

## **Code Pieces: Small Cells & DAS Facility Standards in the Public Rights-of-Way (Annotated)**

### **Preservation of the Special Use Permit Process in Residentially-Zoned Areas**

Applications for new facilities and substantial modifications to existing facilities in the public rights-of-way or within (100) feet of a residentially-zoned area as measured from the parcel line, or across the street from a residentially-zoned area and within the ultimate right-of-way if greater than one hundred (100) feet as measured from the parcel line shall be subject to the ZBA Special Use Permit Approval Process.

In commercial/industrial districts, when more than one hundred (100) feet from a residential or open space district as measured from the parcel line, new wireless communications facilities and substantial changes to an existing tower or existing structure shall be subject to administrative review and approval by the Town wireless agent.

[Town of Amherst § 203 8-6](#), [Town of Amherst § 203 6-7](#), [Orange County, CA § 6-6-1](#), [Orange County, CA § 7-9-146.13](#)

### **Mandatory Escrow Collection Prior to Pre-Application Meeting & Right to Retain Expert Assistance for all applications (Eligible Facilities Requests Included) Reimbursement by Petitioner.**

A. The Town shall hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, technical aspects of the proposed facility or modification of an existing facility, and any requests for recertification. The review shall address the following:

- (1) Compliance with applicable RF emission standards and determination based upon FCC Office of Engineering and Technology Bulletin in 65 (FCC OET BULLETIN 65) as amended from time to time;
- (2) Whether the proposed facility is necessary to close a significant gap in coverage and/ or capacity and is the least intrusive means of doing so;
- (3) The accuracy and completeness of submission;
- (4) Technical demonstration of the unavailability of alternate sites or configurations and/ or coverage analysis;
- (5) The applicability of analysis techniques and methodologies; 28  
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- (6) The viability of alternative sites and alternative designs; and (7) Any other specific technical issue designated by the Town.

B. The petitioner shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the construction and modification of the site, once permitted. The initial deposit shall be \$8,500. The placement of the \$8,500 with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$2,500, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$8,500 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.

C. The total amount of the funds needed as set forth in subsection B of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

D. Failure of the petitioner to deposit the initial escrow amount of \$8,500 prior to their pre-application shall render the pre-application meeting invalid for the purposes of review.

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Town of Amherst § 203 6-7-11, Oswego, NY Ch 247, Town of Cheektowaga § 255-15, City of Glendale, CA § 12.08.037 (I)

### **50% or Greater Service Area Must Be Within Town of Amherst**

The geographic area to be served by the proposed WTF within the Town of Amherst and outside the Town of Amherst. If greater than 50% of the proposed service area of the proposed WTF is outside the Town of Amherst, then the special use permit may be denied unless the petitioner demonstrates to the satisfaction of the Town that the petitioner is unable to locate within the municipality which is primarily receiving service from the proposed WTF.

Code Source: Woodstock, NY § 260-64-G(10)

### **One (1) Mile Documented Search Ring Required**

A. In the case of a new Small Cell or DAS WTF in the public right-of-way, the petitioner shall be required to submit a comprehensive, written report demonstrating its efforts to secure shared use of existing towers, Town-owned infrastructure, existing alternative buildings or existing alternative support structures within the Town. Such report shall include an investigation and inventory of every WTF and every structure with a height exceeding 35 feet from finished grade within one (1) mile of the proposed location of the proposed new tower. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.

B. A petitioner intending to locate on existing infrastructure or another suitable structure shall be required to document the intent of the existing owner(s) to permit its use by the petitioner.

C. Such shared use shall consist only of the smallest antenna and accessory equipment technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown and shall be sited and concealed by design to avoid or minimize obstruction of views from public vantage points and otherwise minimize the negative aesthetic impacts on the public right-of-way and abutting properties.

Note: Amended Town of Amherst §203 6-7-3-H: Reduced height from 60ft from finished grade to 35ft. Reduced search ring from (2) two miles to (1) one mile.

### **Address Capacity**

Documentation that demonstrates and proves the need for the proposed WTF to provide service primarily and essentially within the Town of Amherst. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or capacity, including an analysis of current and projected usage. Where coverage exists and supplemental capacity is the major objective for the petitioner (as implied by the in-vehicle coverage maps and other application materials), a capacity analysis shall be submitted. The capacity analysis shall describe the need for increased capacity in the areas of the proposed site, including the operations and call traffic at all existing sites that surround the proposed facility. A technical description of why the nearby existing sites cannot be modified (by increasing power, modifying antennas, or adding base station radios, for instance) should be included in the capacity report.

The formulas used for any and all calculations must be clearly described.

Code Sources: Village of Airmont, NY §187-19-G(8) added to existing Town of Amherst § 203-6-7-G(1), Happy Valley, OR § 5-08-100.17

### **Radio frequency compliance and RF emissions safety report.**

At its discretion, the City may request an updated diagram in a format acceptable to the Director of Environmental Services of any wireless telecommunications facility located in the City and/or

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a certified report or engage an outside technical consultant to evaluate and/or verify compliance with FCC radio frequency (RF) and radiation emissions requirements. Fees for the outside consultant shall be promptly paid or reimbursed by the applicant/permittee.

[Simi Valley, CA § 5-35.07](#)

### **Withstand Wind: 115 mph / 40 mph with 3/4" ice**

The petitioner shall certify that the WTF, foundation, and related accessory equipment are designed and will be constructed to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads without the use of supporting guy wires. The calculations shall take into account other existing attachments to the supporting structure. The WTF and related equipment shall be designed to withstand a wind force of at least 115 miles per hour, and be designed to withstand a wind force of at least 40 miles per hour under conditions which include at least 3/4" of ice in accordance with standards established in Section 222-G by the Telecommunications Industry Association (TIA) and the Electronics Industry Association (EIA). The operator of a Small Cell Antenna Structure shall provide the Town with a structural evaluation containing a recommendation that the proposed Small Cell Antenna Structure passes the TIA/EIA Section 222-G standards described above. The evaluation shall be prepared by a licensed professional structural engineer.

[Code Source: Palatine, IL § 20.93.F\(xii\)](#) **\*\*[Updated windspeed requirements from 90mph to 115 mph as mandated by most current law]**

### **Annual NIER certification.**

A. The holder of the special use permit shall annually certify in writing to the Town that NIER levels at the site are within the threshold levels adopted by the FCC. The certifying engineer must be licensed to practice engineering in the State of New York.

B. No source of NIER, including facilities operational before the effective date of this Chapter, shall exceed the federal or state NIER emission standard.

C. Excessive emissions. Should the holder of the special use permit calculations or independent monitoring of the WTF by a certified engineer licensed to practice in the State of New York reveal that the site exceeds the most recent FCC regulations regarding NIER levels, emissions of electromagnetic radiation, currently found in FCC Regulations Title 47, Part 1, § 1.1310 and all other relevant sections, then the holder of the special use permit and the owner(s) of all facilities utilizing that site shall be so notified. The holder of the special use permit and the owner(s) shall submit to the Town a plan for the reduction of emissions to a level that complies with the FCC standard within 10 business days of notification of noncompliance. That plan shall reduce NIER levels and emissions to the applicable FCC standard within 15 days of initial notification of noncompliance. Failure to accomplish this reduction of NIER levels and emissions within 15 business days of initial notification of noncompliance shall be a violation of the special use permit and shall subject the violator to penalties and fines as specified in this Chapter. Such fines shall be payable by the holder of the special use permit and owner(s) of the WTF until compliance is achieved. All consultant costs incurred shall be borne by the applicant as part of the special use permit.

D. NIER enforcement. The Town shall have the authority to take any necessary steps to seek FCC enforcement of the relevant standards, or, to the extent consistent with applicable law and FCC regulations, to take such other steps as may be appropriate to rectify such a violation.

[Code Sources: Village of Nissequogue, NY §126-26, Village of Airmont, NY §187-21, Woodstock, NY §260-64-I\[2\], Town of Southampton, NY §330-314-E](#)

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### Registration Required

Each carrier shall register the following information with the Building Department on an annual basis, beginning with the date of approval. If any of the required information listed below is changed, the Building Department shall be notified of the change within 30 days.

- (1) Owner/lessee/intermediary/agent and carrier(s) at the site.
- (2) Location by latitude and longitude, addresses and parcel numbers.
- (3) Height, AGL
- (4) "As-built" set of plans
- (5) Type and maximum emissions of all antennas along with a file of application data including coverage maps.
- (6) Collocation status and capability (including if a former collocation has been removed).
- (7) Last date at which site was modified and the nature of the modification.
- (8) A list of toxic/hazardous materials at the PWSF (including in the equipment shelter).
- (9) Instructions for emergency personnel on the approach action to be taken in case of an emergency involving any toxic/hazardous substances.
- (10) The name and telephone number of a representative of the carrier to be contacted in the event of any emergency at the PWSF site. The contact representative is to be available on a twenty-four-hour-a-day, seven-days-a-week basis.

Code Source: [Town of Smithtown, NY § 242-14](#)

### 24-month build-out plan required.

(1) As part of any application in accordance with this section, the petitioner shall submit to the Town a build-out plan which shall include a description, maps, and data of the petitioner's existing current WTFs within the Town and all WTF's within one-half mile of the Town, together with the petitioner's intentions for additional facilities within the Town for the ensuing 24 months, indicating whether each proposed facility is for initial coverage or capacity building purposes, showing proposed general locations or areas in which additional facilities are expected to be needed, and shall also certify whether any and all existing WTFs of the petitioner are in active use and are necessary for its telecommunications operations.

(2) The aforesaid build-out plan shall include a statement as to how the proposed WTF will supplement, detract from or coordinate with existing WTFs in the Town and contiguous jurisdictions: any changes proposed within the following twenty-four-month period, including a build-out plan for new locations and the discontinuance or relocation of existing facilities.

(3) A similar build-out plan and certification of use of existing facilities shall be thereafter submitted by such petitioner on or before January 31 of each year, as well as upon any further application for any additional facilities.

(4) The Town shall impose the provisions of Subsection X(3) above as a condition of the issuance of any special use permit granted in accordance with this section.

Code Source: [Town of Pittsford, NY §185-126-F](#)

### Pre-Application Meeting Requirements

(1) There shall be a pre-application meeting with the Building Department, the Planning Department, the Town's designated consultant, and the Town Attorney. The purpose of the pre-application meeting will be to receive initial feedback and to address issues which will help to expedite the review and permitting process. A pre-application meeting, at the discretion of the Town, may also include a site visit. Costs of the Town's consultant to prepare for and attend the pre-application meeting will be borne by the petitioner.

(2) The petitioner must sign and submit a tolling agreement that states the petitioner's understanding that the pre-application meeting in no way constitutes review of their application

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and that the “shot-clock” on their project will not begin until an official application has been submitted per this policy.

(3) The petitioner shall submit evidence that a pre-application meeting has been held with the relevant Town departments in the form of a memorandum to include a summary of the meeting and comments from the Building Department, the Planning Department, the Town's designated consultant, and the Town Attorney. This memorandum shall be independently reviewed and verified as accurate by all involved Town entities.

[Code Sources: Amended Town of Amherst § 203-6-7-3-Y, City of Santa Monica, CA Preliminary Application 1-17-17, Village of Nissequoque, NY §126-6-S, Town of Huntington, NY § 198-68.1.F-13](#)

### **Determination of sites in the public rights-of-way.**

A. Unless authorized by the Town Board, not more than one (1) WTF may be located on a single utility pole, streetlight, or traffic signal standard in the public rights-of-way.

B. Limitation Based on Availability of Facilities - The Town may reasonably limit the number of sites available at a particular time, or in a particular location, to a single telecommunications provider based on the current inventory of available sites and currently estimated total demand for sites.

C. Priority of Sites - For the purposes of careful administration, maintenance, allocation, and to substantially reduce a WTF's visual and aesthetic impacts upon the surrounding public rights-of-way and public vantage points, the Town will apply the following priority schedule to small cell antenna facility sites:

(1) Town-owned buildings and traffic signal standards.

(2) Town-owned streetlight in the following order of preference: within an arterial street right-of-way, within a parking lot or property related to a governmental, institutional or commercial use, within a collector street right-of-way.

(3) Existing utility or railroad poles owned or maintained by National Grid or other public utilities or a railroad in the following order of preference: within an arterial street right-of-way, within a parking lot or property related to related to a governmental, institutional or commercial use, within a collector street right-of-way.

(4) Existing streetlight owned or maintained by National Grid or other public utilities or a railroad in the following order of preference: within an arterial street right-of-way, within a parking lot or property related to related to a governmental, institutional or commercial use, within a collector street right-of-way.

D. Town-owned infrastructure and buildings.

(1) Preferred locations are on existing, town-owned infrastructure such as traffic signal standards and streetlights. If the facility is not able to be placed on existing, town-owned infrastructure, the applicant shall provide a map of existing infrastructure in the service area and describe why each such site was not feasible.

(2) When existing Town-owned infrastructure sites have been exhausted, the Town may require that the petitioner provide new Town-owned infrastructure such as a traffic signal standard or streetlight, on which the WTF can be installed. In such cases, the new infrastructure shall be dedicated to the Town and will have a primary purpose other than as a WTF and the WTF will be the secondary use. This installation will be defined as a Wireless Base Station.

(3) When all other preferred sites have been exhausted and new infrastructure is not feasible, the applicant may request the installation of a new tower, concealed and camouflaged by Town-approved methods.

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E. Prohibited Locations - The following locations may not be used for WTF sites in the public right-of ways:

- (1) A utility pole located in a public parkway abutting a front yard of a single-family detached residence or a two-family detached residence
- (2) A utility pole located a corner side yard of a single-family detached residence or two-family detached residence.
- (3) A utility pole located in a rear yard (or abutting easement) of a single-family detached residence or two-family detached residence.
- (4) Antenna(s) mounted on any single-family dwelling or two-family dwelling.
- (5) A newly installed utility pole.
- (6) A newly installed monopole.

F. WTFs shall not be located in the following areas without a permit from all jurisdictional agencies:

- (1) Wetlands
- (2) Land above high groundwater (within 10 feet of the surface).
- (3) Lands purchased with Community Preservation Funds.
- (4) Designated parkland.
- (5) Public or private drainage easements.
- (6) Floodplains

The petitioner shall provide copies of comments and other correspondence sent to and received from all jurisdictional agencies contacted with regard to the proposed WTF.

G. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected.

H. A petitioner may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address collocation on existing infrastructure as an option. If such option is not proposed, the petitioner must explain to the reasonable satisfaction of the ZBA why collocation on existing infrastructure is not feasible. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

I. The petitioner shall submit a written report demonstrating the petitioner's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

J. Notwithstanding the above, the ZBA may approve any site located within an area in the above list of priorities, provided that the ZBA finds that the proposed site is in the best interest of the health, safety and welfare of the Town and will further the policies and goals set forth in § XXX

K. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the ZBA may disapprove an application for any of the following reasons:

- (1) Conflict with safety and safety-related codes and requirements.
- (2) Conflict with the historic nature or character of a neighborhood or historical district.
- (3) The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation.
- (4) Proximity to residences or other noncommercial uses so as to create discernible impact upon any adjoining property by virtue of visual or aesthetic impacts that are out of keeping with the area.
- (5) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to residents, the public,

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employees and agents of the Town, or employees of the service provider or other service providers.

(6) The placement and location of wireless telecommunications facilities which would create an unacceptable risk, or the reasonable probability of such, to commercial property;

(7) The design or location does not comply with current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG) promulgated by the United State Access Board.

(8) Granting the application as submitted would violate the Town of Amherst's Code or Comprehensive Plan.

(9) Conflicts with the provisions of this chapter.

Code Sources: Evergreen Park, IL § 21-222-B(1), C, Des Plaines, IL § 984 C (5-6), City of Santa Monica, CA § 7.70.160-A (1-2), Town of Southold, NY § 280-70 F, Town of Clarkson, NY § 251-19 F-28, Town of Amherst § 203 6-5-4 (B,C,D,E), Overland Park, KS § 18.395.080, Cincinnati, OH § 719-9 F, Town of Cheektowaga, NY § 255-8 F, Tarrytown, NY § 305-84 D, Oswego, NY § 274-6 F

### **Distance between WTFs and setbacks in the public rights-of-way.**

A. A WTF in the public right-of-way may not be closer than one hundred (100) feet to any residential property line and no closer than five-hundred (500) feet from any school property lines, daycare facility, park, playground, house of worship, skilled nursing facility that cares for patients on a long-term basis, designated historical districts, historical landmarks, and historical sites as measured from the closest point of the WTF to the applicable property line.

B. WTFs in the public rights-of way may not be closer than one-thousand (1,000) feet from any other WTF. This separation requirement does not apply to collocated equipment on existing WTFs.

C. Telecommunications towers and antennas shall comply with all existing setbacks within the affected zone. Additional setbacks may be required by the ZBA to contain on-site substantially all icefall or debris from tower failure and/or to preserve privacy of adjoining residential and public property. Setbacks shall apply to all tower parts and any accessory facilities.

D. Setbacks in the public right-of-way must meet the development standards and setback requirements of the underlying zoning district. In cases where the abutting property on either side of the right-of-way has different zoning, the more restrictive zoning provisions shall apply.

E. Wireless communication facilities in the public rights-of-way shall be located at least ten (10) feet from a driveway and at least ten (10) feet from the edge of existing trees twelve (12) inches or greater in diameter.

F. The Town reserves the right to require greater setbacks to ensure proper sight lines for public safety purposes even if it means that the gap in service is not fully remedied; substantial remediation of the gap in service shall be sufficient.

G. A lesser setback may be allowed by the ZBA as a variance to this section when the petitioner establishes that the lesser setback is necessary to close a significant gap in the petitioner's service and the proposed facility is the least intrusive means to do so.

H. In determining what constitutes substantial remediation of a gap in service, and to what extent an applicant needs to locate a facility at a specific location, height, and what level of service is to be made available to users, the Town shall be guided by standards set or as interpreted by federal or state law, decisional law and regulatory agencies.

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Code Sources: Evergreen Park, IL § 21-222 B(2), Village of Lincolnwood, IL § 2015-10-13, Capitola, CA §02.04.2016, Orange County, CA § 6-6-1, Orlando, FL § 58.854 D, Town of Amherst § 203-6-7-10, Town of Huntington, NY § 198-68.1. K-4

### **Height of WTFs in the public rights-of-way.**

A. The maximum permitted height of a new WTF in the public right-of-way including the antenna, lightning rod or other extensions shall not exceed forty-five (45) feet above ground level.

B. The petitioner shall submit documentation justifying the total height of any proposed WTF or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

C. The Town may reduce the height of the proposed structure or make other modifications to the proposed wireless communication facilities for the purpose of making aesthetic improvements, even if it means that the gap in service is not fully remedied; substantial remediation of the gap in service shall be sufficient.

D. In determining what constitutes substantial remediation of a gap in service, and to what extent a petitioner needs to locate a facility at a specific location, height, and what level of service is to be made available to users, the Town shall be guided by standards set or as interpreted by federal or state law, decisional law and regulatory agencies.

E. Where antennas are moved to lower heights on an existing WTF and the full height is no longer needed, the overall height of the structure shall be reduced. No antenna support structure shall remain at a height that is taller than that required by installed and operational antennas.

F. The maximum permitted height of a new WTF in the public right-of-way may be exceeded if the petitioner provides satisfactory technical justification to the ZBA and the ZBA finds that the additional height is truly necessary.

G. These standards apply regardless of RF engineering considerations.

Code Sources: Town of Amherst § 203-6-7-6 (A,B), Town of Southhold, NY § 280-70 J 2, Town of Huntington, NY § 198-68.1. K (3,4), Town of Southhold, NY § 280-76 B, Town of Smithtown, NY § 242-5 B 2

### **Design standards and visibility for all WTFs in the public rights-of-way.**

A. All WTFs in the public rights-of-way shall be sited so as to be the least visually intrusive as reasonably possible and, at a minimum, employ concealment elements into the WTF's design to minimize the adverse visual effects, environmental impacts, and protect the natural features, aesthetics, and character of the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the Town's public rights-of-way and residential areas. Concealment elements: (1) Radio frequency transparent screening; (2) Approved, specific colors; (3) Minimizing the size of the site; (4) Integrating the installation into existing infrastructure; (5) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site. The new infrastructure is then dedicated to the Town and the installation is integrated into the new infrastructure; (6) Controlling the installation location.

B. The use of state-of-the-art technology and implementation of best practices shall be required to ensure high quality design.



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C. Antenna installations shall be placed in a manner so that the size, appearance and function of the final installation is essentially identical to the installation prior to the antenna installation taking place.

D. The Petitioner shall size antennas, mast arms, cabinet equipment and other facilities to minimize visual clutter. Facilities shall be sited to avoid or minimize obstruction of views from public vantage points and otherwise minimize the negative aesthetic impacts of the public right-of-way.

E. All antenna(e) shall be covered by a non-reflective radome, cap or other antenna RF transparent panel covering or shield of a diameter no more than fifty percent (50%) greater than that of the pole and shall be painted, coated, and/or textured using non-reflective materials and color to match the predominant color of the mounting structure.

F. All cabling and wiring must be contained in conduit, cover, cable shield, or cable skirt that shall be painted, coated and/or textured using non-reflective materials and color to match the predominant color of the mounting structure and affixed directly to the face of the pole, for as long as it is technically feasible. No exposed slack or extra cable will be allowed. Wires and cables connecting the antenna to the equipment and/or appurtenances shall be installed in accordance with the version of the electrical code adopted by the Town and in force at the time of the installation of the facility. In no event shall any wiring and cabling serving the facility interfere with any wiring or cabling installed by a cable television or video service operator, electric utility or telephone utility.

G. All accessory equipment, mounting equipment, and equipment cabinets shall be painted, coated and/or textured using non-reflective materials and color to match the predominant color of the mounting structure. Accessory equipment and mounting equipment shall be compatible in structure, scale, function and proportion to the street light standards and traffic standards they are mounted on. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating. No accessory equipment associated with the operation of any WTF shall impair pedestrian use of sidewalks, other pedestrian pathways, public or private trail systems, use of streets, intersections, bicycle lanes, driveways, and shall not be located in a manner that violates the Americans with Disabilities Act.

H. Panel antennas that utilize brackets and/or cross-arms shall allow no more than a six-inch (6") extension (stand-off) from the pole except when additional stand-off is required to comply with health and safety regulations such as OSHA.

I. No faux or otherwise nonfunctioning street lights, decorative elements, signs, clock towers, or artificial trees or shrubs or other such nonfunctioning screening elements made to resemble other objects shall be permitted in the public rights-of-way.

J. The proposed WTF shall be designed and erected so that, in the event of structural failure, it will fall within the required setback area and, to the maximum extent possible, away from adjacent development.

K. All WTFs, including on-site generators and air conditioning units, shall be designed to be compliant with the Town's Noise Ordinance (Town of Amherst Town Code Chapter 138) and all other applicable laws. At no time shall the proposed WTF's equipment noise be audible at the property line of any residentially-zoned or residentially-improved property. Failure to comply with the Town's adopted noise standard after written notice and opportunity to cure have been given shall be grounds for the Town to revoke the special-use permit.

L. No downtilt.

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M. No guy or other support wires shall be used in connection with a WTF or its related equipment unless the WTF is proposed to be attached to an existing tower or existing infrastructure that incorporated guy wires prior to the date that a petitioner has applied for a special use permit.

N. No electrical meters will be allowed. The petitioner shall negotiate directly with the electric utility to determine a flat rate for installation. The applicant is responsible for the cost of all electrical usage.

O. In the event that improving technologies permit the installation of smaller or lower antennas without degradation of their capabilities and without excessive replacement cost, the Town may require installation of such upgraded facilities upon renewal of the special use permit or if the WTF is being altered.

P. Where a WTF is proposed to be located on a building rooftop, the antennas shall be located or screened so as to minimize pedestrian level view from public streets or from any neighboring residential uses. The antenna and accessory equipment shall be enclosed within architecturally integrated RF transparent screening. The required RF transparent screen enclosure shall be decorative, of a design, color, and texture that is architecturally integrated with the building it is on.

Code Sources: City of Santa Monica, § 7.70.020 J (1-6), 7.70.140 (E, H), Village of Tarrytown, NY § 305-93, City of Long Beach, CA § 21.56.130 (A,B,C,D,F), City of Riverside, CA 19.530.050 B-3(d,f), City of Long Beach, CA § 21.56.130 E-4-d, Village of Palatine, IL § 20.93. (F,X) vii, City of San Diego, CA WCF Guidelines Pg. 16, City of Glendale, CA § 12.08.037 L(4,5) P

### **Application Quantity & Formats Required**

An applicant shall submit to the Town (1) electronic file of the complete application, (1) original hard copy, and (15) hard copies of the completed application. Applications shall be rejected if all attachments are not included at the time of submittal. The Town has the discretion to require applications be submitted by appointment only and to set the frequency and number of appointments that will be granted each day. The Town of Amherst reserves the right to request additional hard or electronic-file copies of the completed application if deemed necessary by the Town. Written notification of the application shall be provided in accordance with the provisions of the Zoning Ordinance of the Town of Amherst and applicable NYS laws. The Town's Planning Department and Highway Department shall each be provided with a copy of the application. The Town shall make the complete electronic application file, including copies of all documents produced the Town departments during the course of the application's review as well as correspondence regarding the application and documentation of the pre-application meetings, available to residents via the Town website at least thirty days prior to the Public Hearing.

Note: Amended Town of Amherst § 203-6-3-7-V to require electronic file, 16 total applications,

### **Inter-municipal notification for new WTFs**

In order to keep neighboring municipalities informed and to facilitate the possibility of directing that an existing telecommunications tower or existing tall structure or lot containing an existing telecommunications tower in a neighboring municipality be considered for shared use and to assist in the continued development of county 911 services, the Town shall require that:

A. The petitioner shall provide written notification and a copy of the application to the legislative body of all adjacent municipalities and to the principal planner for Erie County. Notification shall include the exact location of the proposed tower and a general description of the project, including but not limited to the height of the WTF and its capacity for future shared use.

## **Code Pieces: Small Cells & DAS Facility Standards in the Public Rights-of-Way (Annotated)**

B. Documentation of this notification shall be submitted to the ZBA at the time of application. The responsibility of providing such notification shall be borne by the petitioner, who shall file an affidavit of compliance with the Town.

Code Sources: [Town of Kingston, NY § 425-56](#), [Village of Nissequogue, NY § 126-6-Q](#)

### **Limit the Number Per Month of Applications on the ZBA Agenda**

No more than ten (10) complete applications for individual WTFs to be sited in the public rights-of-way from any single petitioner or any combination of separate petitioners shall be considered by the Town per calendar month. Only complete applications shall be accepted and only on a first-come, first-served basis.

Note: This piece is suggested.

### **Application Review**

An application to locate a wireless telecommunication facility in the right-of-way be subject to review to confirm that the proposed facility meets the standards set forth in this Chapter and other applicable Town regulations, and otherwise complies with the provisions of the application process for the approval of such facilities.

A. The following factors shall be considered by the Town for all special permit and applications to locate WTFs:

(1) Due consideration shall be given to the Town's Comprehensive Plan, existing land uses and development, environmentally sensitive areas, and other appropriate factors in approving the issuance of a special use permit, construction permit or other Town approval for the siting of Wireless Telecommunications Facilities.

(2) The ZBA shall give due consideration to the following factors where applicable. In the case of the Zoning Board, these factors are in addition to the standards established in Chapter 203 6-7 of the Amherst Zoning Ordinance for the issuance of a special use permit.

B. All WTFs in the public right-of-way must comply with the following:

(1) WTFs located within a right-of-way must not negatively impact the public health, safety and welfare, interfere with the safety and convenience of ordinary travel over the right-of-way, or otherwise negatively impact the right-of-way or its users. In determining compliance with this standard, the Town may consider one or more of the following factors:

(2) the extent to which right-of-way space where the special use permit and construction permit is sought is available, including the placement of the ground equipment;

(3) the potential demands for the particular space in the right-of-way;

(4) the availability of other locations in a right-of-way that would have less public impact;

(5) the extent to which the placement of the wireless telecommunication facility minimizes impacts on adjacent property; and

(6) the applicability of ordinances or other regulations of the right-of-way that affect location of equipment in the right-of-way;

C. The Town shall have the right to limit the placement of new or additional equipment in the right-of-way if there is insufficient space to reasonably accommodate all requests to occupy and use the rights-of-way. The Town shall consider requests for occupying and using the rights-of-way in the order of receipt of fully completed applications for special use permits and construction permits. The Town shall strive, to the extent possible, to accommodate all requests, but shall be guided by the physical condition of the right-of-way and whether such use would have a detrimental effect on public safety as it relates to the right-of-way.

Code Sources: [Town of Huntington, NY §198-68-1-J\(1-2\)](#), [City of Minnetonka, MN § 300.34. K-1\(a-e\)](#), [Fox Chapel Borough, PA § Part 10 607-1](#)

### **Action on an Application for a Special Use Permit for WTFs**

## **Code Pieces: Small Cells & DAS Facility Standards in the Public Rights-of-Way (Annotated)**

A. The Town's Building Department, Planning Department, the Highway Department, and the Town's designated consultant will undertake a review of an application pursuant to this local law in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and the petitioner's desire for a timely resolution.

B. The Building Department of the Town of Amherst and/or the designated consultant may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.

C. The site plan for the proposed WTF shall be reviewed by the Planning Department and the Highway Department before a hearing is held by the ZBA. The Planning Department and the Highway Departments shall each submit written reports to the ZBA containing its analysis of the proposal under the standards set forth in the applicable sections of this Zoning Ordinance. The Planning Department analysis and the Highway Department analysis are advisory in nature and is not binding on the ZBA. The Planning Department's review of the site plan shall supersede all other site plan review requirements as established in the Zoning Ordinance.

D. After the thirty-day period of public review, the public hearing, and formally considering the application, the ZBA may table the application; approve, approve with conditions, or deny a special use permit; or deem the application incomplete. Its decision shall be made at a meeting of the ZBA with a quorum present and not less than a majority of the total membership voting "aye" on the resolution. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the petitioner.

E. The period in which the ZBA may take action may be extended with the consent of the petitioner.

F. If the ZBA denies the special use permit for WTFs, then the petitioner shall be notified of such denial in writing within 10 calendar days of the Town's action.

[Code Sources: Town of Amherst § 203-6-7-12, Village of Airmont, NY § 187-18 E](#)

### **Vegetation management (Construction and Standards in the ROW)**

The petitioner must submit a report that documents the location, dimension and types of all trees which will be substantially trimmed, removed or replaced as a result of the areas disturbed during construction and which are within or adjacent to the public rights-of-way along the route proposed by the applicant. The applicant shall submit a landscape plan, satisfactory to the Highway Department, for the replacement of such trees.

Upon the express written permission of the Town, the licensee may trim trees or other vegetation owned by the Town and private persons or encroaching upon the public rights-of-way to prevent their branches or leaves from touching or otherwise interfering with its wires. All trimming or pruning shall be at the sole cost of the licensee under the supervision of the Town. Topping, defined as the severe cutting back of the tree limbs to stubs larger than 3 inches in diameter within the tree's crown to such a degree so as to remove the normal canopy and disfigure the tree, is strictly prohibited.

[Code Sources: Ashland, OR § 16-12-040-B, Town of Poughkeepsie, NY § 185-11-A-10](#)

### **Protection of roots (Construction and Standards in the ROW)**

In making excavations in the public right-of-way, proper care shall be taken to avoid injury to the roots of any tree, or shrub, wherever possible. No licensee shall damage the critical root zone of any street tree by compacting soils with heavy equipment.

## Code Pieces: Small Cells & DAS Facility Standards in the Public Rights-of-Way (Annotated)

Code Source: [Evergreen Park, IL § 21-132](#)

### **Company identification (Construction and Standards in the ROW)**

The licensee shall ensure that all of its vehicles and employees are clearly identified to the general public as being associated with the licensee when engaged in construction, maintenance or service of the telecommunications system within the Town.

Code Source: [Town of Poughkeepsie, NY § 185-11-A-19](#)

### **Compliant, As-Built Set of Plan Required (Construction and Standards in the ROW)**

At the completion of construction, the petitioner may not commence operations of the proposed WTF until the petitioner submits an "as-built" set of plans as compliant with all requirements of all laws, ordinances, regulations, requirements and conditions of the permit to the Town.

Code Source: [City of Glendale, CA § 12.08.037 M \(2\)](#)

### **Preexisting WTFs and antennas in the public rights-of-way**

A. Preexisting WTFs and antennas in the public rights-of-way, for which a permit has been issued prior to the effective date of this article, may continue in use for the purpose now used and as now existing, subject to the conditions of that permit. Preexisting transmission support structures and antennas may not be replaced, structurally altered, or added to without complying in all respects with this article. The issuance of permit renewals or other new permits for such facilities shall be in accordance with the provisions of this article. Preexisting WTFs and antennas without the proper permits shall be considered out of compliance with this article.

B. Any wireless service provider with at least one preexisting WTF or antenna in the Town of Amherst that is out of compliance with the building and zoning requirements in the Town Code, prior to the adoption of this article, shall not be eligible for any new approvals until the preexisting WTF or antenna is brought into compliance with this article.

C. Until all required permits are secured, no issuance of any new permit shall occur for a request to co-locate, attach, or share an existing WTF, when such existing facility is found to have one or more antennas or mounts without permits.

D. Any application by a wireless service provider shall be deemed incomplete, if that provider has a preexisting WTF in the Town on which there is any antenna or mount without permits, and said application shall not be processed until that facility is brought into compliance with this article.

Code Source: [Town of Southampton, NY § 330-316 \(A,B,C,D\)](#)

### **Definitions**

#### **COLLOCATION**

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.

Code Source: [6409 Middle Class Tax Relief and Job Creation Act of 2012 Document: Model-Ord-NACo.pdf](#)

#### **CONCEALMENT ELEMENTS**

- (1) Radio frequency transparent screening;
- (2) Approved, specific colors;
- (3) Minimizing the size of the site;
- (4) Integrating the installation into existing infrastructure;

## **Code Pieces: Small Cells & DAS Facility Standards in the Public Rights-of-Way (Annotated)**

(5) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site. The new infrastructure is then dedicated to the Town and the installation is integrated into the new infrastructure;

(6) Controlling the installation location.

[Code Source: City of Santa Monica, CA § 7.70.020 J](#)

### **ELIGIBLE SUPPORT STRUCTURE**

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 Town of Amherst under this section. An Eligible Support Structure does not include utility poles, traffic signal standards, streetlights, or electrical transmission towers.

[Code Source: 6409 Middle Class Tax Relief and Job Creation Act of 2012 Document: Model-Ord-NACo.pdf](#)

### **EXISTING HEIGHT**

The height of the structure as originally approved or as of the most recent modification that received regulatory approval prior to the passage of the Spectrum Act. Height shall be measured from natural grade to the top of all appurtenances.

[Code Source: § City of Santa Monica, CA § 7.70.020 O](#)

### **SHALL**

The word "shall" is always mandatory, and not merely directory.

[Code Source: City of Oswego, NY v61 § 274-3](#)

### **SIGNIFICANT GAPS**

A gap in the service provider's own wireless telecommunications facilities, as defined in federal case law interpretations of the Federal Telecommunications Act of 1996, including *Sprint Spectrum v. Willoth* (1999) 176 F.3d 630 and *Cellular Telephone Company v. Zoning Board of Adjustment of the Borough of Ho-Ho Kus* (1999) 197 F.3d 64.

[Code Source: City of Capitola, CA § 17.104.020 N](#)

### **STEALTH**

State-of-the-art design techniques used to blend the object into the surrounding environment and to minimize the visual impact as much as reasonably possible. Examples of stealth design techniques include eliminating all horizontal projections; architecturally screening roof-mounted antennas and accessory equipment; integrating telecommunications facilities into architectural elements; nestling telecommunications facilities into the surrounding landscape so that the topography or vegetation reduces their view; using the location that would result in the least amount of visibility to the public, minimizing the size and appearance of the telecommunications facilities; and designing telecommunications towers to appear other than as towers, such as light poles, power poles, flag poles, and trees.

[Code Sources: Minnetonka, MN § 300.34. 2E](#)

### **TOWER**

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.

## Code Pieces: Small Cells & DAS Facility Standards in the Public Rights-of-Way (Annotated)

Code Source: 6409 Middle Class Tax Relief and Job Creation Act of 2012 Document: Model-Ord-NACo.pdf

### TOWN-OWNED INFRASTRUCTURE

Infrastructure including, but not limited to, streetlights, traffic signal standards, towers or buildings owned, operated or maintained by the Town of Amherst.

Note: The definition is suggested.

### ULTIMATE RIGHT-OF-WAY

Ultimate right-of-way is the right-of-way shown as ultimate on an adopted precise plan of highway alignment, or a street right-of-way shown within the boundary of a recorded tract map, a recorded parcel map, or a recorded PC development plan. The latest adopted or recorded document in the above cases shall take precedence. If none of these exist, the ultimate right-of-way shall be considered to be the right-of-way required by the highway classification as shown on the Master Plan of Arterial Highways. In all other instances, the ultimate right-of-way shall be considered to be the existing right-of-way in the case of a private street, and the existing right-of-way, but not less than sixty (60) feet in the case of a public street.

Orange County, CA §. 7-10-16.(U) - Must tailor to The Town of Amherst/New York State

### UTILITY POLE

A structure that is: (1) owned or operated by: (a) a public utility; (b) a communications service provider; (c) a municipality; (d) an electric membership corporation; or (e) a rural electric cooperative; and (2) designed and used to: (a) carry lines, cables, or wires for telephone, cable television, or electricity; or (b) provide lighting.

The term does not include a tower, wireless telecommunication facility, eligible support structure, or an electrical transmission tower.

Code Source: City of Fishers, Indiana § 051815B 2-14

### WIRELESS TELECOMMUNICATION FACILITY or “WTF”

Any facility established for the purpose of providing wireless transmission of voice, data, images or other information, including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. For the purposes of this Chapter, a WTF in the public right-of way consists of one (1) single-sited small cell antenna or DAS antenna and its accessory equipment, and shall not include macro cells.

Code Source: City of Santa Monica, CA § 7.70.020 AA