS TELECOMMUNICATIONS FACILITIES

A local law to amend Chapter 218 of the Code of the Village of Brookville entitled "Zoning" by adding a new Article VI entitled "Wireless Telecommunications Facilities Siting" and by amending Article IV, Section 218-22 to allow Wireless Telecommunications Facilities as a permitted conditional use in the Village's Residence Districts.

BE IT ENACTED by the Board of Trustees of the Incorporated Village of Brookville as follows:

Section 1. Add a new Article VI to Chapter 218 of the Code of the Village of Brookville entitled "Wireless Telecommunications Facilities Siting" to read as follows:

#### Section 218-37 Legislative Intent.

The Telecommunications Act of 1996 affirmed the Village of Brookville's authority concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Village finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, historic character, aesthetic qualities and environment of the Village and its inhabitants. In order to insure that the placement, construction and modification of Wireless Telecommunications Facilities is consistent with the Village's land use policies, the Village is adopting a single, comprehensive Wireless Telecommunications Facilities application and permit process. The intent of this Article 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 the aesthetic and environmental impacts of such Facilities, and to protect the overall health, safety and welfare of the residents of the Village of Brookville.

#### Section 218-38 Definitions.

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

1. "Accessory Facility or Structure" means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
2. "Antenna" means 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, 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.

3. **"Applicant"** means any Wireless service provider submitting an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.
4. **"Application"** means all the necessary and appropriate documentation that an Applicant is required to submit for consideration of a Conditional Use Permit for a Wireless Telecommunications Facilities as specifically set forth in this Article.
5. **"Board"** means the Board of Zoning Appeals of the Incorporated Village of Brookville which is hereby authorized to review Conditional Use Permit applications pursuant to this Article.
6. **"Co-location"** means the use of a Wireless Telecommunications Facility or other structure to support Antennae for the provision of wireless services without increasing the height of such Facility or other structure.
7. **"Completed Application"** means an Application that contains all the information and/or data required by this Article necessary to enable an informed decision to be made with respect to an Application.
8. **"Conditional Use Permit"** means the official document or permit issued by the Board of Zoning Appeals of the Village pursuant to which an Applicant is allowed to construct, maintain and use a Wireless Telecommunications Facility as granted or issued pursuant to this Article.
9. **"FAA"** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
10. **"FCC"** means the Federal Communications Commission or its duly designated and authorized successor agency.
11. **"Height"** means, when referring to a Wireless Telecommunications Facility or other structure, the distance measured from the pre-existing grade level to the highest point on such Facility or other structure, even if said highest point is an Antenna or lightening protection device.
12. **"Modification"** means the addition, removal, change or alteration of any of the physical and visually discernable components or aspects of a Wireless Telecommunications Facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Wireless Telecommunications Facility or Telecommunications Site for purposes of this Article shall be deemed as a Modification. A Modification shall not include the replacement of any components of a Wireless Telecommunications Facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a Wireless Telecommunications Facility without adding, removing, changing, or altering the Wireless Telecommunications Facility in any respect.
13. **"NIER"** means Non-Ionizing Electromagnetic Radiation.
14. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.
15. **"Personal Wireless Facility"** See definition for 'Wireless Telecommunications Facilities'.

16. **"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.
17. **Public Utility Structure** means any structure erected for the purposes of providing a public utility service including, but not limited to, water towers, electric transmission towers/poles and telephone poles.
18. **"Repeater"** means a small, supplementary and accessory bi-directional amplifier facility designed and limited in height and transmission power to provide service only where there is a failure of coverage and to minimize visual impacts and the need for primary base stations which may be attached to a structure or pole.
19. **"Secondary Wireless Telecommunication Service Facility"** means a small Wireless Telecommunication Service facility that is intended, designed and limited in its implementation to provide service only in and for an area where there is a failure of coverage that does not involve the construction of a new tower or an increase in the height of any existing structure to which it is attached.
20. **"State"** means the State of New York.
21. **"Stealth" or "Stealth Technology"** means 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, which shall mean using the least visually and physically intrusive facility.
22. **"Telecommunications"** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
23. **"Telecommunication Site"** See definition for Wireless Telecommunications Facilities.
24. **"Telecommunications Structure"** means a structure used in the provision of services described in the definition of 'Wireless Telecommunications Facilities'.
25. **"Temporary"** means, temporary in relation to all aspects and components of this Article, something intended to, or that does, exist for fewer than ninety (90) days.
26. **"Village"** means the Incorporated Village of Brookville.
27. **"Wireless Telecommunications Facilities"** includes **"Personal Wireless Facilities"**, **"Secondary Wireless Telecommunication Service Facilities"**, **"Repeaters"**, antennas and associated equipment and/or a structure, facility or location designed, or intended to be used as, or used to support, Antennas or other transmitting or receiving devices. This includes without limitation, all kinds of structures that employ camouflage technology, including, but not limited to structures such as a multi-story building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an Antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters and other structures associated with the site. It includes towers of all types intended to accommodate Wireless Telecommunications Facilities and Secondary Wireless Telecommunications Service Facilities and Repeaters. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal Telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Village's siting, building and permitting authority, excluding those used

exclusively for the Village's fire, police or exclusively for private, non-commercial radio and television reception and private citizen's bands, amateur radio and other similar non-commercial Telecommunications where the height of the facility is below the height limits set forth in this Article.

**Section 218-39. Overall Policy and Desired Goals for Conditional Use Permits for Wireless Telecommunications Facilities.**

In order to ensure that the placement, construction and modification of Wireless Telecommunications Facilities do not threaten or endanger the health, safety and welfare of the Village's residents and visitors, and to protect the public welfare, environmental features, aesthetic values and the nature and character of the community and neighborhoods and other aspects of the quality of life specifically listed elsewhere in this Article, the Village hereby adopts an overall policy with respect to a Conditional Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

- 1) Implementing an Application process for person(s) seeking a Conditional Use Permit for Wireless Telecommunications Facilities;
- 2) Establishing a policy for examining an Application for and issuing a Conditional Use Permit for Wireless Telecommunications Facilities that is both fair and consistent.
- 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 technology, 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, which shall mean using the least visually and physically intrusive facility.
- 5) Promoting and encouraging the implementation of alternative types of Wireless Telecommunications Facilities and technology such as Secondary Wireless Telecommunication Service Facilities and Repeaters to minimize the adverse visual and physical effects of Wireless Telecommunications Facilities and to protect the natural features, aesthetics and open space character of the Village.
- 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 open space character of the Village.

**Section 218-40. Conditional Use Permit Application and Other Requirements.**

- A) All Applicants for a Conditional Use Permit for Wireless Telecommunications Facilities or any modification of such Facility shall comply with the requirements set forth in this section. The Board of Zoning Appeals of the Village is the officially designated agency or body to whom applications for a Conditional Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Conditional Use 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 Zoning Appeals with respect to the granting or not granting, recertifying or not recertifying or revoking Conditional Use Permits for Wireless Telecommunications Facilities.
- B) An Application for a Conditional Use 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, if different than the Applicant, shall also sign the Application. At

the discretion of the Board, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction.

- C) Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Board.
- D) The Applicant shall include a statement in writing:
  - 1) That the Applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Conditional Use Permit, without exception, as well as 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 construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
  - 3) That the Facility will be completed and will provide service within one hundred and eighty (180) days of the date of the grant of the Conditional Use Permit.
- E) No Wireless Telecommunications Facilities shall be installed or constructed until the Application is reviewed and approved by the Board, and the Conditional Use Permit has been issued and filed with the Village Clerk.
- F) All Applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the Applicant. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the State. The Application shall include as a minimum the following information:
  - 1) Documentation that demonstrates the public necessity of the Wireless Telecommunications Facility at the location proposed to provide service primarily and essentially within the Village. Such documentation shall include, without limitation, propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
  - 2) The Name, address and phone number of the person preparing the report;
  - 3) The Name, address, and phone number of the property owner, operator, and Applicant, and to include the legal form of the Applicant;
  - 4) The Postal address and tax map designation of the property;
  - 5) The Zoning District or designation in which the property is situated;
  - 6) Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
  - 7) The Location of nearest residential structure;
  - 8) The Location, size and height of all structures on the property which is the subject of the Application;
  - 9) The Location, size and height of all proposed and existing antennae and all appurtenant structures;
  - 10) The Type, locations and dimensions of all proposed and existing landscaping, and fencing;

- 11) The number, type and design of the Wireless Telecommunications Facility and Antenna(s) proposed and the basis for the calculations of the Facilities capacity to accommodate multiple users;
  - 12) The make, model and manufacturer of the Wireless Telecommunications Facility and Antenna(s);
  - 13) A description of the proposed Wireless Telecommunications Facility and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
  - 14) The frequency, modulation and class of service of radio or other transmitting equipment;
  - 15) The actual intended transmission and the maximum effective radiated power of the Antenna(s);
  - 16) Direction of maximum lobes and associated radiation of the Antenna(s);
  - 17) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC;
  - 18) Certification that the proposed Antenna(s) will not cause interference with other telecommunications devices;
  - 19) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities;
  - 20) Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed Wireless Telecommunications Facilities on the proposed site;
  - 21) A radius map certified by its preparer showing the name, address, section, block and lot number on all property located within fifteen hundred (1,500) feet of any property line or the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located.
- G) In the case of a new Wireless Telecommunications Facility, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Wireless Telecommunications Facilities or the use of alternative buildings or other structures within or adjoining the Village. Copies of written requests and responses for shared use shall be provided to the Board as part of the Application, along with any letters of rejection stating the reason for rejection.
- H) The Applicant shall certify that the Wireless Telecommunication 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.
- I) The Applicant shall certify that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- J) An Applicant may be required to submit an Environmental Assessment Analysis and a Visual addendum. Based on the results of the Analysis, including the Visual addendum, the Board may require submission of a more detailed visual analysis. The scope of the required Environmental and visual assessment will be reviewed at the pre-application meeting.
- K) The Applicant shall furnish a Visual Impact Assessment which shall include:
- 1) A "Zone of Visibility Map" which shall be provided in order to determine locations from which the Wireless Telecommunications Facility may be seen.

- 2) Pictorial representations of "before and after" views from key viewpoints both inside and outside 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; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.
  - 3) An assessment of the visual impact of the Wireless Telecommunications Facility base, guy wires and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- L) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed Wireless Telecommunications Facilities.
  - M) Any and all representations made by the Applicant to the Board on the record 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 Village.
  - L) All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all Laws, 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.
  - M) All Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be the least visually and physically intrusive and thereby have the least adverse visual effect on the environment of the neighborhood and the Village and its character, on existing vegetation, and on the residences in the general area of the Wireless Telecommunications Facility.
  - N) 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 it 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.
  - O) At a Telecommunications Site, an access road, turn around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
  - P) A Person who holds a Conditional Use 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 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 and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety,

health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

- Q) A holder of a Conditional Use Permit granted under this Article shall obtain, at its own expense, all permits 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 Applicant.
- R) With respect to this application process, the Board will normally seek to have lead agency status pursuant to SEQRA. The Board shall conduct an environmental review of the proposed project pursuant to SEQRA in combination with its review of the Application pursuant to this Article.
- S) An Applicant shall submit to the Village the number of completed Applications determined to be needed at the pre-application meeting.
- T) The Applicant shall examine the feasibility of designing a proposed Wireless Telecommunications Facility to accommodate future demand for at least five (5) additional commercial applications, for example, future co-locations. The Wireless Telecommunications Facility shall be structurally designed to accommodate at least five (5) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference.
- U) 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, and shall:
  - 1. Respond within 60 days to a request for information from a potential shared-use applicant;
  - 2. Negotiate in good faith concerning future requests for shared use of the new Wireless Telecommunications Facility by other Telecommunications providers;
  - 3. 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.

Failure to abide by the conditions outlined above may be grounds for revocation of the Conditional Use Permit for the Wireless Telecommunications Facility.

- X) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the Village's consultants to prepare for and attend the pre-application meeting will be borne by the Applicant.
- Y) The holder of a Conditional Use Permit shall notify the Village of any intended modification of a Wireless Telecommunication Facility and shall apply to the Board to modify, relocate or



rebuild a Wireless Telecommunications Facility in the same manner as provided herein for a new Wireless Telecommunications Facility.

- Z) In order to better inform the public, in the case of a new Wireless Telecommunications Facility, the Applicant shall, prior to the public hearing on the application, conduct a "balloon test". The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) feet in diameter a brightly colored balloon 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 advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date 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 fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 9:00 am and 4:00 pm on the dates chosen. The initial date shall be on a week-end, but in case of poor weather on the initial date, the secondary date may be on a week day.

- AA) The Applicant will provide a written copy of 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.

#### Section 218-41. 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 (1) being the highest priority and five (5) being the lowest priority.

- 1) On existing non-residential structures such as water towers, multi-story buildings, church steeples, silos, signs or other similar non-residential structures when placement of wireless facilities, including but not limited to antennas increase the height by no more than three (3') feet above the existing structure without increasing the height of the structure;
- 2) On electric, telephone and any other utility poles;
- 3) On Village-owned properties or facilities;
- 4) On Non-residential properties such as schools, churches, universities, clubs and similar type non-residential properties exceeding twenty (20) acres in area;
- 5) On other properties in the Village.

- B) Towers shall be permitted only as a last alternative after all other alternatives have been proven not to be workable, such meaning that alternatives to a new tower will not eliminate significant gaps in service within the Village.

- C) If the need for a new tower is proven, the tower shall be no taller than the minimum height that is able to be proven to be the minimum height necessary to eliminate significant gaps in service within the Village.

- D) If the proposed site is not the highest priority listed in Section (A) of this section, then a detailed explanation must be provided as to why any individual site(s) of any higher priority type were 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 by-pass sites of higher priority by stating 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 Village why co-location is not feasible. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim that 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.
- 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 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;
  - 5) Conflicts with the provisions of this Article.

**Section 218-42. Shared use of Wireless Telecommunications Facilities and other structures.**

- A) Locating on existing Wireless Telecommunications Facilities or others structures without increasing the height, as opposed to the construction of a new Wireless Telecommunications Facility, shall always be preferred by the Village. The Applicant shall submit a comprehensive report inventorying existing Wireless Telecommunications Facilities and other suitable alternative structures within two (2) miles of the location of any proposed new site or Wireless Telecommunications Facilities, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Wireless Telecommunications Facility or other suitable structure can not 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.

#### **Section 218-43. Height of Telecommunications Tower(s).**

- A) The Applicant shall submit documentation justifying the total height of any Wireless Telecommunications Facility and/or Antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Village.
- 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 significant gaps in service within the Village.
- C) No Wireless Telecommunications Facility constructed after the effective date of this Article, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, Village, State, and/or any Federal statute, law, local law, Village ordinance, code, rule or regulation.

#### **Section 218-44. Appearance and Visibility of Wireless Telecommunications Facilities.**

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Law.
- B) 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 Article.
- C) If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under applicable regulations.
- D) Where not inappropriate, 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.

#### **Section 218-45. Security of Wireless Telecommunications Facilities.**

All Wireless Telecommunications Facilities and Antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically all Antennas, Towers and other supporting structures, including guy wires, shall be made reasonably inaccessible to unauthorized individuals and constructed or shielded in such a manner that they cannot be climbed or collided with, and shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

#### **Section 218-46. 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 on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

#### **Section 218-47. Lot Size and Setbacks.**

All proposed towers, structures and equipment associated with a Wireless Telecommunications Facility shall be set back a minimum of three hundred (300') feet from any property line on which it is to be 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.

#### **Section 218-48. 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 located underground.

#### **Section 218-49. Noise.**

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

All new utility lines extended to the wireless facility site shall be installed underground.

#### **Section 218-50. Retention of Expert Assistance and Reimbursement by Applicant.**

A) The Board may retain any consultant and/or expert necessary to assist it in reviewing and evaluating the Application, including the construction and modification 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 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 \$8,500.00. The placement of the \$8,500 with the Village shall precede the pre-application meeting. The Village will maintain a separate escrow account for all such funds. The Village's consultants/experts shall invoice the Village for its services in reviewing the Application, 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 \$2,500.00, the Applicant shall immediately, upon notification by the Village, replenish said escrow account so that it has a balance of at least \$8,500.00. 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.

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 not to exceed \$50,000.00.

**Section 218-51. Exceptions from a Conditional Use Permit for Wireless Telecommunications Facilities.**

- 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 Article without having first obtained a Conditional Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Conditional Use 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 Article shall be allowed to continue as they presently exist, provided however, that any Modification of an existing Wireless Telecommunications Facility must comply with the provisions of this Article.
- C) No person or entity of any kind who is not the owner of the site shall be considered for location of any Wireless Telecommunications Facility.

**Section 218-52 Public Hearing and Notification Requirements.**

- A) Prior to the approval of any Application for a Conditional Use Permit for Wireless Telecommunications Facilities, a public hearing shall be held by the Board, notice of which shall be published in the official newspaper of the Village no less than ten (10) calendar days prior to the scheduled date of the public hearing. The Applicant shall notify all landowners in writing whose property is located within fifteen hundred (1,500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located by certified mail, return receipt requested no less than ten (10) 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 Telecommunication Facility or other structure, as long as there is no proposed increase in the height of the Wireless Telecommunications Facility or other structure, including attachments thereto.
- C) The Board shall schedule the public hearing referred to in Subsection (A) of this section once it finds the Application is complete. The Village, at any stage prior to issuing a Conditional Use Permit, may require such additional information as it deems necessary.

**Section 218-53. Action on an Application for a Conditional Use Permit for Wireless Telecommunications Facilities.**

- A) The Board will undertake a review of an Application pursuant to this Article 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 and need to be involved.
- B) The Board may refer any Application or part thereof to any advisory or other committee for a non-binding recommendation.
- C) After the public hearing and after formally considering the Application, the Board may approve, approve with conditions, or deny a Conditional Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the Applicant.

- D) Any Wireless Telecommunications Facility permitted under this Article shall be started within ninety (90) days of the date of the grant of the Conditional Use Permit and be completed and obtain a Certificate of Completion and provide service within one hundred and eighty (180) days of the date of the grant of the Conditional 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 Conditional Use Permit shall be revoked and the provision of Section 28 shall be enforced.

**Section 218-54. Recertification of a Conditional Use Permit for Wireless Telecommunications Facilities.**

- A) Between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effective date of the Conditional Use Permit and all subsequent five (5) year anniversaries of the effective date of the original Conditional Use Permit for Wireless Telecommunications Facilities, the holder of a Conditional Use Permit for such Wireless Telecommunication Facility shall submit a signed written request to the Board for recertification. In the written request for recertification, the holder of such Conditional Use Permit shall include the following:
- 1) The name of the holder of the Conditional Use Permit for the Wireless Telecommunications Facility;
  - 2) If applicable, the number or title of the Conditional Use Permit;
  - 3) The date of the original granting of the Conditional Use Permit;
  - 1) Whether the Wireless Telecommunications Facility has been moved, re-located, rebuilt, or otherwise Modified since the issuance of the Conditional Use Permit and if so, in what manner;
  - 2) If the Wireless Telecommunications Facility has been moved, re-located, rebuilt, , or otherwise Modified, then whether the Village approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  - 3) That the Wireless Telecommunications Facility is in compliance with the Conditional Use Permit and compliance with all applicable codes, Laws, rules and regulations;
  - 8) Recertification that the Wireless Telecommunications Facility and attachments both 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 by a professional engineer licensed in the State, the cost of which shall be borne by the Applicant.
- B) If, after such review, the Board determines that the permitted Wireless Telecommunications Facility is in compliance with the Conditional Use Permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Board shall issue a recertification of the Conditional Use Permit for the Wireless Telecommunications Facility, which may include any new provisions or conditions that are 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 Conditional Use Permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Board may refuse to issue a recertification of the Conditional Use 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 by the Board until such time as the Facility is brought into compliance. 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 a written record and shall be promptly provided to the owner of the Facility.
- C) If the Applicant has submitted all of the information requested and required by this Article, and if the review is not completed, as noted in subsection (B) of this section, prior to the five (5) year anniversary date of the Conditional Use Permit, or subsequent five year anniversaries, then the

Applicant for the permitted Wireless Telecommunications Facility shall receive an extension of the Conditional Use Permit for up to six (6) months, in order for the completion of the review.

- D) If the holder of a Conditional Use Permit for a Wireless Telecommunications Facility does not submit a request for recertification of such Conditional Use Permit within the time frame noted in subsection (A) of this section, then such Conditional Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Conditional Use Permit, or subsequent five (5) year anniversaries.

#### **Section 218-55. Extent and Parameters of Conditional Use Permit for Wireless Telecommunications Facilities.**

The extent and parameters of a Conditional Use Permit for Wireless Telecommunications Facilities shall be as follows:

- 1) such Conditional Use Permit shall be non-exclusive;
- 2) such Conditional Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Village of Brookville.
- 3) such Conditional Use Permit may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit, or for a material violation of this Article.

#### **Section 218-56. Application Fee.**

- A) At the time that a person submits an Application for a Conditional Use Permit for a Wireless Telecommunications Facility, such person shall pay a non-refundable application fee of \$5,000.00 to the Village. If the Application is for a Conditional Use Permit for co-locating on an existing Wireless Telecommunications Facility or other structure, where no increase in height of the Wireless Telecommunications Facility or other structure is required, the non-refundable fee shall be \$2,000.00.
- B) No Application fee is required to recertify a Conditional Use Permit for a Wireless Telecommunications Facility, unless there has been a Modification of the Wireless Telecommunications Facility since the date of the issuance of the original Conditional Use Permit for which the conditions of the Conditional Use Permit have not previously been modified. In the case of any Modification, the fees provided in Subsection (A) shall apply.

#### **Section 218-57. Performance Security.**

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property 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 as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 and with such sureties as are deemed sufficient by the Village to assure the faithful performance of the terms and conditions of this Article and conditions of any Conditional Use Permit issued pursuant to this Article. The full amount of the bond or security shall remain in full force and effect throughout the term of the Conditional Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original Conditional Use Permit.

#### **Section 218-58. Reservation of Authority to Inspect Wireless Telecommunications Facilities.**

In order to verify that the holder of a Conditional Use 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 and buildings or other structures constructed or located on the permitted site.

#### **Section 218-59. Annual NIER Certification.**

The holder of the Conditional Use Permit shall, annually, certify to the Village that NIER levels at the site are within the threshold levels adopted by the FCC.

#### **Section 218-60. Liability Insurance.**

- A) A holder of a Conditional Use 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 Conditional Use Permit in amounts as set forth below:
- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate. Extensions: Waiver of subrogation in favor of the Village;
  - 2) Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
  - 3) Workers Compensation and Disability: Statutory amounts. Extensions: Voluntary Compensation: all states coverage, Employers' 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.
- 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 thirty (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 fifteen (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 fifteen (15) days after the grant of the Conditional Use Permit, the holder of the Conditional Use Permit shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.



#### Section 218-61. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for Village property pursuant to this Article, 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.
- 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 Conditional Use Permit for Wireless Telecommunications Facilities.

#### Section 218-62. Fines.

- A) In the event of a violation of this Article or any Conditional Use Permit issued pursuant to this Article, the Village may impose and collect, and the holder of the Conditional Use Permit for Wireless Telecommunications Facilities shall pay to the Village, fines or penalties as set forth below.
- B) A violation of this Article is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty (\$350.00) dollars per day per occurrence or imprisonment for a period not to exceed six (6) 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 three hundred fifty (\$350.00) dollars nor more than seven hundred (\$700.00) dollars or imprisonment for a period not to exceed six (6) months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than seven hundred (\$700.00) dollars nor more than one thousand (\$1,000.00) dollars or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this Article 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.
- A) Notwithstanding anything in this Article to the contrary, the holder of a Conditional Use 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 Article or any section of this Article. An attempt to do so shall subject the holder of the Conditional Use Permit to termination and revocation of the Conditional Use Permit. The Village may also seek injunctive relief to prevent the continued violation of this Article, without limiting other remedies available to the Village.

**Section 218-63. Default and/or Revocation.**

- B) If Wireless Telecommunications Facilities are repaired, rebuilt, placed, moved, re-located, Modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Article or of the Conditional Use Permit, then the Village shall notify the holder of the Conditional Use Permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within seven (7) 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 Article, 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 twenty-four (24) hours.
- B) If within the period set forth in (A) above the Wireless Telecommunications Facilities are not brought into compliance with the provisions of this Article, or of the Conditional Use Permit, or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facility into compliance, then the Village may revoke such Conditional Use Permit for such Wireless Telecommunications Facility, and shall notify the holder of the Conditional Use Permit within forty-eight (48) hours of such action.

**Section 218-64. Removal of Wireless Telecommunications Facilities.**

- A) Under the following circumstances, the Village may determine that the health, safety, and welfare interests of the Village warrant and require the 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 ninety (90) consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (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 it creates a health or safety hazard;
  - 3) Wireless Telecommunications Facilities have been located, constructed, or Modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary authorization.
- B) If the Village makes such a determination as noted in subsection (A) of this section, then the Village shall notify the holder of the Conditional Use Permit for the Wireless Telecommunications Facility within forty-eight (48) hours that said Wireless Telecommunications Facility is to be removed, the Village may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facility.
- C) The holder of the Conditional Use Permit, or its successors or assigns, shall 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 ninety (90) days of receipt of written notice from the Village. 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.

- D) If a Wireless Telecommunications Facility is not removed or substantial progress has not been made to remove the Wireless Telecommunications Facility within ninety (90) days after the permit holder has received notice, then the Village may order officials or representatives of the Village to remove the Wireless Telecommunications Facility at the sole expense of the owner and/or Conditional Use Permit holder.
- E) If the Village 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 ten (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 Village may approve a temporary use permit/agreement for the Wireless Telecommunications Facility, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facility shall be developed by the holder of the Conditional Use Permit, subject to the approval of the Village, and an agreement to such plan shall be executed by the holder of the Conditional Use Permit and the Village. If such a plan is not developed, approved and executed within said ninety (90) 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.

**Section 218-65. Adherence to State and/or Federal Rules and Regulations.**

- A) To the extent that the holder of a Conditional Use 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 a Conditional Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Conditional Use Permit for a Wireless Telecommunications Facility, then the holder of such a Conditional Use Permit shall conform the permitted Wireless Telecommunications Facility to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twelve (12) 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.

**Section 218-66. Conflict with Other Laws.**

Where this Article differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Village, State or federal government, this Article shall apply.

**Section 218-67. Waiver of Modifications.**

The Board may waive or modify any of the provisions and requirements contained herein upon just cause shown in order to further the purposes and intent of this Article.

**Section 2.** Amend Article IV, Section 218-22 entitled "Permitted principal uses; conditional uses", to add a new subsection (c)(6) to read as follows:

- (6) Wireless Telecommunications Facilities pursuant to the requirements of Article VI.

**Section 3.** Articles VI, VII and VIII, viz Sections 218-37 through and including 218-59, presently existing in the Code shall continue in full force and effect and be re-numbered sequentially to conform with this Local Law.

**Section 4. Severability.**

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this Article 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 Article, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
- B) Any Conditional Use Permit issued under this Article 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 Village.

**Section 5. Effective Date.**

This Local Law shall be effective upon its adoption and filing with the Department of State.