

**Local Law CC of 2022**

**A Local Law amending Chapter 140 of the Code of the Town of Rochester**

**§ 140-29. Wireless telecommunication facilities.**

**Section 1. Chapter 140 Amendment**

Chapter 140 of the Code of the Town of Rochester **§ 140-29. Wireless telecommunication facilities.** shall be amended as follows.

**§ 140-29. Wireless telecommunication facilities.**

- A. Purpose and intent. The Town of Rochester desires to balance the interests of residents, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the Town and is cognizant the concerns and desires of these interests sometimes vary. The Town recognizes wireless telecommunications facilities may pose significant concerns to the health, safety, public welfare, scenic ridgelines and viewsheds, and the character and environment of the Town and its inhabitants and neighborhoods. The Town also recognizes facilitating the development of wireless service technology can be an economic development asset to the Town, is a necessity for emergency management communications, and may provide significant benefit to its residents and businesses. The Town further recognizes wireless telecommunications is an industry which carries a high degree of federal oversight and control and is considered a public utility in New York State. In seeking achievement of this balance, the intent of this section is to:
- 1) Ensure that the location, placement, construction, modification, and maintenance of wireless telecommunications facilities will pose the least possible adverse effect upon the Town and its inhabitants,
  - 2) Minimize the negative impacts of wireless communications facilities on surrounding land uses, and protect the Town's health, safety, public welfare, scenic, historic, environmental, and natural or fabricated resources.
  - 3) Adequately serve the needs of the users of wireless telecommunications facilities by providing safe, adequate coverage for the Town of Rochester residents and businesses and accommodating the growing desire and demand for wireless telecommunications services.
  - 4) Provide for a wide range of appropriate locations and options for wireless telecommunications providers and encourage and promote the location of new telecommunications facilities in areas which are not zoned primarily for residential use.
  - 5) Minimize adverse aesthetic and visual impacts to protect the natural features and aesthetic character of the Town with special attention to the **Historic Overlay District**, Shawangunk Ridge, Mohonk Preserve and Catskill Preserve.
  - 6) Encourage creative approaches in location and types of wireless telecommunications facilities which will blend in with the surroundings of such facilities and promote, wherever possible, the reasonable sharing and/or co- location of wireless telecommunications facilities among service providers, and the locating of telecommunications facilities on existing structures.

- 7) Establish a fair and efficient process for the review of applications consistent with federal, state, and local regulations which assures an integrated, comprehensive review of the health, safety, welfare, and environmental impacts of such facilities.
- B. Applicability. This section shall apply to the development activities including installation, construction, and/or modification of all wireless telecommunications facilities including, but not limited to, existing towers; proposed towers (concealed and non-concealed), public or private, including **outdoor distributed antenna systems (oDAS)**, temporary "cell on wheels" (COW); co-location on existing towers, and attached wireless telecommunications facilities (concealed and non-concealed).
- 1) 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 wireless telecommunications facilities without having first obtained a building permit from the Code Enforcement Officer and any and all other approvals as required herein or under other applicable law. No existing structure shall be modified to serve as a telecommunications structure unless in conformity with these regulations. A new wireless facility must, in addition to a building permit, obtain a special use permit from the Planning Board.
  - 2) With this section, the Town of Rochester hereby institutes the following classification system for applications concerning wireless telecommunications facilities. Upon receipt of a zoning permit application, the Code Enforcement Officer shall review the action proposed and classify the application in the following manner.
    - (a) Type A: The action is determined to be replacement of existing transmission equipment with equipment comparable in size and function **as verified by submitted and reviewed updated technological new equipment parameters**. No other agency review shall be required.
    - (b) Type B: The action is determined to be replacement, alteration, or modification of existing transmission equipment or a telecommunications structure or the co-location of transmission equipment on an existing wireless telecommunications facility which constitutes an "eligible facilities request" action, as defined by the FCC. [Note: In accordance with Section 6409 of the "Middle Class Tax Relief and Job Creation Act of 2012," the Planning Board may not deny, and shall approve, any "eligible facilities request" for a modification of an existing wireless tower or base station that does not substantially change, as defined by the FCC, the physical dimensions of such tower or base station.] Such action shall require **submission of updated equipment technological parameters and site plan application** and review by the Planning Board. SEQRA review shall require short form EAF unless the Planning Board shall require long form EAF.
    - (c) Type C: The action is determined to be replacement, alteration, or modification of existing transmission equipment or a telecommunications structure or the co-location of transmission equipment on an existing wireless communications facility which exceeds the criteria of an "eligible facilities request" action, as defined by the FCC. [Note: In accordance with Section 6409 of the "Middle Class Tax Relief and Job Creation Act of 2012," the Planning Board may not deny, and shall approve, any "eligible facilities request" for a modification of an existing wireless tower or base station that does not substantially change, as defined by the FCC, the physical dimensions of such tower or base station.] Such action shall **require submission of updated equipment technological parameters and shall** require special use permit application and review by the Planning Board. SEQRA review shall require long form EAF.

- (d) Type D: The action is determined to be construction of a new wireless telecommunications facility. Such action shall **require submission of updated technological parameters and shall** require special use permit application and review by the Planning Board. SEQRA review shall require long form EAF.
- 3) All applications for wireless telecommunications facilities are subject to the standards in this subsection to the extent that they do not violate federal or New York State limitations on local siting standards and are not otherwise inconsistent with federal or State law and **TOR Comprehensive Plan objectives**. Upon notification of complete application, shall be acted upon within a reasonable period of time as required by applicable federal regulations.
  - 4) The provisions of this subsection are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services.
  - 5) This subsection shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services.
  - 6) The Town may not regulate the placement, construction, and modification of personal wireless service facilities based on the environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's regulations concerning such emissions.
  - 7) Any decision to deny a request to place, construct, or modify personal wireless service facilities shall be made in writing and supported by substantial evidence contained in a written record.
- C. Exclusions. The following wireless telecommunications facilities shall be exempt from the provisions of this chapter:
- 1) Any facilities operated by or on behalf of any unit of government for public or municipal purposes to provide communications for the sole purpose of public health and safety **provided updated technological equipment parameters are submitted:**
  - 2) Any facilities exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial telecommunications.
  - 3) A temporary wireless telecommunications facility, upon the declaration of a state of emergency by federal, state, or local government; except that such facility must comply with all federal and state requirements. No communications facility shall be exempt from the provisions of this section beyond the duration of the state of emergency.
  - 4) Any facilities expressly or implicitly exempt from the Town's zoning or permitting authority under law.
  - 5) ~~Emergency~~ repairs to existing wireless telecommunications facilities for restoration of service, which repairs shall be reported to the Code Enforcement Office no later than the end of the next business day.
- A. Definitions. The following definitions shall specifically apply to this section. Where a definition references a specific law, code, or statute; any amendments to that law or code shall apply. Where a definition references a federal agency who has been empowered with the authority to interpret such definition, the most recent definition adopted by that agency shall apply.

**ABANDONMENT** — Cessation of use of a wireless telecommunications facility for wireless telecommunications activity for at least the minimum period of time specified under this chapter.

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

**ALTERATION** — Any construction or renovation to an existing wireless telecommunications facility other than a repair.

**ALTERNATE DESIGN TOWER STRUCTURE** — Artificial trees, clock towers, bell steeples, light poles, silos, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers (see also "stealth facility").

**ANSI** — American National Standards Institute, a nonprofit, privately funded membership organization that coordinates the development of voluntary national standards in the United States.

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

- (1) **DIRECTIONAL ANTENNA** (also known as **PANEL ANTENNA**) — Transmits and receives radio frequency signals in a specific directional pattern of less than 360°.
- (2) **OMNI-DIRECTIONAL ANTENNA** (also known as **WHIP ANTENNA**) — Transmits and receives radio frequency signals in a 360° radial pattern. For the purpose of this chapter, an omni-directional antenna is up to 15 feet in height and four inches in diameter.
- (3) **PARABOLIC ANTENNA** (also known as a **MICROWAVE ANTENNA** or **MICROWAVE DISH ANTENNA**) — A bowl-shaped device used to link communications sites together by wireless transmission of voice or data for the reception and/or transmission of radio frequency communications signals in a specific directional pattern.
- (4) **REPEATER** — A small receiver/relay transmitter and antenna of relatively low power output designed to extend personal wireless services to areas which are not able to receive adequate coverage directly from a base or primary station.

**ANTENNA ARRAY** — One or more antennas used to provide wireless service.

**APPURTENANCE** — Any object attached to the body of the tower or support structure that would protrude from the edge.

**ATTACHMENTS** — Wire, fiber optic, telecommunications and/or coaxial cable, nodes, and other wireless communications equipment attached and maintained upon a structure.

**BASE STATION** — As defined by the FCC, a station at a specified site that enables wireless communication between user equipment and a communications network, including any associated equipment such as, but not limited to, radio transceivers, antennas, coaxial or fiber- optic cable, and regular and backup power supply. It includes a structure that currently supports or houses an antenna, transceiver, or other associated equipment that constitutes part of a base station. It may encompass such equipment in any technological configuration, including distributed antenna systems and small cells.

**BREAKPOINT TECHNOLOGY** — The engineering design of a monopole tower wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least 5% more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.

**CELL ON WHEELS (COW)** — A portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle- mounted and contains a telescoping boom as the antenna support structure.

**CO-LOCATION** — As defined by the FCC, the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

**COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE** — 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 commercially impracticable and shall not render an act or the terms of an agreement commercially impracticable.

**IMPRACTICABLE** — 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, shall not deem a situation to be commercially impracticable and shall not render an act or the terms of an agreement commercially impracticable.

**CONCEALED** — A tower, accessory structure, or equipment compound that is not readily identifiable as such and is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site. There are two types of concealed facilities:

- (1) Antenna attachments, including painted antenna and feed lines to match the color of a building or structure, faux windows, dormers, or other architectural features that blend with an existing or proposed building or structure.

- (2) Freestanding. Freestanding concealed towers usually have a secondary, obvious function, which may include church steeple, windmill, bell tower, clock tower, light stanchion, flagpole with or without a flag, or tree.

**COVERAGE AREA** — A boundary defined by the lack of cellular service or specific cellular coverage emitted from an identified contained communications facility.

**DISTRIBUTED ANTENNA SYSTEM (DAS)** — A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

**ELIGIBLE FACILITIES REQUEST** — As defined by the FCC, any request for modification of an existing wireless tower or base station that involves co-location, removal, or replacement of transmission equipment, provided the request does not "substantially change" the physical dimensions of the tower or base station.

**ELIGIBLE SUPPORT STRUCTURE** — As defined by the FCC, any structure that meets the definition of a wireless tower or base station.

**EQUIPMENT CABINET** — Any structure above the base flood elevation including cabinets, shelters, pedestals, and other similar structures and used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communications signals.

**EQUIPMENT COMPOUND** — The fenced-in area surrounding the ground-based wireless communications facility including the areas inside or under a tower's framework and accessory structures such as equipment necessary to operate the antenna on the structure that is above the base flood elevation including cabinets, shelters, pedestals, and other similar structures.

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

**FALL ZONE** — The adjacent area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by [professional engineering standards](#).

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

**GUYED TOWER** — A wireless communications support structure, which usually consists of metal crossed strips or bars, and is steadied by wire guys in a radial pattern around the tower.

**HEIGHT** — When referring to a tower or other structure, the distance measured from the preexisting grade level to the highest point on the tower or structure, even if said highest point is an antenna, lightning protection device or any other apparatus attached to the tower or other structure.

LATTICE TOWER — A wireless communications support structure, which consists of metal crossed strips or bars to support antennas and related equipment.

MICRO CELL — A low-power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

MINIMUM SIGNAL COVERAGE — Specific signal strength established as a minimum capacity for cellular and PCS coverage.

MODIFICATION or MODIFY — The addition, alteration, removal or change of any of the physical or visually discernible components, colors, or other aspects of a wireless telecommunications facility, including but not limited to antennas, cabling, equipment shelters, landscaping, shrouding, fencing, utility feeds, vehicular access, or parking, specifically including new transmission equipment, removal of transmission equipment, replacement of transmission equipment, adding a new wireless carrier or service, changes of wireless carrier or service provider, and/or upgrade or replacement of the equipment for better or more modern equipment. A modification shall not include the replacement of any existing permitted components of a wireless facility, actions that do not change the physical or visually discernible appearance of the facility or any part thereof as it was originally permitted, or wireless facilities classified as described in Subsection B(2)(a) of this section.

MONOPOLE TOWER — A freestanding tower that is composed of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of tower is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground.

NER — Non-ionizing electromagnetic radiation.

NONCONCEALED — A wireless communications facility that has not been treated, camouflaged, or disguised to blend with the setting and is readily identifiable.

OET BULLETIN 65 — Document published by the Federal Communications Commission (FCC) Office of Engineering and Technology specifying radio frequency radiation levels and methods to determine compliance, **as amended and its successors**.

PERSONAL WIRELESS FACILITIES — See definition for "wireless telecommunications facilities.

PERSONAL WIRELESS SERVICES (PWS) or PERSONAL TELECOMMUNICATIONS SERVICE (PCS) — As defined by the Telecommunications Act of 1996, commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. These services include but are not limited to cellular services, personal communications services (PCS), high speed internet services, specialized mobile radio services and paging services.

RADIAL PLOTS — Computer-generated estimates of the signal emanating from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency **ranges** and output **strengths**, type of antenna, antenna gain, topography of the site and its surroundings are all considered to create these simulations. They are the primary tool for determining whether a site will provide adequate coverage for the personal wireless telecommunications service facility proposed for that site, **provided all FCC guidelines are satisfied.**

REPAIRS — The restoration to good or sound condition of any part of an existing wireless telecommunications facility for the purpose of its maintenance.

ROOF-MOUNTED and/or BUILDING-MOUNTED — Antennas and/or equipment mounted above the roof ridge line of an existing structure (including rooftop appurtenances) or **on any building elevation. ~~a building face.~~**

STEALTH FACILITY — A communications facility that is integrated or attached as part of, a structure or is a freestanding monopole incorporating flush-mounted antennas or a transparent shell design to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same areas as the requested location of such wireless telecommunications facilities.

STRUCTURE-MOUNTED — Antennas mounted to, or as part of a structure (e.g., a building, billboard, church steeple, freestanding sign, water tank etc.).

SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSIONS OF A TOWER OR BASE STATION — The test criteria applied to a facility to determine if it may be classified as an "eligible facilities request" as defined in the Nationwide Programmatic Agreement for the Co-location of Wireless Antennas by the FCC. To be classified as such, the impact of such facility must be equal to or less than all the following criteria.

- (1) The mounting of the proposed antenna on the tower would increase the existing height of the tower by more than 10% or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this subsection if necessary to avoid interference with existing antennas; or
- (2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- (3) The mounting of the proposed antenna would involve adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this subsection if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

- (4) The mounting of the proposed antenna would involve excavation outside the current tower site, defined as the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

**TELECOMMUNICATION STRUCTURE** — A structure used in the provision of services described in the definition of "wireless telecommunications facilities."

**TELECOMMUNICATIONS** — As defined by the Telecommunications Act of 1996, the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

**TRANSMISSION EQUIPMENT** — As defined by the FCC, any equipment that facilitates transmission for wireless communications, including all the components of a base station, such as, but not limited to, radio transceivers, antennas, coaxial or fiber optic cable, and regular and backup power supply, but not including support structures.

**WIRELESS TELECOMMUNICATIONS FACILITY** — A structure, facility, or location designed, or intended to be used as, or used to support, antennas or other transmitting or receiving devices. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services and services not licensed by the FCC, but not expressly exempt from the Town's siting, building, and permitting authority. This includes, without limit, towers of all types and kinds and structures that employ stealth technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign or other structure that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, guy wires, and associated anchors, equipment shelters and other structures associated with the site.

**WIRELESS TELECOMMUNICATIONS SITE** — The boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site.

**WIRELESS TOWER** — As defined by the FCC, any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized license-exempt antennas and their associated facilities, including the onsite fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower. It includes structures that are constructed solely or primarily for any wireless communications service, such as, but not limited to, private, broadcast, and public safety services, as well as fixed wireless services such as microwave backhaul and base stations.

- B. Permitted and prohibited locations. Wireless telecommunications facilities, upon determination of the classification of the action as described in § 140-29B by the Code Enforcement Officer, shall be permitted and prohibited in the Town of Rochester in the following zoning districts.

- (1) Type A and Type B wireless telecommunications facilities shall be allowed under the Schedule of District Regulations in all zoning districts as a principal permitted use. Type B shall require site plan approval from the Planning Board.

- (2) Type C wireless telecommunications facilities shall be allowed under the Schedule of District Regulations in all zoning districts upon receipt of a special use approval from the Planning Board.
- (3) Type D wireless telecommunications facilities shall be allowed under the Schedule of District Regulations in the ~~AR-3~~, AB-3, R-5, I, NR, and B Zoning Districts upon receipt of a special use approval from the Planning Board. They shall be prohibited in the ~~PL-10, A-10, AR-3~~, R-1, R-2, and H Zoning Districts, except if such existing parcel use is for public utility, municipal or emergency services use.
- (4) In all cases, Type D wireless communications facilities shall be prohibited in the FD (Floodplain Overlay) District even ~~though through~~ the use may be allowed in the underlying zoning district.
- (5) There shall be no wireless telecommunications facilities constructed within a New York State or federal delineated wetland or an area designated as a critical environmental area.
- (6) There shall be no wireless telecommunications facilities constructed which extend higher than the ridgeline of the Shawangunk Mountain ridgeline.
- (7) Exception under public utility regulations.
  - (a) Should the application propose new wireless telecommunications facilities to be located in a prohibited location or a zoning district where the use is not specifically allowed under the Schedule of District Regulations, such application may proceed and shall require approvals of both a use variance from the Zoning Board of Appeals and a special use permit from the Planning Board. SEQRA application shall be long form EAF with both agencies identified as involved agencies. The Planning Board and Zoning Board of Appeals may, but shall not be required to, convene a joint public hearing for both agencies.
  - (b) In seeking such use variance, the applicant, under New York State law as a public utility, shall show that there is a need for the proposed facility and that the proposal would benefit the needs of the public and shall submit proof no alternative site, either existing or proposed, is possible in a zoning district where the use is permitted. Commercial impracticability may not be considered in this review. Upon a determination feasible, alternate site are possible, the use variance shall be denied on this basis. Upon a determination no alternate site is possible, the Zoning Board of Appeals shall grant such use variance and remit the application to the Planning Board to conduct a special use permit review. Such review may occur either consecutively or concurrently, however no special use permit approval shall be granted absent an approved use variance.
- (8) Nonconforming use. All wireless telecommunications facilities lawfully existing on or before the effective date of this chapter and located in a prohibited location or zoning district effective with this chapter shall be made nonconforming with this or any subsequent amendment and may be continued in accordance with all provisions of Article VI of Chapter 140 of the Town of Rochester zoning code. Such

facilities shall be allowed to continue as they presently exist; provided, however, that an existing wireless telecommunications facility must comply with this chapter in the event of any modification, repair, or maintenance.

C. Application review timeframes. The Town recognizes the authority of federal standards on these actions and establishes this process for determination of a complete application. Upon the determination of the application classification and the review required, the Code Enforcement Officer shall remit such information to the applicant and Planning Board and/or Zoning Board of Appeals along with a signed copy of the zoning permit.

(1) Should Planning Board and/or Zoning Board of Appeals review be determined not to be required, the application shall be considered complete on the date the application material is posted as received by the Code Enforcement Officer unless the CEO notifies the applicant in writing (written responses may be made via electronic notification with hard copy to follow), within 30 calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete.

(2) Should Planning Board and/or Zoning Board of Appeals review be determined to be required, the applicant shall be directed to file the appropriate application to the agency for review. In such case the application shall be considered complete on the date the application material is posted as received by that board and it shall be scheduled as an agenda item for the next regular meeting of the board unless the board notifies the applicant in writing (written responses may be made via electronic notification with hard copy to follow), within 30 calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Fulfillment of the complete application requirement shall not preclude the board from requesting additional information as it may deem necessary to complete review; however, the board may not delay decision due to the request of additional information.

(3) Upon determination of a complete application, the Building Department, Planning Board, or Zoning Board of Appeals shall render a decision within 90 days on an application determined to be an eligible facilities request and 150 days to render a decision on all other applications, as defined in the Nationwide Programmatic Agreement for the co-location of Wireless Antennas, except upon mutual written agreement between the applicant and board to extend such timeframe.

D. Wireless facility standards.

(1) Support structure. In all cases, structures offering visually the least obtrusive silhouettes such as monopole and stealth facilities shall be required unless the applicant presents written proof of the technological impracticability of such.

(2) Height.

(a) Ground-mounted wireless telecommunications towers shall not exceed the height of the nearest tree line plus 50 feet. No tower shall exceed 150 feet in height in any zoning district.

- (b) The Planning Board may grant a waiver to the height requirements upon written request from the applicant and written justification for the need for such waiver request to achieve meeting mandated coverage requirements. Such waiver shall be adopted by majority resolution.
- (3) Setbacks. Any proposed tower and/or other proposed wireless telecommunications facility structure shall be located on a single parcel of land and shall be set back from abutting parcels and road and street lines by the minimum of a distance equal to 110% of the height of the proposed tower or wireless telecommunications facility structure, or the existing setback requirement for the applicable land use designation, whichever is greater. If the wireless facility is shown to employ breakpoint technology, the Planning Board may consider such technology in the determination of the height. Setback distances shall be calculated from the fenced perimeter of the equipment compound.
- (4) Color. Structure colors shall be a single color and shall be subject to approval of the Planning Board, except in such case as is determined by the Planning Board to aid in minimizing the visual effect. Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.
- (5) Lighting. Structures shall not be artificially lighted except as may be required by the Federal Aviation Administration (FAA). Lighting of the equipment compound shall be full-cutoff fixtures located so as not to project light onto neighboring properties or roadways.
- (6) Security. All wireless telecommunications facilities and antennas shall be located, fenced, or otherwise secured in a manner that prevents unauthorized access. All antennas, towers, utilities, and other supporting structures, including guy wires, shall be completely fenced for security to a height of eight feet and gated in such a manner that they cannot be climbed or collided with and transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them. Use of razor wire is not permitted.
- (7) Signage. A sign no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs may be posted on the fence. All signage shall be maintained in legible condition and contain accurate information. No signage of any kind shall be allowed to be attached to towers or antennas, except any required safety warnings. Signage may be allowed by the Planning Board, upon written petition of the applicant, in instances of stealth facilities where such additional signage would be in character with the alternate design tower structure.
- (8) Utilities. Necessary utilities to serve the site shall preferably be underground and in compliance with all local, state, and federal laws, rules, and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate. Overhead lines shall follow access roads and/or existing tree lines to minimize visual impact upon surrounding properties, critical viewsheds and/or historic properties.

- (9) Roadways. An access road from the public road, parking area, and fire access area surrounding the perimeter of the equipment compound area shall be provided to assure adequate emergency and service access and shall conform to the New York State Fire Code. Use of existing roads, public or private, shall be utilized to the maximum extent possible. Road construction shall be consistent with construction standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than 10 feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential but may exceed normal standards. Roadways shall be maintained in good and passable condition under all traffic and weather conditions and kept open so that firefighting equipment and other emergency vehicles may access any telecommunications facility structures. Equipment or vehicles may not be stored at the facility site, except during the construction phase.

E. Site plan review requirements, criteria, and standards.

- (1) Applications for site plan shall contain the following information and certifications. All certified documents shall be signed by a New-York-State-licensed professional engineer, architect, or surveyor and shall bear the seal of that professional.
  - (a) The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided. Proof shall be provided that the applicant has valid authorization to do business in the State of New York.
  - (b) The postal address and tax map parcel number of the property. The land use designation in which the property is situated. The size of the property stated both in acreage or square feet and lot line dimensions.
  - (c) Authorization from the owner of the property and/or facility indicating knowledge of the application shall be required.
  - (d) Property deed and/or existing or proposed lease, right-of-way and/or easement agreements shall be provided. Financial terms may be redacted from any documents submitted.
  - (e) Documentation ensuring the applicant has an agreement with a licensed wireless telecommunications carrier to locate on the telecommunications facility if the applicant is not the licensee.
  - (f) FCC licensing documentation.
  - (g) Submission of proof of compliance with the National Environmental Policy Act (NEPA) and compliance with the National Historic Preservation Act (NHPA).

- (h) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts. The frequency, modulation, and class of service of radio or other transmitting equipment.
- (i) Certification to the Town that the NIER levels at the proposed site are within the threshold levels adopted by the FCC and the provision of the calculations used to determine the cumulative NIER levels if the application involves co-location.
- (j) Certification to the Town that the proposed antenna(s) will not cause interference with other telecommunication devices.
- (k) Certification to the Town that the proposed facility is in compliance with Federal Aviation Administration regulations and stating if the FAA requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If the 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.
- (l) 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.
- (m) Certification to the Town that the site is adequate to assure the stability of the proposed wireless telecommunications facilities as designed and that a geotechnical subsurface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site has been conducted **by a licensed engineer**. If co-located on an existing tower, a copy of the installed foundation design shall be supplied.
- (n) A structural certification study conducted by a New-York-State- licensed engineer indicating the structure or tower's compliance with current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures" or its successors. Calculations shall provide proof the telecommunication facility tower and foundation and attachments, rooftop support structure, or any other supporting structure as proposed to be utilized are designed and are constructed to meet all local, city, state, and federal structural requirements for loads, including wind and ice loads. In the instance of co-location, such structural study shall reflect the current condition of the structure or tower.
- (o) A list of pending permits and/or copies of all permits issued from all other local, state, or federal agencies with jurisdiction over said project, other than the Town Planning Board.

- (2) The applicant shall prepare and submit a site plan which shall comply with the regulations set forth in this chapter and the provisions of Article VII of Chapter 140 of the Town of Rochester Code and shall specifically illustrate:
  - (a) Existing and proposed structures on the subject property, the location of all residential structures within 500 feet of the wireless facility site, the type, locations, and dimensions of all proposed and existing landscaping, and fencing on the subject property; the azimuth, size, and centerline height location of all proposed and existing antennas on the supporting structure.
  - (b) All easements/rights-of-way required for access from a public way to the facility.
  - (c) Setback distances for the existing and proposed wireless telecommunications facility from property boundary lines, rights-of-way, wetlands and waterways, and public and private roadways.
  - (d) Radius shall be shown indicating the fall zone of the wireless structure.
- (3) Location map using the most recent United States Geological Survey Quadrangle map showing the area within a three-mile radius of the proposed facility site indicating facility location and property lines of the facility parcel **and showing the location of nearest wireless structures outside of the three-mile radius.**
- (4) Elevation drawings showing all facades and indicating all exterior materials and color of towers, buildings, and associated facilities. The Planning Board may require visual renderings be submitted.
- (5) A descriptive summary statement of the nature and objective(s) for the work proposed in the application, and the impact(s) of the work on the surrounding area. Applicant shall state that the work proposed in the application is legally permissible. There shall be provided a sequence and schedule report for completion of each phase of the entire project.

F. Special use review requirements, criteria, and standards.

- (1) Applications for special use shall meet the provisions of Article VII of Chapter 140 of the Town of Rochester Code and shall require a site plan submittal as detailed in § 140-29H.
- (2) Applications for special use shall require the following additional documentation.
  - (a) Written report demonstrating the need for such services which shall illustrate gaps in current services and show how the proposal will remedy these gaps. The report shall demonstrate with written documentation that it has analyzed the feasibility of the proposed telecommunications facilities in comparison to opportunities for co-location of existing facilities and/or the use

of other preexisting structures as an alternative to a new construction for providing adequate coverage and/or adequate capacity to the Town of Rochester. The report shall inventory and identify **all** existing towers within reasonable distance of the proposal, **in all directions**. Proof of attempts to negotiate with the owners of such alternatives shall be made.

- (b) A zone of visibility map shall be provided to determine locations from which the tower or structure may be seen to provide proof the visual intrusion will be minimal. Pictorial representations of "before" and "after" views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. The Planning Board shall determine the appropriate key sites.
- (c) An assessment of the visual impact of the tower or structure, the tower base, guy wires, and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening which shall include a demonstration that the facility will be sited so as to be the least visually intrusive and thereby have a minimal adverse visual effect on the environment and the nature and character of the community, existing vegetation, and on the residences in the area of the wireless telecommunications facility. The applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base **station, tower base,** and all related facilities and structures of the proposed wireless telecommunications facilities.
- (d) Documentation shall be submitted justifying the total height of any requested tower, facility, and/or antenna and the basis **for the special use,** ~~thereof~~. Such documentation shall be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.
- (e) A land grading and vegetation clearing plan shall be prepared. Clear-cutting of all trees in a single contiguous area shall be limited to the area of the equipment compound plus the area of an emergency access roadway which shall encircle the entire perimeter of the equipment compound as determined by the Planning Board. Existing on-site vegetation designated to be utilized as screening shall be preserved to the maximum extent possible and shall be diligently maintained to protect its vitality.
- (f) A stormwater, erosion, and slope analysis of the land shall be required to be assessed by a New-York-State-licensed professional engineer for the site and any road used to access the site. The applicant shall comply with the State Pollutant Discharge Elimination System guidelines. A SWPPP shall be prepared, if determined to be required, and all local stormwater regulations shall be complied with.

- (g) An economic analysis study of the property value impacts the construction, and the operation of the telecommunications facility may have on all **contiguous and adjacent** properties located within 500 feet of the parcel boundaries on which the facility is located.
- (3) Balloon test. Prior to any public hearing being held on a new wireless telecommunication facility application, a balloon test shall be conducted by the applicant that will include flying or otherwise raising brightly colored balloons that approximate in diameter the potential build-out of all antennas **to be installed**. The balloon test shall be at minimum four hours in duration between the hours of 10:00 a.m. and 4:00 p.m. on two days from Friday through Monday, one day of which must be a Saturday or Sunday. The dates, times and location of this balloon test shall be advertised, by the applicant, 10 days in advance of the test date in a newspaper with a general circulation in the Town of Rochester and proof of such advertisement provided to the Planning Board. Any and all expense for this test shall be borne by the applicant.
- (4) Any application involving construction of a new tower, structure, or facility shall be required **to and** submit written proof as to the offer of co-location opportunities for emergency service transmission equipment to local emergency service agencies **prior to and** at the time of construction.

G. Performance security.

- (1) Prior to issuance of Planning Board approval for any new or substantially modified wireless telecommunications facilities, the applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Town Board a bond, or other form of security acceptable to the Town Board as to type of security and the form and manner of execution, in an amount to be determined by the Town Board sufficient to cover the entire cost of removal of the wireless telecommunications tower and related facilities such as power lines, transformers, etc., and the reclamation of the affected landscape to substantially the same condition as prior to the facilities construction. Said financial surety, bond or similar undertaking shall be in an amount acceptable to the Town Board and substantiated by a qualified and independent engineering expert as designated by the Town Board. The full amount of the bond of security shall remain in full force and effect throughout the term of the approval 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 approval.
- (2) Should there be any violation of this section, which remains uncorrected by the applicant and/or owner, after proper notice in accordance with this chapter, the Town Board shall have the right to correct the violation, utilizing the security to pay for same. If the security is insufficient to correct the violation, the Town shall chargeback any additional costs against the owner and/ or applicant and may file a municipal lien against the property to recover the costs and any attorney fees incurred by the Town for the correction of the violation.

## H. Registration of wireless communications facilities.

- (1) Purpose. The Town of Rochester desires to develop a registration system to ensure all wireless telecommunications facilities are properly maintained and to ensure all owners properly maintain and inspect their facilities. All owners of wireless telecommunication facilities located in the Town of Rochester shall be required to register the facility ~~upon~~ **prior to** granting of a certificate of occupancy. Facilities in existence as of the effective adoption date of this chapter shall have 60 days from the filing of this chapter to register.
- (2) The Code Enforcement Office shall administer the local wireless telecommunications facility registration system. The Town Board shall establish the fees structure for the registration which may be amended by resolution from time to time.
- (3) Registration shall be effective for a three-year period, with renewal required prior to expiration date. Recertification shall be required for year two and three as described in this chapter.
- (4) Registration requirements. The owner shall provide and certify to the Town the following:
  - (a) The name, mailing address, phone number, email address, and an emergency contact name for the corporation or owner of the wireless facility.
  - (b) The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
  - (c) Copy of FCC license(s) allowing the antenna(s) or other broadcast device to be deployed.
  - (d) Written certification that the wireless telecommunications facilities are in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations.
  - (e) Written certification that the tower or structure and all attachments are designated, constructed, and continue to meet all local, state, and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a State of New York licensed professional engineer, the cost of which shall be borne by the applicant.
  - (f) Written certification that the cumulative NIER levels at the facility are within the threshold levels adopted by the FCC. Such certification shall include a report of field testing of cumulative NIER levels conducted by a State of New York licensed professional engineer.
  - (g) Written certification that onsite vegetation has been maintained to ensure the desired screening effect.

- (5) Inspection of facilities. The owner and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construction of such facilities, including towers and antennas, shall agree in writing to allow the Code Enforcement Officer access 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 or structures, antennas, and buildings or other structures constructed or located on the permitted site to verify **the conditions of approval of the Planning Board and to be in** accordance with any applicable technical, safety, fire, building, and zoning codes, laws, regulations, and other applicable requirements.
- (6) Notification of termination of use. The owner shall sign a letter of commitment, which shall commit the wireless telecommunications facility owner and its successors and assigns to notify the Building Inspector, in writing, within 30 days of the discontinuance of use of the facility. Failure to notify and thereafter remove the facility and all appurtenances shall be deemed a violation punishable under applicable provisions of this chapter. Notwithstanding this provision, the Building Inspector shall have the right to independently investigate any discontinuance of the facility and render a written determination setting forth the extent, duration and facts evidencing the violation and the discontinuance of the facility. Upon rendering said written determination, written notice of the determination shall be provided to the owner and the lessees of the facility and the owners of the real property upon which the facility is situate by certified mail, return receipt requested. Upon proven receipt of the notice of the determination by the facility owner, any lessee of the facility and the owners of the real property said facility is situate thereon, the Building Inspector and the Town of Rochester may commence legal proceedings to levy upon the financial surety, bond or similar undertaking and have the facility removed from the site in accordance with all applicable law.
- (7) Annual certification. Recertification by the facility owner of the following information shall be required for year two and three of each registration period and be due on the anniversary date of registration.
  - (a) The name, mailing address, phone number, email address, and an emergency contact name for the corporation or owner of the wireless facility.
  - (b) The name, mailing address, phone number, email address, and an emergency contact name for each entity which leases space from the facility owner.
  - (c) The wireless telecommunications facilities are in compliance with the approval and in compliance with all applicable codes, laws, rules, and regulations.
- (8) Renewal of registration. Registrations shall be required to be renewed beginning with a period of 90 days prior to expiration until the anniversary date of the registration.
  - (a) Application for renewal of registration of permitted facilities shall include a report prepared by a State of New York licensed professional engineer detailing physical inspection(s) conducted within the prior six months to ensure structural integrity and to ensure paint and other coating is not deteriorated and continues to be consistent with the immediate surroundings of the tower.

(b) The Town Board may review performance security deposits in conjunction with registration renewal to ensure the amount of the bond is adequate and may increase the amount of the performance security, if necessary.

(9) Changes in registration information. The owner shall provide notice to the Town of any changes in registration information within 30 days of such change.

I. Abandonment and removal of wireless communications facilities.

(1) Any wireless telecommunications facility which ceases to operate shall be wholly removed from the site. "Ceases to operate" is defined as not performing all normal functions associated with operation of the wireless telecommunications facility and its equipment on a continuous basis for a period more than one year.

(2) In the event the wireless telecommunications facility is not so removed, the Town Board, upon notice from the Code Enforcement Officer, shall give written notice to the owner of such facility (i) stating that the wireless facility is considered abandoned, and (ii) setting a time, date, and place for a public hearing. Such public hearing shall be on not less than 30 days' notice to such owner. Upon a finding that the wireless facility has been abandoned, the Town Board shall deliver written notice to the facility owner indicating the reasons for its finding and directing that the wireless facility be removed within 120 days. If the wireless facility is not so removed, the Town Board may commence an action in Supreme Court against the owner of such facility seeking an order requiring the removal.

(3) Upon recommendation of the Building Inspector, the Town Board may waive or defer the requirement that a wireless telecommunications facility be removed if it determines that retention of such facility is in the best interest of the Town.

(4) Should the Town remove the tower, structure, or facility pursuant to this subsection, the Town shall utilize the security provided for in § 140-29J to pay for same. If the security is insufficient to correct the violation, the Town shall chargeback any additional costs against the owner and/or applicant and may file a municipal lien against the property to recover the costs and any attorney fees incurred by the Town for the correction of the violation.

J. Penalties. Section 268(1) of New York State Town Law is hereby superseded to allow the Town Board to set penalties higher than those specified in Town Law § 268(1). A violation of this § 140-29 is hereby declared to be an offense punishable by a fine not exceeding \$1,000 for a conviction of a first offense; punishable by a fine of not less than \$1,000 and not more than \$1,500 for conviction of a second offense; and no less than \$1,500 and no more than \$2,500 upon conviction for a third or subsequent offense. Each week's continued violation shall constitute a separate additional violation.

## **Section 2. Severability**

If any part or provision of this local law is judged invalid by any court of competent jurisdiction, such judgment shall be confined in application to the part or provision directly on which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Law or the application thereof to other persons or circumstances. The Town hereby declares that it would have enacted the remainder of this Law even without such part, provision, or application.

## **Section 3. Effective Date**

This local law shall become effective immediately upon the filing in the office of the New York Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.