

**VILLAGE OF BROOKVILLE  
LOCAL LAW 2-2014  
“WIRELESS TELECOMMUNICATIONS FACILITIES OR COMPLEXES”**

A local law to repeal Article VI, entitled “*Wireless Telecommunications Facilities,*” of Chapter 218 of the Code of the Village of Brookville, and to adopt new Article VI, entitled “*Wireless Telecommunications Facilities or Complexes,*” of Chapter 218 of the Code of the Village of Brookville.

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

**SECTION 1.** Article VI of Chapter 218, entitled “*Wireless Telecommunications Facilities* ” is hereby repealed in its entirety and a new Article VI of Chapter 218 entitled “*Wireless Telecommunications Facilities or Complexes*” of the Code of the Village of Brookville is hereby adopted as follows:

**ARTICLE VI  
“WIRELESS TELECOMMUNICATIONS FACILITIES OR COMPLEXES”**

§218-37. Purpose and Legislative Intent

- A. The Telecommunications Act of 1996 affirmed the Village of Brookville’s authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities or Complexes within the Village. This Article provides for the safe and efficient integration of Wireless Facilities or Complexes necessary for the provision of advanced wireless telecommunications services throughout the Village and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety, health and general welfare of the Village.
  
- B. The Village finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the Village and its inhabitants and neighborhoods. The Village 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 a Facility or Complex is consistent with the Village’s land use policies, the Village is adopting a single, comprehensive, Wireless Telecommunications Facility or Complex application and permitting process. The intent of this Article is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, ensure an integrated, comprehensive review of environmental impacts of such Facilities, and protect the health, safety and welfare of the Village.

§218-38. Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed 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.

Any Conditional Use Permit issued pursuant to 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 competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Board.

§218-39 Definitions; Word Usage

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 or Complexes and located on the same property or lot as the Wireless Telecommunications Facilities or Complexes, or an immediately adjacent lot including, but not limited to, utility or transmission equipment storage sheds or cabinets.
2. **“Amend,” “Amendment” and “Amended”** means and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
3. **“Applicant”** means any Wireless service provider submitting an Application for a Conditional Use Permit or other approval for Wireless Telecommunications Facilities.
4. **“Application”** means all necessary and *required* documentation that an Applicant must submit in order to receive a Conditional Use Permit or a Building Permit or other approval for Wireless Telecommunications Facilities.
5. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
6. **“Board”** means the Board of Zoning Appeals of the Village of Brookville.
7. **Certificate of Completion or COC** means a required document issued by the Village that confirms that all work represented in the Application i) was properly permitted; ii)

was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the Facility or Complex passed the final inspection.

8. **“Co-location”** means one Telecommunications Site hosting multiple, separate Facilities.
9. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable.”
10. **“Completed Application”** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application. Where any information is provided pursuant to the terms of this Article and the Building Inspector or the Village’s expert or consultant or the Board determines based upon information provided, that further or clarifying information is needed as to one or more aspects, then the Application will not be deemed complete until that further or clarifying information is provided to the satisfaction of the Building Inspector or the Village’s expert or consultant or the Board.
11. **Complex** means the entire site or Facility, including all structures and equipment located at the site.
12. **“Conditional Use Permit”** means the official document or permit granted by the Board of Zoning Appeals pursuant to which an Applicant is allowed to file for and obtain a building permit to construct and use a Facility or Complex as granted or issued by the Board.
13. **“DAS”** or **“Distributive Antenna System”** means an antenna combining technology whereby low power NIER emanates from multiple Facilities, each covering a limited range, and also allowing for multiple carriers or wireless service providers to use the same set of Antennas, cabling and equipment.
14. **FAA** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
15. **Facility** means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
16. **“FCC”** means the Federal Communications Commission or its duly designated and authorized successor agency.

17. **“Height”** means when referring to a Tower or wireless Telecommunications Structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightening protection device.
18. **In-Kind Replacement** means replacing a component(s) that is malfunctioning with a properly functioning component of substantially the same weight and dimensions and that does not enable an increase or potential increase in revenue for the service provider or increase the compensation paid to the owner or manager of the Telecommunications Structure.
19. **“Maintenance”** or **“Routine Maintenance”** means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a Modification to the WTF. It is work necessary to assure that a wireless facility and/or support structure exists and operates i) reliably and in a safe manner; ii) presents no threat to persons or property; and iii) remains compliant with the latest editions and amendments of all applicable laws, codes, rules and regulations, but does not change the number, types or levels of service provided and is not done for the purpose of enabling increased revenue for the wireless service provider or the owner or manager of the support structure.
20. **“Modification”** or **“Modify”** means the addition, removal or change of any of the physical and visually discernible components, colors or aspects of a wireless Facility or Complex with substantially identical components including, but not limited to, Antennas cabling, equipment shelters, landscaping, shrouding, fencing, utility feeds, color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment or component(s). Adding a new antenna, wireless carrier or service provider to a telecommunication Tower or telecommunication site as a Co-location is always a Modification.
21. **“Necessary”** or **“Necessity”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the Application. Necessary or Need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an Applicant’s specific chosen design standards. Any situation involving a choice between or among alternatives or options is not a Need or a Necessity.
22. **“NIER”** means Non-Ionizing Electromagnetic Radiation.
23. **“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.
24. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.

- 25. “Personal Wireless Services” or “PWS” or “Personal Telecommunications Service” or “PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.
- 26. "Public Rights-of-Way"** means the space, in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, sidewalks, and similar places, including public utility easements and public service easements that are under the jurisdiction and exclusive control of the Village. The term shall not include county, state, or federal rights-of-way or places owned by the Village jointly with another person or entity.
- 27. "Repairs "** means the replacement or repair of any components of a wireless Facility or Complex where the replacement is substantially identical and expressly not merely similar or functionally equivalent to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless Facility or Complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless Facility or Complex that will impose new visible intrusions of the Facility or Complex as originally permitted.
- 28. “State”** means the State of New York.
- 29. “Stealth” or “Stealth Technology”** means a design or treatment that minimizes 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 building the least visually and physically intrusive facility and Complex that is not technologically or Commercially Impracticable under the facts and circumstances. Stealth technology includes such techniques as DAS or its functional equivalent or camouflage where the Tower is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Facility or Complex.
- 30. “Structural Capability” or “Structural Capacity”** means, notwithstanding anything to the contrary in any other standard, code, regulation or law, 100% of the designed loading and stress capability of the Telecommunications Structure under all conditions of wind, ice, snow or accidental collisions or other physical stress which may occur under the worst expected conditions.
- 31. “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.
- 32. “Telecommunications Site”** See definition of Wireless Telecommunications Facilities.
- 33. “Telecommunications Structure”** -See Definition for Wireless Telecommunications Facility.
- 34. “Temporary”** means not permanent in relation to all aspects and components of this Article, something intended to, and that does, exist for fewer than ninety (90) days.

**35. “Village”** means the Incorporated Village of Brookville.

**36. “Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

**37. “Wireless Telecommunications Facility or Facilities (WTF or WTFs) or Complex”** means and includes a “Telecommunications Site” and “Personal Wireless Facility Site”. It means a specific location at which a structure that is designed, or intended to be used to house or accommodate Antennas or other transmitting or receiving equipment is located. This includes, without limitation, Towers of all types and kinds and support structures, including but not limited to buildings, church steeples, silos, water Towers, signs, utility poles or other any other structure that is used or is proposed to be used as a Telecommunications Structure for Antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures enabling the Complex to provide, though not limited to, radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service, licensed by the FCC or not.

#### §218-40 General Policies and Procedures for Applications under this Article

In order to ensure that the placement, construction or Modification of a Facility or the components of a Complex do not endanger or jeopardize the Village’s health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Article and also pose the least adverse effect upon the Village and its inhabitants, the Village hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or other approvals for Wireless Facilities for the express purpose of achieving the policies and goals set forth herein:

1. Requiring a Conditional Use Permit for any new Complex, Facility or any Modification of a Facility or Complex or for a Co-located Facility, except as provided in §218-55;
2. Requiring a license and/or right-of-way agreement for any new Wireless Telecommunications Facilities in the Public Rights-of-Way as provided in §218-55;
3. Requiring a properly issued building permit and any other approvals required for any Co-location or Modification of a Facility or Complex.
4. Implementing an Application process and requirements;
5. Establishing procedures for examining an Application and issuing a Conditional Use Permit and any other necessary permits and approvals that is both fair and consistent;
6. Promoting, and requiring wherever possible, the sharing and/or Co-location of support structures among service providers;

7. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of a Facility or Complex in such a manner as to minimize the physical and visual impact on the community including, but not limited to, the use of Stealth Technology.
8. Requiring that the Facility and Complex shall be the least visually and physically intrusive among those options available in the Village given the facts and circumstances to minimize the adverse aesthetic and visual impacts on the surrounding areas.
9. The Board is the officially designated agency or body of the Village to whom applications for a Conditional Use Permit for a Facility or Complex must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Conditional Use Permits applied for under this Article. The Board may, at its discretion, delegate or designate the Village Planning Board or other official agencies or officials of the Village or outside experts or consultants to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting or revoking Conditional Use Permits for Wireless Telecommunications Facilities. However, the Board shall possess the sole jurisdiction over the granting of all Conditional Use Permits.
10. There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site, or telephonically as deemed appropriate by the Board or its designee. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the review and permitting process; and ii) certain issues or concerns the Board or the Applicant may have.
11. If there has not been a prior site visit for the requested Complex within the previous six (6) months, a site visit shall be conducted. Costs of the Board's expert or consultant to prepare for and attend the site visit or pre-application meeting will be borne by the Applicant and paid for out of a fee set forth in the Village's Schedule of Fees, which shall have been paid to the Village prior to any site visit or pre-application meeting.
12. An Applicant shall submit to the Board the number of Completed Applications determined by the Board to be needed at the pre-application meeting. If Board action is required, Applications will not be transmitted to the Board for consideration until all of the Application is submitted and deemed complete.
13. If the proposed site is within one (1) mile of another jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.
14. The owner(s) of the Telecommunications Structure to which Antennas or related equipment are to be attached must be an official Applicant of record.
15. All Applicants shall closely follow the instructions for preparing a combined Application. Deviations from the instructions without permission shall result in the Application being deemed incomplete and a tolling of the time allowed for action on an Application until a Complete Application is filed with the Board.

- 16.** The Applicant shall be notified in writing of any deficiencies within forty-five (45) days of the filing of an Application as regards any deficiencies related to the completeness of the Application. Remediation of deficiencies in an Application shall be deemed an Amendment of the Application that was previously filed.
- 17.** The Board may deny Applications not meeting the requirements stated herein or which are otherwise not Complete after proper notice and a reasonable opportunity to make the Application Complete has been afforded.. Applications will deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.
- 18.** No work of any kind on a Facility or Complex shall be commenced until the Application is reviewed and approved by the Board and a Conditional Use Permit and building permit has been issued pursuant to the requirements of this or other applicable laws, rules and regulations.
- 19.** Any and all representations made by the Applicant or that are made in support of the Application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the Board. Any verbal representation shall be treated as if it were made in writing.
- 20.** Other than to remediate non-compliant situations related to matters of safety or the conditions of a Permit, no Permits for work at a Facility or Complex shall be issued where the Facility or Complex is not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility or Complex not in full compliance with this Article shall be required to be brought into full compliance before any Permit of any kind will be issued.
- 21.** An Application shall be signed on behalf of the Applicant(s) by a person vested with the authority to bind and commit the Applicant attesting to the truthfulness, completeness and accuracy of the information presented.
- 22.** The Applicant must provide documentation to substantiate that it has the right to proceed as proposed on the site or at the Complex in the form of an executed copy of the lease with the owner or a signed letter of agency and consent granting such authorization
- 23.** All Applications shall include written commitment statements to the effect that:
  - a.** the Applicant's Facility or Complex shall at all times and without exception be maintained in a safe manner, and in compliance with all conditions of all Permits, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable Village, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Board in writing; and
  - b.** the construction of the Facility or Complex is legally permissible including, but not limited to, the fact that the Applicant is licensed to do business in the State of New York.

- 24.** Where a certification is called for in this Article, such certification shall bear the signature and seal of a Professional Engineer licensed in the State of New York.
- 25.** A Wireless Telecommunications Facility shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of Stealth or camouflage or concealment techniques as may be required by the Board.
- 26.** All utilities at a Complex or site shall be installed underground and in compliance with all applicable laws, ordinances, rules and regulations of the Village including specifically, but not limited to, applicable electrical codes.
- 27.** At a Facility or Complex needing vehicular access, an access road, parking and turn around space for emergency vehicles 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. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable laws, rules or regulations as determined at a site visit by the Board, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with all applicable laws, rules and regulations.
- 28.** All work at a Facility or Complex shall be done 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 edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the New York State Building and Fire Prevention Code, and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. 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.
- 29.** A holder of a Conditional Use Permit or any other permit or approval granted under this Article shall obtain, at its own expense, all permits and licenses required by all applicable laws, ordinances, rules, regulations or codes, 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.
- 30.** Unless it is proven to be technologically impracticable, the Village requires the Co-location of new antenna arrays on existing structures, as opposed to the construction of a new Complex or Telecommunications Structure or increasing the height, footprint or profile of a Facility or Complex beyond the conditions of the approved Conditional Use Permit for an existing Facility or Complex. The Applicant shall submit a comprehensive report inventorying all existing structures more than fifty feet (50') in height within one-half (1/2) mile of the location of any proposed new Facility or Complex.

- 31.** An Applicant intending to Co-locate on or at an existing Facility or Complex shall be required to document the intent of the existing owner to permit its use by the Applicant.
- 32.** Co-located equipment shall consist only of the minimum Antenna array technologically Needed to provide service primarily and essentially within the Village, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.
- 33.** DAS systems that are owned or operated by a commercial carrier and are part of a commercial wireless system, or are used for commercial purposes, are expressly included in the context of this Article, regardless of the location or whether the Facility or any of its components is located inside or outside a structure or building.
- 34.** The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Article. An Applicant may not bypass sites of higher priority solely because the site proposed is under lease or an option to lease exists. If a site other than the number “1” priority is proposed, the Applicant must explain to the reasonable satisfaction of the Board why Co-location is technically or Commercially Impracticable. Build-to-Suit agreements between carriers and a proposed Tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Article.
- 35.** New Towers or other support structures other than utility poles shall be prohibited in residential areas and areas deemed by the Board to be visual or scenic sensitive areas, unless the Applicant provides clear and convincing technical evidence demonstrating that i) a new Tower as proposed is Necessary, ii) that the intended area cannot be served from outside the residential or visual or sensitive areas; iii) that no existing or previously approved Facility or Complex can reasonably be used to serve the intended area within the Village; and iv) that not to permit a new Tower would result in or would preclude eliminating a significant gap in service.

#### §218-41 Responsible Party(s)

The owner(s) of a Facility, WTF or Complex or Telecommunications Structure, and of the land upon which the same is located, shall at all times be jointly and severally responsible for: (1) the physical and safe condition of the Facility, Complex, or Telecommunications Structure and all components on the site related to the Facility, Complex, or Telecommunications Structure; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the Facility, Complex, or Telecommunications Structure, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility, Complex, or Telecommunications Structure; and (3) assuring the proper permitting as required by this Article and other Village regulations by all lessees and users of the Facility, Complex, or Telecommunications Structure, including but not limited to any upgrades and/or Modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the Facility, Complex, or Telecommunications Structure is operated in compliance with this Article, other Village regulations, and any Conditional Use Permit.

## §218-42 Fees

All fees and charges, including but limited to Application fees, expert or consulting fees, attorney fees, inspection fees and permit fees, shall be as set forth in the Village's Fee Schedule.

## §218-43 Existing Facilities and Complexes

1. Any legally permitted Facility, Tower or other Telecommunications Structure or Complex that exists on the effective date of this Article shall be allowed to continue as it presently exists, provided that i) all work was properly permitted; ii) the Facility or Complex is in compliance with all applicable local, State and federal laws, rules regulations, orders and permit conditions; iii) a Certificate of Completion (COC) was issued for the most recent work performed;
2. Any work not properly previously permitted prior to the adoption of this Article must be permitted within ninety (90) days of the effective date of this Article.
3. Any Co-location on or Modification of an existing Facility, Tower or other Telecommunications Structure or Complex, is subject to the provisions of this Article and will require the entire Facility or Complex and any new Co-location or Modification to comply with this Article, including obtaining a valid COC.

## §218-44 Certificate of Completion

- A. No work shall be allowed to be done at or on any Facility or Complex, excepting normal Repairs and Maintenance as defined in this Article, for which the owner cannot produce the COC for the most recent previous work, until a final inspection has been conducted and a COC has been issued. The owner of the Facility, Tower or other Telecommunications Structure or Complex shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the Facility or Complex does not pass the initial final inspection, the owner shall be required to pay for any subsequent inspection prior to the inspection being conducted. A passing final inspection is required prior to the issuance of a COC.
- B. If no COC can be produced for previously done work, at the discretion of the Building Inspector, fines and other penalties as allowed by law may be imposed until the Facility or Complex is compliant and the required COC has been issued.

## §218-45 Exclusions

The following shall be exempt from this Chapter:

1. Any Facility operated by or on behalf of any unit of government for public or municipal purposes

2. Any Facilities expressly or implicitly exempt from the Village's zoning, land use, siting, building or permitting authority under law or controlling legal precedent
3. Any reception or transmission devices expressly exempted under the Telecommunications Act of 1996.
4. Any Facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that are less than 100' above ground.
5. Facilities used exclusively for providing unlicensed spread spectrum technologies where (i) there is no charge for the use of the wireless service; (ii) the Facility or Complex does not require a new Tower or increase the height of the structure being attached to; and (iii) the service is not intended to be useable more than one-hundred feet (100') from the Antenna(s).

#### §218-46 Location of Wireless Telecommunications Facilities

- A. Applicants for a Conditional Use Permit for a Wireless Telecommunication Facility shall locate, site and erect all such Facilities and associated equipment in accordance with the following priorities which are designed and intended to encourage Co-location on existing Towers and Structures improved with WTC and to keep the Facilities as far away as Commercially Practicable from residences, schools, houses of worship and day care centers, one being the highest priority and nine being the lowest priority.
  1. No new Telecommunication Structure shall be allowed in any residential area.
  2. No new Telecommunications Structure that is taller than the existing surrounding structures other than Exclusions in Section 218-45, or as otherwise allowed in section 218-55 of this Article, shall be permitted within one-quarter (1/4) mile of any existing or planned (i.e. platted) residential neighborhood or area.
  3. On utility poles or the functional equivalent thereof without increasing the total height of the pole, including the height of any Antenna, by more than is allowed in section 218-55 of this Article.
  4. 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.
  5. On existing structures without increasing the height of the structure by more than can be shown to be technically Needed by clear and convincing evidence, but in no case by no more than forty-eight (48") inches.
  6. On non-residential properties such as churches, universities, clubs and similar type non-residential properties exceeding twenty (20) acres in area;
  7. On Village-owned properties or facilities.
  8. On other properties in the Village.
  9. On properties in residential areas zoned for residential use without increasing the height of the Telecommunications Structure and only if camouflaged or stealthed to maximum practical extent and to the satisfaction of the Board.

- B.** If the proposed site is not proposed for the highest priority listed above, then a detailed narrative and technical explanation must be provided as to why a site from all higher priority designations was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a Conditional Use Permit or any other necessary permit or approval should be granted for the proposed site and why any other location higher on the list of priorities would serve to prohibit the provision of service.
- C.** Notwithstanding anything to the contrary provided in this Article, the Board may approve any site located within an area in the list of priorities, provided that the Board 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 nature and character of the community and neighborhood given the totality of the circumstances. Conversely, the Board may direct that the proposed location be changed to another location that is more in keeping with the goals of this Article and the public interest and that substantially meets the primary service objective of the Applicant.
- D.** Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Board may disapprove an Application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and Fall Zone requirements;
  2. Non-Compliance with zoning or land use regulations;
  3. The placement and location of Facilities which would create an unacceptable safety risk to residents or the general public, employees and agents of the Village or employees of the service provider or other service providers, physical or financial damage to or trespass on private property, or the reasonable possibility of such;
  4. The placement and location of a Facility or Complex would result in a conflict with, compromise in or change in the nature or character of the adjacent and immediately surrounding area, and expressly including but not limited to loss in value as measured from the end of the calendar year prior to the Application having been filed;
  5. Conflicts with the provisions of this Article;
  6. Failure to submit a Complete Application as required under this Article, after proper notice and opportunity to make the Application complete.
- E.** Notwithstanding anything to the contrary provided in this Article, for good cause shown, as determined by the Board, such as but not limited to the ability to utilize a shorter, smaller or less intrusive Facility or Complex at a different location that is more in keeping with the goals of this Article and the public interest, and that substantially meets the primary service objective, the Board may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) site to provide substantially the same service if the relocation could result in a less intrusive Facility or Complex, singly or in combination with other locations.

## §218-47 Type and Height of Towers

- A.** All new Towers shall be of the monopole type. No new Towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.
- B.** Pursuant to the 1996 Telecommunications Act and subsequent case law related to the right to deny an Application for cause, the Applicant for a new Tower or other Telecommunications Structure shall submit clear and convincing technical evidence by a carrier or wireless service provider committed to use the new Tower or other Telecommunications Structure justifying to the exclusion of all reasonable alternatives i) the Need for a new tower; ii) the Need for the proposed location; and iii) the total height of the proposed Tower or other Telecommunications Structure requested and the basis therefore, including all attachments. If the Applicant chooses to provide evidence in the form of propagation studies, such must include all modeling information and support data used to produce the studies at the requested height and a minimum of ten feet (10') lower to enable verification of the Need for the requested height and showing the service area/signal strengths for all frequency bands to be used.
- C.** In the event that Propagation Studies do not resolve the issue of Need, the Board reserves the right to require a drive test to be conducted under the supervision of the Board or its expert or consultant as evidence of the technical Need for what is requested.
- D.** As the Village has made the policy decision that more Facilities of a shorter height is in the public interest, as opposed to fewer taller Facilities, spacing or the distance between Facilities shall be such that the service can be provided without exceeding the maximum permitted height.
- E.** The maximum permitted total height of a Tower or other proposed Telecommunications Structure shall be one hundred fifty feet (150') above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the Village. The maximum permitted height is not an as-of-right height, but is the maximum allowable height.
- F.** At no time shall a Tower or other Telecommunications Structure be of a height that requires lighting by the FAA.
- G.** Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a Tower or other Telecommunications Structure and that can be increased in height if Needed.

## §218-48 Visibility and Aesthetics

- A. Height:** No Tower or Telecommunications Structure that is not a building and is constructed after the effective date of this Article, shall be of a height that requires lighting by the FAA.

- B. Stealth:** All new Facilities, including but not limited to Towers, shall utilize Stealth or camouflage siting techniques, unless it can be shown to be either Commercially Impracticable or technologically impracticable.
- C. Finish/Color:** Towers shall be galvanized and/or 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.
- D. Lighting:** Notwithstanding the prohibition of lighting, in the event lighting is subsequently required by the FAA, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under local, State and Federal regulations. For any Facility or Complex for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least one (1) mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.
- E. Retrofitting re Lighting:** In the event a Tower or other Telecommunications Structure that is lighted as of the effective date of this Article is Modified, at the time of the Modification, the Board may require that the Tower be retrofitted so as to comply with the lighting requirements of this Article or be reduced to a height that does not require lighting.
- F. Flush Mounting:** Except for omni-directional antennas, all new or replacement Antennas, shall be flush-mounted or as close to flush-mounted on the Telecommunications Structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the Applicant can prove that it is technologically impracticable.
- G. Placement on Building:** If attached to a building, all Antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the Antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.

#### §218-49 Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A.** All Facilities, including Antennas, Towers and other supporting structures, including all guy anchors points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and

- B.** Transmitters and Telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

#### §218-50 Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing 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 must be visible from the access point of the Facility or Complex and must identify the equipment owner of the shelter or cabinet. On Tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

#### §218-51 Setback and Fall Zone

- A.** All proposed Towers and any other proposed Wireless Telecommunications Structure, except utility poles, shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: i) a distance equal to two times the height of the proposed Tower or Telecommunications Structure, otherwise known as the Fall Zone; or ii) the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located within the fenced compound area, or as required under section 218-55 of this Article, as approved in the Conditional Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone shall be measured from the center-line of the Tower to the nearest portion of the right-of-way or any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. Further, the nearest portion of any access road leading to a Facility shall be no less than ten (10') feet from the nearest property line.
- B.** There shall be no development of habitable buildings within the Setback area or Fall Zone.

#### §218-52 New Tower - Application Requirements for a New Tower or Telecommunications Structure

- A.** All Applicants for a Conditional Use Permit for a new Wireless Facility or Complex, including for a new Tower or other Telecommunications Structure or that constitutes a Modification, shall comply with the requirements set forth in this Section. In addition to the required information set forth in this Section, all applications for the construction or installation of a new Facility or Complex, or that increases the height of an existing structure, shall contain the information hereinafter set forth prior to the issuance of a Building Permit.

#### **Ownership and Management**

- 1.** The Name, address and phone number of the person preparing the Application;

2. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the Applicant, the name and all necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands;
5. The Applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs or has constructed for it;

### **Zoning and Planning**

6. The Zoning District or designation in which the property is situated;
7. The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and an up to date guaranteed survey showing the location of all lot lines;
8. The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are in any way related to the subject of the Application;
9. A certified site plan drawn to scale, prepared by a licensed engineer, architect or surveyor and not a hand drawn sketch, showing a vertical drawing of the Tower or other Telecommunications Structure identifying all attachments by owner and the height of such, the footprint of the Telecommunications Structure and the type, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans;
10. Elevation drawings showing the profile or the vertical rendition of the Tower or Telecommunications Structure at the Facility or Complex and identifying all existing and proposed attachments, including the height above the pre-existing grade of each attachment and the owner or operator of each, as well as all lighting;
11. The type and design of the Tower or Telecommunications Structure, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Tower's or Telecommunications Structure's Structural Capacity to accommodate the required number of antenna arrays for which the structure must be designed;
12. Disclosure in writing of any agreement in existence prior to the submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
13. A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all equipment of the Applicant at the Facility. To verify the accuracy of the information, the Board reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

### **Safety**

14. The age of the Tower or Telecommunications Structure and Complex stated in years, including the date of the grant of the original permit;

15. A description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or other type of Telecommunications Structure;
16. The make, model, type and manufacturer of the Tower and the structural design analysis and report, including the calculations, certified by a professional Engineer licensed in the State and proving the Tower or Telecommunications Structure's capability to safely accommodate the Facilities of the Applicant without change or Modification .
17. If a Co-location, change or Modification of a Facility or Complex is needed, a detailed narrative explaining what changes are needed and why they are needed. This includes a complete list of all equipment and Facilities proposed to be removed and all equipment proposed to be added;
18. A complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design;
19. If Modifying or Co-locating on an existing Tower or other Telecommunications Structure, a complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the Complex and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Village, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the Building Inspector;
20. In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower where the array will be ten (10) meters or more above ground level and not within 100 feet of areas to which the public has or could reasonably have or gain access to, signed documentation in the form of the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the Facility and Complex with the proposed installation will be in full compliance with the FCC's current RF Emissions regulations;
21. In certain instances the Board may deem it appropriate to have an on-site RF survey of the Facility or Complex performed after the construction or Modification and activation of the Facility or Complex, to be performed under the direction of the Village or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
22. If not previously submitted, a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
23. A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless Telecommunications Facility or Complex is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting. Unless already lighted, this requirement shall also be for any Facility or Complex where the Application proposes to increase the height of the Tower or Telecommunications Structure. If this analysis determines that an FAA

determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

24. All Applications for a proposed Facility or Complex applicable to this Section shall contain clear and convincing evidence that the Facility or Complex is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and on the nature and character of the community in the area of the Facility or Complex. To achieve this goal the Board expressly reserves the right to require the use of Stealth or camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System) siting techniques or a functional equivalent siting technique, and such shall be subject to approval by the Board.
25. If proposing a new Tower or Telecommunications Structure, or if increasing the height of an existing structure or the size of the profile, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within one-half (1/2) mile of the proposed site that would be less visually intrusive and that not to permit the proposed new Tower or Telecommunications Structure, or a Co-location or Modification would result in the prohibition of service or the perpetuation of a significant gap in service primarily within the Village.
26. In order to better inform the public, in the case of a new Tower, the Applicant shall conduct a "balloon test" prior to the initial public hearing on the Application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10') foot in length brightly colored balloon at the maximum height of the proposed new Tower.
27. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be readable from the road by a person with 20/20 vision. Such sign shall be placed off, but as near to, the public right-of-way as is possible. And shall contain the times and date(s) of the balloon test and contact information.
28. The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph 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 Board 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 (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall also be provided with the Application.
29. The Applicant shall, no less than fourteen (14) calendar days prior to the scheduled date of the balloon test, mail a written notice of the date and time of the balloon test to all property owners 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, and for that purpose, Applicant shall complete and utilize a form provided by the Board, and provide

affidavits or such other proof to the Board as the Board requires to ensure that such mailing has properly taken place. The notice of the balloon test shall be sent by certified mail, return receipt requested, to all property owners located within five hundred (500') feet, and by first class mail to all other property owners entitled to notice hereunder.

- 30.** The Wireless Telecommunications Facility or Complex shall be structurally designed to accommodate at least four (4) Antenna Arrays, with each array to be flush mounted or as close to flush-mounted as is reasonably possible.
- 31.** The Applicant shall provide certified documentation in the form of a structural analysis and report, including all supporting calculations, showing that the Facility or Complex will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply.
- 32.** The Applicant shall furnish a Visual Impact Assessment, which shall include:
  - (a) computer generated "Zone of Visibility Map" at a minimum of one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
  - (b) Pictorial representations (photo simulations) of "before and after" views from key viewpoints inside of the Village as may be appropriate and required, 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 viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall also provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;
  - (c) The Applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen feet (15') of the Facility or Complex and all related equipment and structures associated with the Facility or Complex.
- 33.** A building permit shall not be issued for construction of a new Tower or other Telecommunications Structure until there is an Application for or by a specific carrier that documents that the Facility or Complex is Necessary for that carrier to serve the community and that Co-location on an existing Structure is not feasible.
- 34.** Co-location on an existing structure is not reasonably feasible if technically or Commercially Impractical or the owner of the structure is unwilling to enter into a contract for such use at or below fair market value. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an Application for the first carrier in order to determine whether Co-location on existing Structures is reasonably feasible and to document the need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

§218-53 Modification or Co-Location without Increasing the Height or Size of the Profile –  
General Policies

- A. The Village shall not be required to issue a Conditional Use Permit for any Facility, the service area for which is not primarily and substantially within the Village.
- B. Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the Antennas shall be flush-mounted on the facade without increasing the height of the building or other structure, unless it can be shown by clear and convincing evidence that such will prohibit or have the effect of prohibiting the provision of service. All such attachments and exposed cabling shall use camouflage or Stealth Techniques to match as closely as possible the color and texture of the structure.
- C. Attachments to Towers: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and thereby have the least adverse visual effect, all Antennas attached to a Tower or other Structure shall be flush mounted or as near to flush mounted as is possible so as to create the smallest profile reasonably possible under the facts and circumstances, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- D. Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service.
- E. Structural Analysis and Report: The Applicant shall provide a certification by a Professional Engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the Telecommunications Structure and its foundation as proposed to be utilized are designed and were or will be constructed to meet all local, Village, State, Federal and TIA ANSI 222 structural requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new equipment.
- F. ANSI Inspection: A complete, unredacted TIA ANSI 222 Report regarding the physical condition of the Facility or Complex and its components done within the previous six (6) months shall be provided. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Tower, other Telecommunications Structure, Complex or Wireless Facility or related equipment without the required TIA ANSI 222 Report and where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Village, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the Village Building Inspector.
- G. Compliance: Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued

for any work related to an Facility where the Facility and Complex are not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility and Complex not in full compliance shall be required to be brought into full compliance before a Building Permit will be issued for work related to a Facility request or Application.

#### §218-54 Application Requirements for Co-locations or Modifications

- A) A Conditional Use Permit and a building permit shall be required for any work that is not Routine Maintenance as defined in this section.
- B) No Building Permit shall be required for Routine Maintenance, nor for work that does not constitute a Modification or Co-location, all as defined in this Article.
- C) The following shall be required in an application for and prior to obtaining a Conditional Use Permit. No Building Permit shall be issued until the requirements of this Article have been complied with. No work related to a Modification or Co-location may be performed without having obtained a valid and properly issued Conditional Use Permit.
  - 1) If deemed necessary, a site visit shall be conducted by the Board and a pre-Application meeting shall be held for all intended Applications. At or before the pre-Application meeting, the Applicant shall be provided instructions for completing an Application. Said instructions shall be controlling as regards the form and substance of the issues addressed in the Application and must be followed. Applications submitted that do not follow the instructions shall be deemed incomplete. Prior to the site visit and the pre-Application meeting, the Applicant shall prepare and submit a Project Information Form provided by the Village and the required fees, but shall not submit the Application until after the pre-Application meeting;
  - 2) The following information shall be required to be contained in an Application for a Modification or Co-location.

#### Safety

- a) A dated and signed copy of the valid COC for the last previously done work;
- b) If increasing the height of the Telecommunications Structure or the size of the profile, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within one-half (1/2) mile of the proposed site that would be less visually intrusive and that not to increase the height or the size of the profile would result in the prohibition of service or the perpetuation of a significant gap in service primarily within the Village;
- c) The age of the Tower or other Telecommunications Structure in years, including the date of the grant of the original permit;
- d) A description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or a description of the other type of Telecommunications Structure;
- e) A detailed narrative description and explanation of the specific objective(s) of the new equipment, expressly including and explaining the purpose of such,

- such as coverage and/or capacity, technical requirements, frequencies to be used and the identified boundaries of the specific geographic area of intended coverage;
- f) Technical documentation that shows by clear and convincing technical evidence that the Need for the requested height is Necessary to provide the type and coverage of the service primarily and essentially within the Village using generally accepted industry methods.
  - g) Certified documentation in the form of a structural analysis and report, including all supporting calculations, showing that the Facility, as designed, will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to, NYS Uniform Fire Prevention and Building Code and all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply
  - h) A copy of the installed foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the Tower or other structure;
  - i) Certified documentation regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection, done pursuant to and in compliance with the latest version of TIA/ANSI 222. The inspection must be done by a qualified individual experienced in performing such inspections and the report must be signed by an individual with authority to order any needed remediation or resolution of issues.
  - j) All of the modeling information (i.e. data) inputted into the software used to produce the evidence used to determine the Needed height, including, but not limited to any assumptions made such as ambient tree height;
  - k) A copy of the FCC licenses for each frequency band applicable for the intended use of the Wireless Telecommunications transmission and/or receive equipment;
  - l) The frequency, modulation and class of service of radios or other transmitting and receiving equipment;
  - m) The maximum transmission power capability at which each type of radio is designed to operate,;
  - n) The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;
  - o) The number, type and model of the Antenna(s) proposed, along with a copy of the specification sheet(s) for the Antennas;
  - p) A certified statement from the owner of the Facility certifying that the Facility and all attachments thereto are currently in compliance with the conditions of the approved Conditional Use Permit or setting forth any non-compliant situation.

#### **Ownership and Management**

- q) The Name, address and phone number of the person preparing the Application;
- r) The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the

- structure is different than the Applicant, the name and all necessary contact information shall be provided;
- s) The Postal address and tax map parcel number of the property;
  - t) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

#### Construction

- u) The total cost of construction and the value of all new and replacement components and equipment.
- D) In certain instances the Board may deem it appropriate to have an on-site RF survey of the Facility performed after the construction or Modification and activation of the Facility, such to be performed under the direction of the Board or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance.

#### E) Attachments

- 1) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the Antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or Stealth Techniques to match as closely as possible the color and texture of the structure.
- 2) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service.
- 3) Profile: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and thereby have the least adverse visual effect, all Antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible so as to create the smallest profile reasonably possible under the facts and circumstances, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

#### §218-55. Public Right of Way requirements.

- (A) An application to construct, install, operate, maintain or otherwise establish new Wireless Telecommunication Facilities (including but not limited to DAS equipment and systems) on poles or similar structures of forty (40') feet or less in height above existing grade in the Public Rights-of-Way (including, but not limited to, utility poles or other similar structures owned by other municipal entities or utility companies), shall be administered exclusively as provided in this section, and not require a Conditional Use Permit provided in this Article.

- (B) Any Applications under Subsection “A” above shall require an administrative permit to be issued by the Building Inspector. Such permit shall be issued only after Applicant’s submission of a building permit application and compliance with all other requirements of this Chapter, the Village Code, and all other applicable federal, state and local codes and regulations relating to the construction and safety of Wireless Telecommunication Facilities, as determined by the Building Inspector and only after such permit is approved by the Board subject to the following procedures and standards:
- (1) The Board may have a qualified professional expert or consultant of its choosing to review and confirm or disaffirm the information and conclusions contained in the Application materials, and provide an assessment as to the propriety of each proposed site under the standards hereinafter set forth. Any costs for the Village’s expert or consultant shall be reimbursed by the Applicant as provided in the Village’s Fee Schedule.
  - (2) The Board shall conduct site visits, including possible alternate sites, and seek to ensure that the proposed placement(s) are on poles or similar structures that are as far away from residences, houses of worship, day care centers and schools as is Commercially Practicable, and are as stealthed as reasonably possible.
- (C) The Board shall assess each proposed site individually, addressing the issues of whether the Applicant has a substantial need to locate a Wireless Telecommunications Facility on the specific pole or similar structure in question, and whether there are alternate Commercially Practicable locations which will adequately serve the lawful interest of Applicant and be farther away from residential, religious or educational uses than that proposed by Applicant subject to the following standards:
- (i) Existing utility poles or other similar structures should be utilized unless it shall be demonstrated by the Applicant that the functional or performance requirements of the Facility cannot be satisfied using an existing utility pole or other similar structure that conforms to the requirements of this section;
  - (ii) For reasons of public safety, cabinet installations shall either be placed (a) in a weather-proof underground vault or be (b) mounted no higher than 36 inches above grade at the base of the pole, or (c) mounted at least 15 feet above grade at the base of the pole;
  - (iii) Antennas shall be mounted at least 15 feet above the grade at the base of the pole and one omni-directional antenna having a maximum diameter no greater than the diameter of the pole it is attached to and a maximum length of 72 inches may extend above the top of the pole.
  - (iv) Installations shall not be on utility poles or other similar structures (a) adjacent to or opposite driveways, or (b) adjacent to or opposite intersections; or (c) directly opposite a nonconforming dwelling or other building where such nonconforming dwelling or building is set back less than the required front yard. The installation

shall be set back at least 75 feet from such a dwelling or building when the installation is located on the same side of the street as such a nonconforming dwelling or building and no less than 125 feet from such a dwelling or building when the installation is located on the opposite side of the street from such a dwelling or building.

- (v) A new pole or other similar structure shall not be installed (a) adjacent to or opposite driveways, or (b) adjacent to or opposite intersections, or (c) opposite a dwelling in cases where a nonconforming dwelling is set back less than the required front yard setback.
  - (vi) A new pole or other similar structure shall be no higher than the highest of the existing utility poles within 300 feet of such new pole and shall not exceed a maximum height of 40 feet above existing grade.
  - (vii) All above ground cabinets and antennas shall be finished in non-reflective coatings in camouflage natural tone colors and patterns as to make the installation as inconspicuous in its surroundings as possible and practical.
  - (viii) The Board may, upon just cause shown by clear and convincing evidence, waive or modify any of the aforementioned requirements.
- (D) The Board may authorize the issuance of an administrative permit by the Building Inspector for each site or node.
- (E) On an Application to the Board as referenced above, the Board shall treat each proposed site or node as a separate case, and require a fee from Applicant as required by the Village's Fee Schedule except that the Applicant may include up to three (3) nodes in a single Application provided sufficient funds are deposited to cover the cost of mailing notices and decisions to all property owners located within a 200 foot radius of each proposed node in addition to all other required fees and deposits as set forth in Village's Fee Schedule and in this Article. In considering the case(s), the Board shall employ all standard procedures, including all public notice and hearing requirements as required generally under sections 7-712-a of the New York State Village Law, this Code, and the rules of the Board, subject to the provisions of the Federal Telecommunications Act of 1996, as applicable.
- (F) The Village's expert's or consultant's report shall be included in the Board record. The Board may seek the advice and testimony of the Village's expert or consultant, who by virtue of the Village having done its due diligence prior to retaining the expert or consultant, shall be deemed to be a qualified expert. The Board may require the Applicant to provide such further information to the Village's expert or consultant to enable the expert or consultant to provide full expert and probative input to the Board as to the merits of the Application.
- (G) The Board shall grant an administrative permit for each site or node only if it shall determine that Applicant has a substantial need to place a Wireless Telecommunications Facility on the pole or similar structure in question, and that no other pole or similar structure in a Commercially Practicable location exists or may be installed or established in compliance with this Article which will adequately serve the lawful interest of Applicant and be further away from residential, religious or educational uses than that proposed.

- (H) The Building Inspector shall issue an administrative permit only for those sites for which an administrative permit has been approved by the Board under this Article, which permits shall require the following:
- i. Indemnification: The Applicant shall indemnify, defend and protect and hold harmless the Village, its Board members, officers and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense directly or proximately resulting from activities undertaken pursuant to the construction, use, and operation of any approved Wireless Telecommunication Facility as provided in this section.
  - ii. Insurance: The owner and Applicant shall obtain and maintain at all times insurance of an appropriate type and amount, with the Village as a named insured, from an insurer licensed and authorized in the State of New York meeting the satisfaction of the Board, the Village Board of Trustees and the Village Attorney.
  - iii. Approval of a license and/or right-of-way agreement by the Board of Trustees, (except that no license and/or right-of-way agreement shall be required of any entity that already holds a cable television or telecommunications franchise issued or covering the Village)

§218-56 Retention of Expert Assistance or Consultant Cost to be Borne by Applicant

- A. The Board may retain any consultant and/or expert necessary to assist the Board in reviewing and evaluating the Application, including the construction and Modification of the site, once permitted, and any site inspections. To prevent taxpayers from having to bear the costs and expenses related to the permitting and regulating of Wireless Telecommunications Facilities, the Applicant shall pay to the Village a fee(s) as set forth in the Village's Fee Schedule. The fee(s) is intended to cover all the costs and expenses of the expert or consultant and attorneys fees in connection with the review of any Application or the permitting, inspection, construction or Modification requested under this Article.
- B. Timing of Payment: The payment of the expert or consultant fees to the Village shall precede any work being done related to the intended Application, including but not limited to a site visit, pre-application meeting or discussions or inquiries initiated by the Applicant.
- C. Review prior to the formal submittal of the Application: The expert or consultant costs for any review of an Application or any portion thereof that is requested by the Applicant prior to the formal submittal of the Application shall be paid for by the Applicant and shall be separate and apart from the cost for expert or consultant assistance related to the formal review of the Application.
- D. Fee Cap: Notwithstanding the above, there shall be a \$12,000.00 cap as regards the total expert or consultant fees applicable to any single Application. However, the fee

cap shall be exclusive of and shall not apply in instances where the Application is changed or amended, or instances which the Board determines to be attributable to the dilatory or otherwise bad faith actions of Applicant in providing a Complete Application, or for instances of multiple hearings before the Board. The Board shall be the sole determiner of the appropriateness of expert or consulting fees, costs, and expenses.

- E. Amended or Changed Application:** If an Application is amended or changed after its formal submittal at any time prior to the grant of the permit or approval required under this Article, the Board reserves the right to require additional payment for review and analysis equal to, but not exceeding, the cost incurred by the Village by the Amendment of the Application. Such amount shall be paid to the Village prior to the issuance of the Conditional Use Permit, any building permit or any other required permit or approval.
- F. Relief or Waiver Request:** The cost of expert or consulting assistance to the Village related to work associated with a request for relief or waiver after the initial submittal of the an Application shall be paid for by the Applicant and shall not count toward the fee cap.
- G. Lease Negotiations:** The intended lessee shall pay all costs of the Village's expert assistance incurred for lease negotiations. The cost for the Village's expert assistance for lease negotiations is and shall be separate and apart from an application review for any permit, and shall be required to be paid for by the requesting lessee prior to the start of any work related to the intended lease negotiations.
- H. Qualifications:** The Village may hire any consultant of its choice to assist the Village in reviewing and evaluating Applications, provided the consultant has at least five (5) years experience working exclusively for the public sector regulating Towers and Wireless Facilities and negotiating leases for such facilities and has reviewed at least five hundred (500) Applications.
- I.** The total amount of the funds needed for expert or consulting assistance as set forth in the Village's Fee Schedule may vary with the scope and complexity of the Application, 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 or the amount of time spent responding to an Applicant's arguments as regards its Application or the requirements of this Article.
- J.** The Village will maintain an accounting for the expenditure of all such funds.

#### §218-57 Procedural Requirements for Granting a Conditional Use Permit

- A. Co-Location or Modification:** There shall be no public hearing required for an Application to Co-locate on an existing structure or to Modify a Facility, so long as there is no increase in the height of the Telecommunications Structure or increase in the size of the profile of the Facility. In such an instance, the Building Inspector shall be authorized to administratively issue the appropriate authorization or permit.

- B. **New Telecommunications Structure or Increased Height or Size of Profile:** When the Building Inspector determines that the Application is complete, with all required submissions having been received in proper form and all the information contained therein is truthful, correct and accurate, the Application shall be referred to the Board to schedule a Public Hearing. Except where expressly prohibited by applicable State and Federal law, the Board may require such additional information as it deems necessary and relevant to the Application or the impact on the Village of what is proposed, or the scheduling of a public hearing.
- C. In order for a public hearing to be held, notice of the hearing shall be published in the official newspaper of the Village no fewer than ten (10) calendar days prior to the scheduled date of the public hearing. In order that nearby property owners shall be specifically notified of the Application, the Applicant shall, no less than fourteen (14) calendar days prior to the scheduled date of the public hearing, mail a written notice of the hearing to all property owners 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, and for that purpose, Applicant shall complete and utilize a form provided by the Board, and provide affidavits or such other proof to the Board as the Board requires to ensure that such mailing has properly taken place. The notice of hearing shall be sent by certified mail, return receipt requested, to all property owners located within five hundred (500') feet, and by first class mail to all other property owners entitled to notice hereunder.
- D. The Applicant shall pay for all costs related to the public notice of any hearing and for the individual notices to property owners of the hearing.
- E. Upon Board review and approval, a Conditional Use Permit shall be issued.

§218-58 Action on an Application

- A. Timely Review: The Village will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- B. Referral of Application: The Village may refer any Application or part thereof to any advisory committee or expert or consultant for a non-binding recommendation.
- C. Action on an Application: After the public hearing is completed, and after formally considering the Application, the Board may i) approve; ii) approve with conditions; or iii) deny a Conditional Use Permit. If denied, the decision shall be in writing and shall be supported by substantial evidence contained in a written record. Throughout the Application and permitting process, the burden of proof for compliance with this Article or the need for a waiver or relief shall always be upon the Applicant.
- D. Refusal to Provide Information Needed for Written Record: An Applicant shall not be permitted to refuse to provide information needed to establish the substantial written

record required under federal law and applicable case law. Refusal shall result in a denial of the Application.

- E. Approval Notification:** If the Board approves the Conditional Use Permit or Administrative Authority for the Facility or Complex, then the Applicant shall be notified of approval of its Application, including any conditions, within 30 calendar days of the Village's action. The Conditional use Permit or Administrative Authorization shall be issued within thirty (30) days after such approval.
- F. Denial Notification:** The Applicant shall be notified of a denial of its Application at the Board Meeting when the decision was made, and in writing within 30 calendar days of the Board's action, which notice shall set forth in writing the reason or reasons for the denial. The written record expressly includes the minutes of any hearing.

#### §218-59 Extent and Parameters of Conditional Use Permit or Administrative Authority for Wireless Telecommunications Facilities

The extent and parameters of a Conditional Use Permit or Administrative Authorization for a Facility or Complex shall be as follows:

- A.** Such Conditional Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the Village, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- B.** A transfer, assignment or other conveyance of the Conditional Use Permit or Administrative Authorization shall require the written commitment of the proposed new holder of the Conditional Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Article.
- C.** Following notice and an opportunity to cure, a Conditional Use Permit granted under this Article may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Conditional Use Permit or other applicable law, rule, regulation or order, and if warranted the payment of a fine(s) as is permissible.
- D.** If a violation is not cured within the time frame set forth in the Notice of Violation, a hearing shall be held upon due prior notice to the Applicant citing the violation and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Conditional Use Permit.
- E.** Following the original notice and an opportunity to cure, subsequent or repeated violations of a substantially similar nature shall be deemed a pattern of misbehavior and not require an opportunity to cure prior to the imposition of fines or penalties.

#### §218-60 Removal and Performance Security

- A. Removal and Performance:** Prior to the issuance of any building permit, the Applicant and the owner of record of any proposed new Tower or other Telecommunications Structure or Complex shall, at its sole cost and expense, be jointly required to execute and file with the Village a bond or other form of security that is acceptable to the Village Attorney as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower or other Telecommunications Structure and with such sureties as are deemed adequate by the Village Attorney to assure the faithful performance of the requirements 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.

§218-61 Reservation of Authority to Inspect Wireless Telecommunications Facilities

- A.** In order to verify that the holder of a Conditional Use Permit for a Facility or Complex and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such Facilities in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and other applicable requirements and the conditions of any permit granted under this Article, and remains in compliance with such, the Village or its designee shall have the right to 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.
- B.** Refusal to allow or grant access to the Village's representative upon reasonable notice shall be deemed a violation of this Local Law.

§218-62 Liability Insurance

- A.** A holder of a Conditional Use Permit for a Wireless Telecommunications Facility shall secure and at all times maintain general comprehensive 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: \$2,000,000 per occurrence/\$5,000,000 aggregate; and
  2. Automobile Coverage: \$1,000,000.00 per occurrence/ \$3,000,000 aggregate; and
  3. A \$10,000,000 Umbrella coverage; and
  4. Workers Compensation and Disability: Statutory amounts.
- B.** For a Facility or Complex located on Village property, the Commercial General Liability insurance policy shall specifically name the Village and its officers, Boards, employees, 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 of New York and with an AM 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 thirty (30) days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted Wireless Telecommunications Facility or Complex is initiated, but in no case later than fifteen (15) days prior to the grant of the Building 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.
- G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Village shall not be deemed to comply with this Chapter.

#### §218-63 Indemnification

- A. Any Application for Wireless Telecommunication Facilities that is proposed to be located on Village property shall contain a provision with respect to indemnification of the Village. Such provision shall require the Applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, 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 or Complex, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Village, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the 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 a Wireless Telecommunications Facility or Complex.

#### §218-64 Enforcement; Civil Penalties; Fines

- A. The owner of the property on which a Wireless Telecommunications Facility or wireless equipment is located, as well as the owner and/or manager of the Facility, including any support structure and/or the land on which it is located, shall at all times be responsible for assuring that all activities occurring on the structure or at the site of the Facility that are related to the operation of the Facility and the support structure, including but not limited to i) proper permitting for all activities as required by this and other Village laws, rules or regulations; ii) the physical and safe condition and operation of the Facility, including any components of such; and iii) compliance with all applicable laws, ordinances, rules, regulations and orders related to the presence and operation of the Facility by any user or Lessee of all or part of the Facility. Said owner(s) and/or Manager(s) shall monitor activities at the site and operate the Facility so as to assure compliance as set forth in this subsection.
- B. In the event of a violation of this Article or any of the terms and conditions of a Conditional Use Permit or other approval required pursuant to this Article, and in addition to any other remedy available to the Village at law or equity, the Village may impose and collect, and the holder of the Conditional Use Permit for Wireless Telecommunications Facilities or the owner of the support structure responsible for adherence to the law for the construction, maintenance, operation and modification, shall pay to the Village civil penalties in the amount of \$500.00 per day, until the violation or violations are abated to the satisfaction of the Village.
- C. Additionally, the failure to comply with provisions of this Article or the terms and conditions of any Conditional Use Permit, Building Permit, or other required approval, shall constitute a violation of this Article by the owner of the property, the owner of the improvements, and any lessee or other person or entity in control of the property or Facility, jointly and severally, and shall subject them or any of them to prosecutions in the Brookville Village Court or other court of competent jurisdiction, or injunction actions in any court of competent jurisdiction to compel compliance.
- D. In the case of a Village Court prosecution, any person, firm or corporation which shall construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any Wireless Telecommunications Facility or part thereof in violation of this Article, or the conditions of any Conditional Use Permit or other approval issued hereunder, shall be guilty of a violation punishable by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment. Each day that an offense continues shall be deemed a separate offense. For conviction of a second offense, both of which were committed within a period of five years, such violation shall be punishable by a fine of not less than \$250 and not more than \$1,000 or by imprisonment for a period not to exceed 15 days, or both. Except as provided otherwise by law, such a violation shall not be a crime and the penalty or punishment imposed therefore shall not be deemed for any purpose a penal or criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person convicted thereof.
- E. No person or entity may use the payment of penalties set forth in this subsection as a means of evading or avoiding compliance with the letter and the intent of this Article.

## §218-65 Default and/or Revocation

If a Telecommunications Structure, Facility or Complex is 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 or any other required permit or approval, then the Village shall notify the holder of the Conditional Use Permit or other required permit or approval in writing of such violation. A Conditional Use Permit or any other permit or approval holder found to be in violation may be considered in default and subject to fines as provided in this Article, and if a violation is not corrected to the satisfaction of the Village in a reasonable period of time the Conditional Use Permit or other required permit or approval shall be subject to revocation.

## §218-66 Removal or Moving of Co-located Facilities and Equipment

- A.** If attached to an existing Tower or other Telecommunications Structure , unless the Board deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- B.** If the lease for the existing Co-location expires and is not renewed, thereby forcing the Facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the Board of the need to move or relocate the Facility; and ii) clear and convincing evidence satisfactory to the Board of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a lessee shall not be deemed a permissible reason for relocating.
- C.** The owner of any Facility or Complex shall be required to provide a minimum of sixty (60) days prior written notice to the Village Clerk prior to abandoning any Facility or Complex and shall bear the costs of removal and restoration of the sites of the Complex to their original condition, the costs of which shall be bonded in the event the owner/operator does not remove restore the areas of the installation or transfer the ownership and obligations to another entity under this Article.
- D.** Under the following circumstances, the Village may determine that the health, safety, and welfare interests of the Village warrant and require the removal of Facilities.
  - 1. a Facility or Complex that has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a cumulative total of one hundred-eighty (180) non-consecutive 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 be completed within 90 days of abandonment;

2. A Telecommunications Structure or Facility or Complex falls into a state of disrepair as to create a health or safety hazard or is deemed an attractive nuisance or a visual blight;
3. A Telecommunications Structure or Facility or Complex has been located, constructed, or Modified without first obtaining, or in a manner not authorized by, the required Conditional Use Permit, or any other necessary permit or approval and the Conditional Use Permit or any other necessary permit or approval has been revoked as provided in this Article.
4. If the Village makes such a determination under this section, then the Village shall notify the holder of the Conditional Use Permit or any other necessary permit or approval for the Facility or Complex in writing that said Facility or Complex is to be removed.
5. The holder of the Conditional Use Permit or any other necessary permit or approval, its successors or assigns, shall dismantle and remove such Facility or Complex and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or Commercial Impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the Village. However, if the owner of the property upon which the Facility or Complex is located wishes to retain any access roadway to the Facility or Complex, the owner may do so with the approval of the Board.
6. If a Facility or Complex has not been removed within ninety (90) days after the permit holder has received written notice from the Village, then the Village may order officials or representatives of the Village to remove the Facility or Complex at the sole cost and expense of the owner and the Conditional Use Permit or any other necessary permit or approval holder, dispose of the equipment as it sees fit and charge a tax lien against the property on which the structures(s) are situated to cover all of the Village's cost and expenses including attorney fees.
7. If the Village removes, or causes Facilities to be removed, and the owner of the Facility or Complex 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 Facility or Complex abandoned, and sell them and their components.
8. Notwithstanding anything in this Article to the contrary, the Village may approve a temporary Use Permit/agreement for the Facility or Complex for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected Facility or Complex 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 or other approval and the Village. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Village may take possession of and dispose of the affected Facility or Complex in

the manner provided in this Article and utilize the bond as provided for in this Article.

#### §218-67 RF Emissions

To assure the protection of the public health and safety, unless expressly prohibited by State or Federal law, the Village expressly reserves the right to require that an Applicant, a user of a Facility or Complex or the owner of the Facility or Complex verify compliance with the FCC's regulations regarding RF emissions as may be deemed appropriate from time to time, and that all users of the Facility or Complex cooperate with the party responsible for such verification. Failure to cooperate shall be deemed a violation of this Article and subject the non-cooperating party to all fines and other remedies at law or in equity and shall further be deemed cause for the Village to call upon the services of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) to make a determination.

- A. With respect to Telecommunications Structure other than Towers, if any section or portion of the structure to be attached to or area within 100' of such, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger.

#### §218-68 Relief

- A. Any Applicant desiring relief, waiver or exemption from any provision or requirement of this Article shall address and identify such at the pre-Application meeting. The relief or exemption must be contained in the filed Application for either a Conditional Use Permit or any other necessary permit or approval, or in the case of an existing or previously granted Conditional Use Permit or any other necessary permit or approval, a request for Modification of the Facility or Complex and/or equipment. Such relief may be temporary or permanent, partial or complete.
- B. Requests for relief shall not be considered part of the Application process.
- C. The burden of proving the need for the requested relief, waiver or exemption shall be solely on the Applicant.
- D. The Applicant shall bear all costs and expenses of the Village in considering the request and the relief, waiver or exemption, including expert assistance costs.
- E. No relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Village, its residents and other service providers.

§218-69 Adherence to State and/or Federal Rules and Regulations

- A. To the extent that the holder of a Conditional Use Permit or any other necessary permit or approval for a Wireless Telecommunications Facility or Complex 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, permit or approval 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 or any other necessary permit or approval for Wireless Telecommunications Facilities, then the holder of such a Conditional Use Permit or other permit or approval shall conform the permitted Facility or Complex to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (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.

§218-70 Conflict with Other Laws

Where this Local Law 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 Local Law shall apply.

§218-71 Legislative Authority

This Article is enacted as a local law under the Municipal Home Rule Law, pursuant to applicable authority granted by the State and federal governments.

§218-72 Effective Date

This Article shall become effective immediately upon filing with the Secretary of State.

**SECTION 2. Validity.**

If any section, sentence, clause or phrase of this law is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding will in no way affect the validity of the remaining portions of this law.

**SECTION 3. Effective Date.**

This Local Law shall become effective immediately upon filing with the Secretary of State.