

DRAFT NEW AND SUBSTANTIALLY CHANGED WIRELESS COMMUNICATION FACILITIES

LEGISLATIVE INTENT

DEFINITIONS

APPLICABILITY

PERMITS REQUIRED

PERMIT APPLICATIONS

DECISIONS

SITE LOCATION GUIDELINES

DESIGN STANDARDS

STANDARD CONDITIONS OF APPROVAL

AMORTIZATION OF NONCONFORMING WIRELESS FACILITIES

TEMPORARY WIRELESS FACILITIES

COMPLIANCE OBLIGATIONS

Legislative Intent

- A. The Town of Amherst intends this Chapter to establish reasonable and uniform standards and procedures for wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the Town's territorial boundaries, consistent with and to the extent permitted under federal and New York state law. The standards and procedures contained in this Chapter are intended to, and should be applied to, protect and promote public health, safety and welfare, and also balance the benefits that flow from robust, advanced wireless services with the Town's local values, which include without limitation the aesthetic character of the Town, its neighborhoods and community.
- B. This Chapter is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission's regulations concerning such emissions; (5) prohibit any collocation or modification that the Town may not deny under federal or New

York state law; or (6) otherwise authorize the Town to preempt any applicable federal or New York state law.

Definitions

The abbreviations, phrases, terms and words in this Chapter will have the meaning assigned to them in this Section _____, as may be appropriate, in Chapter _____ (Purpose, Interpretation and Definitions), as may be amended from time to time, unless context indicates otherwise. Undefined phrases, terms or words in this section will have the meanings assigned to them in 47 U.S.C. §702, as may be amended from time to time, and, if not defined therein, will have their ordinary meanings. In the event that any definition assigned to any phrase, term or word in this section conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

“Approval Authority” means the board or official responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a project which requires a minor use permit or administrative temporary use permit refers to the Zoning administrator. The approval authority for a project which requires a special use permit refer to the Zoning Board of Appeals.

“Base Station” means the same as defined by the FCC in 47 C.F.R § 1.40001(b)(1), as may be amended, which defines that term as a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in 47 C.F.R §1.40001(b)(9) or any equipment associated with a tower. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks). The term includes any structure other than a tower that, at the time the relevant application is filed with the State or local government under this section, supports or houses equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not build for the sole or primary purpose of providing such support. The terms does not include any structure that, at the time the relevant application is filed with the State or local government under this section, does not support or house equipment described in 47 C.F.R. § 1.40001(b)(1)(i)-(ii).

“Collocation” means the same as defined by the FCC in 47 C.F.R § 1.40001(b)(2), as may be amended, which defines that term as 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. As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more than one wireless facility installed at a single site.

“Completely Stealth” means concealment techniques that completely screen all transmission equipment from public view and integrate the transmission equipment with the surrounding natural and/or built environment such that, given the particular context, the average, untrained

observer does not recognize the existence of the wireless facility and concealment technique. Stealth concealment techniques include, but are not limited to: (1) transmission equipment placed completely within existing architectural feature such that the installation causes no visible change to the underlying structure and (2) new architectural features that mimic the underlying building in architectural style, physical proportion and quality of construction materials. Architectural feature commonly used as stealth concealment include, but are not limited to, church steeples, cupolas, bell towers, clock towers, pitched faux-roofs, water tanks and flagpoles. Further, whether a wireless facility qualifies as a steal facility depends on the context that exists at a given location and is evaluated on a case-by-case basis.

“**CPCN**” means a “Certificate of Public Convenience and Necessity” granted by the NPUC or its duly appointed successor agency pursuant to New York Codes, Rules and Regulations §16 *et seq.*, as may be amended.

“**NPUC**” means the New York Public Utilities Commission, or it’s duly appointed successor agency.

“**FAA**” means the Federal Aviation Administration or its duly appointed successor agency.

“**FCC**” means the Federal Communications Commission or its duly appointed successor agency.

“**OTARD**” means any over-the-air reception device subject to 47 C.F.R. §§ 1.4000 *et seq.*, as may be amended, and which includes satellite television dishes not greater than one meter in diameter.

“**Personal Wireless Services**” means the same as defined in 47 U.S.C. § 332 (c)(7)(C)(i), as may be amended, which defines the terms as commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services.

“**Personal Wireless Service Facilities**” means the same as defined in 47 U.S.C. § 332 (c)(7)(C)(i), as may be amended, which defines the term as facilities that provide personal wireless services.

“**RF**” means radio frequency.

“**Section 6409**” means Section 6409(a) of the Middle Class Tax Relief and Job Creation Act, Pub. L. No. 112-96, 126 Stat. 156 (Feb.22, 2012), codified as 47 U.S.C. § 1455(a), as may be amended or superseded.

“**Temporary Wireless Facilities**” means portable wireless facilities intended or used to provide personal wireless services on a temporary or emergency basis, such as a large-scale special event in which more users than usual gather in a confined location or when a disaster disable permanent wireless facilities. Temporary wireless facilities include without limitation, cells-on-wheels (“COWs”), sites-on-wheels (“SOWs”), cells-on-light-trucks (“COLTs”) or other similarly portable wireless facilities not permanently affixed to a site on which it is located.

“**Tower**” means the same as defined by the FCC in 47 C.F.R. § 1.40001 (b)(9), as may be amended, which defines that terms as any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed

wireless services such as microwave backhaul, and the associated site. Examples include, but are not limited to, monopoles, mono-trees and lattice towers.

“Transmission Equipment” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(8), as may be amended, which defines that term as equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Wireless” means any FCC-licensed or authorized wireless communication service transmitted over frequencies in the electromagnetic spectrum.

Applicability

- A. Applicable Wireless facilities. This Chapter applies to all existing wireless facilities within the Town and all applications and requests for approval to construct, install, modify, collocate, relocate or otherwise deploy wireless facilities in the Town, whether located or proposed to be located on private property or in the public right-of-way, unless exempted pursuant to Section _____ or governed under Chapter _____ pursuant to Section _____.
- B. Exempt Wireless facilities. Notwithstanding Section _____, the provisions in this Chapter will not be applicable to: (1) wireless facilities owned and operated by the Town for public purposes; (2) wireless facilities installed on Town property in the public right-of-way pursuant to a valid master license agreement with the Town; (3) amateur radio facilities; (4) OTARD antennas; (5) wireless facilities installed completely indoors and intended to extend signals for personal wireless services in a personal residence or a business (such as a femtocell or indoor distributed antenna system); and (6) wires facilities or equipment owned and operated by NPUC-regulated electric companies for use in connection with electrical power generation, transmission and distribution facilities subject to NPUC General Order _____.
- C. Requests for Approval Pursuant to section 6409. All requests for approval submitted pursuant to section 6409 will be first evaluated pursuant to the provision in Chapter _____.

Permits Required

- A. Minor Use Permit. A minor use permit, subject to the Zoning Administrator’s prior review and approval in accordance with Chapter _____ (Minor Use Permits), is required for new wireless facilities and substantial changes to existing wireless facilities that:
 1. Are or will be in preferred locations as defined in Section _____ and do not require an exemption pursuant to Section _____.
 2. Are or will be in any location and are completely stealth.
- B. Special Use Permit. A special use permit, subject to the Zoning Board of Appeals prior review and approval in accordance with Chapter _____ (Variance and Special Use Permits), is required for:
 1. All wireless facilities in discouraged locations as defined in Section _____;
 2. All wireless facilities on private property within 500 feet from a residence,

except for completely stealth facilities subject to a minor use permit pursuant to Section _____.

3. All unconcealed wireless facilities in any zone; and
 4. All wireless facilities that require an exemption pursuant to Section _____.
- C. Administrative Temporary Use Permit. An administrative temporary use permit, subject to the Zoning Administrator's prior review and approval in accordance with the procedures and standards in Section _____ is required for any temporary wireless facility, unless deployed in connection with an emergency pursuant to Section _____.
- D. Other Permits and Regulatory Approvals. In addition to any special use permit, minor use permit or other permit required under this Chapter, the applicant must obtain all other required prior permits and other regulatory approvals from other Town departments, and state and federal agencies. Any special use permit, minor use permit or other permit granted under this Chapter will be subject to the conditions and/or other requirements in any other required prior permits or other regulatory approvals from other Town departments, and state and federal agencies.

Permit Applications

- A. Application Requirement. The Town shall not approve any wireless facility subject to a minor use permit or special use permit except upon a duly filed application consistent with this Section _____ and any other written rules the Zoning Administrator may publish in any publicly-stated format.
- B. Minimum Application Content. The material required under this Section are minimum requirements for any application for a special use permit or minor use permit in connection with a wireless facility:
1. Master Application and Applicable Fee. The applicant must provide the applicable special use permit or minor use permit application form with the applicable application fee.
 2. Owner's Authorization and Title Report. For facilities proposed or located on private property, the applicant must provide a title report prepared within the six months prior to the application filing date in order for the Town to verify the property owner's identity. No title report is required for facilities proposed or located in the public rights-of-way. If the applicant does not own the subject property or support structure in the public rights-of-way, the application must include a written authorization signed by the property owner that empowers the applicant to file the application and perform all wireless facility construction, installation, perpetration and maintenance to the extent described in the application.
 3. Regulatory Authorizations. To the extent that the applicant claims any regulatory authorization or other right to use the public rights-of-way, such as a CPCN, the applicant must provide a true and correct copy of the certificate, license, notice to proceed or other regulatory authorization that supports the applicant's claim.

4. Project Plans. A fully dimensioned site plan and elevation drawings prepared and sealed by a New York-licensed engineer showing any existing wireless facilities will all existing transmission equipment and other improvements, the proposed wireless facility with all proposed transmission equipment and other improvements and the legal boundaries of the leased or owned area surrounding the proposed wireless facility and any associated access or utility easements. The plans must contain all other elements and details required for site plans submitted with a special use permit application.
5. Site Photos and Photo simulations. Photographs and photo simulations that show the proposed wireless facility in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that show the photo location of each view angle.
6. RF Compliance Demonstration. An RF exposure compliance report prepared and certified by an RF engineer acceptable to the Town that certifies that the proposed wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power (ERPP) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupations limit (as the term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
7. Acoustic Analysis. A written report that analyzes acoustic levels for the proposed wireless facility and all associated equipment including without limitation all environmental control units, sump pumps, temporary backup power generators, and permanent backup generators in order to demonstrate compliance with Chapter ____ (Noise Control). The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturer's specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of a written report, the applicant may submit evidence from the equipment manufacturer that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable limits.
8. Project Purpose Statement. A written statement that includes: (a) a description of the technical objectives to be achieved; (b) an annotated topographical map that identifies the targeted service area to be benefitted; (c) the estimated number of potentially affected users in the targeted service area; and (d) full-color signal propagation maps with objective units of signal strength measurement that show the applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites.

9. Alternatives Analysis. The applicant must list all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The applicant must also provide a written explanation for why the alternatives considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this Chapter as the proposed location and design. This explanation must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, infeasible, unavailable or not as consistent with the development standards in this Chapter as the proposed location.

C. Procedures for a Duly Filed Application. The Town shall not review any application unless duly filed in accordance with the provisions in this Section _____.

1. Pre-Submittal Conference. Before application submittal, applicants must schedule and attend a pre-submittal conference with Town staff for all proposed wireless facilities that require a special use permit. The town strongly encourages, but does not require, a pre-submittal conference for all other proposed wireless facilities. The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification and permit requirements, concealment opportunities and/or concerns, potential alternative sites and/or designs, requirements for a complete application, scheduling matters and coordination with other Town departments responsible for application review. To minimize unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials so that Town staff may provide informal feedback about whether such application or other material may be incomplete or unacceptable. The Zoning Administrator may, in the Zoning Administrator's discretion, grant a written exemption to the submittal appointment under _____ and/or for a specific requirements for a complete application to any applicant who (i) schedules, attends and fully participates in any pre-submittal conference and (ii) show to the Zoning Administrator's satisfaction that such specific requirement duplicates information already provided in other materials to be submitted or is otherwise unnecessary to the Town's review under facts and circumstances in that particular case. Any written exemption will be limited to the project discussed at the pre-submittal conference and will not be extended to any other project.

2. Submittal Appointment. All applications must be filed with the Town at a pre-scheduled appointment. Applicants may generally submit one application per appointment, but may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants. Any application received without an appointment, whether delivered in-person or through any other means, will not be considered duly filed unless the applicant received a written exemption for the Zoning Administrator at a pre-submittal conference.

3. Appointment Scheduling Procedures. For any event in the submittal process that requires an appointment, applicants must submit a written request to the Zoning Administrator. The Zoning Administrator shall endeavor to provide applicants with an appointment as soon as reasonably feasible and within five business days after a written request is received.

- D. Applications Deemed Withdrawn. To promote efficient review and timely decision, an application will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the Town within 90 calendar days after the Town deems the application incomplete in a written notice to the applicant. The Zoning Administrator may, in the Zoning Administrator's discretion, grant a written extension for up to an additional 30 calendar days when the applicant submits a written request prior to the 90th day that shows good cause to grant the extension. Delays due to circumstances outside the applicant's reasonable control will be considered good cause to grant the extension.
- E. Departmental Forms, Rules and Other Regulations. The Town Board authorizes the Zoning Administrator to develop and publish permit applications forms, checklists, informational handouts and other related materials for this Chapter. Without further authorization from the Town Board, the Zoning Administrator may from time-to-time update and alter the permit application forms, checklists, informational handouts and other related materials as the Zoning Administrator deems necessary or appropriate to respond to regulatory, technological or other changes related to this Chapter. The Town Board further authorizes the Zoning Administrator to establish other reasonable rules and regulations, which may include without limitation regular hours for appointments with applicants, as the Zoning Administrator deems necessary or appropriate to must be in written form and publicly stated to provide applicants with prior notice.

Decisions

A. Notice.

1. General Notice Required for the Application. Public notice as provided in _____ (Special Use Permit- Notice of Hearing) will be required for any special use permit. Public notice as provided in Section _____ (Minor Use Permits – Procedure) will be required for any minor use permit. The approval authority shall not act on any application for a wireless facility unless the public notice required by law has occurred.

2. Decision Notices. Within five working days after the approval authority approves, conditionally approves or denies an application for a wireless facility or before the FCC timeframe for review expires (whichever occurs first), the approval authority shall send a written notice to the applicant and all other parties entitled to receive notice. For any denial notice, the approval authority shall include the reasons for the denial either in the notice or as a separate written document.

B. Required Findings for Approval. The approval authority may approve or condition approve a duly filed application for a special use permit or minor use permit only when the approval authority finds:

1. the proposed wireless facility complies with all the findings required for a special use permit or minor use permit in accordance with Section _____ (Special Use Permit –When Permitted);

2. the proposed wireless facility complies with all applicable development standards described in Section _____;

3. the applicant has demonstrated that its proposed wireless facility will be in compliance with all applicable FCC rules and regulations for human exposure to RF emissions;

4. the applicant has demonstrated a good-faith effort to identify and evaluate more-preferred locations and potential less-intrusive designs; and

5. the applicant has provided the approval authority with a meaningful comparative analysis that shows all less-intrusive locations and designed identified in the administrative record are either technically infeasible or not potentially available.

C. Conditional Approvals. The approval authority may impose any reasonable conditions on any special use permit or minor use permit, related and proportionate to the subject matter in the application, as the approval authority deems necessary or appropriate to promote and ensure conformance with the General Plan, any applicable specific plan and all applicable provisions in the Town of Amherst Code.

D. Limited Exception for Personal Wireless Service Facilities. The Zoning Board of Appeals shall not grant any limited exception, to the site location guidelines in Section _____ or the development standards in Section _____, pursuant to this Section _____ unless the Zoning Board of Appeals finds all the following:

1. The proposed wireless facility qualifies as a “personal wireless service facility” as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded;

2. the applicant has provided the Zoning Board of Appeals with a reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility;

3. the applicant has provided the Zoning Board of Appeals with a written statement that contains a detailed and fact-specific explanation as to why the proposed wireless facility cannot be deployed in compliance with the applicable provisions in this Chapter, the Town of Amherst Code, the general plan and/or any specific plan;

4. the applicant has provided the Zoning Board of Appeals with a meaningful comparative analysis with the factual reasons why all alternative locations and/or designs identified in the administrative record (whether suggested by the applicant, the Town, public comments or any other source) are not technically feasible or potentially available to reasonably achieve the applicant’s reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility; and

5. the applicant has demonstrated that the proposed location and design is the least non-compliant configuration that will reasonably achieve the applicant’s reasonable and clearly defined technical service objective to be achieved by the proposed wireless facility, which includes without limitation a meaningful comparative analysis into multiple smaller or less intrusive wireless facilities dispersed throughout the intended service area.

E. Appeals. Any person or entity may appeal a decision by the approval authority in accordance with the standards and procedures in _____ (Appeals), except as modified in this Section _____. On the next available meeting date after the appeal period lapses, or as soon as reasonably feasible thereafter, the appellate body shall hold a *de novo* public hearing to consider and act on the application in accordance with the applicable provision in the General Plan, any applicable specific plan and all applicable provisions in the General Plan, any

applicable specific plan and all applicable provisions in the Town of Amherst. Appeals from an approval will not be permitted to the extent that the appeal is based on environmental effects from RF emissions that comply with all applicable FCC regulations.

Site Location Guidelines

a) Preferred Locations. All applicants must, to the extent feasible, propose new wireless facilities in locations according to the following preferences, ordered from most preferred to least preferred. Wireless facilities proposed to be sited in the following locations may be eligible for a minor use permit.

1. town-owned structures in the public rights-of-way;
2. existing support structures in the public rights-of-way;
3. town-owned property;
4. parcels within industrial zones; and
5. parcels within commercial zones;

b) Discouraged Locations. The Town discourages new wireless facilities in the following Locations, ordered from most discouraged to least discouraged, and the approval authority will take into account whether any less discouraged (or more preferred) locations are technically feasible and potentially available. Furthermore, any wireless facility proposed to be sited in the following discouraged locations will require a special use permit:

1. all Single-Family Residential zones (which includes, without limitation, _____);
2. all properties within any Biological Preserve Overlay as defined in the General Plan;
3. all parcels designated as Open Space in the General Plan;
4. all parcels within the Historic _____ District;
5. all parcels within the _____ Specific Plan area; and
6. all other locations not identified as "preferred" in section _____

c) Preferred Support Structures. In addition to the preferred locations described in Section _____, the Town also expresses its preference for installations on certain support structures. The approval authority will take into account whether any less discouraged (or more preferred) support structures are technically feasible and potentially available. The Town's preferred support structures are as follows, ordered from most preferred to least preferred:

1. collocations with existing building-mounted wireless facilities;
2. collocations with existing wireless facilities on electric transmission towers;
3. collocations with existing freestanding wireless facilities;
4. new installations on existing buildings;
5. new installations on existing electric transmission towers;
6. new freestanding wireless towers;

Design Standards

- A. Generally Applicable Development Standards. All new wireless facilities and all collocations or modifications to existing wireless facilities not subject to Section 6409 must conform to the generally applicable development standards in this Section ____.
1. Concealment. Wireless facilities must incorporate concealment elements, measures and techniques that blend the equipment and other improvements into the natural and/or built environment in a manner consistent and/or compatible with the uses germane to the underlying zoning district and existing in the immediate vicinity.
 2. Overall Height. Wireless facilities may not exceed the applicable height limit for structures in the applicable zoning district.
 3. Setbacks. Wireless facilities may not encroach into any applicable setback for structures in the subject zoning district.
 4. Noise. Wireless facilities and all accessory equipment and transmission equipment must comply with all noise regulations, which includes without limitation Chapter _____ (Noise Control), and shall not exceed, either individually or cumulatively, the applicable ambient noise limit in the subject zoning district. The approval authority may require the applicant to incorporate appropriate noise-baffling materials and/or strategies whenever necessary to avoid any ambient noise from equipment reasonably likely to exceed the applicable limit.
 5. Landscaping. Wireless facilities must include landscape features when proposed in a landscaped area. The approval authority may require additional landscape features to screen the wireless facility from public view, avoid or mitigate potential adverse impacts on adjacent properties or otherwise enhance the concealment required under this Chapter.
 6. Security Measures. Wireless facilities may incorporate reasonable and appropriate security measures, such as fences, walls and anti-climbing devices, to prevent unauthorized access, theft and vandalism. Security measures must be designed to enhance concealment elements as the approval authority finds necessary to blend the security measures and other improvements into the natural and/or built environment. The approval authority shall not approve barbed wire, razor ribbon, electrified fences or any similar security measures.
 7. Backup Power Sources. The approval authority may approve permanent backup power sources and/or generators on a case-by-case basis. All backup power sources and/or generators must be compliant with all generally applicable rules and regulations for public health and safety, and the approval authority may require conditions reasonably necessary or appropriate to ensure such compliance. The Town strongly disfavors backup power sources mounted on the ground or on poles in the public rights-of-way.

8. Lights. Wireless facilities may not include exterior lights other than (i) as may be required under FAA, FCC or other applicable governmental regulations; and (ii) timed or motion-sensitive lights for security and/or worker safety. All exterior lights permitted or required to be installed must be installed in locations and within enclosures that avoids illumination impacts on other properties to the maximum extent feasible.
 9. Signage; Advertisements. All wireless facilities must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. Wireless facilities may not bear any other signage or advertisements unless expressly approved by the Town, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
 10. Future Collocations. All wireless facilities must be designed and sited in a manner that contemplates future collocations, and will facilitate additional equipment to be integrated into the proposed wireless facility or associated structures with no or negligible visual changes to its outward appearance to the greatest extent feasible.
 11. Utilities. All cables and connectors for telephone, primary electric and other similar utility services must be routed underground to the extent feasible in conduits large enough to accommodate future collocated wireless facilities. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
 12. Compliance with Laws. All wireless facilities must be designed and sited in compliance with all applicable federal, state and local laws, regulations, rules, restrictions and conditions, which includes without limitation the New York Building Standards Code, General Plan and any specific plan, the Town of Amherst Code and any conditions or restrictions in any permit or other governmental approval issued by any public agency with jurisdiction over the project.
- B. Freestanding Wireless facilities.
1. Tower-Mounted Equipment. All tower-mounted equipment must be mounted as close to the vertical support structure as possible to reduce its visual profile. Applicants must mount non-antenna, tower-mounted equipment (including, but not limited to, remote radio units/heads, surge suppressors and utility demarcation boxes) directly behind the antennas to the maximum extent feasible. All tower-mounted equipment, cables and hardware must be painted with flat colors subject to the approval authority's prior approval.

2. Ground-mounted Equipment and Shelters. All ground-mounted equipment must be concealed within an existing or new structure, opaque fences or other enclosures subject to the approval authority's prior approval. The approval authority may require additional concealment elements as the approval authority finds necessary to blend the ground-mounted equipment and other improvements into the natural and/or built environment.

C. Building-Mounted Wireless facilities.

1. Preferred Concealment Techniques. All applicants should, to the extent feasible, propose new non-tower facilities that are completely concealed and architecturally integrated into the existing façade or rooftop features with no visible impacts from any publicly accessible areas at ground level (examples include, but are not limited to, antennas behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials). Alternatively, when integration with existing building features is not feasible, the applicant should propose completely concealed new structures or appurtenances designed to mimic the support structure's original architecture and proportions (examples include, but are not limited to, cupolas, steeples, chimneys and eater tanks). Facilities must be located behind existing parapet walls or other existing screening elements to the maximum extent feasible.
2. Façade-Mounted Equipment. When wireless facilities cannot be placed behind existing parapet walls or other existing screening elements, the approval authority may approve façade-mounted equipment in accordance with this section. All façade-mounted equipment must be concealed behind screen walls and mounted as flush to the façade as practicable. The approval authority may not approve "pop-out" screen boxes unless the design is architecturally consistent with the original building or support structure. Except in industrial zones, the approval authority may not approve any exposed façade-mounted antennas, including but not limited to exposed antennas painted to match the façade.
3. Rooftop-Mounted Equipment. All rooftop-mounted equipment must be screened from public view with concealment measures that match the underlying structure in proportion, quality architectural style and finish. The approval authority may approve unscreened rooftop equipment only when it expressly finds that such equipment is effectively concealed due to its low height and/or setback from the roofline.
4. Associated Ground-Mounted Equipment. Outdoor ground-mounted equipment associated with building-mounted wireless facilities must be avoided whenever feasible. In publicly visible or accessible locations, applicants must conceal outdoor ground-mounted equipment with opaque fences or landscape features that mimic the adjacent structure(s) such as dumpster corrals and other accessory structures.

D. Right-of-Way Wireless Facilities.

1. Concealment. All wireless facilities in the right-of-way must be concealed to the maximum extent feasible with design elements and techniques that mimic or blend with the underlying support structure, surrounding environment and adjacent uses. Such concealment techniques may include, without limitation, placing equipment underground or within landscaped areas, painting or coloring the equipment, mounting the equipment behind existing street signage or rotating the equipment away from prominent views, installing passively cooled equipment rather than fan-

cooled equipment, covering any solid or flashing indicator lights on the internal components. In addition, wireless facilities in the rights-of-way may not unreasonably subject the public use, for any purpose including expressive or aesthetic purposes, to inconvenience, discomfort, trouble, annoyance, hindrance, impediment or obstruction.

2. **Support Structures.** All wireless facilities in the public right-of-way must be installed on existing above-ground structures whenever possible and desirable. Existing above-ground structures may be replaced with hardened support structures so long as the replacement structure is substantially similar to the existing structure to be replaced. The approval authority shall not approve any new, non-replacement support structures unless: (i) the applicant demonstrates that above-ground support structures near the project site either do not exist or are not available to the applicant; or (ii) the approval authority finds that a new, non-replacement support structure would be more desirable and consistent with the objectives in this Chapter than installations on existing structures near the project site.
3. **Underground Equipment.** To conceal the non-antenna equipment, applicants for a proposed wireless facility within any area in which the existing utilities are primarily located underground shall underground all non-antenna equipment other than any required electric meter or disconnect switch. In all other areas, applicants shall install all non-antenna equipment underground to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt an applicant from this requirement, except where the applicant demonstrates with evidence that this requirement will effectively prohibit the provision of personal wireless services.
4. **Pole-Mounted Equipment.** All pole-mounted equipment must be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. All required or permitted signage in the rights-of-way must face toward the street or otherwise placed to minimize visibility from adjacent sidewalks and structures. All conduits, conduit attachments, cables, wires and other connectors must be concealed from public view to the extent feasible.
5. **Ground-Mounted Equipment.** To the extent that the equipment cannot be placed underground as required, applicants must install ground-mounted equipment in the location so that it does not obstruct pedestrian or vehicular traffic. The approval authority may require landscaping as a condition of approval to conceal ground-mounted equipment.

Standard Conditions of Approval

In addition to all other conditions adopted by the approval authority, all special use permits and minor use permits, whether approved by the approval authority or deemed approved by the operation of law, shall be automatically subject to the conditions in this Section _____. The approval authority shall have discretion to modify or amend these conditions on a case-by-case as may be necessary or appropriate under the circumstances to allow for the proper operation of the approved facility consistent with the goals of this chapter.

- A. **Approved Plans.** Before the permittee submits any applications to the Building Department, the permittee must incorporate this permit, all conditions associated with this permit and the approved photo simulations into the project plans (the "**Approved Plants?**"). The permittee must construct, install and operate the wireless facility in strict compliance with the Approved Plans. Any alterations, modifications or other changes to the Approved Plans, whether requested by the permittee or required by other departments or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Zoning Administrator's prior review and approval, who may refer the request to the original approval authority if the Zoning Administrator finds that the requested alternation, modification or other change implicates a significant or substantial land-use concern.
- B. **Build-out Period.** This permit will automatically expire one year from the issuance date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved wireless facility, which includes without limitation any permits or approvals required by any federal, state or local public agencies with jurisdiction over the subject property, the wireless facility or its use. The zoning Administrator may grant one written extension to a date certain when the permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.
- C. **Maintenance Obligations; Vandalism.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe conditions in accordance with the Approved Plans and all conditions in this permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the Town, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- D. **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("Laws") applicable to the permittee, the subject property, the wireless facility or any use or activities in connection with the use authorized in this permit. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all Laws.

- E. Adverse Impacts on Other Properties. The permittee shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines on (1) any weekday or Saturday between 7PM and 7AM or (2) any Sunday or holiday. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any Administrator's designee may issue a stop work order for any work that violates this condition.
- F. Noise Complaints. The permittee shall conduct all activities on the site in compliance with the ambient noise standards in _____ applicable to the zone in which the site is situated. In the event that any person files a noise complaint and the Town verifies that such complaint is valid, the permittee must remedy the violation within 10 days after notice from the Town, which may include demonstration that the permittee has amended its operational guidelines in situations where the violation arises from the permittee's personnel rather than the permittee's equipment.
- G. Inspections; Emergencies. The permittee expressly acknowledges and agrees that the Town or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the permittee; provided, however, that the Town or its designee may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee will be permitted to supervise the Town or its designee while such inspection or emergency access occurs.
- H. Contact Information. The permittee shall furnish the Building Department with accurate and up-to-date contact information for a person responsible for the wireless facility, which includes without limitation such person's full name, title, direct telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times.
- I. Indemnification. The permittee and, if applicable, the property owner upon which the wireless facility is installed shall defend, indemnify and hold harmless the Town, its agents, officers, officials, employees and volunteers from any and all (1) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, demands, law suits, writs and other actions or proceedings ("Claims") brought against the Town or its agents, officers, officials, employees or volunteers to challenge, attach, seek to modify, set aside, void or annul the Town's approval of this permit, and (2) other Claims any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees', or customers' acts or omissions in connection with this permit or the wireless facility. In the event the Town becomes aware of any Claims, the Town will use best efforts to promptly notify the permittee and the private property owner and shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the Town shall have the right to

approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town's defense, and the property owner and/or permittee incurred by the Town in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this condition are a material consideration that motivates the Town to approve this permit, and that such indemnification obligations will survive the expiration or revocation of this permit.

- J. Performance Bond. Before the Building Official issues any construction permit in connection with the wireless facility, the permittee shall post a performance bond from a surety and in a form acceptable to the Town Supervisor and the Town Attorney in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility. In establishing or adjusting the bond amount required under this condition, and in accordance with New York Code, the Town Supervisor shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.
- K. Recall to the Approval Authority. The original approval authority may recall this permit for review at any time due to complaints about noncompliance with the Town of Amherst Code or any approval conditions. At a duly noticed public hearing and in accordance with all applicable laws, the approval authority may revoke this permit or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.
- L. Record Retention. The permittee shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the permit or regulatory approval. In the event that the Town cannot locate any such full and complete permits or other regulatory approvals in its official records, and the permittee fails to retain full and complete permits or other regulatory approvals in the permittee's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the permittee.

Amortization of Nonconforming Wireless Facilities

Any non-conforming wireless facilities in existence at the time this Chapter becomes effective must be brought into conformance with this Chapter in accordance with the amortization schedule in this Section _____. As used in this section, the "fair market value" will be the construction costs listed on the building permit application for the subject wireless facility and the "minimum years" allowed will be measured from the date on which this Chapter becomes effective.

Fair Market Value on Effective Date	Minimum Years Allowed
Less than \$50,000.....	5
\$50,000 to \$500,000.....	10
Greater than \$500,000.....	15

The Zoning Administrator may grant a written extension to a date certain when the wireless facility owner shows (1) a good faith effort to cure non-conformance; (2) the application of this Section would violate applicable laws; or (3) extreme economic hardship would result from strict compliance with the amortization schedule. Any extension must be the minimum time period necessary to avoid such extreme economic hardship. The Zoning Administrator may not grant any permanent exemption from this Section.

Nothing in this Section is intended to limit any permit term to less than 10 years. In the event that the amortization required in this Section would reduce the permit term to less than 10 years for any permit granted on or after September 29, 2006, then the minimum years allowed will be automatically extended by the difference between 10 years and the number of years since collocation or modification covered under 47 U.S.C § 1455(a) on the basis that the subject wireless facility is a legal nonconforming wireless facility.

Temporary Wireless Facilities

A. Temporary Wireless Facilities for Non-Emergencies.

1. Administrative Temporary Use Permit Applications. The Zoning Administrator shall not approve any temporary wireless facility subject to an administrative temporary use permit except upon a duly filed application consistent with this Section _____ and any other written rules the Zoning Administrator may publish in any publicly-stated format. Applicants for an administrative temporary use permit must submit, at a minimum: (1) an administrative temporary use permit application on the most current form prepared by the Planning Department; (2) the applicable fee for the application; (3) a site plan that shows the proposed temporary wireless facility and its equipment, physical dimensions and placement on the proposed site relative to property lines and existing structures; (4) an RF compliance report in accordance with d) _____ in this Chapter; (5) an insurance certificate for general commercial liability that names the Town as an additional insured, includes coverage for the time period in which the temporary wireless facility will be placed and carries at least \$1,000,000 in coverage per occurrence. Applications must be submitted in person to the Zoning Administrator. No pre-submittal conference or appointment is required for a temporary administrative use permit application.

2. Administrative Review Procedures. After the Zoning Administrator receives a duly filed application for an administrative temporary use permit, the Zoning Administrator shall review the application for completeness. After the Zoning Administrator deems the application complete, the Zoning Administrator shall review the application for conformance with the required findings in Section _____ and render a written decision to the applicant. Any denials must include the reasons for the denial. The review shall be administrative in nature and shall not require notice or a public hearing. In the event that the Zoning Administrator denies an administrative temporary use permit for a temporary wireless facility, the applicant may appeal to the Town Supervisor within 10 days. The Town Supervisor shall consider the appeal *de novo*

and the Town Supervisor's decision will be final and not subject to any further administrative appeals.

3. Required Findings. The Zoning Administrator may approve or conditionally approve an administrative temporary use permit for a wireless facility only when the Zoning Administrator finds all of the following:

- a. The proposed temporary wireless facility will not exceed 50 feet in overall height above ground level;
- b. The proposed temporary wireless facility complies with all setback requirements applicable to the proposed location;
- c. The proposed temporary wireless facility will not involve any excavation or ground disturbance;
- d. The proposed temporary wireless facility will be compliant with all generally applicable public health and safety laws and regulations, which includes without limitation maximum permissible exposure limits for human exposure to RF emissions established by the FCC;
- e. The proposed temporary wireless facility will not create any nuisance or violate any noise limits applicable to the proposed location;
- f. The proposed temporary wireless facility will be identified with a sign that clearly identifies the site operator and contains a working telephone number to a live person who can exert power-down control over the antennas;
- g. The proposed temporary wireless facility will be removed within five days after the Zoning Administrator grants the administrative temporary use permit, or such longer time as the Zoning Administrator finds reasonably related to the applicant's need or purpose for the temporary wireless facility;
- h. The applicant has not received any other administrative temporary use permit for substantially the same location within the previous 90 days; and
- i. The applicant has not sought approval for any permanent wireless facility in substantially the same location within the previous 365 days.

B. Temporary Wireless Facilities for Emergencies. Temporary wireless facilities may be placed and operated within the Town without an administrative temporary use permit only when a duly authorized federal, state, county or Town official declares an emergency within a region that includes the Town in whole or in part. Any temporary wireless facilities placed pursuant to this Section _____ must be removed within five days after the date the emergency is lifted (whichever occurs first). Any person or entity that places temporary wireless facilities pursuant to this section must send a written notice that identifies the site location and person responsible for its operation to the Zoning Administrator as soon as reasonably practicable.

Compliance Obligations

A. An applicant or permittee will not be relieved of its obligation to comply with every applicable provision in the Amherst Town Code, any permit, any permit condition or any applicable law or regulation by reason of any failure by the Town to timely notice, prompt of enforce compliance by the applicant or permittee.

DRAFT