BOARD OF TRUSTEES
INCORPORATED VILLAGE OF GARDEN CITY

LOCAL LAW NO. 10 OF 2016

A local law to amend Chapter 185 of the Village Code regarding Wireless Telecommunications Projects

BE IT ENACTED, by the Board of Trustees of the Village of Garden City, as follows:

Section 1. Chapter 185 of the Village Code, entitled "Telecommunications", is hereby amended as follows:

§ 185-1 Legislative intent.

The Board of Trustees has determined that having a specific regulatory framework for processing applications for Wireless Telecommunications Facilities is appropriate and advisable in order to further the safety and general welfare of the Village in that it will ensure that wireless equipment installed in the Village complies with federal law and regulations governing telecommunications facilities. Accordingly, the Board of Trustees seeks to implement a set of regulations that shall apply to and govern any and all applications for commercial, wireless facilities in the Village.

§ 185-2 Definitions; word usage.

ANTENNA
A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

CO-LOCATION
Co-Location shall mean the installation of a new Antenna or Antennas on an existing tower or a structure already being used as an Antenna site to support wireless services.

DISTRIBUTIVE ANTENNA SYSTEM or DAS
An Antenna or system of Antennas 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.

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

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

HEIGHT
When referring to a tower or structure, the distance measured from the mean level of the established center-line grade of the street adjacent to the parcel to the highest point on the tower or structure, even if said highest point is an Antenna or lightning protection device.

MODIFICATION OR MODIFY
The addition, removal or change of any of the physical or visually discernible components, colors, or other aspects of a Wireless Telecommunications Facility (such as Antennas, cabling, equipment shelters, landscaping, shrouding, fencing, utility feeds, vehicular access, or parking, and specifically including new transmission equipment, removal of transmission equipment, replacement of transmission equipment, or changes of wireless carrier or service provider) which addition, removal or change would be inconsistent with an existing permit for the facility but, in the judgment of the Superintendent of Buildings, will likely qualify for approval under a permit conformed to reflect such addition, removal or change.

NIER
Shall mean nonionizing electromagnetic radiation, which emanates from an operating Wireless Telecommunication Facility.

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

PERSONAL WIRELESS FACILITY
See definition of "Wireless Telecommunications Facility."

PERSONAL WIRELESS SERVICES OR PWS OR PERSONAL TELECOMMUNICATIONS SERVICE OR PCS
Shall have the same meaning as defined and used in the 1996 Telecommunications Act, as such definition may be amended from time to time.

REPAIRS AND MAINTENANCE
Normal repair and maintenance means work necessary to keep the facilities in good and safe working order and to prevent damage or malfunction. Normal repair and maintenance does not change the physical or visually discernible appearance of a facility or any part thereof as it was originally permitted. It also means the normal replacement of any equipment or components of a wireless facility without an increase in height, and where the replacement is, in the judgment of the Superintendent of Buildings, identical to the existing equipment or component being replaced. The term "Repair and Maintenance" shall not include any matters which the Superintendent of Buildings determines is a Modification, as defined herein.

RADIO FREQUENCY EMMISSIONS (RF)
See “NIER”.

STATE
The State of New York.

STEALTH TECHNOLOGY AND DESIGN
Shall mean technology, equipment, materials, and/or methods of design which minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of a proposed Wireless Telecommunications Facilities.

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

TELECOMMUNICATION SITE
See definition of "Wireless Telecommunications Facilities."

TELECOMMUNICATIONS STRUCTURE
A building or structure used in the provision of services described in the definition of "Wireless Telecommunications Facilities."

VILLAGE
The Incorporated Village of Garden City, New York.

WIRELESS TELECOMMUNICATIONS FACILITY
A structure, facility or location designed, intended to be used as, or used to support Antennas or other transmitting or receiving devices for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC. This includes, without limitation, towers, guyed lattice towers, monopoles, buildings, church steeples, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. "Wireless Telecommunications Facility" includes any site referred to as a Telecommunications Site or Personal Wireless Facility.

§ 185-3 Exclusions.

A. The following Wireless Telecommunications Facilities are exempt from this chapter:

(1) Any facilities operated by or on behalf of any unit of government for public or municipal purposes;

(2) Any facilities expressly or impliedly exempt from the Village's zoning or permitting authority by State or Federal law.

(3) Any facilities exclusively for private, noncommercial radio, television or internet reception, or private citizen's bands, licensed amateur radio and other similar noncommercial telecommunications.

(4) Private satellite dishes for television service.

B. The following Wireless Telecommunications Facilities shall be exempt from this chapter until they are Modified:

(1) Any facilities that are authorized and regulated by or under an unexpired license agreement or lease with the Village, or any district or agency under the control of the Village, which facility was already lawfully installed on the effective date of this chapter, except that nothing herein shall exempt any such facility from complying with any and all provisions or requirements set forth under such agreement or lease.

(2) Any facilities that are authorized and regulated by or under a valid and unexpired building permit or decision of a Village board, which was issued prior to the effective date of this chapter, except that nothing herein shall exempt any such facility from complying with any and all provisions or requirements set forth under such permit or decision or other applicable law.

C. Repairs and Maintenance of Wireless Telecommunications Facilities shall not require any permit or approval under this chapter.

§ 185-4 Permit and application requirements.

A. As of the effective date of this chapter, and except as otherwise expressly provided herein, no Person shall be permitted to site, place, build, construct, Modify or prepare any site for the placement or use of a Wireless Telecommunications Facilities without having first obtained a building permit from the Building Superintendent and any and all other approvals as required herein or under other applicable law. A new Wireless Telecommunications Facility must, in addition to a building permit, be granted a special use permit by the Board of Trustees. A Modification or Co-Location in conformity with Section 185-6 shall be approved administratively by the Building Superintendent.

B. An application for a special use permit, and any other approval under this chapter, shall be submitted to the Building Department contemporaneously with a building permit application.

C. If the Superintendent of Buildings or Board of Trustees determines that a particular application under this chapter should be considered with the assistance of a consultant, the Village may retain a consultant to review, analyze, and evaluate applications and to advise and provide information to Village personnel on technical and other issues relating to such applications, and to make recommendations to the Department of Buildings and the Board of Trustees.

D. In the course of considering an application pursuant to this chapter, the Buildings Superintendent and the Board of Trustees may waive submission of information otherwise required by this chapter if such information is unnecessary or irrelevant given the scope or nature of the project. If an applicant contends that certain information which has been requested need not be submitted in its application, the applicant shall submit a written statement explaining why such information ought not to be required under the circumstances.

E. Any and all representations made by the applicant to the Department of Buildings, Board of Trustees, or other Village agency, or any consultant thereto, relating to the application, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Department of Buildings and Board of Trustees.

F. In addition to any general requirements for the filing of a building permit application, an application for a building permit for a Wireless Telecommunications Facility shall include:

(1) A descriptive statement of the nature of the work proposed in the application, and the impact(s) of the work on the surrounding area.

(2) The name, address and phone number of the Person(s) preparing the application and supporting documentation.

(3) A site plan showing the existing and proposed structures on the subject property, and the type, locations and dimensions of all proposed and existing landscaping, and fencing on the subject property; the azimuth, size and center-line Height location of all proposed and existing Antennas on the supporting structure; the number, type and model of the Antenna(s) proposed with a copy of the specification sheet; the make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users.

(4) The frequency, modulation and class of service of radio or other transmitting equipment.

(5) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts.

(6) A report, or reports, prepared by a qualified company or individual verifying that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF emissions guidelines.

(7) A copy of all FCC licenses, if any, to be utilized at the site.

(8) A certified structural analysis, using the appropriate code in effect in New York State, demonstrating that the support structure (i.e. tower or pole), foundation, attachments, rooftop support structures, water tank structure, and any other supporting structures, meet all local, city, state and federal structural requirements for loads, including wind and ice

loads, and will be capable of supporting the Wireless Telecommunications Facility as constructed or improved in accordance with the application.

(9) For purposes of a proposed free-standing Wireless Telecommunications Facility, a geotechnical subsurface soils investigation report and foundation recommendation.

(10) The number, type and model of the Antenna(s) proposed with a copy of the specification sheet.

(11) A written copy of an analysis, completed by a qualified individual or organization, to determine if a proposed new tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting. This requirement shall also be for any existing structure or building where the applicant proposes to increase the Height of the structure or building. 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 as part of the application.

G. In addition to all other required information as stated in this chapter, all applications for a special use permit for the construction or installation of new Wireless Telecommunications Facilities, or Modification of an existing facility not meeting the requirements of Section 185-6, shall contain a complete building permit application in accordance with Section 185-4(F) and the additional information hereinafter set forth:

(1) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility at the location selected by the applicant. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a gap in coverage. If there is a capacity need, such documentation shall include an analysis of current and projected usage. Drive test or call test data shall be required to assist in reviewing the application;

(2) The name, address and phone number of the Person(s) preparing the documentation referenced in Subsection G(1) above and conducting the studies and analyses;

(3) An area map showing the location, size, Height and usage of all structures and buildings within 500 feet of the site of the application;

(4) The site plan must also show, in addition to all standard information, a description of any proposed tower and/or Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including Height above the mean level of the established center line grade of the street adjacent to the parcel, materials, color and lighting;

(5) The make, model, type and manufacturer of the tower and design plan; and

(6) A statement and substantive explanation to show that, pursuant to a study undertaken by the applicant, the proposed site is justified in that alternate sites, Co-Location sites, or other alternate facilities, which would have a lesser negative impact on area character and aesthetics than the proposed site and facilities, would be technically unfeasible, commercially impracticable, or otherwise inappropriate for the applicant's needs. Technical, financial and other evidence to support rejection of any such alternatives must be provided.

H. Application for new tower or other structure.

In the case of an application for a new tower, new monopole, new utility pole or other new structure, the applicant shall comply with the provisions of this subsection.

(1) The applicant shall provide a written report demonstrating the applicant's meaningful efforts to secure shared use of existing towers or other structures within the Village, with copies of written requests and responses, along with any letters of rejection. The applicant shall provide a report inventorying existing towers and other potentially suitable structures already improved with Wireless Telecommunications Facilities located within two miles (or such other distance agreed to by the Department of Buildings) of a proposed new tower or structure explaining why none of those existing sites is suitable for their project.

(2) A "balloon test", which shall be completed prior to the public hearing on the application. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three-foot-in-diameter brightly colored balloon at the maximum Height of the proposed new structure. (The size of the balloon must be representative of the size of the Antenna configuration proposed.) The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised by the applicant between seven and 14 days in advance of the first test date in a newspaper with a general circulation in the general vicinity. The applicant shall inform the Department of Buildings, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided to the Department of Buildings.

(3) A requirement that the structure be structurally designed to accommodate at least three additional Antenna arrays. This requirement may be waived by the Board of Trustees; provided the applicant demonstrates, in writing, that the provision of future shared usage of the structure is not technologically feasible, is commercially impracticable, or creates an unnecessary and unreasonable burden, based upon:

(a) The foreseeable number of FCC licenses available for the area;

(b) The kind of Wireless Telecommunications Facilities proposed; and

(c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites.

I. For applications for a replacement tower, or for Co-Location or Modification on an existing tower, the applicant shall provide a signed inspection report of the tower condition, such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F, or the most recent version in effect. If a signed report of tower inspection has been provided by another permit holder for the tower already and is on file with and satisfactory to the Building Superintendent at the time the applicant is required to file an initial or an updated tower inspection report, the Building Superintendent shall waive such filing by the applicant. On applications for a new a new tower, documentation consistent with the foregoing shall be provided by the applicant prior to issuance of a certificate of completion for the tower. Any deficiency, structural or otherwise, noted in the foregoing documentation shall be remedied prior to issuance of a certificate of completion for a tower or project.

J. For an application for a special use permit for a new tower or structure, or for a Modification of an existing structure, the applicant shall furnish a visual impact assessment, which shall include:

(1) If a new tower or increasing the Height of an existing structure is proposed, a computer-generated "Zone of Visibility Map" at a minimum of one-mile radius from the proposed structure, with and without foliage, to illustrate locations from which the proposed installation may be seen.

(2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the Village as may be appropriate, including but not limited to major roads; 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. In the case of a Co-Location or Modification, the photo simulation need show only the effect of the co-location or Modification in relation to other equipment located on the support structure, i.e. the effect on the profile of the facility, and may be taken at or near the site. The applicant should consult with the Building Department to insure that the selection of key viewpoints for the assessment is appropriate.

(3) A map showing the locations of where the pictures were taken and distance from the proposed structure.

(4) A written description of the visual impact of the proposed facility, including and as applicable the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

(5) In narrative and/or by drawing, a demonstration of how applicant shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility.

K. Applications for a special use permit or a building permit shall maximize the use of site configurations, building materials, Stealth Technology and Design to blend the project in with the surrounding area.

L. All utilities at Wireless Telecommunications Facilities shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the Village, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate, as well as Village regulations applicable to excavations in public streets.

M. Each application for a special use permit shall demonstrate that there shall be adequate access to the project site through public streets, an access road, turnaround space and/or parking to assure adequate emergency and service access to the site.

N. All Wireless Telecommunications Facilities subject to this chapter shall be constructed, operated, maintained, repaired, Modified, removed and restored in strict compliance with all applicable technical, safety and safety-related codes adopted by the Village, state, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code and the recommended practices of the National Association of Tower Erectors.

§ 185-5 Priority of selection of sites.

A. Wireless Telecommunications Facilities should be sited in a manner that preserves area character and aesthetics and minimizes potential adverse economic, environmental and quality of life impacts. Careful selection of sites, including Co-Location where appropriate, will help achieve this objective. Accordingly, all applications submitted pursuant to this chapter shall be subject to the site prioritization schedule below. To the greatest extent possible, applications shall seek approval for installations at locations with the highest priority level possible with item (1) being the highest.

(1) An existing tower or other structure already improved with Wireless Telecommunications Facilities on properties in areas zoned for non-residential uses.

(2) An existing tower or other structure on properties in areas zoned for non-residential uses.

(3) A new tower or other structure on properties in areas zoned for non-residential uses.

(4) An existing tower or other structure already improved with Wireless Telecommunications Facilities on properties in areas zoned for residential uses.

(5) An existing tower or other structure in areas zoned for residential uses.

(6) A new tower or other structure on properties in areas zoned for residential use.

B. In reviewing an application for a new Wireless Telecommunication Site, the Board of Trustees shall determine if the site selected for the application is appropriate taking into account the totality of the circumstances, including the priority level of the proposed site and the existence of potential alternatives. An applicant proposing a Wireless Telecommunications Facility must explain in its application why siting or Co-Location at any higher priority location is not feasible or appropriate under the circumstances. Any technological, financial, or other factors should be identified, and any quantitative data relating to such factors should be included in the application. Unilateral or contractual obstacles to Co-Location created by the applicant and/or others holding permits for Wireless Telecommunications Facilities in the Village are contrary to the public interest and may be given little weight.

§ 185-6 Shared use; Modifications.

A. An applicant seeking to Co-Locate on an existing tower or other suitable structure shall be required to provide: (i) a copy of the permit for the existing Wireless Telecommunications Site; and (ii) written permission from the owner or Person in control of the site granting the applicant permission to attach their wireless facilities.

B. A Co-Location or Modification at a permitted Wireless Telecommunications Facility which does not involve a substantial change in emissions, size or appearance, as defined in FCC Report and Order 14-153, shall be approved administratively by the Building Department as an amendment to the existing permit, provided the application complies with all other applicable federal, state and local laws and regulations, specifically including § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 28 U.S.C. § 1455. Notwithstanding anything to the contrary herein, the Building Department may utilize the Village consultant to assist in review of applications for Co-Locations and Modifications.

§ 185-7 Justification for Height of telecommunications towers.

A. In addition to satisfying all other special use permit criteria, the applicant for a new Wireless Telecommunications Facility shall submit documentation justifying the Height of any tower, facility, pole and/or Antenna requested. Documentation in the form of propagation studies must include all backup data used to perform at the requested Height and at a Height which is a minimum of 10 feet shorter to allow verification of the need for the Height requested.

B. No tower constructed after the effective date of this chapter shall be constructed to a Height, inclusive of all attachments, which exceeds the maximum height allowed under federal, state and/or local law for a facility that does not utilize artificial lighting.

§ 185-8 Visibility.

A. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by Federal or state law.

B. If lighting is required, the applicant shall provide a detailed plan for lighting, demonstrating as unobtrusive and inoffensive an effect as is possible while complying with state and federal law.

§ 185-9 Security.

All Wireless Telecommunications Facilities and Antennas shall be fenced or otherwise secured in a manner that prevents unauthorized access.

§ 185-10 Signage.

A. All Wireless Telecommunications Facilities shall feature signs notifying Persons in the immediate area of the presence of RF radiation and providing the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as their emergency phone number(s). The signs shall be installed in all directions on the fence, or if none, on the equipment shelter or cabinet, for the facility and shall be visible from the access point to the site. Such signs shall be of a size that is proportionate to the size of the shelter or cabinet on which they are affixed, but shall in no event exceed 4 square feet in size.

B. On tower sites, an FCC registration sign must also be posted. Signs shall not be lighted, unless applicable law, rule or regulation requires lighting.

§ 185-11 Retention of experts; escrow funds for reimbursement by applicant.

A. In addition to all other fees for building permit or special use permit applications, as the case may be, an applicant shall deposit with the Village escrow funds as set forth below to reimburse the Village for all reasonable costs of the Village's consultant(s), including legal counsel and experts, in providing evaluation and consultation to any agency of the Village in connection with the review of any application under this chapter. The initial deposit for a new Wireless Telecommunications Facility shall be $8,500. The initial deposit for a Co-Location or Modification shall be $6,000. The placement of the initial deposit with the Village shall precede processing of an application. The Village will maintain a separate escrow account for all such funds.

B. If at any time during the application process the escrow account has a balance less than $2,500, the applicant shall immediately, upon notification by the Village, replenish said escrow account so that it has a balance of at least $5,000. Such additional escrow funds shall be deposited with the Village before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Village is more than the

amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant.

C. When notified by the Village that additional escrow is required, the applicant may request copies of invoices paid to consultants. If the applicant finds errors in those invoices, the applicant may ask the Village to audit those specific items for reasonableness.

§185-12 Referral to Board of Trustees; public hearing and notification requirements.

A. If a special use permit is required, then once the Department of Buildings determines that the application is complete, with all required submissions having been received in proper form, it shall refer the file to the Board of Trustees, which shall hold a public hearing on the application prior to rendering its decision on the application.

B. In order for a public hearing to be held by the Board of Trustees, notice of the hearing shall be published in a newspaper of general circulation in the vicinity of the premises, no less than five 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 calendar days prior to the scheduled date of the public hearing, mail a written notice of the hearing to all property owners within 500 feet or ten times the Height of the proposed new tower or other structure, whichever is greater, 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, the applicant shall complete and utilize a form provided by the Village, and provide affidavits or such other proof to the Village 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.

§ 185-13 Action on application for special use permit.

A. The Board of Trustees shall consider the merits of the case, based on the evidence in the record. The burden of proof for showing compliance with applicable standards and criteria shall always be upon the applicant.

B. After the public hearing is completed, and within the time frame required by law, the Board may approve, approve with conditions, or deny a special use permit.

C. No special use permit may be assigned, transferred or conveyed without written notice to and approval of the Board of Trustees, provided such approval shall not be unreasonably withheld or conditioned.

D. In addition to any other remedy of the Village at law or equity, any special use permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled or terminated if the Board of Trustees determines that there are substantial violations of the conditions and provisions of the special use permit, or a substantial violation of the provisions of this chapter.

§ 185-14 Fees.

A. The fees for building permit and special use permit applications pursuant to this chapter shall be set forth in the Village Fee Schedule, as amended from time to time.

B. At the time that the building permit application is filed, the applicant shall provide a qualified cost of construction affidavit to the Department of Buildings to establish the basis for the cost of the building permit fees, providing such information therein as the Department of Buildings shall deem sufficient for that purpose.

C. Prior to issuance of a building permit, if it appears to the Department of Buildings that the affidavit underestimated the actual cost, the Department shall require payment of such additional fees as it shall deem appropriate, at the time that the building permit is to be issued.

D. All application fees shall be paid at the time an application is submitted.

E. All fees paid shall be nonrefundable.

§ 185-15 Deleted.

§ 185-16 Deleted.

§ 185-17 Post-construction testing and inspection.

The applicant shall perform post-construction testing of each site for which a building permit is issued pursuant to this chapter within three (3) weeks after all work is completed and the site is operational. Said testing shall be done at the applicant's sole cost and expense and in accordance with a site-specific testing plan approved by the Building Superintendent or the Village's consultant, if any. The Building Superintendent or consultant shall be on-site for post-construction testing to inspect the site and confirm that the facilities are properly installed and operating. Any costs incurred by the Village in connection with post-construction testing shall be paid using the applicant's escrow deposit.

§ 185-18 Applicability.

This chapter shall apply to all applications filed with the Village of Garden City after the filing of this chapter in the Office of the Secretary of State of the State of New York.

§ 185-19 Penalties for offenses.

A. The failure to comply with provisions of this chapter, or the terms and conditions of any special use permit, building permit, or other approval granted pursuant to this chapter, shall constitute a violation of this chapter 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 facilities, jointly and severally, and shall subject them, or any one of them, to prosecution in criminal court and/or any civil proceeding available at law or equity in a court of competent jurisdiction.

B. In the case of a criminal prosecution, any Person, firm or corporation which shall be convicted of constructing, altering, repairing, moving, removing, demolishing, equipping, using, occupying or maintaining any Wireless Telecommunications Facility, or part thereof, in violation of this chapter, or in violation of the conditions of any special use permit, building 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. Upon conviction of a third offense and any further offenses, all of which were committed within a period of five years, such violations shall be punishable by a fine of not less than $500 and not more than $2,000 or by imprisonment for a period not to exceed 15 days, or both.

§ 185-20 Removal.

A. Under the following circumstances, the Department of Buildings may determine that the health, safety, and welfare of the Village warrant and require the removal of a Wireless Telecommunications Facility:

(1) The facility has been abandoned (i.e., not used as a Wireless Telecommunications Facility) for a period exceeding 90 consecutive days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days.

(2) The facility has fallen into such a state of disrepair that it poses a health or safety hazard.

(3) The facility has been located, constructed, or Modified without first obtaining, or in a manner not authorized by, a special use permit or any other necessary authorization.

(4) The special use permit or other authorization for the facility has been revoked.

B. If the Department of Buildings makes a determination under this section, then the Village shall notify the holder of the special use permit or other approval within 48 hours that said Wireless Telecommunications Facilities are to be removed, on such terms and time frames as the Department may direct, within not-less-than 90 days of receipt of written notice from the Department. Nothing herein shall prevent the Department of Buildings from declaring any structure a dangerous or unsafe structure.

C. In such a case, the holder of the special use permit or other approval, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities, and all associated structures and facilities, 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 economic impracticability, within 90 days of receipt of written notice from the Department; provided, the Superintendent of Buildings may direct removal in a shorter timeframe where the subject structure is an unsafe structure. However, if the owner of the property upon which the Wireless Telecommunications Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the Village.

D. If Wireless Telecommunications Facilities ordered to be removed under this section are not removed or substantial progress has not been made to remove same within the ninety-day period (or shorter period prescribed by the Building Superintendent), the Village may charge the owner with a violation of this chapter, unless a longer timeframe for removal has been approved.

§ 185-21 Right-of-way or public street permit requirements.

A. Applications for permits for Wireless Telecommunications Facilities in public rights-of-way shall be determined under the same procedures and standards applicable to all applications under this chapter, except that the following provisions shall not apply: 185-4(F)(10); 185-4(F)(12); 185-4(G)(6); 185-4(H)(2); 185-4(H)(3); 185-4(J)(1); 185-4(J)(5); 185-4(M); 185-5(A-B); 185-8(B-C); 189-9; 185-11; and 185-15.

B. The following additional regulations shall apply to proposed Wireless Telecommunications Facilities in public rights-of-way:

a. Location. Whenever possible, Wireless Telecommunications Facilities shall not be located in front of the front façade of a commercial or residential building.

b. Utility Status Certification. The applicant for a new tower in the public rights-of-way shall provide the Village Board of Trustees with its Certificate of Public Convenience and Necessity from the New York Public Service Commission.

c. Co-Location. The applicant for a new Wireless Telecommunications Facility shall provide a written report demonstrating the applicant's meaningful efforts to secure shared use of existing facilities in the public rights-of way or existing infrastructure owned by other utilities in the public rights-of-way, with copies of written requests and responses, along with any letters of rejection. The applicant shall provide a report inventorying existing facilities and other potentially suitable structures already improved with Wireless Telecommunications Facilities located within one-half mile (or such other distance agreed to by the Department of Buildings) of a proposed new tower or structure explaining why none of those existing sites is suitable for their project.

d. Equipment Location. New Wireless Telecommunications Facilities and related equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists or to otherwise inconvenience public use of the rights-of-way as determined by the Village. In addition:

(1) Ground-mounted related equipment shall be located between the sidewalk and the curb. For reasons of safety and aesthetics, such equipment shall neither protrude onto the curb, nor obstruct the sidewalk.

(2) Ground-mounted related equipment that cannot be placed underground shall be screened, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Village Board of Trustees.

(3) Required electrical meter cabinets shall the screened to blend in with the surrounding area to the satisfaction of the Village Board of Trustees.

(4) Any underground vaults related to new Wireless Telecommunications Facilities shall be reviewed and approved by the Department of Public Works.

e. Future Users. Any proposed new Wireless Telecommunications Facility shall be designed structurally, electrically, and in all respects to accommodate both the applicant's antennas and comparable antennas for the maximum amount of future users possible, based on the size of the proposed facility.

f. Stealth Technology. All new Wireless Telecommunications Facilities shall incorporate Stealth Technology and Design.

g. Height restriction. Wireless Telecommunications Facilities located within a public right-of-way shall be no taller than five (5) feet above the average height of utility and light poles located within a two (2) block radius thereof.

C. Applications for Wireless Telecommunications Facilities in public rights-of-way shall further require:

(1) A franchise or other contractual agreement between the Village and the applicant in form and content acceptable to the Village and approved by the Board of Trustees; and

(2) A permit from the Department of Public Works for street and/or sidewalk opening, if required under the Village Code.

§ 185-22 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.

§ 185-23 Relief.

The Board of Trustees, as part of the special use permit process, and the Building Superintendent, as part of the building permit process, are respectively authorized to grant relief from the provisions of this chapter to ensure compliance with all applicable laws, including the Federal Telecommunications Act of 1996. Such relief may be granted, in whole or in part, with respect to any requirement or restriction herein upon presentation of proof acceptable to the Board of Trustees or Building Department, as the case may be, demonstrating that: (i) the specific requirement or restriction does not apply to the present application; or (ii) relief from the Code is necessary to comply with a latter amendment or change to an applicable federal or state law.

Section 2. This local law shall take effect immediately upon filing with the Office of the Secretary of State.