

FOR DISCUSSION PURPOSES ONLY

**DRAFT WIRELESS COMMUNICATION FACILITIES  
ORDINANCE FOR FACILITIES COVERED UNDER SECTION  
6409(a) OF THE MIDDLE CLASS TAX RELIEF AND JOB  
CREATION ACT OF 2012**

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**LEGISLATIVE INTENT**

Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, codified in 47 U.S.C. §1455(a), generally requires that State and local governments “may not deny, and shall approve” requests to collocate, remove or replace transmission equipment at an existing tower or base station. Federal Communication Commission regulations interpret this statute and create procedural rules for local review, which generally preempt certain subjective land-use regulations, limit permit application content requirements and provide the applicant with a potential “deemed granted” remedy when the State or local government fails to approve or deny the request within sixty (60) days after submittal (accounting for any tolling periods). Moreover, whereas Section 704 of the Telecommunications Act of 1996, Publ. L. 104-104, codified in 47 U.S.C. §332, applies to only “personal wireless service facilities” (e.g., cellular telephone towers and equipment), Section 6409(a) applies to all “wireless” facilities licensed or authorized by the FCC (e.g. cellular, Wi-Fi, satellite, microwave backhaul, etc.).

The Town of Amherst finds that the overlap between wireless deployments covered under Section 6409(a) and other wireless deployments, combined with the different substantive and procedural rules applicable to such deployments, creates a potential for confusion that harms the public interest in both efficient wireless facilities deployments and carefully planned community

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development in accordance with local values. The Town of Amherst town board further finds that a separate permit application and review process specifically designed for compliance with Section 6409(a) contained in a section devoted to Section 6409(a) will mitigate such potential confusion, streamline local review and preserve the Town's land-use authority to the maximum extent possible.

The Town of Amherst intends this section to establish reasonable and uniform standards and procedures in a manner that protects and promotes the public health, safety and welfare, consistent with and subject to federal and New York state law, for wireless facilities collocations and modifications pursuant to Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96 codified in 47 U.S.C. §1455(a), and related FCC regulation codified in 47 C.F.R. §§1.40001 *et seq.* This section 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 managements; (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 effect of radio frequency emissions to the extent that such wireless facilities comply with the FCC'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 will have the meanings assigned to them in this Section \_\_\_\_\_ or, 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 “Building Commissioner”, 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 section 6409(a) approval refers to the Zoning Administrator.

**“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 terms 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 a 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

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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)-(iii) 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 built for the sole or primary purpose of providing such support. The term 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.

**“Eligible facilities request”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(3), as may be amended, which defines that term as any request for modification of an existing tower or base station that does not substantially change the physical dimension 1.40001 9b)ns of such tower or base station, involving: (i) collocation of new transmission equipment; (ii) removal of transmission equipment; or (iii) replacement of transmission equipment.

**“Eligible support structure”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(4), as may be amended, which defines that terms as any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with the State or local government under this section.

**“Existing”** means the same as defined by the FCC in 47 C.F.R § 1.40001(b)(4), as may be amended, which provides that a constructed tower or base station is existing for purposes of the FCC’s Section 6409 (a) regulations if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower has been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition.

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

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**“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 term as commercial mobile services, unlicensed wireless service 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 or electromagnetic waves between 3 kHz and 300 GHz in the electromagnetic spectrum range.

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

**“Site”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(6), as may be amended, which provides that for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

**“Substantial change”** means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, which defines that term differently based on the particular wireless facility type (tower or base station) and location (in or outside the public right-of-way). For clarity, this definition organizes the FCC’s criteria and thresholds for a substantial change according to the wireless facility type and location.

- (a) For towers outside the public rights-of-way, a substantial change occurs when:
- (1) the proposed collocation or modification increases the overall height more than 10% or the height of one additional antenna array not to exceed 20 feet (whichever is greater); or
  - (2) the proposed collocation or modification increases the width more than 20 feet from the edge of the wireless tower or the width of the wireless tower at the level of the appurtenance (whichever is greater); or
  - (3) the proposed collocation or modification involves the installation of more than the standard number of equipment cabinets for the technology involved, not to exceed four; or
  - (4) the proposed collocation or modification involves excavation outside the current boundaries of the leased or owned property surrounding the wireless tower, including any access or utility easements currently related to the site.
- (b) For towers in the public rights-of-way and for all base stations, a substantial change occurs when:
- (1) the proposed collocation or modification increases the overall height more than 10% or 10 feet (whichever is greater); or
  - (2) the proposed collocation or modification increases the width more than 6 feet from the edge of the wireless tower or base station; or

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- (3) the proposed collocation or modification involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets; or
  - (4) the proposed collocation or modification involves the installation of any new ground-mounted equipment cabinets that are ten percent (10%) larger in height or volume than any existing ground-mounted equipment cabinets; or
  - (5) the proposed collocation or modification involves excavation outside the area in proximity to the structure and other transmission equipment already deployed on the ground.
- (c) In addition, for all towers and base stations wherever located, a substantial change occurs when:
- (1) the proposed collocation or modification would defeat the existing concealment elements of the support structure as determined by the Director; or
  - (2) the proposed collocation or modification violates a prior condition of approval, provided however that the collocation need not comply with any prior condition of approval related to height, width, equipment cabinets or excavation that is inconsistent with the thresholds for a substantial change described in this section.

**Note:** The thresholds for a substantial change outlined above are disjunctive. The failure to meet any one or more of the applicable thresholds means that a substantial change would occur. The thresholds for height increases are cumulative limits. For sites with horizontally separated deployments, the cumulative limit is measure from the originally-permitted support structure without regard to any increases in size due to wireless equipment not included in the original design. For sites with vertically separated deployments, the cumulative limits is measured from the permitted site dimensions as they existed on February 22, 2012 – the date that Congress passed Section 6409(a).

**“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 term 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 sit. Examples include, but are not limited to, monopoles, mono-tress 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.

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### APPLICABILITY

This Chapter applies to all collocation or modification to an existing wireless tower or base station submitted with a written request for approval pursuant to Section 6409(a). However, the applicant may voluntarily elect to seek a minor use permit or special use permit under Chapter \_\_\_\_\_.

### APPROVAL REQUIRED

- (a) **Section 6409(a) Approval.** Any request to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted with a written request for approval under Section 6409(a) shall require a section 6409(a) approval subject to the Zoning Administrator's approval, conditional approval or denial without prejudice pursuant to the standards and procedures contained in this Chapter.
- (b) **Other Regulatory Approvals Required.** No collocation or modification approved under any section 6409(a) approval may occur unless the applicant also obtains all other permits or regulatory approvals from other Town departments and state or federal agencies. Furthermore, any section 6409(a) approval granted under this Chapter shall remain subject to any and all lawful conditions and/or requirements associated with such other permits or regulatory approvals from other Town departments and state or federal agencies.

### PERMIT APPLICATIONS

- (a) **Application Requirement.** The Town shall not approve any wireless facility subject to this Chapter except upon a duly filed application consistent with this Section \_\_\_\_\_ and any other written rules the Town or the Zoning Administrator may establish from time to time in any publicly-stated format.
- (b) **Application Content.** The materials required under this section are minimum requirements for any application.
  - (1) **Master Application and Applicable Fee.**
  - (2) **Title Report and Owner's Authorization.** 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 proper owner's identity. If the applicant does not own the subject property, 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, operation and maintenance to the extent described in the application.

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- (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 Certificate of Public Convenience and Necessity, 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) **Prior Regulatory Approvals.** Evidence that the applicant holds all current licenses and registrations from the FCC and any other applicable regulatory bodies where such license(s) or registrations(s) are necessary to provide wireless services utilizing the proposed wireless facility. For any prior local regulation approval(s) associated with the wireless facility, the applicant must submit copies of such approvals, including any corresponding approved project plans and conditions of approval. Alternatively, the applicant may submit a written justification that sets forth reasons why prior regulatory approvals were not required for the wireless facility at the time it was constructed or modified.
- (5) **Project Plans.** A fully dimensioned site plan and elevation drawings prepared and sealed by a New York-licensed engineer showing any existing wireless facilities with 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 specifically depict and call out the original overall height of the structure and, if the structure was constructed prior to February 22, 2012, the overall height that existed on February 22, 2012. The plans must contain all other elements and details required for site plans submitted with a special use permit application.
- (6) **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.
- (7) **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 (ERP) 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 limits (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 that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.

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- (8) **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 power 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 manufacturers' 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.
- (9) **Section 6409(a) Justification Analysis.** A written statement that explains in plain factual detail whether and why Section 6409(a) and the related FCC regulations at 47 C.F.R. § 1.40001 *et seq.* require approval for the specific project. A complete written narrative analysis will state the applicable standard and all the facts that allow the Town to conclude the standard has been met—bare conclusions not factually supported do not constitute a complete written analysis. As part of this written statement the applicant must also include (i) whether and why the support structure qualifies as an existing tower or existing base station; and (ii) whether and why the proposed collocation or modification does not cause a substantial change in height, width, excavation, equipment cabinets, concealment or permit compliance.
- (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-application meeting with Town staff for all proposed modifications submitted for approval pursuant to Section 6409(a). The pre-submittal conference is intended to streamline the review process through informal discussion that includes, without limitation, the appropriate project classification, including whether the project qualifies for Section 6409(a); any latent issues in connection with the existing tower or base station; potential concealment issues (if applicable); coordination with other Town department responsible for application review; and application completeness issues. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications or other materials to the Town staff may provide informal feedback about whether such applications or other materials may be incomplete or unacceptable. The Zoning Administrator may, in the Zoning Administrator's discretion, grant a written exemption to the submittal appointment under Section \_\_\_\_\_ and/or for a specific requirement for a complete application to any applicant who (i) schedules, attends and fully participates in any pre-submittal conference and (ii) shows to the Zoning Administrator's satisfaction that such specific requirement



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duplicates information already provided in other material 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 application 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 from 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 \_\_\_-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 application forms, checklists, information handouts and other related material that the Zoning Administrator finds necessary, appropriate or useful for processing requests for section 6409(a) approvals. Without further authorization from the Town Board, the Zoning Administrator may from time-to-time update and alter any such permit application forms, checklists, information handouts and other related materials as the zoning Administrator deems necessary, appropriate or useful to respond to regulatory, technological or other changes related to this Chapter. The Town Board authorizes the Zoning Administrator to establish other reasonable rules and regulation, which may include without limitation regular hours for appointments with applicants, as the Zoning Administrator deems necessary or appropriate to organize, documents and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide applicants with prior notice.

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### DECISIONS

- (a) **Administrative Review; Decision Notices.** The Zoning Administrator shall administratively review an application for a section 6409(a) approval and may act on such an application without prior notice or a public hearing. Within five working days after the approval Zoning Administrator, conditionally approves or denies an application submitted for approval pursuant to Section 6409(a) or before the FCC timeframe for review expires (whichever occurs first), the Zoning Administrator shall send a written notice to the applicant. In the event that the Zoning Administrator determines that an application submitted for approval pursuant to Section 6409(a) does not qualify for approval, the Zoning Administrator will send written notice to the applicant that includes the reasons to support the approval authority's decision and states that the application will be automatically denied without prejudice on the 60th day after the date the application was filed unless the applicant withdraws the application.
- (b) **Required Findings for Approval.** The Zoning Administrator may approve or conditionally approve an application submitted for approval pursuant to Section 6409(a) when it finds that the proposed project:
- (1) Involves collocation, removal or replacement of transmission equipment on an existing wireless tower or base stations; and
  - (2) Does not substantially change the physical dimensions of the existing wireless tower or base station.
- (c) **Criteria for Denial Without Prejudice.** Notwithstanding any other provisions in this Chapter, and consistent with all applicable federal laws and regulations, the Zoning Administrator may deny without prejudice an application submitted for approval pursuant to section 6409(a) when it finds that the proposed project:
- (1) Does not satisfy the criteria for approval;
  - (2) Violates any legally enforceable standard or permit condition reasonably related to public health and safety then in effect; or
  - (3) Involves the replacement of the entire support structure.
- (d) **Conditional Approvals.** Subject to any applicable limitations in federal or state law, nothing in this Chapter is intended to limit the Town's authority to conditionally approve an application for a section 6409(a) approval to protect and promote the public health, safety and welfare.
- (e) **Appeals.** Any applicant may appeal a decision by the Zoning Administrator's decision to deny without prejudice a Section 6409(a) application. The appeal must be filed within 10 days from the Zoning Administrator's decision. The appeal must state in plain terms the grounds for reversal and the facts that support those grounds. The Town Supervisor shall serve as the appellate authority for all appeals of all actions of the Zoning Administrator taken pursuant to this Chapter. The Town Supervisor shall limit their review to whether the project should be approved or denied in accordance with the provisions in Section

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\_\_\_\_\_. The decision of the Town Supervisor shall be final and not subject to any further administrative appeals.

### 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 basis as may be necessary or appropriate under the circumstances.

- (a) **Permit Term.** The Town's grant or grant by operation of law of a section 6409(a) approval constitutes a federal-mandated modification to the underlying permit or other prior regulatory authorization for the subject tower or base station. The Town's grant or grant by operation of law of a section 6409(a) approval will not extend the permit term, if any, for any minor use permit, special use permit or the underlying prior regulatory authorization. Accordingly, the term for a section 6409(a) approval shall be coterminous with the underlying permit or other prior regulatory authorization for the subject tower or base station.
- (b) **Accelerated Permit Terms Due to Invalidation.** In the event that any court of competent jurisdiction invalidates any portion of Section 6409(a) or any FCC rule that interprets Section 6409(a) such that federal law would not mandate approval for any section 6409(a) approval(s), such approval(s) shall automatically expire one year from the effective date of the judicial order, unless the decision would not authorize accelerated termination of previously approved section 6409(a) approvals or the Zoning Administrator grants an extension upon written request from the permittee that shows good cause for the extension, which includes without limitation extreme financial hardship. Notwithstanding anything in the previous sentence to the contrary, the Zoning Administrator may not grant a permanent exemption or indefinite extension. A permittee shall not be required to remove its improvements approved under the invalidated section 6409(a) approval when it has submitted an application for either a minor use permit special use permit for those improvements before the one-year period ends.
- (c) **No Waiver of Standing.** The Town's grant or grant by operation of law of a section 6409(a) approval does not waive, and shall not be construed to waive, any standing by the Town to challenge Section 6409(a), any FCC rules that interpret Section 6409(a) or section 6409(a) approval.
- (d) **Approved Plans.** Before the permittee submits any applications to the Building Department, the permittee must incorporate this section 6409(a) approval, all conditions associated with this section 6409(a) approval and the approved photo simulations into the project plans (the "**Approved Plans**"). 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 department or public agencies with jurisdiction over the wireless facility, must be submitted in a written request subject to the Zoning

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Administrator's prior review and approval, who may revoke the section 6409(a) approval if the Zoning Administrator finds that the requested alteration, modification or other change may cause a substantial change as that term is defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended.

- (e) **Build-out Period.** This section 6409(a) approval 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.
- (f) **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 condition in accordance with the Approved Plans and all conditions in this section 6409(a) approval. 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.
- (g) **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 section 6409(a) approval. 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, relive or otherwise lessen the permittee's obligations to maintain compliance with all Laws.
- (h) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts or 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 n (a) any weekday or Saturday between [ ] and [ ] 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 work during an emergency declared by the Town. The Zoning Administrator or his/her designee may issue a stop work order for nay work that violates this condition.

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- (i) **Noise Complaints.** The permittee shall conduct all activities on the site in compliance with the ambient noise standards in Chapter \_\_\_\_ applicable to the zone. 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 for the Town, which may include a 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.
- (j) **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.
- (k) **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.
- (l) **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 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, attack, seek to modify, set aside, void or annul the Town's approval of this section 6409(a) approval or the wireless facility. In the even 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 (as applicable) shall promptly reimburse Town for any costs and expenses directly and necessarily 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 City to approve this section 6409(a) approval, and that such indemnification obligation will survive the expiration or revocation of this section 6409(a) approval.
- (m) **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 in an amount equal to or greater than a written estimate from a qualified contractor with experience in wireless facilities

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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, cable, 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, the Town Supervisor shall take into consideration information provided by the permittee regarding the cost to remove the wireless facility.

- (n) **Recall to the Approval Authority.** The original approval authority may recall this section 6409(a) approval for review at any time due to complaints about noncompliance with the Amherst Town Code or any approval conditions. At a duly noticed public hearing and in accordance with all applicable laws, the approval authority may revoke this section 6409(a) approval or amend these conditions as the approval authority deems necessary or appropriate to any such noncompliance.
- (o) **Record Retention.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the permittee.

### COMPLIANCE OBLIGATIONS

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