

6-10-1. Definitions. As used in this Chapter, the following terms shall have definitions which follow:

ACCESSORY EQUIPMENT

Any equipment serving or being used in conjunction with a SC-PWSF. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets, storage sheds, shelters, vaults, or other structures.

AGL

An abbreviation for "At Ground Level".

ANTENNA

A device used to transmit and/or receive radio or electromagnetic waves for the provision of services, including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such devices include, but are not limited to, directional antennas, such as panel antenna, microwave dishes, and satellite dishes; omnidirectional antennas; wireless access points (Wi-Fi); and strand-mounted wireless access points. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

APPROVAL AUTHORITY

"Approval authority" means the board or official and Commissioner of Building (C.O.B.) responsible for review of permit applications and vested with the authority to approve or deny such applications. The approval authority for a project which requires a minor use permit or administrative temporary use permit refers to the C.O.B. The approval authority for a project which requires a special use permit refer to the Zoning Board of Appeals.

BASE STATION

A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

- (i) Equipment associated with personal wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (ii) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small-cell networks).
- (iii) Any structure other than a tower that, at the time the relevant application is filed with [jurisdiction] under this section, supports or houses equipment described in paragraphs (a)(i)-(a)(ii) that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the Town under this section, does not support or house equipment described in (a)(i)-(ii) of this section.

CAMOUFLAGE

A PWSF to which the petitioner applies some concealment techniques in order to blend the installation with the underlying support structure as well as to mimic or blend into the surrounding area or to appear to be an object that is congruent with its environment, but the equipment or the concealment technique is readily apparent to the observer. Examples include, but are not limited to, (i) façade or rooftop mounted pop-out screen boxes; (ii) antennas mounted within a radome and a cable skirt above a street light standard, traffic light standard, or utility pole; or (iii) faux-trees either as the only tree in the vicinity or inconsistent with other tree species in the vicinity.

CODE

For the purposes of this Chapter, the term “Code” refers to Chapter 203 § 6-10 New and Substantially Modified Small Cell Personal Wireless Services Facilities Standards in the Public Rights-of-Way.

CONCEALMENT TECHNIQUES

Concealment techniques include, but are not limited to, (i) the use of radio frequency transparent screening, (ii) approved specific colors and textures, (iii) minimizing the size of the site, (iv) integrating the installation into existing utility infrastructure, (v) 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, (vi) controlling the installation location.

CO-LOCATION

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.

CPCN

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

DISTRIBUTED ANTENNA SYSTEM (DAS)

A network of spatially separated antenna nodes connection to a common source via a transport medium that provides personal wireless services within a geographic area.

EAF

An abbreviation for “Environmental Assessment Form”.

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 under Chapter 203.

EXISTING

A constructed antenna, tower, or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning process, or under another State or local regulatory review process. An existing PWF structure does not include a utility pole, street light standard, traffic light standard, a structure for signage, or an electrical transmission tower.

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.

FAA

"FAA" means the Federal Aviation Administration or its duly appointed successor agency.

FCC

An abbreviation for the "Federal Communications Commission."

GRADE OR "GROUND LEVEL"

The surface elevation of any lawn, public right-of-way, or other improved or unimproved surface.

HEIGHT

The distance measured from the pre-existing grade level to the highest point on the tower or structure, including any antenna or lightning protection device.

IN

When used in conjunction with public rights-of-way means over, above, in, within, on or under a right-of-way.

INTERFERENCE

Physically or electronically affecting the operation, views, signals or functions of Town equipment or third party equipment.

MACROCELL

A macrocell provides the largest area of coverage within a mobile network. The antennas for macrocells can be mounted on ground-based masts, rooftops or other existing structures. They are generally positioned at a height that is not obstructed by terrain or buildings. They provide radio coverage over varying distances depending on the frequency used, the number of calls made and the physical terrain. Macrocell base stations typically occupy space greater than eight cubic feet for station equipment, greater than three cubic feet per antenna and three or more antennas. Macrocell have a typical power output in hundreds or thousands of watts.

NIER

An abbreviation for non-ionizing electromagnetic radiation.

NEW INSTALLATION

Installation of any form of PWSF at any location where there is not currently a PWSF.

NPUC

"NPUC" means the New York Public Utilities Commission, or its duly appointed successor agency.

OTARD

An abbreviation for "Over-the-Air Reception Device" which includes satellite television dishes not greater than one meter in diameter.

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PERSON

Any individual, corporation, estate, trust, partnership, joint-stock company, an association of two or more persons having a joint common interest, or any other entity.

PETITIONER

Any person or entity submitting an application to install personal wireless service facilities within the public right-of-way.

POTHOLING

A method that includes vacuum excavation for the purpose of obtaining visual confirmation of utilities and underground obstructions near or crossing a planned bore path.

PUBLIC RIGHTS-OF-WAY or "PROW"

Real property for or devoted to (i) public transportation purposes; or (ii) the placement of the Town's municipal utility easements and other traditional uses along a transportation route, whether by dedication, prescription, or otherwise, as well as the spaces above and below. In addition to the foregoing, the definition of right of way includes, without limitation, public highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, and viaducts within the Town.

PWS

An abbreviation for "Personal Wireless Services."

PWSF or PWSFs

An abbreviation for "Personal Wireless Services Facility/Facilities".

RADOME

A weatherproofed enclosure (typically constructed from RF transparent fiberglass or plastic material) that protects and conceals an antenna or antennas contained therein.

RF

An abbreviation for "Radio Frequency".

SC-PWSF

An abbreviation for "Small Cell Personal Wireless Services Facility".

SHALL

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

SECTION 6409(a)

Refers to the Middle Class Tax Relief and Job Creation Act of 2012.

SIGNIFICANT GAPS

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

SITE

The area occupied by the structure supporting the antenna, the accessory equipment and the path of the wires and cable connecting the antenna to the accessory equipment.

SMALL CELL or SMALL CELL PERSONAL WIRELESS SERVICES FACILITY

An umbrella term for low-powered radio access nodes, including those that operate in licensed spectrum and unlicensed carrier-grade Wi-Fi. Small cells occupy no more than eight cubic feet for all base station equipment, and no more than three cubic feet per antenna and typically have a range from ten meters to several hundred meters. Types of small cells include femtocells, picocells and microcells—broadly increasing in size from femtocells (the smallest) to microcells (the largest).

SPECIAL USE PERMIT

The official document or permit by which a petitioner is allowed to construct and use PWS facilities as granted or issued by the Town.

STEALTH

The utilization of state-of-the-art concealment techniques that completely screen the wireless facility and all associated equipment from public view and are so integrated into the surrounding natural or manmade environment that the observer does not recognize the structure as a wireless facility. Examples include, but are not limited to: (i) wireless equipment placed completely within existing architectural features such that the installation causes no visible change to the underlying structure; (ii) new architectural features that match the underlying building in architectural style, physical proportion and construction-materials quality; (iii) flush-to-grade underground equipment vaults with flush-to-grade entry hatches, with wireless equipment placed completely within.

SUBSTANTIAL CHANGE

As applicable to SC-PWSFs in the public right-of-way, which defines that term as a collocation or modification that:

- (a) Increases the overall height more than 10% or 10 feet (whichever is greater);
- (b) Increases the width more than 6 feet from the edge of the wireless tower or base station or would encroach on private property unless the applicant has a letter of authorization from the land owner where the encroachment occurs;
- (c) Involves the installation of any new equipment cabinets on the ground when there are no existing ground-mounted equipment cabinets;
- (d) 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;
- (e) Involves excavation or deployment of equipment or "rack systems" outside the area in proximity to the structure and other transmission equipment already deployed on the ground;
- (f) Would defeat the existing concealment elements of the support structure as determined by the Town; or
- (g) 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.

Note: For clarity, the definition in this Chapter includes only the definition of a substantial change as it applies to SC-PWSFs in the PROW. 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 measured 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

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deployments, the cumulative limit is measured from the permitted site dimensions as they existed on February 22, 2012, the date that Congress passed Section 6409(a) of the Middle Class Tax Relief and Job Creation Act.

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.

TOWN

The set of entities charged with implementing the provisions of this Chapter, and related elements of the Town code, including, but not limited to the Town Board, Zoning Board of Appeals, the Planning Department, Town Attorney, Building Department and Highway Department.

TOWN-OWNED INFRASTRUCTURE

Infrastructure that is maintained, owned, or operated by the Town including, but not limited to: (i) street light standards, (ii) traffic signal standards, (iii) structures for signage, (iv) buildings, and (v) poles or similar structures owned or operated by the Town that supports only PWS Facilities.

UNCONCEALED

A PWS Facility that is not a stealth facility and has no or effectively no camouflage techniques applied such that the wireless equipment is plainly obvious to the observer.

UTILITY POLE

A structure that is: (a) maintained, owned, or operated by: (i) a public utility; (ii) a communications service provider; (iii) a municipality; (iv) an electric membership corporation; or (v) a rural electric cooperative; and (b) designed and used to: (i) carry lines, cables, or wires for telephone, cable television, or electricity; or (ii) provide lighting.

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

§ 6-10-2. Purpose. The purposes of this Code are:

- A. To establish reasonable and uniform standards and procedures for Small Cell Personal Wireless Services Facilities (SC-PWSFs) deployment, construction, installation, design, co-location, modification, operation, relocation and removal within the public rights-of-way (PROW), consistent with and to the extent permitted under federal and New York State law;
- B. To balance the provision of Personal Wireless Services (PWS) that meet the community's needs while promoting and protecting public health, safety, and welfare, land uses, adjacent and surrounding property values, and the scenic and natural beauty of the public rights-of-way from potential adverse aesthetic effects and community character intrusion impacts caused by the installation and view of SC-PWSFs in the public rights-of-way by requiring that special use permit holders and the owner(s) of SC-PWSFs in the public rights-of-way utilize careful siting, state-of-the-art technology, advanced design, innovative concealment, camouflage, or stealth techniques, sufficient screening and buffering, and adequate setbacks from residential uses;

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- C. To ensure that the Town's current and ongoing costs of granting and regulating private access to and the use of the public rights-of-way are fairly and fully compensated by the petitioners seeking such access and causing such costs;
- D. To conserve the limited physical capacity of those public rights-of-way held in trust by the Town by ensuring that SC-PWSFs in the public rights-of-way are limited to those for which the petitioner has demonstrated by substantial evidence in a written record a need for service primarily and essentially within the Town.

§ 6-10-3. Applicability.

- A. This Chapter applies to all existing SC-PWSFs within the PROW of the Town's territorial boundaries, and all applications and requests for approval to construct, install, substantially modify, co-locate, relocate, or otherwise deploy SC-PWSFs within the PROW of the Town's territorial boundaries, unless exempted pursuant to Subsection § 203 6-10-3 B.
- B. Notwithstanding Subsection 6-10-3 (A), the provisions in this Chapter will not be applicable to:
 - 1. Wireless facilities owned and operated by the Town for public purposes;
 - 2. Wireless facilities owned and operated by the Town and governed under Chapter 103 (Emergency Responder Radio Coverage);
 - 3. Amateur radio facilities;
 - 4. OTARD antennas.
- C. All application requests for approval submitted pursuant to Section 6409(a) will be first evaluated pursuant to the provisions in Chapter 203, Section 6-11.

§ 6-10-4. Jurisdiction and Management of the PROW.

- A. The Town has jurisdiction and exercises regulatory control over all PROWs within the Town:
 - (a) Under the authority of New York State law;
 - (b) Whether the Town has a fee, license, easement, or other legal interest in the PROW; and
 - (c) Whether the legal interest in the PROW was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- B. The Town shall have the right to limit the placement of new or additional equipment in the PROW if there is insufficient space to reasonably accommodate all requests to occupy and use the PROW.
- C. PROWs include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements, and all other public ways or areas, including the subsurface under and air space over these areas.
- D. No person may occupy or encroach on a PROW without the permission of the Town. The Town grants permission to use PROW by permits or license agreements.
- E. The exercise of jurisdiction and regulatory control over a PROW by the Town is not official acceptance of the PROW, and does not obligate the Town to maintain or repair any part of the PROW.

- F. The Town shall have the right to sever, move, disrupt, dig up or otherwise destroy SC-PWSFs within the PROW, without any prior notice, if such action is deemed necessary by the Town Supervisor, the Chief of Police, the Building Commissioner or the Highway Superintendent because of a public emergency. However, the Town shall provide notice to the petitioner as soon as reasonably possible. "Public emergency" shall be any condition which, in the opinion of either of the officials so named, possesses an immediate threat to the lives or property of the citizens of the Town caused by any natural or man-made disaster, including, but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills. The petitioner shall be responsible for repair, at its sole expense, of any of its facilities damaged pursuant to any such action taken by the Town.
- G. The Town shall have the right to require the petitioner to protect, support, temporarily disconnect, relocate or remove its personal wireless service system within the PROW when the public convenience requires such change, and the expense thereof shall be paid solely by the petitioner. The Town shall provide the petitioner with written notification requesting such relocation. Should the petitioner fail to remove or relocate any such facilities by the date established by the Town, the Town may cause such removal or relocation, and the expense thereof shall be paid by the petitioner, including all costs and expenses incurred by the Town due to the petitioner's delay. If the Town requires the petitioner to relocate facilities located in the PROW, the Town will make a reasonable effort to provide the petitioner with an alternate location for its facilities within PROW.
- H. Nothing in this Chapter shall prevent the Town from constructing sewers, grading, paving, repairing and/or altering any street or PROW or the laying down, repairing or removing of sewer and/or waterlines or constructing or establishing, any other public work or improvement. All such work shall be done, insofar as practicable, so as not to hinder or prevent the unrestricted use and operation of the SC-PWSF by a petitioner. If any SC-PWSF interferes with the construction or repair of any PROW or public improvement, including construction, repair or removal of a sewer and/or waterline and any other public work or improvement, the applicable petitioner's equipment shall be removed or replaced at the petitioner's expense in the manner the Town shall direct. The Town will cooperate with the petitioner to identify possible alternate locations within the PROW. Any and all such removal or replacement shall be at the expense of the petitioner. Should the petitioner fail to remove, adjust or relocate its facilities by the date established by the Town's written notice to the petitioner, the Town may cause and/or effect such removal adjustment or relocation, and the expense thereof shall be paid by the petitioner, including all costs and expenses incurred by the Town due to the petitioner's delay.
- I. If a SC-PWSF is placed within a future, planned underground utility district adopted by resolution of the Town Board, the SC-PWSF must be removed from the PROW at the SC-PWSF owner's expense. Replacement of the SC-PWSF is subject to this Code.
- J. As requested by the Town, the petitioner or PWS carrier shall host on-site training for Town personnel. The training will be offered for each SC-PWSF installation. The training shall include occupational safety, personal protection, proximity limits, emergency procedures, and contact information.
- K. Nothing in this Chapter or in any license or permit granted in accordance herewith shall be construed as an abrogation of, or restriction on, the exercise of the Town's lawful police

powers vested in the Town under applicable Federal, State, and local laws pertaining to the regulation or use of the PROW.

§ 6-10-5. Pre-Application Meeting Required.

- A. There shall be a pre-application meeting with representatives of the Building Department, the Planning Department, the Town Attorney, and the Town's designated consultant. The purpose of the pre-application meeting will be to receive initial feedback and to address issues which will help to expedite the license agreement, special use permit, and application review processes. 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.
- B. 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 and that the "shot clock" on their project will not begin until an official application has been submitted per this Chapter.
- C. 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 made by the Town entities in attendance. This memorandum shall be independently reviewed and verified as accurate by all involved Town entities and deemed part of the official record.

§ 6-10-6. Retention of Expert Assistance and Reimbursement by Petitioner.

- A. Review and evaluation of PWS facilities applications depends on highly specialized scientific and engineering expertise not ordinarily available to Town of Amherst staff or to residents who may be adversely impacted by the proposed development of these facilities. Therefore, in order to allow the Town to make an informed decision on a proposed PWS facility, the Town shall hire any consultant, attorney 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. The accuracy and completeness of submission;
 - 2. Compliance with applicable RF emission standards and determination based upon FCC OET BULLETIN 65 as amended from time to time;
 - 3. 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;
 - 4. Technical demonstration of the unavailability of alternate sites or configurations and/or coverage analysis;
 - 5. The viability of alternative sites and alternative designs;
 - 6. The appropriateness of granting any requested variances;
 - 7. The applicability of analysis techniques and methodologies;
 - 8. The validity of conclusions reached; and
 - 9. Any specific technical issue designated by the Town.
- B. The petitioner shall deposit with the Town in escrow funds sufficient to reimburse the Town for all reasonable costs of consultant, attorney 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 determined by the Town's fee schedule. The placement of the initial deposit with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds per application. 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 the minimum amount determined by the Town's fee schedule, the petitioner shall, upon notification by the Town, replenish said escrow account so that it has a minimum balance as determined by the Town's fee schedule 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 6-10-6 (B) 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 deposit determined by the Town's fee schedule at the time of their pre-application shall render the pre-application meeting invalid for the purposes of review and the shot clock shall not begin to run.

§ 6-10-7. License Agreement Required and Use of Fees.

No person shall be permitted to site, place, build, construct, substantially modify or prepare any site for the placement or use of SC-PWSFs in the PROW as of the effective date of this Chapter without having first obtained a license agreement and a special use permit. The Town Board is the officially designated agency or body of the Town to whom applications for license agreements must be made. The PROWs are valuable public properties, acquired and maintained by the Town at great expense to its taxpayers, and the grant to a licensee of the use of the PROW is a valuable property right without which the licensee would be required to invest substantial capital in PROW costs and acquisitions. Therefore, a licensee shall pay the Town as general compensation, no later than January 31 of each year for the duration of the license agreement, an amount equal to the greater of a minimum annual fee as set by the terms of the license agreement. Interest at 18% per annum will be payable on late payments. License fees collected under this Code shall be placed in an enterprise fund and used to reimburse the Town's costs in managing the PROW with respect to each special use permit holder. Such costs include, but are not limited to, inspection costs, administrative costs, costs of maintaining the PROW, costs of degradation of streets and PROW property, and monitoring installation and maintenance of SC-PWSFs in the PROW pursuant to this Code .

§6-10-8. Special Use Permit Applications and Other Requirements.

- A. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of SC-PWSFs in the PROW as of the effective date of this Chapter without having obtained first obtained a license agreement and a special use permit.
- B. The ZBA is the officially designated agency or body of the Town to whom applications for a special use permit for a SC-PWSF must be made. The ZBA is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not

recertifying, or revoking special use permits for a SC-PWSF. The Town may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the ZBA with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for a SC-PWSF. All petitioners for a special use permit for a new SC-PWSF or a substantial modification of an existing SC-PWSF in the PROW shall comply with the requirements set forth in this Code.

- C. A person who holds a special use permit for a SC-PWSF shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted SC-PWSFs in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, New York State, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, ICC 2015, IBC and ANSI/TIP 222, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, engineering, design, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding codes, rules and regulations, the more stringent shall apply.
- D. A holder of a special use permit granted under this ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the petitioner.
- E. Any and all representations made by or on behalf of the petitioner on the record during the application and hearing process, whether written or verbal, shall be sworn to be accurate, complete, detailed, and non-conclusory and shall be deemed a part of the application and may be relied upon in good faith by the Town.
- F. Applications shall be signed and verified on behalf of the petitioner by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The property owner, if different than the petitioner, shall also sign the application.
- G. A special use permit shall not be granted for a tower or utility pole to be built on speculation. If the petitioner is not simultaneously installing a SC-PWSF, it shall provide:
 - 1. A true and correct copy of the petitioner's Certificate of Public Convenience and Necessity (CPCN) granted by the New York State Public Service Commission (PSC);
 - 2. A binding written commitment or executed lease from an FCC-licensed PWS provider to utilize or lease space on the proposed tower;
 - 3. Notice to proceed or other regulatory authorization that supports the petitioner's claim. Said FCC-licensed PWS provider must be the petitioner or the co-petitioner for any proposed new SC-PWSF, co-location or substantial modification and shall provide all necessary data to comply with the terms of this Chapter as part of the application for a special use permit, or the special use permit shall not be granted.
- H. The Town reserves the right to limit the number of applications for special use permits to no more than twenty five (25) complete applications for individual SC-PWSFs to be sited in the PROW from any single petitioner or any combination of separate petitioners per calendar month. Only complete applications shall be accepted and only on a first-come, first-served basis.

- I. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Town. At the discretion of the Town, any false or misleading statement in the application may subject the petitioner to denial of the application.
- J. The petitioner shall include a statement in writing:
 1. That the petitioner's proposed SC-PWSF shall be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit and license agreement, without exception, unless specifically granted a variance by the ZBA in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations.
 2. That the construction or modification of the SC-PWSF is legally permissible, including, but not limited to the fact that the petitioner is authorized to do business in New York State, and that the petitioner and/or co-petitioner is licensed by the FCC to provide personal wireless services in the Town.
 3. That the petitioner has authorization to install, maintain and operate SC-PWSs and equipment in, under and above the PROW.
 4. Evidence that the petitioner has the financial, technical, and legal ability to construct, install, operate and maintain the facilities in the PROW.
 5. If the Town of Amherst does not own the subject property, the application must include a written authorization signed by the property owner that empowers the petitioner to file the application and perform all SC-PWSF construction, installation, operation and maintenance to the extent described in the application.
 6. If a modification is proposed, the petitioner shall furnish a written attestation that the property owner, tower owner, or person in control of the SC-PWSF and/or site has consented to the proposed modification.
 7. Affirmation of the petitioner's willingness to pay the applicable fees and compensation required by this Chapter.
- K. All applications for the construction, installation of a new SC-PWSF, or for the substantial modification of an existing SC-PWSF located wholly or partly within the PROW shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the petitioner. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the State of New York.
 1. Documentation that demonstrates and proves the need for the proposed SC-PWSF to provide service primarily and essentially within the Town. Such documentation shall include:
 - a) A description of the technical objectives to be achieved;
 - b) An annotated topographical map that identifies the targeted service area to be benefitted; and
 - c) Full-color signal propagation maps with objective units of signal strength measurement that show the petitioner's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites. The propagation maps shall also include a narrative description summarizing the findings in layman's terms. Existing obstacles such as buildings, topography, or vegetation that cannot adequately be represented in the propagation maps, yet may cause significant signal loss and therefore require additional facility

- height, should be clearly described and/or illustrated through additional visual analyses, such as line-of-sight or Fresnel zone modeling diagrams.
- d) The formulas used for any and all calculations must be clearly described. A description of the methods, instrumentation, and computer software used to generate the coverage maps, and the name and contact information of the person preparing the studies and maps shall be provided.
2. If greater than (50%) of the proposed service area of the proposed SC-PWSF 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 SC-PWSF;
 3. 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 PWSF sites cannot be modified by increasing power, modifying antennas, adding base station radios, or utilizing alternative technologies for instance, should be included in the capacity report. The petitioner must explain and document its standards and criteria for adequate signal strength, capacity and reliability and must demonstrate to the satisfaction of the Town why these standards and criteria are applicable to the Town of Amherst. The formulas used for any and all calculations must be clearly described. The name and contact information of the person preparing the report shall also be provided;
 4. The legal name and DBA name, if any, mailing address, NYS tax number, contact phone number(s), and email of the property owner, operator, and petitioner. The legal form of the petitioner is to be specified
 5. If a corporation, the name and address of the registered agent of petitioner in NY State, and the state of incorporation of the petitioner;
 6. If the petitioner is an entity, other than a corporation, such as a partnership LLC, just enterprise, etc. the names and business addresses of the principals;
 7. The names and contact information of each contractor, sub-contractor, or consultant assisting or acting on behalf of the wireless carrier;
 8. The postal addresses, tax map parcel numbers, zoning districts, and applicable comprehensive plan designations of the adjacent and abutting properties to the proposed project site in the PROW;
 9. Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all easement boundaries abutting the PROW, curbs, sidewalks, driveway approaches, walls, existing utility substructures, and trees along with the setback dimensions from the SC-PWSF to the abutting and adjacent property lines;
 10. A comprehensive, annotated, to-scale map that documents the location and use of all structures that are encompassed by or intersect a radius of five-hundred (500) feet from

the SC-PWSF and the location of all PWSFs that are encompassed by or intersect a radius of five-hundred (500) feet from the proposed SC-PWSF;

11. A comprehensive, annotated, to-scale map depicting and listing all existing PWS facilities owned, operated, maintained, and/or used by the petitioner within the Town's municipal boundaries which are within one (1) mile of the Town's municipal boundaries;
12. The location, size and height of all structures on the property which is the subject of the application;
13. The utility pole number, installation date of the utility pole, estimated remaining service life of the utility pole, and the material type of the utility pole (wood/concrete/steel);
14. The type, locations and dimensions of all proposed and existing landscaping, and fencing;
15. The location, size and height of the proposed or existing antenna, all related fixtures, structures, appurtenances, and apparatus, including height above pre-existing grade, materials, and color;
16. The make, model, manufacturer, and design of the SC-PWSF proposed with a copies of all specification sheets;
17. The actual frequency, modulation, and class of service of radio or other transmitting equipment;
18. Direction of maximum lobes and associated radiation of the antenna; shown in plans and elevation views of the lobes.
19. An RF exposure compliance report prepared and certified by a New York State licensed engineer expert in the field of RF emissions that certifies that the proposed SC-PWSF, as well as any co-located SC-PWSF(s), will comply with applicable federal RF threshold levels, exposure standards, and exposure limits. The RF report shall include:
 - a) The effective radiated power (ERP) levels, and the maximum effective radiated power (ERP) levels for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational 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;
 - b) The measured existing cumulative radiation levels, by frequency range, at the point on the property line nearest the radiating source (as measured by radial distance from the antenna) and the point on the property line of the predicted maximum emission level from all effecting sources;
 - c) These measurements shall be made at the time of the expected highest emissions in accord with current ANSI/IEEE measurement protocol;
 - d) The effects of contributing sources of frequency below the lower frequency limit of broadband instruments may be appropriately shown by a separate single instant measurement;

- e) The cumulative radio frequency emissions from all the co-locations on a single structure shall not exceed the maximum exposure limits of the FCC. Measurements outlined above shall include a cumulative analysis for all RF emitting sites within sixty 60 feet of the subject site. Anything within sixty (60) feet is usually considered a co-location;
 - f) The calculated average radiation levels at the points specified in Subsection 6-10-8(K)(19)(b) after installation of the new source, including both the background and the new source;
 - g) The calculated level at the predicted point of maximum radiation off of the property on which the new source is located caused by the new source along with the measured background radiation level at this point. This measurement shall meet the requirements of Subsection 6-10-8 (K)(19)(c);
 - h) A scaled site plan shall identify the location of each point of measurement and/or calculation, in relation to the subject facility;
 - i) Formulas used for any and all calculations must be clearly described.
20. Certification that the construction and placement of the SC-PWSF will not interfere with public safety communications, the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and nonresidential properties, or other existing telecommunications devices;
21. Copies of all current FCC licenses applicable for the intended use of the SC-PWSF;
22. Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, that the site is adequate to assure the stability of the proposed SC-PWSF on the site;
23. The ZBA may approve permanent backup power sources and/or generators on a case-by-case basis. The Town strongly disfavors backup power sources mounted on the ground or on poles in the PROW. The ZBA shall not approve any diesel generators or other similarly noisy or noxious generators in or within one-thousand (1,000) feet from any residence; provided, however, the ZBA may approve sockets or other connections used for temporary backup generators. Notwithstanding, if an emergency power supply is proposed, the petitioner shall submit documentation justifying the necessity for the proposed emergency power supply, a statement in writing that the proposed emergency power supply shall fully comply with all performance standards set forth in Chapter § 203- 7-9 (Performance Standards), a description of the proposed emergency power supply, identification of the proposed storage of fuel on the site, and the type and quantity of fuel. A statement of battery classification, location, and certification that all proposed on-site batteries comply with International Code Council (ICC) 2015 and International Fire Code (IFC) Section 608 shall be submitted. If lead acid batteries are proposed, the statement shall provide the cumulative acid weight of all batteries at the proposed facility. Upon approval of the application for the SC-PWSF, the petitioner shall provide this information to the local fire department. If petroleum products are used to fuel power supplies or any toxins are contained in equipment cabinets or shelters or alternative power sources, the SC-PWSF shall be registered as a hazardous facility;
24. A certified, written report that analyzes acoustic levels for the proposed SC-PWSF and all associated equipment including without limitation all proposed environmental control units, temporary backup power generators, and permanent backup power generators in order to demonstrate that the ambient noise emitted from all the proposed equipment will

not, both individually and cumulatively exceed the applicable limits and will be in compliance with Chapter 138 (Noise). The acoustic analysis must be prepared and certified by a New York State licensed 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;

25. Certification that the SC-PWSF, 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 SC-PWSF and related equipment shall be designed to withstand a wind force of at least one-hundred-and-fifteen (115) miles per hour, and be designed to withstand a wind force of at least forty (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 the proposed SC-PWSF shall provide the Town with a structural evaluation containing a recommendation that the proposed SC-PWSF passes the TIA/EIA Section 222-G standards described above. The structural analysis shall be prepared, stamped, and signed by a New York State licensed professional structural engineer.
 26. A detailed soils engineering analysis prepared, stamped, and signed by a New York State licensed professional engineer certifying that the soil suitability for the existing and/or proposed tower (as applicable) has been evaluated by the engineer and that based on the engineer's evaluation the existing and/or proposed tower (as applicable) does now or by virtue of this project will meet all of the requirements of the current Uniform Building Code (UBC) to bear the maximum anticipated load of the project as proposed. The soils analysis shall be less than one year old;
 27. Certification that the design or location of the SC-PWSF complies with the relevant standards promulgated by the American Association of State Highway and Transportation Officials (AASHTO) for construction in the PROW;
 28. Certification that the proposed SC-PWSF and its location shall comply with the current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG).
 29. Certification that the SC-PWSF will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- L. If a subsurface disturbance is proposed at a previously undisturbed site, the petitioner shall be required to submit a written report identifying buried conductors within fifty (50) feet of any non-building mounted SC-PWSF.
- M. If a modification is proposed, the petitioner must additionally furnish the following:
1. Evidence of all prior Town approvals;
 2. A copy of the special use permit as initially approved setting forth pre-existing conditions, restrictions or requirements;
 3. Record drawings, as-built plans, or the equivalent, showing the SC-PWSF,
 - a) As originally constructed and granted approval by the Town, or
 - b) As of the most recent modification that received Town approval, prior to the passage of the Spectrum Act.

- N. A petitioner may be required to submit an Environmental Assessment Form (EAF) and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed and documented at the pre-application meeting.
- O. All information necessary to satisfy SEQRA..
- P. The petitioner shall furnish a visual impact assessment, which shall include:
1. A "Zone of Visibility Map" which shall be provided in order to determine locations from which the SC-PWSF may be seen.
 2. Multi-seasonal color photo simulations of "before" and "after" views from key viewpoints, adjacent residences, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance shall be provided and documented concerning the appropriate key sites at the pre-application meeting.
 3. An assessment of the visual impact of the SC-PWSF from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
 4. Show the location, dimension and types of all trees which the petitioner seeks to substantially trim, remove or replace as a result of the areas disturbed during construction and which are within or adjacent to the PROW along the route proposed by the applicant. The applicant shall submit a landscape plan, satisfactory to the Town, for the replacement of such trees.
- Q. 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 PWSFs within the Town and all PWSFs within one mile of the Town, together with the petitioner's intentions for additional facilities within the Town for the ensuing twenty-four (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 PWSFs 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 SC-PWSF will supplement, detract from or coordinate with existing PWSFs in the Town and contiguous jurisdictions and 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 ZBA shall impose the provisions of Subsection 6-10-8 (P)(3) as a condition of the issuance of any special use permit granted in accordance with this section.
 5. The Town shall reserve the right to reject applications for future PWSFs within the Town if they are inconsistent with previously submitted build-out plans and the deviations are not sufficiently justified by technical evidence and factual documentation at the time of the pre-application meeting and within the application.

- R. An index of the complete application.
- S. The petitioner shall submit to the Town one (1) complete electronic file of the application, one (1) original hard copy, and fifteen (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 and applicable New York State laws. The Town shall make the complete electronic application file, including copies of all documents produced by any Town officials 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 (30) days prior to the public hearing.

§ 6-10-9. Determination of sites in the PROW.

- A. Unless authorized by the Town Board, not more than one (1) SC-PWSF may be located on a single utility pole, street light standard, or traffic signal standard in the PROW.
- B. The Town may reasonably limit the number of sites available at a particular time, or in a particular location, to a single PWS 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 SC-PWSFs visual and aesthetic impacts upon the surrounding PROW and public vantage points, the Town will apply the following priority schedule to SC-PWSF sites in the PROW: preferred, discouraged, and prohibited.
 - 1. Preferred sites. All petitioners must, to the extent feasible, propose new SC-PWSFs in locations according to the following preferences, ordered from most preferred to least preferred:
 - a) Existing traffic signal standards in the following order of preference:
 - (1) within an arterial street PROW in districts zoned for
 - i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - (2) Within a collector street PROW in districts zoned for:
 - i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - b) Existing Town-owned infrastructure excluding street light standards with a height exceeding thirty (30) feet from finished grade in the following order of preference:
 - (1) within an arterial street PROW in districts zoned for
 - i) Industrial use
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - (2) A PROW within a parking lot or property related to a governmental, industrial, or commercial use.
 - (3) Within a collector street PROW in districts zoned for

- i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - c) Existing Town-owned street light standards in the following order of preference:
 - (1) Within an arterial street PROW in districts zoned for
 - i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - (2) A PROW within a parking lot or property related to a governmental, industrial, or commercial use.
 - (3) Within a collector street PROW in districts zoned for
 - i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - d) Electric transmission towers
 - e) Existing utility or railroad poles owned or maintained by National Grid or other public utilities or a railroad in the following order of preference:
 - (1) within an arterial street PROW in districts zoned for
 - i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - (2) A PROW within a parking lot or property related to a governmental, industrial, or commercial use.
 - (3) Within a collector street PROW in districts zoned for
 - i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - g) Existing street light standards owned or maintained by Erie County, National Grid, a PWS provider, other public utilities, or a railroad in the following order of preference:
 - (1) Within an arterial street PROW in districts zoned for
 - i) Industrial use.
 - ii) Business or non-residential use.
 - iii) Agricultural use.
 - (2) A PROW within a parking lot or property related to a governmental, industrial, or commercial use.
 - (3) Within a collector street PROW in districts zoned for
 - i) Industrial use.
 - ii) Business or non-residential use
 - iii) Agricultural use.
- 2. Discouraged sites. The Town strongly discourages new SC-PWSFs in the following PROW locations, ordered from most discouraged to least discouraged, and the Town will take into account whether any less discouraged (or more preferred) locations are technically feasible and potentially available.
 - a) Within a PROW in districts zoned for residential use.
 - b) Within a PROW in any other districts not identified as “preferred” in Subsection § 203 6-10-9 (C)(1).
 - c) Designated parkland.
 - d) Lands purchased with Community Preservation Funds.
 - e) Wetlands.
 - f) Floodplains.

- g) Drainage easements.
- h) New non-replacement support structures.

Notwithstanding, if a new SC-PWSF is proposed in an area listed in Subsection § 6-10-9 (C)(2)(c-f), the petitioner shall provide a permit from all jurisdictional agencies and copies of comments and other correspondence sent to and received from all jurisdictional agencies contacted with regard to the proposed SC-PWSF.

3. Prohibited Locations. The Town prohibits new SC-PWSFs in the following locations:
 - a) A site within one-hundred (100) feet of a residential-use structure as measured from the furthest extent of the SC-PWSF to the closest applicable residential-use structure.
 - b) A site within five-hundred (500) feet of any school, daycare facility, park, playground, house of worship, or skilled nursing facility that cares for patients on a long-term basis as measured from the furthest extent of the SC-PWSF to the closest applicable property line.
 - c) A utility pole or street light standard located in a PROW abutting a front yard of a single-family detached residence or duplex.
 - d) A utility pole or street light standard located in a PROW of a corner side yard of a single-family detached residence or duplex.
 - e) A utility pole located in a rear yard (or abutting easement) of a single-family detached residence or duplex.
 - f) All center street medians, whether landscaped or not.
- E. If the new SC-PWSF site is not proposed for the most preferred, highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected.
- F. A petitioner may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. The petitioner shall submit a written report demonstrating the petitioner's review of the above locations in order of priority, explaining why the higher priority locations considered were unacceptable or infeasible, unavailable or not as consistent with the development standards in this Chapter as the proposed location, and demonstrating the technical reason and other factual justification for the site selection. Copies of written requests and responses for shared use of non-Town-owned infrastructure shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.
- G. The Town strongly disfavors the construction of any new, non-replacement support structures in the PROW. All new SC-PWSFs in the PROW must be installed on above-ground structures existing at the time of application whenever possible. An application shall address co-location on existing, non-replacement infrastructure as an option. If such option is not proposed, the petitioner shall be required to submit a written report demonstrating its efforts to secure shared use of existing, above-ground structures within the Town. Such report shall include an investigation of every existing PWSF and every existing, above-ground structure with a height exceeding thirty (30) feet from finished grade within one-half (0.5) miles of the project site. 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. The report must include a meaningful comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each existing, non-replacement structure is unacceptable, infeasible, unavailable, or not as consistent with the development standards in this Chapter as the

proposed support structure. If an existing macrocell PWSF is listed among the alternatives, the applicant must specifically address why the co-location or modification of such wireless facility is not a viable option. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

- H. The ZBA shall not approve any new, non-replacement support structures unless:
1. The applicant demonstrates in the written report that above-ground support structures within one-half (0.5) miles of the project site either do not exist or are not available to the applicant; or
 2. The ZBA finds that a new, non-replacement support structure would be more desirable and consistent with the objectives, policies, and goals in this Chapter and the comprehensive plan than installations on existing structures near the project site.
- I. 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, will further the objectives, policies, and goals set forth in this Chapter and the Comprehensive Plan.
- J. 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 reasons listed in Subsection § 6-10-14 (G)(1-10).

§ 6-10-10. Separation and Setback Requirements for SC-PWSFs in the PROW.

For purposes of measurement, separation, and setback distances shall be calculated and applied to SC-PWSFs located within the PROW, irrespective of municipal and county jurisdictional boundaries.

- A. SC-PWSFs in the PROW may not be closer than one-hundred (100) feet to any residential-use structure and no closer than five-hundred (500) feet from the property line of any school, daycare facility, park, playground, house of worship, or skilled nursing facility that cares for patients on a long-term basis as measured from the furthest extent of the SC-PWSF to the closest applicable residential-use structure or applicable property line, with the exception of equipment shelters. Equipment shelters shall be measured from the outside wall of the shelter to the closest applicable residential-use structure or applicable property line.
- B. SC-PWSFs in the PROW may not be closer than one-thousand (1,000) feet from any other SC-PWSF.
- C. SC-PWSFs shall comply with the minimum separation requirements from adjacent zoning districts. In cases where the abutting property on either side of the PROW has different zoning, the more restrictive zoning provisions shall apply. 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. SC-PWSFs in the PROW shall be located at least ten (10) feet from a driveway, at least ten (10) feet from the edge of existing trees twelve (12) inches or greater in diameter, and a minimum of fifteen (15) feet from any pedestrian ramp.
- E. In addition to any other required setbacks, all proposed ground-mounted equipment shall be located at least:

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1. Three (3) feet from the curb face; and
 2. Two-and-a-half (2.5) feet from alleys, driveways, bus zone areas, disabled person parking zones, commercial loading zones, and fire hydrants; and
 3. Five (5) feet from curb ramps, parking meters or pay stations, traffic signs, utility poles, bike racks, and other street fixtures; and
 4. Ten (10) feet along the curb line from the point where the radius of corner curb area intersects the curb line; and
 5. Fifteen (15) feet from any business entrance or exit; and
 6. One (1) foot from edge of sidewalk.
 7. A smaller setback than that required by Subsections 6-10-10 (F)(3), 6-10-10 (F)(4), 6-10-10 (F)(5), or 6-10-10(F)(6) may be allowed by the Town, provided the Town determines the ground-mounted equipment can be installed with a reduced setback without impairing public safety or access, and will not conflict with other setback requirements established by code or rule.
 8. Thirty-five (35) feet from the street intersection per Chapter 203, §2-5-1's clear vision triangle.
- 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 provides sufficient technical evidence and factual documentation 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.

§ 6-10-11. Height of SC-PWSFs in the PROW.

- A. The maximum permitted height of a new SC-PWSF in the PROW including the antenna, lightening rod or other extensions shall not exceed forty-five (45) feet AGL. Height shall be measured from the pre-existing grade level to the highest point on the tower or structure, including any antenna or lightning protection device.
- B. The petitioner shall submit to the Town sufficient technical evidence and factual documentation justifying the total height of any proposed SC-PWSF and the basis therefore. Such evidence and 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 SC-PWSF 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. The maximum permitted height of a new SC-PWSF in the PROW may be exceeded if the petitioner provides sufficient technical evidence and factual documentation to the ZBA and the ZBA finds that the additional height is truly justified and necessary. The ZBA shall have the power to set the height of the SC-PWSF in accordance to the testimony provided.
- E. Where antennas are moved to lower heights on an existing SC-PWSF 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.

§ 6-10-12. Design Standards and Visibility for SC-PWSFs in the PROW.

A. Concealment. All new SC-PWSFs and substantial modifications to existing SC-PWSFs shall maximize the use of concealment elements, measures, and techniques to render the facility either camouflaged or stealth to mimic or blend the equipment and other improvements with the structure to which it may be affixed and blend into the surrounding natural and/or built environment in a manner consistent and/or compatible with the uses germane to the adjacent zoning district(s) and existing in the immediate vicinity. The use of state-of-the-art technology and implementation of best practices shall be required to ensure high quality design. Economic considerations alone are not justification for failing to provide concealment, camouflage or stealth techniques. Concealment techniques include, but are not limited to:

1. Radio frequency transparent screening;
2. Approved, specific colors and textures;
3. Minimizing the size of the site;
4. Integrating the installation into existing utility 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.

In circumstances where a proposed SC-PWSF is within or easily visible from a non-preferred location, the Town may require additional concealment elements, measures, and techniques designed to camouflage or stealth the proposed PWS facility.

B. Siting. All SC-PWSFs shall be sited to avoid or minimize obstruction of views from public vantage points, to minimize the negative aesthetic impacts of the PROW, and to be the least visually intrusive as reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the SC-PWSF.

C. Antennas. The antenna shall be the smallest possible volume but in no case greater than three cubic feet. 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. Antenna installations shall be top of pole mount and shall not increase the height of the existing structure by more than ten percent or ten feet, whichever is greater. Antennas shall be fully enclosed in 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. Antennas shall comply with all health and safety regulations such as OSHA.

D. Undergrounded Equipment. To conceal the non-antenna equipment, petitioners for a proposed SC-PWSF within a PROW adjacent to an area in which the existing utilities are primarily located underground shall underground all non-antenna equipment other than any required disconnect switch. In all other areas, applicants shall install all non-antenna equipment underground to the extent feasible. Additional expense to install and maintain an underground equipment enclosure does not exempt the petitioner from this requirement,

except where the petitioner demonstrates by clear and convincing evidence that this requirement will effectively prohibit the provision of personal wireless services.

- E. Pole-Mounted Accessory Equipment. All pole-mounted equipment, mast arms, and other facilities shall be sized to minimize visual clutter and be installed as close to the pole as technically and legally feasible to minimize impacts to the visual profile. All pole-mounted accessory equipment shall maximize the use of radio frequency transparent screening, building materials, approved non-reflective colors and textures designed to blend with the mounting structure and/or to blend into the surrounding natural and/or built environment in a manner consistent and/or compatible with the uses germane to the adjacent zoning district and existing in the immediate vicinity. This shall include the utilization of concealment techniques or stealth technology as required by the Town. All equipment cabinets visible to the public shall be treated with a graffiti-resistant coating. No accessory wireless equipment associated with the operation of any SC-PWSF shall impair pedestrian use of sidewalks, other pedestrian pathways, or public or private trail systems. The accessory equipment shall not be located in a manner that violates the current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG). This equipment should be high enough that the equipment boxes cannot be reached from the ground (12 feet minimum) so as to prevent vandalism.
- F. Ground-Mounted Equipment. The Town strongly discourages ground-mounted equipment and shall approve ground-mounted equipment on a case-by-case basis. Notwithstanding, if ground-mounted equipment is proposed, to the extent that the equipment cannot be placed underground as required, petitioners must install ground-mounted equipment at the location that minimizes impacts on adjacent property and does not:
- (a) obstruct pedestrian use of sidewalks, other pedestrian pathways, or public or private trail systems, or vehicular traffic;
 - (b) create a safety hazard; or
 - (c) adversely impact the health, safety, or welfare of the community.
- The Town shall require landscaping and the utilization of concealment techniques or stealth technology designed to blend the ground-mounted equipment into the surrounding natural and/or built environment in a manner consistent and/or compatible with the uses germane to the adjacent zoning district and existing in the immediate vicinity as a condition of approval. All ground-mounted equipment cabinets visible to the public shall be treated with a graffiti-resistant coating. The ground-mounted equipment shall not be located in a manner that violates the current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG).
- G. Wiring and Cabling—No Exposed Cables. All cabling and wiring must be contained in a cable skirt, conduit, cover, or cable shield 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.

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- H. The following shall not be permitted:
1. Down tilt.
 2. Guy or other support wires used in connection with a SC-PWSF or its related equipment unless the SCPWSF is proposed to be attached to an existing tower or existing infrastructure that incorporated guy wires prior to the date that the petitioner has applied for a special use permit.
 3. Faux or otherwise nonfunctioning street light standards.
 4. Electrical meters. The petitioner shall negotiate directly with National Grid to determine a flat rate for installation. The applicant is responsible for the cost of all electrical usage.
- I. Lighting. SC-PWSFs in the PROW shall not be illuminated by artificial means, except when mounted on an existing light pole or where the illumination is specifically required by the Federal Aviation Administration or other federal, state or local regulations.
- J. Security. All sites shall be reasonably protected against unauthorized climbing. The bottom of the tower, measured from ground level to twelve (12) feet above ground level, shall be designed in a manner to discourage unauthorized climbing.
- K. Structural Failure. The proposed SC-PWSF 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, infrastructure, and structures which include but are not limited to: buildings, gas or liquid storage tanks, garages, and dwellings.
- L. Utilities. All utilities at a SC-PWSF site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the applicable building, plumbing, electrical and fire codes of the Town, the National Electrical Safety Code and the National Electrical Code where appropriate. The Town shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- M. Signage; Advertisements. All SC-PWSFs must include signage that accurately identifies the equipment owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SC-PWSFs may not bear any other signage or advertisements unless expressly approved by the Town, required by law or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. Signage will be maintained in legible condition and the petitioner will be required to replace any faded signage within thirty days of receiving written notification from the Town that it is in need of replacing.
- N. 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 SC-PWSF is being modified.

§ 6-10-13. FCC "Shot Clock" Time Periods and Tolling of Time.

The timeframe for formal review of an application shall begin when a submitted application is deemed complete by the Town. If the Town finds the application incomplete, it shall provide notice of incompleteness that delineates the missing information in writing within thirty (30) days of submission of the application. After submission of additional information, the Town will notify

the petitioner within ten (10) days of this submission if the additional information is sufficient to complete the application. The time period begins running again when the petitioner makes a supplemental submission in response to the Town's notice of incompleteness. The Town may deem grossly incomplete applications as to not constitute a proper submission of an application for purposes of review and will notify the applicant accordingly

- A. For application involving minor modifications to existing SC-PWSFs submitted pursuant to Section 6409(a) and evaluated pursuant to the provisions in Chapter 203 § 6-11, the Town will act on the application within sixty (60) days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time which shall be in writing.
- B. For applications involving substantial modifications to existing PWS facilities that are not governed under Section 6409(a), the Town will act on the application within ninety (90) days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time. In the event that after submittal of the application, or as a result of any subsequent submittals, the petitioner modifies the proposed facilities modification described in the initial application, the application as modified will be considered a new application subject to commencement of a new application review period; provided, that applicant and the approval authority may, in the alternative, enter into a mutually agreeable tolling agreement allowing the city to request additional submittals and additional time that may be reasonably necessary for review of the modified application.
- C. For applications involving new fixed SC-PWSF sites, the Town will act on the application within one-hundred-and-fifty (150) days, adjusted for any tolling due to requests for additional information or mutually agreed upon extensions of time.
- D. The Town will make every effort to meet all Federal shot clocks for modifications and new installations. Goals for review have been established for each stage of review. However, these goals maybe affected by Town holidays, the number of applications received, and other unforeseen circumstances.

§ 6-10-14. Action on an Application for a Special Use Permit for SC-PWSFs in the PROW.

An application to locate a SC-PWSF in the PROW will 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 Building Department, Planning Department, Highway Department, Town Engineer, Town Attorney, and the designated consultant will undertake a review of a deemed complete application pursuant to this local law in a timely fashion, and shall make reasonable efforts to act within the timeframes set forth in Section § 6-10-13 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 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 SC-PWSF shall be reviewed by the Planning Department before a hearing is held by the ZBA. Thirty (30) days prior to the scheduled public hearing, the Planning Department shall submit a written report 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 is advisory in nature and is not binding on the ZBA. This review of the site plan by the Planning Department shall supersede all other site plan review requirements as established in the Zoning Ordinance.

- D. Thirty (30) days prior to the scheduled public hearing, the Building Department, Consultant, the Highway Department, Town Engineer, and Town Attorney shall each submit a written report to the ZBA containing its analysis of the application and proposal under the standards set forth in the applicable sections of this Zoning Ordinance before a hearing is held by the ZBA. Department analyses are advisory in nature and is not binding on the ZBA.
- E. After the thirty-day (30) period of public review, and after conducting the public hearing, the ZBA shall render a decision within sixty-two (62) days thereafter. The time within which the decision shall be rendered may be extended by mutual consent of the petitioner and the Board. Said consent shall be produced in writing.
- F. Pursuant to the standards listed below and established in Subsection § 8-6-6 (A), in rendering a decision, the ZBA shall consider and make findings that the proposed use:
 - 1. Will be generally consistent with the policies of the Comprehensive Plan;
 - 2. Meets any specific criteria set forth in this Code;
 - 3. Will be compatible with existing uses adjacent to and near the property;
 - 4. Will be in harmony with the general purpose of this Code;
 - 5. Will not tend to depreciate the value of adjacent property;
 - 6. Will not create a hazard to health, safety or the general welfare;
 - 7. Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and
 - 8. Will not otherwise be detrimental to the public safety, convenience and welfare.
- G. Notwithstanding, 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 SC-PWSFs which is contrary to an already stated purpose of a specific zoning or land use designation.
 - 4. Proximity to residences or other discouraged locations 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 SC-PWSF's which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers.
 - 6. The placement and location of SC-PWSF's which would create an unacceptable risk, or the reasonable probability of such, to residential property;
 - 7. The design or location does not comply with the relevant standards promulgated by the American Association of State Highway and Transportation Officials (AASHTO) or Town statute for construction in the PROW;
 - 8. The design or location does not comply with current or proposed Americans with Disabilities Act Accessibility Guidelines (ADAAG).
 - 9. Granting the application as submitted would violate the Town of Amherst's Code or Comprehensive Plan.
 - 10. Conflicts with the provisions of this Chapter.
 - 11. Granting the application would be detrimental to the health, safety, convenience, or welfare of the public.

- H. The ZBA may approve, approve with conditions, or disapprove the application for a special use permit. 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 special use permit shall always be upon the petitioner.
- I. The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit including limitations as to height. Upon approval of a special use permit, any such conditions shall be met in connection with issuance of permits by applicable agents and officers of the Town.
- J. The petitioner shall be notified of ZBA action in writing within ten (10) calendar days..

§ 6-10-15. Application Fees.

- A. At the time that a person submits an application for a special use permit for a new SC-PWSF or for a substantial modification to an existing SC-PWSF, such person shall pay the Town a non-refundable application fee, as determined by the Town's fee schedule.
- B. No application fee is required in order to recertify a special use permit for SC-PWSFs unless there has been a modification of the SC-PWSF since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, a non-refundable application fee, as determined by the Town's fee schedule shall be paid to the Town.

§ 6-10-16. Construction Standards for SC-PWSFs in the PROW.

- A. Except in the case of an emergency, before commencing any construction in the PROW, the petitioner shall submit to the Town detailed plans of the proposed construction activity. Such plans shall include:
 - 1. The type of construction activity;
 - 2. The equipment proposed to be installed or erected;
 - 3. The specific locations of the construction activity;
 - 4. The scheduled beginning and ending dates of all planned construction; and
 - 5. The sequence for the installation of the SC-PWSF,
 - 6. If approved, such plans shall also include the name(s), address(es) and experience of any and all contractors, subcontractors, or consultant assisting or acting on behalf of the wireless carrier whom the petitioner intends to utilize.Such information shall be submitted concurrently with an application for a special use permit. Failure of the petitioner to provide detailed plans of the proposed construction activity shall constitute an incomplete application.
- B. Upon submission of all such information required in Subsection 6-10-16 (A), the Building Department shall review the information provided herein to determine whether such construction would have a detrimental impact on public safety as it relates to the PROW. The Town may impose conditions on the building permit regulating the times, locations and manner of construction to preserve effective traffic flow, prevent hazardous road conditions and/or minimize noise impacts.

- C. The specific location within the PROW and the method of installing facilities underground or overhead will be subject to approval by the Building Department. Cutting of pavement in the PROW shall be prohibited where the Town approves locating underground facilities in the unimproved portions of the PROW or in the sidewalk areas or requires alternative methods for undergrounding not requiring trenching or the cutting of pavement.
- D. Cutting of pavement shall be prohibited in any event in a newly constructed or reconstructed street for a period of five years from the paving of such street or in a street where a trench was previously available for a period of three years from the date the trench was available. The Building Department may require as a condition to the occupancy of the PROW that communications facilities be located in existing underground ducts or conduits wherever the capacity exists; provided, however, the Building Commissioner, may in his/her discretion, permit potholing (subject to conditions to alleviate the harmful effects) where conduit is to be placed underground by means of directional boring and the person seeking permission has provided evidence satisfactory to the Building Commissioner that:
1. Such potholing is necessary to avoid interference with existing utilities;
 2. Such potholing is the only reasonable alternative available to locate existing utilities; and
 3. Such potholing will result in little or no visual or other detrimental impact to the street.
- E. The petitioner, at its sole cost and expense, shall restore all damage to property, both public and private, caused by the installation, construction, operation, maintenance or repair of the petitioner's SC-PWSF. Whenever the petitioner disturbs or excavates the surface of any PROW or opens the hard surface pavement in any street for any purpose, restoration shall be made as soon as practicable after completion of work necessitating the restoration and shall be done in a manner approved by the Town. If any such damage involves pavements, sidewalks, driveways, water mains, storm and sanitary sewers, traffic control conduits, cable, or loop system, other public facilities or other emergency circumstances, the damage shall be repaired to the Town's satisfaction immediately. The Town reserves the right, after providing notice to the petitioner, to remove and/or repair any work done by the petitioner, which, in the determination of the Town, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the petitioner. In the event that the petitioner fails to so restore, the Town has the right, but not the obligation, to restore the same and charge the petitioner therefor and collect reimbursement from the petitioner. The petitioner waives any claims for damages to the SC-PWSF that may arise as a result of the Town's actions.
- F. Any openings or obstructions in PROW on any Town or public property made by the petitioner shall be guarded and protected at all times, subject to the approval of the Town, by the placement of adequate barriers, fences, bordering or other protective devices shall be clearly designated by warning lights. The petitioner shall indemnify the Town with respect to any claim arising out of the same unless caused by the Town's negligent acts, and the petitioner shall provide insurance therefor.
- G. The SC-PWSF shall not damage or interfere in any way with Town Property, the Town's operations or the operations of prior-existing, third party installations. The Town will reasonably cooperate with the petitioner and/or carrier to carry out such activities as are necessary to correct the interference.
1. Signal Interference. No permit shall be issued for any transmitting antenna which interferes with the reception or transmission of any preexisting FCC-approved communication device or antenna which complies with current FCC standards and requirements.

- a) If interference results from the operation of any newly approved transmitting antenna, the owner or operator of that most recently installed antenna shall immediately eliminate the interference or cease operation of the facility.
 - b) The petitioner shall correct any such interference within twenty-four hours of written notification of the interference. Upon the expiration of the twenty-four (24) hour cure period and until the cause of the interference is eliminated, the petitioner shall cease operation of any PWSF causing such interference until such interference is cured.
2. No SC-PWSF shall interfere with any emergency communication system at any time. In the event that the Town has reason to believe that licensee's SC-PWSF operations are causing interference with the Town's emergency communication system, then the petitioner shall, at its own expense, immediately cooperate with the Town to either rule out petitioner as the interference source or eliminate the interference. Cooperation with the Town may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.
 3. All lines, cables and distribution equipment, including poles and necessary appurtenances, erected by the petitioner within the Town shall be located so as not to obstruct or interfere with the proper use of PROW or any other public ways and places, and so as to cause minimum interference with the rights of property owners who abut any of such PROW or other public ways and places, and so as not to interfere with existing public utility installations or traffic control systems. The petitioner shall remove, at its own cost and expense, any equipment that now or in the future restricts, obstructs or interferes with the operation or location of such PROW and public places.
 4. A petitioner shall not place poles, conduits, or other fixtures where they will interfere with any gas, electricity, telephone fixtures, water hydrants, traffic control systems and loops, or other utility use, and all such poles, conduits or other fixtures in or upon any PROW shall be so placed as to comply with all requirements of the Town or other applicable authority and comply with local regulations, including the aesthetic provisions thereof.
 5. In no case shall any part of a SC-PWSF alter vehicular circulation or parking within the PROW, nor shall it impede vehicular and/or pedestrian access or visibility along any PROW. No petitioner shall locate or maintain SC-PWSF's to unreasonably interfere with the use of Town property or the PROW by the Town, by the general public or by other persons authorized to use or be present in or upon the PROW. Unreasonable interference includes disruption to vehicular or pedestrian traffic on Town property or the PROW, interference with public utilities, and any such other activities that will present a hazard to public health, safety or welfare when alternative methods of construction would result in less disruption. All such facilities shall be moved by the petitioner, at the petitioners cost, temporarily or permanently, as determined by the Town.
 6. Failure to correct or eliminate the interference shall be subject to the immediate revocation of the special use permit issued by the ZBA.
- H. Vegetation Management. No petitioner may trim trees or other vegetation owned by the Town and private persons or encroaching upon the PROW without prior permission from the Town pursuant to Town Code Chapter 179 (Trees). All trimming or pruning shall be at the sole cost of the petitioner under the supervision of the Town. Topping, defined as the severe cutting back of the tree limbs to stubs larger than three (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.

- I. Protection of roots. In making excavations in the PROW, proper care shall be taken to avoid injury to the roots of any tree, or shrub, wherever possible. No petitioner shall damage the critical root zone of any street tree by compacting soils with heavy equipment.
- J. Adverse Impacts on Other Properties. The petitioner shall use all reasonable efforts to avoid any and all undue or unnecessary adverse impacts on nearby properties that may arise from the licensee's construction, installation, operation, modification, maintenance, repair, removal and/or other activities at the site. The petitioner shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines on (1) any weekday or Saturday between 7 PM and 7 AM 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 Commissioner of Building or a designee may issue a stop work order for any work that violates this condition.
- K. Noise Complaints. The petitioner shall conduct all activities on the site in compliance with the ambient standards in Town Code Chapter 138 (Noise) applicable to the zone in which the site is situated. In the event that any person files a noise complaint and the Town verifies that such complaint is valid, the petitioner must remedy the violation to the satisfaction of the Town, which may include a demonstration that the petitioner has amended its operational guidelines in situations where the violation arises from the petitioner's personnel rather than the petitioner's equipment.
- L. Company identification. The petitioner shall ensure that all of its vehicles and employees are clearly identified to the general public as being associated with the petitioner when engaged in construction, maintenance or service of the SC-PWSF within the Town.
- M. At the completion of construction, the petitioner may not commence operations of the proposed SC-PWSF 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 special use permit to the Town.
- N. As requested by the Town, the petitioner or PWS carrier shall host on-site training for Town maintenance staff. The training will be offered for each installation of a SC-PWSF in the PROW. The training shall include occupational safety, personal protection, proximity limits, emergency procedures and contact information.
- O. Upon order of the Town, all work which does not comply with the special use permit, the approved plans or specifications for the work, or the requirements of this Code or other applicable law shall be remedied to conform to the work permit..

§ 6-10-17. Extent and Parameters of Special Use Permit for SC-PWSFs.

The extent and parameters of a special use permit for SC-PWSFs shall be as follows:

- A. Such special use permit shall be non-exclusive.

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- B. Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town within thirty (30) days of such assignment, transfer, or conveyance.
- C. Such special use permit may, following a hearing upon due prior written notice to the holder of the special use permit, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this local law..

§ 6-10-18. Registration.

Each carrier shall file the following information with the Building Department on an annual basis, no later than January 31 of the year, beginning with the date of approval.

- A. The legal and DBA names, mailing address, NYS tax number, contact phone number(s), and email of the owner/lessee/intermediary/agent/operator and carrier(s) at the site;
- B. As-built drawings for each PWSF;
- C. Location by latitude and longitude, addresses and parcel numbers;
- D. Height, AGL;
- E. Type and maximum emissions of all antennas;
- F. Coverage maps;
- G. Collocation status and capability if applicable (including if a former collocation has been removed);
- H. Last date at which site was modified and the nature of the modification;
- I. A list of toxic/hazardous materials at the PWSF (including in the equipment shelter);
- J. Instructions for emergency personnel on the approach action to be taken in case of an emergency involving any toxic/hazardous substances; and
- K. The name and telephone number of a representative of the PWS 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.

If the name or address of the owner or operator of the PWSF is changed, the Town shall be notified of the change within thirty (30) days.

§ 6-10-19. Intermunicipal Notification for New SC-PWSFs.

In order to keep neighboring municipalities informed and to facilitate the possibility of directing that an existing PWSF or existing tall structure or lot containing an existing PWSF 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. An electronic copy of the completed application shall be provided by the petitioner to the legislative body of each municipality that borders the Town of Amherst and the principal planner of Erie County. Notification shall include, but not limited to, the exact location of the proposed SC-PWSF, the height of the proposed SC-PWSF and a general description of the project.
- B. Documentation of this notification shall be submitted to the Town 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.

§ 6-10-20. Recertification of a Special Use Permit for SC-PWSFs.

- A. At least six (6) months prior to the five (5) year anniversary date after the effective date of the special use permit and all subsequent five (5) year anniversaries of the effective date of the original special use permit for SC-PWSFs, the holder of a special use permit for such SC-PWSFs shall submit a signed written request to the Building Department for recertification. In the written request for recertification, the holder of such special use permit shall note the following:
1. The legal and DBA names, mailing address, NYS tax number, contact phone number(s), and email of the holder of the special use permit for the SC-PWSF;
 2. If applicable, the number or title of the special use permit;
 3. The date of the original granting of the special use permit;
 4. Whether the SC-PWSF have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the special use permit and if so, in what manner;
 5. If the SC-PWSF has been moved, re-located, rebuilt, or otherwise visibly modified, then whether the Town approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
 6. That the SC-PWSF is in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations;
 7. Recertification that the antennae, accessory equipment, tower and/or other supporting structure are all designed and constructed and continue to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the State of New York, the cost of which shall be borne by the petitioner. The holder of the special use permit shall certify to the Town that the cumulative NIER levels at the site are within the threshold levels adopted by the FCC.
- B. If, after such review, the Building Department determines that the permitted SC-PWSFs are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Building Department shall issue a recertification of the special use permit for the SC-PWSF, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted SC-PWSF is not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Town may refuse to issue a recertification special use permit for the SC-PWSF, and in such event, such SC-PWSF shall not be used after the date that the petitioner receives written notice of the decision by the Town until such time as the SC-PWSF is brought into compliance. Any decision requiring the cessation of use of the SC-PWSF or imposing a penalty shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the SC-PWSF.
- C. If the petitioner has submitted all of the information requested and required by this local law, and if the review is not completed, as noted in Subsection 6-10-20 (B), prior to the five-year anniversary date of the special use permit, or subsequent five-year anniversaries, then the petitioner for the permitted SC-PWSF shall receive an extension of the special use permit for up to six months, in order for the completion of the review.
- D. If the holder of a special use permit for the SC-PWSF does not submit a request for recertification of such special use permit within the time-frame noted in Subsection 6-10-20 (A), then such special use permit and any authorizations granted thereunder shall cease to

exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five-year anniversaries, unless the holder of the special use permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the Town agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.

§ 6-10-21. Record Retention.

The petitioner shall retain full and complete copies of all permits and other regulatory approvals issued in connection with the SC-PWSF, which includes without limitation all conditions of approval, approved plans, resolutions and other documentation associated with the special use permit or regulatory approval. In the event that the Town cannot locate any such full and complete special use permits or other regulatory approvals in its official records, and the petitioner fails to retain full and complete special use permits or other regulatory approvals in the petitioner's files, any ambiguities or uncertainties that would be resolved through an examination of the missing documents will be conclusively resolved against the petitioner.

§ 6-10-22. Security of SC-PWSFs.

All SC-PWSFs in the PROW shall be sited, designed, and secured in a manner that prevents unauthorized access. Specifically:

- A. All antennae, accessory equipment, towers and other supporting structures, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- B. All antennae, towers and auxiliary structures shall be properly bonded and grounded to protect the facility and surrounding properties from lightning discharges.

§ 6-10-23. Reservation of Authority to Inspect SC-PWSFs.

In order to verify that the holder of a special use permit for SC-PWSFs and any and all lessees, renters, and/or licensees of SC-PWSFs place and construct such facilities, including towers and antennae, in accordance with all required conditions of the special use permit and all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennae and buildings or other structures constructed or located on the permitted site.

§ 6-10-24. Annual NIER Certification.

- A. After the SC-PWSF is operational, the petitioner shall submit within ninety (90) days of the issuance a certificate of compliance and at annual intervals on the anniversary of the submittal of the initial certificate of compliance, the existing, cumulative NIER levels from the SC-PWSF. Such measurements shall be signed and certified by a New York State licensed RF engineer, stating that the NIER levels are accurate and meet FCC guidelines as specified in the radio frequency standards section.

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- B. 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.
- C. No source of NIER, including facilities operational before the effective date of this Chapter, shall exceed the federal or state NIER emission standard.
- D. Should the holder of the special use permit calculations or independent monitoring of the SC-PWSF by a qualified engineer licensed to practice engineering 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 ten (10) business days of notification of noncompliance. That plan shall reduce NIER levels and emissions to the applicable FCC standard within fifteen (15) days of initial notification of noncompliance. Failure to accomplish this reduction of NIER levels and emissions within fifteen (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 by the Town. Such fines shall be payable by the holder of the special use permit and owner(s) of the SC-PWSF until compliance is achieved. All consultant costs incurred shall be borne by the holder of the special use permit and the owner(s) as part of the special use permit.
- E. 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.

§ 6-10-25. Preexisting SC-PWSFs in the PROW.

- A. Preexisting SC-PWSFs in the PROW, for which a special use permit has been issued prior to the effective date of this Code, may continue in use for the purpose now used and as now existing, subject to the conditions of that special use permit. Preexisting SC-PWSFs may not be replaced, structurally altered, or added to without complying in all respects with this Code. The issuance of special use permit renewals or other new special use permits for such facilities shall be in accordance with the provisions of this article. Preexisting SC-PWSFs without the proper permits shall be considered out of compliance with this article.
- B. Any PWS provider with at least one preexisting SC-PWSF in the Town that is out of compliance with the building and zoning requirements in the Town Code, prior to the adoption of this Chapter, shall not be eligible for any new approvals until the preexisting SC-PWSF is brought into compliance with this article.
- C. The Town reserves the right to reject any application from a PWS provider if that PWS provider has a preexisting PWSF in the Town on which there is any antenna or mount without special use permits. Until all required special use permits are secured and the facility in violation is brought into compliance with this article, no issuance of any new special use permit shall occur.

§ 6-10-26. Relief.

After a Public Hearing conducted pursuant to Chapter 203 § 8-6-5, the ZBA may grant relief, waiver or exemption from any aspect or requirement of this local law. Any petitioner desiring relief, waiver or exemption from any aspect or requirement of this local law shall submit a written statement that provides sufficient technical evidence and factual documentation justifying such request(s) at the pre-application meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit a request for substantial modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the petitioner pursuant to Chapter 203 § 8-13-4 (Burden of Proof). The petitioner shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the petitioner demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

§6-10-27. Performance Security.

The petitioner must submit an analysis, certified by a NYS licensed professional engineer, reflecting the cost of removal of the SC-PWSF and surrounding property restoration. The petitioner shall, at the petitioner's cost and expense, be required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount approved by the ZBA, but not less than twice the certified cost of said removal. The full amount of the bond or security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

§ 6-10-28. Indemnification.

- A. Any application for SC-PWSFs that is proposed for Town property, pursuant to this Code, shall contain a provision with respect to indemnification. Such provision shall require the petitioner, to the fullest extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable solely to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.
- B. Notwithstanding the requirements noted in Subsection 6-10-28 (A), an indemnification provision will not be required in those instances where the Town itself applies for and secures a special use permit for SC-PWSFs.

§ 6-10-29. Default or Revocation.

- A. If SC-PWSFs are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this local law or of the special use permit, then the Town shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within thirty (30) days of the date of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this Subsection or any other Section of this local law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Town may, at its sole discretion, order the violation remedied within twenty-four (24) hours.
- B. If within the period set forth in Subsection 6-10-29 (A) the SC-PWSFs are not brought into compliance with the provisions of this ordinance, or of the special use permit, or substantial steps are not taken in order to bring the affected SC-PWSFs into compliance, then the Town may revoke such special use permit for SC-PWSFs, and shall notify the holder of the special use permit within forty-eight (48) hours of such action.

§ 6-10-30. Removal of SC-PWSFs.

- A. Under any of the following circumstances, the Town may determine that the health, safety and welfare interests of the Town warrant and require the removal of SC-PWSFs:
 - 1. SC-PWSFs with a permit have been abandoned (i. e., not used as SC-PWSFs) for a period exceeding ninety (90) consecutive days or a total of one-hundred-and-eighty (180) days in any three-hundred-and-sixty-five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within ninety (90) days. The owner or user of the SC-PWSFs shall notify the Town within ten (10) days of the discontinuance of the use of the facilities or any part thereof.
 - 2. Permitted SC-PWSFs fall into such a state of disrepair that it creates a health or safety hazard.
 - 3. SC-PWSFs have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization.
- B. If the Town makes such a determination as noted in Subsection 6-10-30(A), then the Town shall notify the holder of the special use permit for the SC-PWSFs within forty-eight (48) hours that said SC-PWSFs are to be removed.
- C. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such SC-PWSFs, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within ninety (90) days of receipt of written notice from the Town. However, if the owner of the property upon which the SC-PWSFs are located wishes to retain any access roadway to the SC-PWSFs, the owner may do so with the approval of the Town.
- D. If SC-PWSFs are not removed or substantial progress has not been made to remove the SC-PWSFs within ninety (90) days after the permit holder has received notice, then the

Town may order officials or representatives of the Town to remove the SC-PWSFs at the sole expense of the owner or special use permit holder.

- E. If, the Town removes, or causes to be removed, SC-PWSFs, and the owner of the SC-PWSFs does not claim and remove it from the site to a lawful location within thirty (30) days, then the Town may take steps to declare the SC-PWSFs abandoned, and sell all equipment and components thereof.
- F. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the SC-PWSFs, for no more ninety (90) days, during which time a suitable plan for sale, lease, sub-lease, removal, conversion, or re-location of the affected SC-PWSFs shall be developed by the holder of the special use permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the special use permit and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected SC-PWSFs in the manner provided in this Section.

§ 6-10-31. Adherence to State and Federal Rules and Regulations.

- A. To the extent that the holder of a special use permit for SC-PWSFs has not received relief, or is otherwise exempt, from appropriate state and/or Federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, or exceed all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA, FCC, and EPA. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical, and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA, FCC and EPA, and specifically including any rules and regulations regarding height, lighting, security, electrical, and RF emission standards are changed and/or are modified during the duration of a special use permit for SC-PWSFs, then the holder of such a special use permit shall conform the permitted SC-PWSFs to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of three (3) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

§ 6-10-32. Severability.

The invalidity of any section or provision of this Ordinance shall not invalidate any other section or provision of this Ordinance.

§ 6-10-33. Effective Date.

This Local Law shall take effect immediately and be filed in the Office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law and published pursuant to Sections 130 and 133 of the Town Law and Chapter 28 of the Code of the Town of Amherst.

**Marjory Jaeger
Town Clerk
Town of Amherst**

County of Erie, New York