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Town of Colonie

Local Law No. 12 of the year 2009

A local law establishing Chapter 189 of the Code of the Town of Colonie entitled “Wireless Telecommunications Facilities Siting Law” and repealing existing wireless telecommunications facilities regulations.

Be it enacted by the Town Board of the Town of Colonie as follows:

SECTION 1.

Repealer

All local laws, ordinances, resolutions and parts thereof inconsistent with this Local Law are hereby repealed, including but not limited to Section 190-51 of the Code of the Town of Colonie entitled “Telecommunications facilities,” the definition of “Telecommunications Tower” in Section 190-6 of the Code of the Town of Colonie entitled “Definitions,” except for Attachment I to Chapter 190 of the Code of the Town of Colonie entitled “Table of Permitted Uses.”

SECTION 2.

Attachment I to Chapter 190 of the Code of the Town of Colonie entitled “Table of Permitted Uses” is hereby amended as follows in pertinent part:

SECTION 3.

Chapter 189 of the Code of the Town of Colonie entitled “Wireless Telecommunications Facilities Siting Law” is hereby established as follows:

§ 189-1. Title.

This chapter shall be known and may be cited as the Wireless Telecommunications Facilities Siting Law.

§ 189-2. Purpose and Legislative Intent.

The Telecommunications Act of 1996 affirmed the Town of Colonie’s authority to make reasonable, nondiscriminatory decisions concerning the placement, construction and modification of Wireless Telecommunications Facilities. The Town of Colonie finds that Wireless Telecommunications Facilities may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to insure that the placement, construction or modification of Wireless Telecommunications Facilities is consistent with the Town’s land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facilities application and permit process. It is the purpose of this Chapter to accommodate the communications needs of residents and businesses consistent with the applicable federal and state laws and regulations, while protecting the health, safety and general welfare of the residents of the Town by facilitating the provision of wireless telecommunications and other communication services to the residents and businesses of the Town while simultaneously preserving the character, appearance, aesthetic resources, environmental features and property value of the Town by:

- A) Requiring a Wireless Telecommunications Special Use Permit for any new, co-location or modification of a Wireless Telecommunications Facility;
- B) Implementing a fair, consistent and efficient application process for person(s) seeking a Wireless Telecommunications Special Use Permit;
- C) Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
- D) Promoting and encouraging, wherever possible, the placement, height and visual quality of Wireless Telecommunications Facilities in such a manner as to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable; and

- E) Assuring an integrated, comprehensive review of environmental impacts of such facilities.

§ 189-3. Severability.

- A) If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
- B) Any Wireless Telecommunications Special Use Permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Permit shall be void in total, upon determination by the Board.

§ 189-4. Definitions.

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

ACCESSORY FACILITY OR STRUCTURE — An ancillary facility or ancillary 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.

APPLICANT — Any Wireless service provider submitting an Application for a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities.

APPLICATION — All necessary and appropriate documentation that an Applicant submits in order to receive a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities.

ANTENNA — A system of electrical conductors or apparatus that transmits and/or receives electromagnetic waves or radio frequency or other wireless signals.

BOARD — The Zoning Board of Appeals of the Town of Colonie New York.

CO-LOCATION — The use of an existing Tower or structure to support Antennas for the provision of wireless services. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old

tower and the old tower is removed in a reasonably short time frame after the new tower is constructed.

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 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”.

COMPLETED APPLICATION — An Application that contains all information and/or data necessary to enable an informed decision to be made with respect to an Application.

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 (in reference to a Tower or structure) — The vertical distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightning protection device.

MODIFICATION OR MODIFY — The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as Antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site as a co-location is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or the normal repair and maintenance of a wireless facility without adding, removing or changing any visually discernable components or aspects of a wireless facility.

NIER — Non-Ionizing Electromagnetic Radiation.

PERSON — Any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS SERVICES shall have the same meaning as defined and used in the 1996 Telecommunications Act.

STEALTH or STEALTH TECHNOLOGY — Use of design, materials and placement of facilities to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location

of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable.

STATE — The State of New York.

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

TELECOMMUNICATIONS SITE — See definition for Wireless Telecommunications Facilities.

TEMPORARY — Temporary in relation to all aspects and components of this chapter, something intended not to, or that does not, exist for more than ninety (90) days.

TOWER — Any structure designed primarily to support one or more Antennas or the functional equivalent of such for receiving and/or transmitting a wireless signal.

WIRELESS TELECOMMUNICATIONS SPECIAL USE PERMIT — The initial written authorization, or renewal thereof, issued by the Board in accordance with the provisions of this chapter, for the right and authority to install, construct, maintain, operate or modify a Wireless Telecommunications Facility, and/or to file for a building permit if required therefor.

WIRELESS TELECOMMUNICATIONS FACILITIES — A structure, facility or location designed, or intended to be used as, or used to support Antennas or other transmitting or receiving devices for transmitting and/or receiving radio, television, cellular, Specialized Mobile Radio (SMR), paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC. Wireless Telecommunications Facilities means and includes a “Telecommunications Site.” Wireless Telecommunications Facilities include without limit, Towers of all types and kinds and structures, including, but not limited to buildings, steeples, silos, water towers, signs or other structures that can be used as a support structure for Antennas or the functional equivalent of such. Wireless Telecommunications Facilities further include all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. The following are excluded from the meaning of Wireless Telecommunications Facilities:

- A) Over-the-Air reception Devices including the reception Antennas for direct broadcast satellites (DBS), multichannel multipoint distribution (wireless cable) providers (MMDS), television or radio broadcast stations and other customer-end Antennas that receive and transmit fixed wireless signals that are primarily used for reception.
- B) Facilities exclusively for private, non-commercial radio and television reception and private citizen’s bands, licensed amateur radio and other similar non-commercial Telecommunications.

§ 189-5. Permitting.

- A) Except as otherwise provided by this chapter, no Person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, Wireless Telecommunications Facilities as of the effective date of this chapter without having first obtained a Wireless Telecommunications Special Use Permit.
- B) All legally permitted Wireless Telecommunications Facilities, constructed as permitted, existing on or before the effective date of this chapter shall be allowed to continue as they presently exist, provided however, that any visible modification of an existing Wireless Telecommunications Facility will require the complete facility and any new installation to comply with this chapter.
- C) Applicants for a Wireless Telecommunications Special Use Permit for a new Tower must also obtain site plan approval pursuant to Article XI of the Colonie Land Use Law. All applications for such site plan approval shall be considered major site plan review applications, and the site plan requirements for such applications shall be as described in Section 189-7 (C) of this Chapter. Once a Wireless Telecommunications Special Use Permit for a new Tower has been granted hereunder and a site plan approval has been issued pursuant to Article XI of the Colonie Land Use Law, Applicant may apply for any necessary building permits, and subsequent Certificates of Compliance.
- D) Once a Wireless Telecommunications Special Use Permit for other than a new Tower has been granted hereunder, no additional permits or approvals from the Town, such as site plan or zoning approvals, shall be required by the Town for Wireless Telecommunications Facilities covered by the Wireless Telecommunications Special Use Permit, except for any necessary building permits, and subsequent Certificates of Compliance.

§ 189-6. Exclusions. The following shall be exempt from this chapter:

- A) Wireless Communications Facilities owned or leased by the federal government, State, Town, or a special district within the Town, except for any part or component of the Wireless Communications Facilities, including but not limited to an antennae or an accessory structure, which is not owned or operated by the federal government, State, Town, or a special district within the Town.
- B) Any repair and maintenance of a Wireless Telecommunications Facility consisting of the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or involving the normal repair and maintenance of a wireless facility without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility that will add to the visible appearance of the facility as originally permitted.
- C) Any facilities expressly exempt from the Town's siting, building and permitting authority.

- D) Facilities exclusively for providing unlicensed spread spectrum technologies (such as IEEE 802.11a, b, g (Wi-Fi) and Bluetooth) where the facility does not require a new tower.

§ 189-7. Wireless Telecommunications Special Use Permit Application and Other Requirements.

A) Procedure.

- 1) An application for zoning verification must be made to the Building Department as provided in Article III of the Colonie Land Use Law. No Application for a Wireless Telecommunications Special Use Permit shall be accepted by the Building Department unless an approved zoning verification is issued by the Building Department. At the time of such application, Applicant shall deposit funds with the Town to be placed in escrow pursuant to Section 189-15 of this chapter.
- 2) All Applicants for a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this chapter.
- 3) The Board is the officially designated agency or body of the Town that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking Wireless Telecommunications Special Use Permits for Wireless Telecommunications Facilities. The Board may at its discretion delegate or designate other consultants, official agencies or officials of the Board to accept, review, analyze, evaluate and make recommendations to the Board with respect to granting or not granting or revoking Wireless Telecommunications Special Use Permits for Wireless Telecommunications Facilities.
- 4) An Applicant shall submit to the Town the number of completed Applications that the Town of Colonie Building Department determines are needed for review by the Board and Town. Applications shall be submitted to the Town of Colonie Building Department.
- 5) The Town may reject applications not meeting the requirements stated herein or which are otherwise incomplete.
- 6) Written notification of the Application shall be provided to the legislative body or other appropriate board of all adjacent municipalities as applicable and/or requested.
- 7) There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues that will help to expedite the review and permitting process. A pre-application meeting may consist of a conference call, in-person meeting and/or a site visit. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.

- 8) In the case of a new Telecommunication Tower, in order to better inform the public, the Applicant shall, prior to the public hearing on the application, hold a “balloon test”. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot in diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates, (including a second date, in case of poor visibility on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town. The Applicant shall inform the Town, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 am and 4:00 pm 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 with the Application.
- 9) The Board shall conduct an environmental review of the proposed project pursuant to SEQRA in combination with its review of the Application.
- 10) Prior to the approval of any Application for a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities, a Public Hearing shall be held by the Board, notice of which shall be published in the newspaper of general circulation in the Town no less than five (5) calendar days prior to the scheduled date of the Public Hearing. The Applicant shall provide written notice of the public hearing to all landowners whose property is located within five hundred (500) feet of any property line of the lot or parcel on which the new Wireless Telecommunications Facilities are proposed to be located. The notice of public hearing shall contain a brief description of the proposed installation, construction or modification, the date, time and place of the hearing, and an invitation to attend the hearing. Such notice must be mailed at least ten (10) days before the scheduled date of the Public Hearing, or provided in person at least five (5) days before the scheduled date of the Public Hearing. The Application shall contain proof, such as an affidavit, showing that such notice was provided.
- 11) The Town shall schedule the Public Hearing referred to in Section 189-7 (A) (10) of this Chapter once it finds the Application is complete. The Town, at any stage prior to issuing a Wireless Telecommunications Special Use Permit, may require such additional information as it deems necessary for a complete application pursuant to this chapter.
- 12) The Town will undertake a review of an Application pursuant to this Chapter in a timely fashion, consistent with its responsibilities, and shall act within a reasonable period of time given the relative complexity of the Application and the circumstances, with due regard for the public’s interest and need to be involved, and the Applicant’s desire for a timely resolution.

- 13) The Town may refer any Application or part thereof to any consultant, committee or other person or entity for a non-binding recommendation.
- 14) After the Public Hearing and after formally considering the Application, the Board may approve, approve with conditions, or deny a Wireless Telecommunications Special Use Permit. The Board's decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the granting of the Permit shall always be upon the Applicant.
- 15) If the Town approves the Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such approval in writing within ten (10) calendar days of the Town's action, and the Wireless Telecommunications Special Use Permit shall be issued within thirty (30) days after such approval.
- 16) If the Town denies the Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities, then the Applicant shall be notified of such denial in writing within ten (10) calendar days of the Town's action.

B) General Requirements.

- 1) A holder of a Wireless Telecommunications Special Use Permit granted under this chapter shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- 2) All Wireless Telecommunications Facilities shall be constructed, operated, maintained, repaired, provided for removal of, modified or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or federal government, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- 3) All utilities at a Wireless Telecommunications Facilities site shall be installed underground whenever possible and in compliance with applicable laws, rules and regulations, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code.
- 4) At any Wireless Telecommunications Facility site, an access road, turn-around space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent

practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

- 5) The holder of a Wireless Telecommunications Special Use Permit shall notify the Town of any intended Modification of a Wireless Telecommunication Facility and shall apply to the Town to modify, relocate or rebuild a Wireless Telecommunications Facility.
- 6) The Applicant shall examine the feasibility of designing the proposed Tower to accommodate future demand for at least four (4) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least four (4) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant's Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower 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 site and structure proposed;
 - c) The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
 - d) Available space on existing and approved Towers.
- 7) The owner of a proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
 - a) Respond within 60 days to a request for information from a potential shared-use Applicant.
 - b) Negotiate in good faith concerning future requests for shared use of the new Tower by other Telecommunications providers.
 - c) Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user.

- d) Failure to abide by the conditions outlined above may be grounds for revocation of the Wireless Telecommunications Special Use Permit.
 - 6) Where a certification is called for in this chapter, such certification shall bear the signature and seal of a registered professional licensed in the State.
 - 7) An Application for a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information.
- C) Submission requirements. In addition to all other application requirements as stated in this chapter, all applications for the construction or installation of new Wireless Telecommunications Facilities or modification of an existing Wireless Telecommunications Facility shall contain the following:
- 1) Names, addresses, phone and fax numbers of the following involved parties, as appropriate:
 - a) The person(s) preparing the Application;
 - b) The landowner of the project site to be purchased, leased or otherwise acquired;
 - c) The owner of a tower, building or structure on which co-location is proposed, if the owner is not the Applicant;
 - d) The Applicant, including the Applicant's legal name;
 - e) Engineering consultant(s);
 - f) Legal representative(s); and
 - g) Other authorized service providers proposing to co-locate on the Wireless Telecommunications Facility.
 - 2) The postal address and tax map parcel number of the property.
 - 3) Documentation to verify it has the right to proceed as proposed on the site. This requires an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the applicant owns the site, a copy of the ownership record is required.
 - 4) The Zoning District or designation in which the property is situated.
 - 5) A statement in writing:

- a) That the applicant's proposed Wireless Telecommunications Facilities shall be maintained in a safe manner, and in compliance with all conditions of the Wireless Telecommunications Special Use Permit, without exception, unless specifically granted relief by the Town in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, State and Federal Laws, rules, and regulations;
 - b) That the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in the State.
- 6) A descriptive statement of the objective(s) for the new facility or modification including and expanding on a need such as coverage and/or capacity requirements.
- 7) Documentation that demonstrates and proves the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, include an analysis of current and projected usage.
- 8) For all applications, a certified site plan, accurately drawn to scale, containing the following information:
 - a) Title block including name of project, name of applicant, name of map preparer, and address of the property.
 - b) Small-scale location and zoning map at a scale of one inch equals 2,000 feet; location map shall be oriented the same as the site plan.
 - c) North arrow.
 - d) Existing zoning district, with district boundaries within 300 feet of the site.
 - e) Existing vegetation, watercourses and other natural features.
 - f) Names of all adjoining property owners.
 - g) Existing use of all adjoining properties.
 - h) Location and names of existing adjacent streets.
 - i) Boundary line of property, including any interior lot lines.
 - j) Size of the property in square feet.

- k) Location, size and height of all existing structures on the property.
 - l) Existing structures, utilities and site improvements on and within 100 feet of the site.
 - m) The location of nearest residential structure.
 - n) Existing parking, circulation, storage, service and display areas, with number of parking spaces.
 - o) Type, locations and dimensions of all existing landscaping and fencing.
 - p) Location of any proposed Tower and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting.
 - q) Azimuth, size and center-line height location of all proposed and existing Antennas on the supporting structure.
- 9) For all applications for a new Tower, the following additional site plan information:
- a) Proposed buildings and other improvements (with building and setback dimensions).
 - b) Existing and proposed utilities, including lateral locations, sizes and connection points.
 - c) The location, size and height of all proposed structures on the property.
 - d) The type, locations and dimensions of all proposed landscaping, vegetation and fencing.
 - e) Proposed clearing and grading limits.
 - f) Proposed parking, circulation, storage, service and display areas, with number of parking spaces.
 - g) Existing/proposed easements.
 - h) Existing and proposed site coverage statistics (building area, paved area, and green area in square feet and as a percentage of the total site area).
 - i) The following standard notes:

- i) The Applicant shall comply with all applicable federal, state and local laws, rules and regulations, including but not limited to the State Environmental Quality Review Act (SEQR), Freshwater Wetlands Permit regulations, the Town's grading, floodplain management, and protected watercourse area management regulations.
- ii) The Applicant shall bear the sole responsibility for ensuring that all improvements are completed and maintained in accordance with approved plans, specifications and standards.
- iii) No certificate of compliance shall be issued until all required improvements are satisfactorily completed, and the Planning and Economic Development Department has issued written authorization to the Building Department.
- iv) The Applicant shall be responsible for keeping existing public highways and adjacent lands free of debris, soil and other matter which may accumulate due to construction related to the site.
- v) All plant materials installed pursuant to this site development plan shall conform to the American Standard Nursery Stock (ANSI Z60.1-1986) of the American Association of Nurserymen or equivalent recognized standard and shall be installed and maintained in accordance with accepted industry practice.
- vi) No portion of this site shall be used for storage or display of any product or material, or for parking of any vehicles, or for the conduct of any other business operations, unless specifically designated for such use on this site development plan.
- vii) All required erosion control measures shall be installed in accordance with the New York State Standards and Specifications for Erosion and Sediment Control.

j) A 3"x3" block for site plan approval stamp (at lower right side of plan).

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

11) The make, model, type and manufacturer of the Tower and design plan stating the Tower's capacity to accommodate multiple users;

12) Construction plans showing the elevation of the proposed Wireless Telecommunications Facility, Tower, Antennae, and/or Accessory Facilities or Structures. Show all foundations, piers, structural supports, cross arms, guy wires and anchors, antenna mounting mechanisms, lighting and signage. Label the size, material and color sample of Wireless Telecommunications Facilities, towers, antennas, and accessory facilities or structures, including but not limited to equipment cabinets, fencing and storage;

- 13) The frequency, modulation and class of service of radio or other transmitting equipment;
- 14) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts;
- 15) Signed documentation such as the FCC's "Optional Checklist for Local Government to Determine Whether a Facility is Categorically Excluded" to verify that the Wireless Telecommunication Facility with the proposed installation will be in full compliance with the current FCC RF Emissions regulations (NIER). If not categorically excluded, a complete RF Emissions study is required to verify compliance with FCC Emissions regulations;
- 16) A copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities; and
- 17) A copy of the geotechnical sub-surface soils investigation, evaluation report and foundation recommendation for a proposed or existing Tower site and if existing Tower or water tank site, a copy of the installed foundation design.
- 18) A written copy of an analysis, completed by a qualified individual or organization, to determine if the 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 application increases 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 with the application. If lighting is required by law or regulation, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.
- 19) Certification with documentation (structural analysis) including calculations that the Wireless Telecommunication Facility Tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, Town, State and Federal structural requirements for loads, including wind and ice loads. To protect municipal services, any Tower located on Town property must be designed to withstand 100 mile per hour winds and one inch (1") of radial ice.
- 20) Documentation demonstrating that the Facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved and will thereby have the least adverse visual effect practicable on the environment and its character and on the residences in the area of the Wireless Telecommunications Facility.

- 21) If a new Tower, proposal for a new Antenna attachment to an existing structure, or modification adding to a visual impact, the Applicant shall furnish a Visual Impact Assessment, which shall include:
- a) 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 shall be provided to illustrate locations from which the proposed installation may be seen.
 - b) Pictorial representations of “before and after” (photo simulations) 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. Guidance will be provided, concerning the appropriate key sites at the pre-application meeting. Provide a map showing the locations of where the pictures were taken and distance from the proposed structure.
 - c) 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.
 - d) The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related equipment and structures of the proposed Wireless Telecommunications Facility.
- 22) In the case of an Application for a new Tower, a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Town in the Application, along with any letters of rejection stating the reason for rejection.
- 23) In the case of an Application for a co-location or modification of an existing Tower, the Applicant is to provide signed documentation of the Tower condition such as an ANSI report as per Annex E, Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222F or most recent version. The inspection report must be performed every three (3) years for a guyed tower and five (5) years for monopoles and self-supporting towers.

§ 189-8. Location of Wireless Telecommunications Facilities.

- A) Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunications Facilities in accordance with the following priorities, one (1) being the highest priority and nine (9) being the lowest priority.

- 1) On existing Towers or other structures on Town-owned properties.
 - 2) On existing Towers or other structures on other property in the Town.
 - 3) A new Tower on Town-owned properties.
 - 4) A new Tower on properties in the Industrial District.
 - 5) A new Tower on properties in the Airport Business Area District.
 - 6) A new Tower on properties in the Commercial Office District.
 - 7) A new Tower on properties in the Highway Commercial Office Residential District, the Commercial Office Residential District, Neighborhood Commercial Office Residential,
 - 8) A new Tower on properties in the Office Residential District.
 - 9) A new Tower on properties in the Multi-family Residential District.
 - 10) A new Tower on properties in the Single-family Residential District.
- B) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed site, and the hardship that would be incurred by the Applicant if the permit were not granted for the proposed site.
- C) An Applicant may not by-pass sites of higher priority by stating the site proposed is the only site leased or selected. An Application shall address co-location as an option. If such option is not proposed, the Applicant must explain to the reasonable satisfaction of the Town why co-location is Commercially or otherwise Impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of Commercial Impracticability or hardship.
- D) Notwithstanding the above, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E) The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the Application.

F) Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons.

- 1) Conflict with safety and safety-related codes and requirements;
- 2) Conflict with the historic nature or character of a neighborhood or historical district or site;
- 3) The use or construction of Wireless Telecommunications Facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
- 4) The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;
- 5) Conflicts with the provisions of this chapter.

§ 189-9. Shared Use of Wireless Telecommunications Facilities and Other Structures.

- A) The Town shall prefer locating on existing Towers or other structures without increasing the height, as opposed to the construction of a new Tower. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within two (2) miles of the location of any proposed new Tower, unless the Applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure cannot be used.
- B) An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C) Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

§ 189-10. Height of Telecommunications Tower(s).

- A) The Applicant shall submit documentation justifying the total height of any Tower, Facility and/or Antenna requested and the basis therefor. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of ten (10') feet lower height to allow verification of this height need. Such documentation will 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.

- B) Any Tower, including any attachments to such tower, constructed after the effective date of this chapter, shall be designed and sited so as not to exceed the height at which artificial lighting is required by federal, state or Town law, code, rule or regulation.

§ 189-11. Lighting and Visibility of Wireless Telecommunications Facilities.

- A) Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by federal or state law, rule or regulation.
- B) The Wireless Telecommunications Facility and any and all accessory or associated facilities shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This shall include the utilization of stealth or concealment technology as may be required by the Town.
- C) Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings, unless other standards are required by the FAA, and shall be maintained in accordance with the requirements of this chapter.

§ 189-12. Security of Wireless Telecommunications Facilities.

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

- A) All Antennas, Towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B) Transmitters and Telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

§ 189-13. Signage.

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. An additional sign no larger than four (4) square feet is also to be installed to contain the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be located on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site, and must identify the equipment owner of the shelter or cabinet. If no equipment shelter or cabinet is present at the Wireless Telecommunications Facility, or no such sign placed on such equipment shelter or cabinet would be visible from the access point, the sign may be placed on a fence or may be freestanding. On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

§ 189-14. Lot Size and Setbacks.

All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying Zoning District, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the zoning district in which it is situated.

§ 189-15. Retention of Expert Assistance and Reimbursement by Applicant.

- A) The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the Application, including the construction and modification of the site, once permitted, and any site inspections.
- B) An Applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any Application including where applicable, the lease negotiation, the pre-approval evaluation, and the construction and modification of the site, once permitted. The initial deposit shall be \$8,500.00. The placement of the \$8,500.00 with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for services related to the Application. If at any time during the process this escrow account has a balance less than \$2,500.00, the Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000.00. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the Application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be refunded to the Applicant.
- C) The total amount of the funds needed as set forth in subsection (B) of this section may vary with the scope (lease negotiations and/or review) and complexity of the project, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

§ 189-16. Extent and Parameters of Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities.

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

- A) Such Wireless Telecommunications Special Use Permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town.

- B) Such Wireless Telecommunications Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Wireless Telecommunications Special Use Permit, or for a material violation of this chapter after prior written notice to the holder of the Wireless Telecommunications Special Use Permit.

§ 189-17. Application Fee.

At the time that a Person submits an Application for a Wireless Telecommunications Special Use Permit, such Person shall pay a non-refundable application fee. Application fees shall be established by the Town Board by resolution from time to time. A fee schedule shall be made available upon request. No required fee shall be substituted for any other fee.

§ 189-18. Performance Security.

The Applicant and the owner of record of any proposed Wireless Telecommunications Facilities property site shall, at its cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the Town to assure the faithful performance of the terms and conditions of this chapter and conditions of any Wireless Telecommunications Special Use Permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the Wireless Telecommunications Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Wireless Telecommunications Special Use Permit.

§ 189-19. Reservation of Authority to Inspect Wireless Telecommunications Facilities.

In order to verify that the holder of a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facilities, including Towers and Antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, Laws, Ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.

§ 189-20. Liability Insurance.

- A) A holder of a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Wireless Telecommunications Special Use Permit in amounts as set forth below

- 1) Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - 2) Automobile Coverage: \$1,000,000 per occurrence/ \$2,000,000 aggregate;
 - 3) Workers Compensation and Disability: Statutory amounts
- B) For a Wireless Telecommunications Facility on Town property, the Commercial General Liability insurance policy shall specifically include the Town and its officers, Boards, employees, committee members, attorneys, agents and consultants as additional insureds.
- C) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- D) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- E) Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- F) Before construction of a permitted Wireless Telecommunications Facility is initiated, but in no case later than fifteen (15) days after the granting of the Wireless Telecommunications Special Use Permit, the holder of the Wireless Telecommunications Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 189-21. Indemnification.

- A) Any application for Wireless Telecommunication Facilities that is proposed for Town property, pursuant to this chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

- B) Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities.

§ 189-22. Fines.

- A) In the event of a conviction for a violation of this chapter or any Wireless Telecommunications Special Use Permit issued pursuant to this chapter, the Town may impose and collect, and the holder of the Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities shall pay to the Town, fines or penalties as set forth below.
- B) The failure of a holder of a Wireless Telecommunications Special Use Permit to comply with provisions of this chapter shall constitute a violation of this chapter and shall subject the Applicant to the code enforcement provisions and procedures as provided in Section 190-129 of the Code of the Town of Colonie Code entitled “Enforcement and penalties for offenses”.
- C) Notwithstanding anything in this chapter, the holder of the Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this chapter or any section of this chapter. An attempt to do so shall subject the holder of the Wireless Telecommunications Special Use Permit to termination and revocation of the Wireless Telecommunications Special Use Permit. The Town may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the Town.

§ 189-23. Default and/or Revocation.

If a Wireless Telecommunications Facility is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the Wireless Telecommunications Special Use Permit, then the Town shall notify the holder of the Wireless Telecommunications Special Use Permit in writing of such violation. A Permit holder in violation may be considered in default and subject to fines as in Section 189-24 and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the Wireless Telecommunications Special Use Permit is subject to revocation.

§ 189-24. Removal of Wireless Telecommunications Facilities.

- A) Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Wireless Telecommunications Facilities.
 - 1) Wireless Telecommunications Facilities with a permit have been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety

consecutive (90) days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days;

- 2) Permitted Wireless Telecommunications Facilities fall into such a state of disrepair that it creates a health or safety hazard;
- 3) Wireless Telecommunications Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Wireless Telecommunications Special Use Permit, or any other necessary authorization and the Special Permit may be revoked.

B) If the Town makes such a determination as noted in subsection (A) of this section, then the Town shall notify the holder of the Wireless Telecommunications Special Use Permit for the Wireless Telecommunications Facilities within forty-eight (48) hours that said Wireless Telecommunications Facilities are to be removed. The Town may approve an interim temporary use agreement/permit, such as to enable the sale of the Wireless Telecommunications Facilities.

C) The holder of the Wireless Telecommunications Special Use Permit, 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 Commercial Impracticability, within ninety (90) days of receipt of written notice from the Town. 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 Town.

D) If Wireless Telecommunications Facilities are not removed or substantial progress has not been made to remove the Wireless Telecommunications Facilities within ninety (90) days after the Permit holder has received notice, then the Town may order officials or representatives of the Town to remove the Wireless Telecommunications Facilities at the sole expense of the owner or Wireless Telecommunications Special Use Permit holder.

E) If, the Town removes, or causes to be removed, Wireless Telecommunications Facilities, and the owner of the Wireless Telecommunications Facilities does not claim and remove it from the site to a lawful location within ten (10) days, then the Town may take steps to

declare the Wireless Telecommunications Facilities abandoned, and sell them and their components.

- F) Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities shall be developed by the holder of the Wireless Telecommunications Special Use Permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the Wireless Telecommunications Special Use Permit and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected Wireless Telecommunications Facilities in the manner provided in this Section.

§ 189-25. Relief.

Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this chapter may request such, provided that an explanation of the requested relief or exemption is contained in the submitted Application for either a Wireless Telecommunications Special Use Permit, or in the case of an existing or previously granted Wireless Telecommunications Special Use Permit, a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service providers.

§ 189-26. Periodic Regulatory Review by the Town.

- A) The Town may at any time conduct a review and examination of this entire chapter.
- B) If after such a periodic review and examination of this chapter, the Town determines that one or more provisions of this chapter should be amended, repealed, revised, clarified, or deleted, then the Town may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town may repeal this entire chapter at any time.
- C) Notwithstanding the provisions of subsections (A) and (B) of this Section, the Town may at any time and in any manner (to the extent permitted by Federal, State, or local law), amend, add, repeal, and/or delete one or more provisions of this chapter.

§ 189-27. Adherence to State and/or Federal Rules and Regulations.

- A) To the extent that the holder of a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities has not received relief, or is not otherwise

exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Wireless Telecommunications Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

- B) To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Wireless Telecommunications Special Use Permit for Wireless Telecommunications Facilities, then the holder of such a Wireless Telecommunications Special Use Permit shall conform the permitted Wireless Telecommunications Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

§ 189-28. Conflict with Other Laws.

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

SECTION 4.

This local law shall take effect upon its proper filing in the Office of the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 12 of 2009 of the **Town of Colonie** was duly passed by the Town Board on November 5, 2009, in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 2009 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 2009, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed adopted on _____ 2009, in accordance with applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 2009 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 2009, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed adopted on _____ 2009. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 2009, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. ____ of 2009 of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 2009, and was (approved)(not approved)(repassed after disapproval) by the _____ and was deemed adopted on _____ 2009. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 2009, in accordance with the applicable provisions of law.

***Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.**

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2009 of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 2009, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 2009 of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 2009, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.

Clerk of county legislative body, City, Town or Village
Clerk or officer designated by local legislative body

(Seal)

Date: November 13, 2009

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF ALBANY

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Town of Colonie Town Attorney
Date: November 13, 2009