

Ordinance No. 2021-__
Ordinance to Amend City Code Telecommunication Provisions

WHEREAS, the City’s existing Code provisions were implemented in 2002, and do not take into account installations of current wireless technologies like small cell 4G and 5G antennae installations; and

WHEREAS, the City recognizes that access to 4G and 5G will enhance City residents’ access to advanced technologies wirelessly and ability to conduct business; and

WHEREAS, the City wishes to preserve its zoning authority in accordance with 47 U.S.C 332(c)(7); and

WHEREAS, the purpose of these amendments is to balance the simultaneous objectives of enabling wireless carriers to provide personal wireless services within the City while protecting the City’s zoning authority and concerns in minimizing the number of facilities used to provide such coverage, avoid unnecessary, redundant wireless infrastructure, and avoiding to the greatest extent possible, any unnecessary adverse impacts upon residential homes and residential communities; now therefore be it

BE IT ORDAINED by the Common Council of the City of Ithaca as follows:

Section 1. Legislative findings, intent, and purpose.

The Common Council makes the following findings:

1. The City’s Telecommunication ordinance was implemented in 2002 and has not been significantly updated to account for new and emerging, smaller technologies.
2. Such smaller telecommunication facilities pose different and unique concerns for zoning purposes and use of the public right of way.
3. These amendments are intended to update the City Code to reflect the City’s interests in zoning and placement on City land.

Based upon the above findings, the intent and purpose of this ordinance is to amend the City Code to account for a variety of telecommunication installations within the City and preserve the City’s authority in zoning and use of City property or right of way for all telecommunication installations within the City.

Section 2. Amend to Section 152-37 “Design and construction provisions” within Article II “Telecommunications” of City Code Chapter 152 “Communications Technology” as follows:

§ 152-37 Design and construction provisions.

This part shall be applicable to the telecommunications systems in the public right-of-way and providers franchised hereunder and to cable television systems, open video systems, and cable service providers franchised under the Ithaca Cable Television Regulatory Ordinance, Chapter 152, § 152-1 et seq., as amended, or telecommunications systems as may be licensed pursuant to Chapter 170 “Use of City Real Property.”

- A. Permits, conduit, pole use and approvals.

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(7) Approval for poles.

- (a) No poles shall be erected by the grantee in the public right-of-way without prior written approval of the City with regard to location, height, types, and any other pertinent aspect. In areas where utilities are placed aerially, the grantee shall use existing poles unless the City permit authorizes the grantee to install new poles. In areas where utilities are placed underground, the grantee may not be permitted to install new poles unless the Board of Zoning Appeals approves of such installation in accordance with the review process set forth in Article VA entitled “Telecommunications Facilities and Services,” within Chapter 325 “Zoning” of the City Code, and as subject to the City’s present or future public works, fire, and/or safety concerns and comments.
- (b) Where poles already exist in the public right-of-way and are available for use by the grantee, but grantee does not make arrangements for such use, the City may require the grantee to use such poles and structures if it determines that the public convenience would be enhanced thereby and the terms of the use available to the grantee are just and reasonable. If a small cell attachment is proposed for an existing utility pole with an existing street light attachment, the small cell equipment shall be installed such that the streetlight will remain in the same location and height and installed such that the small cell equipment will not obstruct proper lighting of the area.
- (c) Where a public utility or other provider serving the City desires to make use of the poles or other wire-holding structures of the grantee located in the public right-of-way but agreement thereof with the grantee cannot be reached, the City may require the grantee to permit such use for such consideration and upon payment of the prevailing public utility rates for make-ready and pole attachment rental if the City determines that the use would enhance the public convenience and would not unduly interfere with the grantee's operation.
- (d) For new or replacement poles, the following spacing standards shall apply:

Object	Minimum Spacing
Curb	2.5 ft. to face of curb
Mainline Sidewalk	1.5 ft.
Bike Paths	5 ft.
Pavement Edge (unimproved streets)	4 ft.
Residential Driveway	6 ft.
Commercial Driveway	10 ft.
Streetlight	10 ft.
Traffic Signal	25 ft. unless on traffic signal pole
Utility Pole	25 ft. (with collocation favored)
Street Tree	15 ft.
Fire Hydrant	6 ft.
Bike Rack	10 ft.

Notes:

1. *Minimum spacing is to nearest face of pole.*
2. *If an existing pole that violates any of these standards is being replaced, it may remain in the same location, but it may not be placed any closer to any object than existing condition.*
3. *In certain circumstances, City Engineering may request further spacing than what is noted; the intent of which is not to prohibit installations, but better accommodation of existing or future features. Examples - driveways with heavy truck use, more sensitive street trees, streets with right-of-way reservations or planned sidewalk installation, etc.*
4. *To the maximum extent feasible, applications must adhere to the minimum spacing guidelines.*
5. *The design of bus stops vary throughout the City and each location is unique. Poles must be placed such that they do not interfere with bus operations and accessible loading/unloading passengers in and around bus stop zones.*
6. *Nothing in this table is to be construed to override any existing zoning requirements as may be applicable and set forth in Chapter 325.*

(8) Joint use agreements. In order to minimize the number of facilities in the public right-of-way, the grantee shall seek to conclude joint use agreements with utilities and other owners of facilities on the public right-of-way so as to utilize existing poles, conduits, and other facilities whenever possible. No location of conduit or wiring-holding structure of the grantee's shall be a vested interest. Joint use of poles shall be in accordance with New York State statutes and the City of Ithaca Code. To the extent a facility or support structure owned by a party other than the City is destroyed, removed, relocated, or replaced, the owner of the collocated facility must obtain a new right-of-way use permit; or the replacement facility or support structure accommodating the collocation must be comparable in size, mass, appearance, and placement, as determined by the City Engineer.

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B. Use of public rights-of-way.

(4) Interference with persons, improvements, public and private property, and utilities. The grantee's facilities, including poles, lines, equipment, and all appurtenances, shall be located, erected, and maintained so that such facilities shall:

(a) Not endanger or interfere with the health, safety or lives of persons. Specifically, but without limitation, complying with the following:

- i. Facilities and support structures must be located so as not to create a vision hazard at intersections or driveways. Equipment near these areas must be placed below 2.5 ft or above 15 ft.

ii. Equipment mounted to support structures must not interfere with or create a hazard to pedestrian or vehicular traffic and must be a minimum of 12 feet above any pedestrian or bicycle thoroughfare and a minimum of 16 feet above any traffic lane. Metering equipment may be placed at ground level provided that the location does not violate any of the spacing standards established for pole placement.

iii. The height of a support structure, tower, or utility pole in the right-of-way shall be no more than 10% higher of any adjacent pole up to a maximum height of 50 feet. Telecommunication System installations shall not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is smaller.

(b) Not interfere with any public utilities or improvements the City or state may deem proper to make. To the extent possible, a facility, support structure or utility pole should be located and designed so as to avoid interference with right-of-way maintenance activities, such as: (i) Grass mowing, brush collection, tree trimming, and landscaping maintenance; (ii) Trash collection; (iii) Maintenance of streets, pavement, sidewalks, and bicycle lanes; and (iv) Maintenance of other facilities in the rights-of-way such as poles, hydrants, bike racks, control cabinets, etc.

(c) Not interfere with the free and proper use of the public right-of-way, public easements, or public property, except to the minimum extent possible during actual construction or repair. All equipment and support structures are to be installed such that they do not obstruct, impede, or hinder vehicular, pedestrian or bicycle travel, including any facilities necessary to meet Americans with Disabilities Act of 1990 along with any updates to the ADA guidelines. A clear pedestrian path shall be maintained at all locations, and the minimum width of the path may vary and will be determined by City Engineering with each application.

(5) Cooperation with building movers. The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily remove, raise, or lower its wire in the public right-of-way to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 15 working days' advance notice to arrange for such temporary wire changes.

(6) Use of and compensation for City property. If the right is granted, by lease, license, or other manner, to use and occupy public property, in addition to the public right-of-way, for the installation of telecommunications or cable facilities, the terms and conditions of such use and the compensation to be paid or provided by grantee shall be fixed by the City and may differ from the provisions of this article or the franchise. Such terms and conditions shall include those set forth in Chapter 170 "Use of City Real Property."

(7) Employee identification. Grantee shall provide a standard identification document to those of its employees and the employees of its contractors and subcontractors that will be in

contact with the public. Such documents shall include a telephone number that can be used to verify that the person is an employee of grantee or its contractor or subcontractor. In addition, grantee shall use its best efforts to clearly identify all field personnel, vehicles, and other major equipment that are operating under the authority of the grantee.

- (8) Tree removal and trimming. Subject to the prior approval of the Superintendent of Public Works, grantee shall have the authority, provided it abides by any local laws, ordinances, or regulations, to trim any trees upon or overhanging the public right-of-way of the City to prevent the branches of such trees from coming in contact with the wires or cables of grantee, except that at the option of the City, such tree trimming may be done by it, or under its supervision and direction, at the reasonable expense and cost of grantee. Prior to any tree trimming, grantee shall obtain a tree-trimming permit which shall describe in detail the area in which tree trimming will take place. All tree trimming shall be in accordance with the ANSI A-300 Tree Care Performance Standards and shall be performed under the supervision of a certified arborist although a certified arborist is not required to be on site. All cleanup shall be to the reasonable satisfaction of the City. Tree “topping” or improper pruning of trees within the right-of-way is prohibited. The City reserves the right to impose additional reasonable conditions to all tree-trimming work, provided that the City imposes any such additional requirements on any and all persons, governmental and nongovernmental entities that are involved in telecommunications or tree-trimming activities in the City. All said tree trimming performed by grantee or by the City or under grantee's supervision or direction shall be accomplished in the least intrusive manner and in a manner that is designed by grantee to be aesthetically pleasing. City street trees may not be removed for the purposes of installing any Telecommunication System. The City will also preserve locations where a street tree may be planted. To the extent a Telecommunication System installation will impact a City tree, the applicant must secure a tree permit from the City Forester as part of the street permit authorization.

Section 3. Amendments to City Code Section § 170-5 “Authority to grant approval for use of City property; no entitlement to approval” to add the following subsection (I):

- I. The authority to grant approval for a license exceeding one-year or renewal of an existing license for any telecommunication use of City property or right of way as described in the telecommunications articles of City Code, namely Article II of Chapter 152 and Article VA of 325, shall be vested with Common Council. Prior to review by the Department of Public Works and Board of Zoning Appeals as described in Chapters 152 and 325, each applicant proposing to use City property for telecommunication uses must have in place a fully executed standard license agreement governing the terms and conditions of use of City property and incorporating an annual use fee for the use of City property as set by Common Council. Each license granted under this subparagraph shall be revocable in the event of a change in federal or state regulations or statutes governing telecommunications.

Section 4. Amendments to Article VA “Telecommunications Facilities and Services” of City Code
Chapter 325 “Zoning”

(a) Add the following subparagraphs to §325-29.4(C):

- (7) Achieve the simultaneous objectives of enabling wireless carriers to provide personal wireless services within the City while minimizing the number of facilities used to provide such coverage, avoid unnecessary, redundant wireless infrastructure, and avoiding to the greatest extent possible, any unnecessary adverse impacts upon residential homes and residential communities.
- (8) Protect the interests of the public, property owners, communities, and the City, against significant adverse impacts caused by the irresponsible placement of wireless facilities, including, but not limited to, adverse aesthetic impacts, reductions in property values of properties situated adjacent to, across from, or in close proximity to, a site for a proposed wireless facility, the potential dangers associated within structural failures, fire, icefall and debris fall from wireless facilities, adverse impacts upon historic resources and/or scenic views, and/or the use of properties which would be incompatible with nearby properties and thus be out-of-character with same.

(b) Amend §325-29.5 “Definitions” to add or amend, as applicable, the following definitions:

APPLICATION AUTHORITY

The Director or the Board, as applicable, responsible for making an initial determination upon an Application, prior to any applicable appeals.

APPLICATION

All necessary and required documentation and evidence that an Applicant must submit to receive all required permits or other necessary approvals for personal wireless service facilities from the City.

BOARD

The Board of Zoning Appeals of the City of Ithaca.

DIRECTOR

The Director of Planning and Development or designee.

PERSONAL WIRELESS SERVICE FACILITY (PWSF)

A facility for the provision of personal wireless services, as defined by Section 704 of the Telecommunications Act of 1996. A PWSF is any facility for the transmission and/or reception of personal wireless services, usually consisting of an antenna array, transmission cables, equipment shelter and a mount, including but not limited to small wireless facilities.

SHOT CLOCK

The applicable period which is presumed to be a reasonable period within which the City is generally required to issue a final decision upon an Application seeking approval for the

installation or substantial modification of a personal wireless services facility or structure, to comply with Section 47 U.S.C. §332(c)(7)(B)(ii) of the TCA.

SIGNIFICANT GAP IN COVERAGE or SIGNIFICANT COVERAGE GAP

A significant coverage gap exists when a remote user of those services is unable to either connect with the land-based national telephone network, or to maintain a connection capable of supporting a reasonably uninterrupted communication. A significant coverage gap exists when customers cannot receive and send signals, and when customers pass through a coverage gap their calls are disconnected. An applicant's claim that it needs the proposed tower for "future capacity" or to "improve coverage" is not sufficient to establish that it suffers from a significant gap in service coverage.

SMALL WIRELESS FACILITY

A facility that meets the definition of 47 CFR 1.1312(e)(2). Facilities that meet this definition are typically low-powered antennas and related equipment providing cellular and data coverage to smaller geographic areas, supplementing the larger cellular network, and improving service for wireless customers. This term is used interchangeably with Small Cell Infrastructure, Equipment or Facilities, and Small Wireless Equipment.

SPECIAL INTEREST AREAS

Areas within the City that have stricter aesthetic standards. These include the following:

- 1) Primary and Secondary Commons as defined in Section 346-1 of the City of Ithaca Municipal Code;
- 2) Locally Designated Historic Districts;
- 3) Recreational Areas, Parks, Natural Areas, and trails, specifically including, but not limited to:
 - a. Cascadilla Creek and associated trails from Linn Street to College Avenue
 - b. Cayuga Waterfront Trail
 - c. Cass Park
 - d. Fuertes Bird Sanctuary
 - e. Ithaca Falls
 - f. Newman Golf Course
 - g. Stewart Park; and
- 4) Undergrounding Districts as defined in this section.

TYPE I – IV APPLICATIONS (see, e.g., shot clocks, § 325-29.10.1)

Type I Applications. Colocations of Small Wireless Facilities

Type I applications shall be limited to applications wherein an applicant is seeking to co-locate a new Small Wireless Facility by installing such new personal wireless service equipment upon an already existing small personal wireless services facility structure.

If the completed facility would still meet the physical limits and requirements to meet the definition of a Small Wireless Facility after the installation of the new

equipment, then the application to install such new equipment is a Type I application.

Type II Applications. Colocations which do not meet the definition of a Small Wireless Facility.

Type II applications shall be limited to applications wherein an applicant is seeking to co-locate new personal wireless service equipment, by installing such new wireless equipment upon an already existing personal wireless services facility structure, tower, or complex, which does not meet the definition of a Small Wireless facility, either before, during, or after the installation of the new personal wireless service equipment.

Type III Applications. New Small Wireless Facilities

Type III Applications shall be limited to applications seeking to install and/or construct a new Small Wireless Facility.

Type IV Applications. New Towers and All Other Wireless Facilities

Type IV Applications shall include applications for the installation of a new cell tower, personal wireless service facility, complex, structure, or equipment, which does not meet the criteria for Type I, Type II, or Type III applications.

UNDERGROUNDING DISTRICT

Areas of the City that historically had overhead utility lines but have now been undergrounded by either coordination with developments, by use of City funds, by resolution to enforce private property undergrounding of overhead services, or a combination of these means; or areas of the City in which all utility services are provided underground and the only poles in the area are either for streetlights or traffic signals. Districts presently meeting this definition include but are not limited to, and further subject to future additions: 1) 100 & 200 blocks of Dryden Road; 2) College Avenue running between Stone Bridge to Mitchell Street; 3) West State Street running between the Commons to Meadow Street, Warren Road, Richard Place, Brookfield Road, Campbell Ave., Oakwood Lane (between Cliff Street and Hector Street).

(c) Amend § 325-29.6 “Purpose and intent; applicability” as follows:

A. Purpose and intent. The purpose and intent of this article is to establish standards for the location, siting, and design of PWSF's, including those installed within right of way, other public lands, or on private buildings, homes, or lands and the goals of this article are to:

- (1) Allow for alternative types of PWSF's in any location subject to standards.
- (2) Encourage the use of existing structures, including but not limited to rooftops and utility poles, for deploying PWSF's.
- (3) Expedite the review process for those applications choosing the least intrusive alternative of deploying PWSF's.

- (4) Encourage users of guyed and lattice towers, monopoles, and antennas to locate, site and design them in a way that minimizes the adverse visual impact of the lattice or guyed towers, monopoles, and antennas.
- (5) Enhance the ability of the providers of personal wireless services to provide such services to the community quickly, effectively, and efficiently.
- (6) Promote PWSFs' compatibility with surrounding land uses, and protect the attractiveness, health, safety, general welfare, and property values of the community.
- (7) Enable wireless carriers to provide personal wireless services within the City while minimizing the number of facilities used to provide such coverage, avoid unnecessary, redundant wireless infrastructure, and avoiding to the greatest extent possible, any unnecessary adverse impacts upon residential homes and residential communities.

B. Preexisting personal wireless service facilities.

(1) Permits and renewals.

- (a) A PWSF for which a building permit has been issued prior to the effective date of this article shall be deemed a permitted use, subject to the conditions of that permit. When an unpermitted PWSF is identified by the City of Ithaca to be attached to a mount approved for another use or PWSF, a separate permit must be applied for it, even when:

[1] Sharing a legal mount;

[2] Already in operation; and

[3] Duly licensed by the Federal Communications Commission.

- (b) The issuance of permit renewals or other new permits for such facilities shall be in accordance with the provisions of this article. PWSF upgrade or replacements for preexisting permitted PWSF shall require a new permit in accordance with the provisions of this article unless the replacement is a complete in-kind replacement of the PWSF, or any portion thereof, as originally permitted. Unpermitted PWSF's will be considered out of compliance with this article.
- (2) Placement of any attached array, microcell, small wireless facility, or any other portions of a PWSF on an existing structure, whether legally nonconforming or in, as well as out of, compliance, shall require a permit to be obtained for the PWSF under the terms of this article.
- (3) Any carrier with at least one preexisting PWSF in the City of Ithaca that is out of compliance with the City of Ithaca building or zoning requirements shall not be eligible for any new approvals of personal wireless service facilities by the City until the preexisting PWSF or PWSF's are brought into compliance with this article.

- C. Exclusions for amateur radio facilities. This article shall not govern the installation of any amateur radio facility that is owned and operated by a federally licensed amateur radio station operator or is used exclusively for noncommercial, receive-only antennas.
- D. Unpermitted facilities, mounts, or equipment ineligible for collocation.
 - (1) No permit shall be issued under this article for a request to collocate, attach or share an existing PWSF site, mount, or facility when such existing site, mount or facility is found to have one or more PWSF's without permits and/or any structure, mount or facility is found to lack one or more building permits, electrical permits or any other permits required by the City of Ithaca.
 - (2) Any application by a wireless carrier or other entity shall not be approved by the City of Ithaca if that wireless carrier has a preexisting PWSF on, or the other entity owns, a mount, rooftop, or tower, on which there is any unpermitted PWSF until that PWSF is brought into compliance with this article.
- E. Relationship to other laws. This article shall supersede conflicting requirements contained in any other provision of the City of Ithaca Code.
- F. Due to the limited visual impact of underground or cable based broadband installations, such installations are not governed by the zoning requirements of this Article.

(d) Amend §325-29.7 “Land use and PWSF classifications” as follows:

- A. No PWSF shall be permitted except in accordance with the provisions of this article of the City of Ithaca Zoning Ordinance.
- B. All PWSF's shall be classified as follows:
 - (1) Tier One. This tier is limited to applications that:
 - (a) Place PWSF's on existing utility poles (telephone poles, utility distribution poles, streetlights, and traffic signal stanchions); or
 - (b) Place PWSF's on new utility poles when the carrier specifies a utility pole that meets the City of Ithaca specifications for utility poles; and
 - (c) Meet all location standards, siting standards, design standards and safety standards in this article. In the event that any of the standards in the article are in conflict for a particular application, one or the other conflicting standard shall be met. The decision of which standard shall be met shall be subject to the approval of the City of Ithaca.
 - (d) Tier One applications meeting all criteria, with proof of required notice specified in Section 325-29.15 specified herein may be approved by the Director. At any time in

the application if the Director determines a proposal may cause public controversy, the Director may classify the application as Tier Two or Three and refer the proposal to the Board for full review.

(2) Tier Two. This tier is limited to applications that:

- (a) Do not qualify for Tier One status; and
- (b) Propose to place PWSF's on or in buildings or propose to conceal PWSF's in natural or man-made features approved by the City of Ithaca Planning and Development Board; and
- (c) Meet all location standards, design standards and safety standards in this article. In the event that any of the standards in the article are in conflict for a particular application, one or the other conflicting standard shall be met. The decision of which standard shall be met shall be subject to the approval of the Director.

(3) Tier Three. This tier is limited to applications that:

- (a) Do not qualify as either Tier One or Tier Two status; and
- (b) Require the erection, establishment, siting, location, construction, modification or development of a guyed tower, monopole, lattice tower or similar structure as determined by the City of Ithaca; and
- (c) Meet all location standards, design standards and safety standards in this article. In the event that any of the standards in the article are in conflict for a particular application, one or the other conflicting standards shall be met. The decision of which standard shall be met shall be subject to the approval of the Director.

C. All Tier Two and Three PWSF installations require final approval of the Board of Zoning Appeals; Tier One applications are subject to staff approval of the zoning findings specified in this Article. All PWSF require final approval pursuant to Chapter 276, Site Plan Review, and issuance of a building permit and certificate of building compliance from the Director.

(e) Amend § 325-29.8 “Standards” as follows:

The approval of PWSF's shall be subject to meeting or exceeding the following standards:

A. Location standards.

(1) Opportunity sites. A PWSF shall be located at one of the following opportunity sites:

- (a) Utility transmission towers.
- (b) Public water tanks.

- (c) Inside or concealed around steeples or similar architectural features.
 - (d) Rooftops.
 - (e) Utility poles in publicly owned rights-of-way or similar public properties as identified by the City of Ithaca. PWSF installations to be installed on new (where permitted) or replacement poles shall match existing pole types on the same block to the extent feasible, meeting City specifications with regard to paint and material. Notwithstanding the foregoing, where there are impending improvements that will impact the look of existing pole types, applicant shall comply with the specifications of the impending improvements to the maximum extent they are available.
- (2) **Order of Location Preference.** If a PWSF can be sited in an adjacent higher preferred zone that can accommodate similar coverage, the applicant shall be required to install in the higher preferred zone. Listed in order of most preferred location to least preferred: 1. Industrial zone; 2. Commercial zone; 3. Mixed commercial and residential zone; 4. Residential zone. An applicant who seeks to install a PWSF at a less desirable location must establish that no higher-ranking sites is available to satisfy whatever coverage needs the respective applicant is seeking to remedy.
- (3) **Avoidance areas.** PWSF shall not be located in the following avoidance areas:
- (a) Flood hazard zones.
 - (b) Historically and culturally significant resources. PWSF installations shall not be located along the front or side boundary lines of a City, New York State, or National Landmark, or any property individually listed in the National Register of Historic Places. Any Small Wireless Facility proposed to be installed within a historic district must be reviewed by the Director. If the Director determines that the proposed installation will result in public controversy or the applicant appeals any decision of the Director, the application will be referred to the Ithaca Landmarks Preservation Commission for a determination on a certificate of appropriateness.
 - (c) Unique natural areas and/or critical environmental areas.
 - (d) Parks, greenways, and natural areas.
 - (e) Scenic or visual corridors as defined by the City and as defined in the Tompkins County Scenic Resources Inventory, January 2007, and other prominent views, such as on the Commons or views from the Cayuga Waterfront Trail, Cascadilla Creek trails, Cass Park, City Cemetery, Ithaca Falls, Stewart Park, or views within any other City Park, Natural Area, or trail.
 - (f) Wetlands.
 - (g) Lakeshores and waterways.

(4) Guidelines Regarding Areas of Special Interest

- a. In any Special Interest Area, Applicants are prohibited from installing new poles or support structures for the sole purpose of mounting PWSF. All PWSF installations in Special Interest Areas must be installed on existing support structures; the foregoing does not prohibit replacement in kind of existing poles or support structures.
- b. In any Special Interest Area, PWSF equipment, other than the antenna, may be mounted on an existing or replacement pole or support structure, but in such situations, equipment shall be a minimum of 15 ft. above ground or must be completely concealed or placed underground. If necessary, a meter may be placed near ground level for visibility and access by the electrical provider, provided that the meter does not violate any spacing requirements.
- c. PWSF infrastructure that is to be collocated on an existing structure may be placed in a Special Interest Area provided that it meets the specified equipment height and pole spacing requirements, and does not block any entryways, views of the landmarked property, or any other prominent views or vistas.
- d. To the extent technically feasible, new PWSF installations and infrastructure must have all equipment, other than the antenna, completely concealed. This may be within the pole and base, designed with decorative transitions and without exterior attachments, or equipment may be within a decorative street amenity, which would need to be owned and maintained by the carrier. Alternatively, the PWSF equipment may be installed in an underground vault. Any wiring is to be completely concealed. These requirements are consistent with the existing streetscape and other utilities placed in this area.
- e. PWSF infrastructure located in unnamed alleys within a Special Interest Area shall be setback a minimum of twenty feet (20') from the inside edge of adjoining sidewalk.

(5) Interpretation of opportunity sites and avoidance areas shall be based on maps or aerial photographs provided by the City of Ithaca Department of Planning and Development and/or the applicant.

6) Personal wireless service facilities may also be permitted in areas that are not opportunity sites subject to the following siting, design and safety standards and permitted in avoidance areas subject to the following siting, design, and safety standards. For PWSF's desiring to locate in avoidance areas as set forth in Subsection **A(3)(b)** above (historically and culturally significant resources), the City of Ithaca Landmarks Preservation Commission must approve the application.

(5) These standards apply regardless of radio frequency (RF) engineering considerations.

B. Siting standards.

(1) Personal wireless service facilities shall meet the following siting standards:

- (a) To the greatest extent possible, PWSF's shall be concealed within existing structures or where the PWSF will be camouflaged, or on inconspicuous mounts.
- (b) Placement within trees shall be encouraged, but no antennas shall extend higher than 10 feet above the average tree height (within 300 horizontal feet when measured along the ground). Any trimming or pruning of City trees shall be subject to approval of the City Forester as indicated in Chapter 152.
- (c) Placement on existing roofs or non-wireless structures shall be favored over ground mounted PWSF's.
- (d) Roof-mounted PWSF's shall not project more than 10 additional feet above the height of a building. If the roof mounted PWSF's project above the height limit, they may be appropriately screened.
- (e) Side-mounted PWSF's shall not project more than 20 inches from the face of the mounting structure.
- (f) Alignment –PWSF and support structures, and utility poles are to be located in alignment with existing trees, facilities, support structures, towers, utility poles, and streetlights, and are to be spaced evenly between any buildings and other prominent architectural or vertical features.
- (g) Frontage – New or replacement Small Wireless Facilities and support structures, and utility poles are to be located at or near the extension of property lines, whenever feasible, and are not to be located directly in front of a building entrance area such that the facility would interfere with ingress or egress. Existing support structures that do not conform to this guideline and will be replaced as part of the installation will be brought into conformity to the maximum extent feasible.
- (h) Permissible Spacing – No new PWSF shall be placed closer than 1500 feet from the nearest PWSF (whether proposed or existing unless the PWSF is placed on the same pole as another PWSF), regardless of carrier. Distance should be measured in a linear fashion between the two facilities' center points.

(2) These standards shall apply regardless of RF engineering considerations.

C. Design standards. Each new or modified PWSF must be compatible in size, mass, and color to similar facilities in the immediate area, with a goal of minimizing the physical and visual impact on the area.

(1) Personal wireless service facilities shall meet the following design standards:

- (a) Color. All PWSF's shall be painted or complemented with colors that match or complement their surroundings.

- (b) Size. The silhouette of the PWSF shall be reduced to the minimum visual impact. The diameter of new PWSF support structures is to be minimized such that it is sufficient only for the structural support of the existing and currently proposed attachments. For small wireless facilities, antennas shall be sized and mounted in a manner in which either the antenna(s) is on top of and in line with its supporting pole or such that the antenna(s) do not protrude excessively off of the side of the pole. Antennas that are either mounted on top of the structure or on the side of the structure shall be mounted no further than twice the distance of the diameter of the pole or within the safe install specifications of the pole owner, and overall have the equivalent dimension of no more than three times the pole diameter, at the location of mounting.

- (c) Personal wireless service facilities near or within view of residences shall be no closer than 250 feet from any adjacent residence, school, or day care facility and either:

[1] Provide underground vaults for equipment shelters; or

[2] Place equipment shelters within enclosed structures approved by the City of Ithaca and the Planning and Development Board. All small wireless facility equipment is to be shrouded. Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent feasible. Wiring to any antennas mounted on the side of the poles shall also be concealed, which may be within a shroud providing the visual appearance of a taper between the pole and the side mounted antennas. Proposed wiring and concealment methods shall be shown on the documents submitted with the application for a small cell permit. To the extent technically feasible, the equipment is to be placed in cabinets, which shall be designed to match the shape of the pole. For example, if the pole is round, the cabinets shall be round, but may be a larger diameter than the pole. The transition between any pieces of equipment or cabinets and the upper pole shall also be considered. To the extent technically feasible, a decorative transition is to be installed over the equipment cabinet(s) to smoothly taper the cabinet back to the pole diameter. All hardware connections shall be hidden from view to the extent feasible. No horizontal flat spaces greater than 1.5 inches shall exist on the equipment cabinet to prevent cups, trash, and other objects from being placed on the equipment cabinet. Each pole component shall be architecturally compatible to create a cohesive aesthetic.

- (d) Equipment. The following types of equipment shall be discouraged:

- [1] Roof-mounted monopoles, lattice towers or guyed towers.
- [2] Ground-mounted lattice towers.
- [3] Ground-mounted guyed towers.
- [4] New support structures in any Undergrounding District.

(f) Amend § 325-29.9 “Fall zone and setback requirements for Tier Three PWSF's” as follows:

§ 325-29.9 Fall zone and setback requirements for PWSF's.

A. The support structure of a proposed small cell wireless facility shall have a fall zone of no less than 110% of the height of the support structure to minimize the possibility of damage or injury resulting from facility or pole collapse or failure, ice fall or debris fall, and to avoid or minimize all other impacts upon adjoining properties. Any small cell wireless facility shall be 250 feet or more from any residence, school, or day care facility and 1500 feet or more from any other small cell wireless facility proposed or installed.

B. Tier Three applications shall meet the following standards:

1. Fall zone.

- (1) No habitable structure or outdoor area where people congregate shall be within a fall zone of 120% of the height of the PWSF or its mount.
- (2) No adjoining property line shall be within the fall zone of a radius equal to the height of the PWSF.

2. Setback.

- (a) All PWSF's, including mounts and equipment shelters, shall comply with the minimum setback requirements of the applicable zoning district as set forth in the City of Ithaca Zoning Ordinance.
- (b) The antenna array for an attached PWSF, with the exception of a side mounted PWSF on an existing building, is exempt from the setback requirements of this article and from the setback for the zoning district in which it is located, provided that no such antenna array shall project more than five feet horizontally from the attachment structure at the point of attachment.
- (c) No portion of any PWSF shall project into a required setback more than the maximum projection permitted in the zoning district in which the facilities are located, except as otherwise provided in this article.
- (d) On parcels with a principal building housing a principal use, all components of the PWSF shall be located behind the building line.

(g) Amend § 325-29.10 "Submittal requirements" as follows:

An applicant shall submit the following information as part of an application for a PWSF, which shall be submitted with the applicant verifying under penalties of perjury the truth of the representations made therein:

A. Application information.

- (1) Name, address and telephone number of applicant and all applicants as well as any agents for the applicant or co-applicants.

(a) Co-applicants shall include the landowner(s) of the subject property, licensed carrier(s), and tenant(s) for the PWSF.

(b) Either an applicant or a co-applicant must be a licensed carrier.

- (2) The applicant shall provide a copy of the lease (or license as specified in Chapter 170 in the case of an installation on City property or within the City's right of way) between the applicant and co-applicant(s) and shall provide a description which shall include the following:
 - (a) Whether the landowner can enter into leases with other carriers for collocation and that the landowner is aware that any future collocation will be subject to a new application.
 - (b) How the landowner will remove the PWSF in the event that the licensed carrier fails to remove it upon abandonment.
- (3) Original signatures for the applicant and all co-applicants applying for a building permit and/or site plan review; if the applicant or co-applicant will be represented by an agent, original signature of applicant and/or co-applicant authorizing the agent to represent the applicant and/or co-applicant. Photo reproductions of signatures will not be accepted.

B. Location information. The following information is required for all applications:

- (1) Identification of the subject property by including the name of the nearest road or roads, and street address, if any.
- (2) Tax parcel number of subject property.
- (3) Zoning district designation for the subject parcel and for all parcels within 1,000 feet of the property lines of the subject parcel.
- (4) A line map to scale showing the subject property and all properties within 1,000 feet and the location of all buildings, including accessory structures, on all properties shown.
- (5) A City-wide map showing the other existing PWSF's in the City and outside the City within one mile of its corporate limits indicating coverage areas and gaps of the PWSFs shown on the map.
- (6) The specific locations for this carrier of all existing and future PWSF's indicating coverage areas and gaps of the PWSFs shown in the City on a City-wide map.
- (7) For purposes of submitting the maps required by subparagraphs B.5 and B.6 above, the applicant shall demonstrate network performance based on a sample of on-the-ground testing (drive tests) data and certify the accuracy of the data under penalty of perjury and that the testing is statistically appropriate for the area tested. The applicant shall

provide the hard data that was employed to create such map or maps, including drive test data demonstrating the existence, location, and geographic boundary of the gap in coverage which the PWSF is intended to remedy, or if demonstrating *capacity deficiency*, actual dropped call records from the carrier, and the location and geographic boundary of the capacity deficiency.

C. Siting information.

- (1) A one-inch-equals-two-hundred-feet scale vicinity plan showing the following:
 - (a) Property lines for the subject property.
 - (b) Property lines of all properties adjacent to the subject property.
 - (c) Tree cover on the subject property and all properties adjacent to the subject property, by species and average height, as measured by or available from a verifiable source.
 - (d) Outline of all existing buildings, including purpose (e.g., residential buildings, garages, accessory structures, etc.), on subject property and all properties adjacent to the subject property.
 - (e) Proposed location of antenna, mount, and equipment shelter(s).
 - (f) Location of all roads, public and private, on the subject property and on all properties adjacent to the subject property, including driveways proposed to serve the PWSF.
 - (g) Distances, at grade, from the proposed PWSF to each building on the vicinity plan.
 - (h) Contour lines.
 - (i) Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight lines" subsection below.
- (2) Sight lines and photographs as described below:
 - (a) Sight line representation. A sight-line representation shall be drawn from the closest facade of each residential building (viewpoint) included on the vicinity plan to the highest point (visible point) of the PWSF. Each sight line shall be depicted in profile, drawn at one-inch-equals-forty-feet scale. The profiles shall show all intervening trees and buildings. In the event that there is only one (or more) residential building on the vicinity plan, there shall be at least two sight lines from the closest habitable structures, if any.
 - (b) Existing (before condition) photographs. Each sight line shall be illustrated by one four-inch-by-six-inch color photograph taken from the perspective of the nearest

homes or properties which happen to be situated in closest proximity to the proposed PWSF site and depicting what can currently be seen from the building(s).

- (c) Proposed (after condition). Each of the existing-condition photographs shall have the proposed PWSF superimposed on them to show the perspective of the nearest homes or properties which happen to be situated in closest proximity to the proposed PWSF site, and what will be seen from residential building(s) if the proposed PWSF is built.
- (d) The photographs described in subparagraphs (b) and (c) must be taken from the interior perspective of the properties situated in closest proximity to the proposed installation, unless the applicant can show proof that it attempted to secure such images, but that the owners of such properties refused to grant them access to obtain such images. If the owners of such properties have refused to grant the applicant access, the applicant may depict the height, distance from the property, and sight line representation by balloon test.

...

(h) Create a new § 325-29.10.1 “Shot Clock Periods” as follows:

To comply with the requirements of Section 47 U.S.C. 332(c)(7)(B)(ii), the following shot clock periods set forth herein below shall be presumed to be reasonable periods within which the City shall render initial determinations upon Special Permit applications for personal wireless service facilities, provided that any subsequent amendment of said federal law that would have the effect of extending the shot clock presumptions herein shall take precedence over the following periods.

The Director or the Board, as applicable, shall in the first instance (i.e., prior to any permitted appeals therefrom) render determination upon such Applications within the periods set forth hereinbelow, unless the applicable shot clock period list below is tolled, extended by agreement or the processing of the application is delayed due to circumstances beyond the Application Authority’s control, as addressed within Section § 325-29.10.2 herein below.

A. Type I Applications. Colocations of Small Wireless Facilities - Sixty (60) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Application Authority shall issue a written decision upon a Type I application within sixty (60) days from the date when the City receives a Type I application.

Upon receipt of a Type I application, the Director shall review the application for Completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within ten (10) days of the City’s receipt of the application, the Director shall mail the Applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the Applicant.

Within such Notice of Incompleteness, the Director shall advise the Applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 60-day shot clock, which shall not thereafter resume running unless and until the Applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which the Director had mailed to the applicant.

The submission of any responsive materials by the Applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the Applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within ten (10) days of the Applicant having filed its supplemental or corrected materials to the City and the Shot Clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

B. Type II Applications. Colocations on existing Towers, Structures or other Facilities which do not meet the definition of a Small Wireless Facility –
Ninety (90) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Application Authority shall issue a written decision upon a Type II application within ninety (90) days from the date when the City receives a Type II application.

Upon receipt of a Type II application, the Director shall review the application for Completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within thirty (30) days of the City's receipt of the application, the Director shall mail the Applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the Applicant.

Within such Notice of Incompleteness, the Director shall advise the Applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 90-day shot clock, which shall not thereafter resume running unless and until the Applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which the Director had mailed to the applicant.

The submission of any responsive materials by the Applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the Applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within ten (10) days of the Applicant having filed its supplemental or corrected materials to the City and the Shot Clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

C. Type III Applications. New Small Wireless Facilities - Sixty (60) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Application Authority shall issue a written decision upon a Type III application within sixty (60) days from the date when the City receives a Type III application.

Upon receipt of a Type III application, the Director shall review the application for Completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within ten (10) days of the City's receipt of the application, the Director shall mail the Applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the Applicant.

Within such Notice of Incompleteness, the Director shall advise the Applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 60-day shot clock, which shall not thereafter resume running unless and until the Applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which the Director had mailed to the applicant.

The submission of any responsive materials by the Applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the Applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within ten (10) days of the Applicant having filed its supplemental or corrected materials to the City and the Shot Clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

D. Type IV Applications. New Towers and All Other Wireless Facilities –
One Hundred Fifty (150) Days

Unless extended by agreement, tolled, or subject to reasonable delays, the Application Authority shall issue a written decision upon a Type IV application within one hundred fifty (150) days from the date when the City receives a Type IV application.

Upon receipt of a Type IV application, the Director shall review the application for Completeness. If the Director determines the application is: (a) incomplete, (b) missing required application materials, (c) is the wrong type of application, or (d) is otherwise defective, then, within thirty (30) days of the City's receipt of the application, the Director shall mail the Applicant a Notice of Incompleteness by first class mail, to the Notice Address provided by the Applicant.

Within such Notice of Incompleteness, the Director shall advise the Applicant, with reasonable clarity, the defects within its application, including a description of such matters as what items are missing from the application and/or why the application is incomplete and/or defective.

The mailing of a Notice of Incomplete Application by the Director shall toll the 150-day shot clock, which shall not thereafter resume running unless and until the Applicant tenders an additional submission to the Director to remedy the issues the Director identified in the Notice of Incomplete Application, which the Director had mailed to the applicant.

The submission of any responsive materials by the Applicant shall automatically cause the shot clock period to resume running.

If upon receipt of any additional materials from the Applicant, the Director determines that the application is still incomplete and/or defective, then the Director shall, once again, mail a Notice of Incompleteness within ten (10) days of the Applicant having filed its supplemental or corrected materials to the City and the Shot Clock shall once again be tolled, and the same procedure provided for hereinabove shall be repeated.

(i) Create a new § 325-29.10.2 “Shot Clock Tolls, Extensions & Reasonable Delay Periods” as follows:

Consistent with the letter and intent of Section 47 U.S.C. §332(c)(7)(B)(ii), each of the shot clock periods set forth within § 325-29.10.1 hereinabove shall generally be presumed to be sufficient periods within which the Application Authority shall render decisions upon Applications.

Notwithstanding same, the applicable shot clock periods may be tolled, extended by mutual agreement between any applicant and/or its representative and the Application Authority, and the Application Authority shall not be required to render its determination within the shot clock period presumed to be reasonable for each type of application, where the processing of such application is reasonably delayed, as described hereinbelow.

A. Tolling of the Applicable Shot Clock Due to Incompleteness and/or Applicant Error

As provided for within § 325-29.10.1 hereinabove, in the event that the Application Authority deems an application incomplete, the Application Authority shall send a Notice of Incompleteness to the applicant to notify the applicant that its application is incomplete and/or contains material errors, and shall reasonably identify the missing information and/or documents and/or the error(s) in the application.

If the Application Authority mails a Notice of Incompleteness as described hereinabove, the applicable shot clock shall automatically be tolled, meaning that the applicable shot clock period within which the Application Authority is required to render a final decision upon the application shall immediately cease running, and shall not resume running, unless and until the City receives a responsive submission from the applicant.

If and when the applicant thereafter submits additional information in an effort to complete its application, or cure any identified defect(s), then the shot clock shall automatically *resume* running, but shall not be deemed to start running *anew*.

The applicable shot clock period shall, once again, be tolled if the Application Authority thereafter provides a second notice that the application is still incomplete or defective, despite any additional submissions which have been received by the City, from the applicant, up to that point.

B. Shot Clock Extension by Mutual Agreement

The Application Authority, in its sole discretion, shall be free to extend any applicable shot clock period by mutual agreement with any respective applicant. This discretion on the part of the Application Authority shall include the Application Authority's authority to request, at any time, and for any period of time the Application Authority may deem reasonable or appropriate under the circumstances, consent from a respective applicant, to extend the applicable shot clock period, to enable the Application Authority, the applicant, or any relevant third party, to complete any type of undertaking or task related to the review, analysis, processing, and determination of the particular application, which is then pending before the Application Authority, to the extent that any such undertaking, task or review, is consistent with, or reasonably related to, compliance with any federal, state, or local law, and/or the requirements of any provision of the City Code, including but not limited to this Article.

In response to any request by the Application Authority, the applicant, by its principal, agent, attorney, site acquisition agent or other authorized representative can consent to any extension of any applicable shot clock, by affirmatively indicating its consent either in writing or by affirmatively indicating its consent on the record at any public hearing or public meeting. The Application Authority shall be permitted to reasonably rely upon a representative of the applicant indicating that they are authorized to grant such consent on behalf of the respective applicant, on whose behalf they have been addressing the Application Authority within the hearing process.

C. Reasonable Delay Extensions of Shot Clock Periods

The City recognizes that there may be situations wherein, due to circumstances beyond the control of the City and/or the Application Authority, the review and issuance of a final decision upon an Application for a personal wireless facility cannot reasonably be completed within the application shot clock periods delineated within § 325-29.10.1 hereinabove.

If, despite the exercise of due diligence by the City and the Application Authority, the determination regarding a specific application cannot reasonably be completed within the applicable shot clock period, the Application Authority shall be permitted to continue and complete its review, and issue its determination at a date beyond the expiration of the applicable period, if the delay of such final decision is due to circumstances including, but not limited to, those enumerated hereinbelow, each of which shall serve as a reasonable basis for a reasonable delay of the applicable shot clock period.

Reasonable delays which may constitute proper grounds for extending the presumed sufficient periods for rendering determinations under the applicable shot clock periods may include, but are not necessarily limited to:

1. Environmental and/or Historic Site Impacts:

- a. To the extent a proposed installation bears the potential for a significant adverse impact upon (i) the environment within the meaning of SEQRA and/or the NEPA (National Environmental Policy Act, 42 U.S.C. §4321 et seq.) and/or (ii) a historic site or a historic district within the meaning of SEQRA and/or the NHPA (The National Historic Preservation Act, 54 U.S.C. 300101 et seq, and 36 CFR Part 800 et seq.);
- b. Processes to comply with the requirements of SEQRA (and/or NEPA and/or NHPA), including necessary engagement with and/or review under NSDEC, FCC, SHPO and NHPA, in determining both: (i) the extent of adverse impacts, and (ii) what mitigation measure might the applicant be required to undertake to minimize the adverse environmental impacts and/or adverse impacts upon historic sites, structures and/or district.
- c. So long as the Application Authority acts with reasonable diligence in completing such necessary review(s), if compliance with the statutory requirements for environmental or historic preservation review requires a period of effort that extends beyond the expiration of the applicable shot clock period, the delays beyond such period shall be deemed reasonable.

2. Force Majeure:

In the event that the rendering of a final decision upon an Application under this Article is delayed due to natural and/or unnatural events and/or forces which are not within the control of the City and/or the Application Authority, such as the unavoidable delays experienced in government processes due to the COVID 19

pandemic, and/or mandatory compliance with any related federal or state government orders issued in relation thereto, such delays shall constitute reasonable delays which shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations beyond the period allotted under the applicable shot clock.

3. Eleventh Hour Submissions

In the event that an applicant tenders eleventh-hour submissions to the City and/or the Application Authority in the form of (a) expert reports, (b) expert materials, and/or (c) materials which require a significant period for review due either to their complexity or the sheer volume of materials which an applicant has chosen to provide to the Application Authority at such late point in the proceedings, the Application Authority shall be afforded a reasonable time to review such late-submitted materials.

If reasonably necessary, the Application Authority shall be permitted to retain the services of an expert consultant to review any late-submitted expert reports which were provided to the Application Authority, even if such review or services extend beyond the applicable shot clock period, so long as the Application Authority completes such review and retains and secures such expert services within a reasonable period of time thereafter, and otherwise acts with reasonable diligence in completing its review and rendering its final decision.

(j) Amend § 325-29.12 “Tiered permit process” as follows:

- A. Department of Planning and Development. After assigning each application to a tier, the City of Ithaca Department of Planning and Development shall:
 - (1) Prepare an analysis of the alternatives for each application according to § 325-29.11 of this chapter.
 - (2) Prepare a staff report for each application based on § 325-29.14 of this chapter.
 - (3) For any appeal of a determination under this Chapter or for Tier Two or Three application, forward the application, alternative analysis and staff report to the Board of Zoning Appeals.
- B. Findings. All decisions resulting in approvals or denials by the Board of Zoning Appeals shall be in writing and supported by findings of fact and conclusions of law based upon competent substantial evidence in the record, and shall specify:
 - (1) Whether the applicant has proven, based upon the evidence presented to the Board that an identified wireless carrier suffers from a “significant gap” in its personal wireless service coverage by demonstration of the following:

- a. reliable drive test data to demonstrate the significant gap in coverage or actual dropped call records to demonstrate a capacity deficiency, including the location and geographic boundaries of such, that the PWSF proposes to remedy;
 - b. that the proposed installation will remedy that significant gap or gaps in an identified wireless carrier's personal wireless coverage;
 - c. the installation will not create an unnecessary redundancy in wireless infrastructure within the city;
 - d. the proposed height proposed for the PWSF is the minimum height necessary to remedy any significant gap in personal wireless coverage for any identified wireless carrier.
- (2) Whether or not any gaps in coverage are limited in size, or confined to a limited number of homes, or are situated in a rural sparsely populated area, or that any lack in coverage would be de minimis.
- (3) Whether the applicant has proven, based upon the evidence presented to the Board that its proposed installation is the least intrusive means of remedying any such significant gap in coverage.
- (a). whether or not the proposed facility presents a minimal intrusion on the community;
 - (b.) whether or not the proposed installation will, or will not, inflict a significant adverse aesthetic impact upon adjacent or nearby properties or surrounding neighborhood or community, specifically:
 - (i) inflict a significant adverse impact to the property values of adjacent or nearby properties;
 - (ii) inflict a significant adverse impact upon historic resources or scenic views;
 - (iii) whether the proposed siting of the PWSF, both in terms of site location and the specific area upon the site where the installation is proposed, would minimize the adverse visual impact of the facility;
 - (iv) whether or not the proposed installation will, or will not, provide and maintain a sufficient fall zone and/or safe zone around the facility to protect the public from the potential dangers of structural failures, icefall, debris fall and/or fire;
 - (v) whether there are potential, less intrusive, alternative locations for the placement of a wireless facility which would fill any significant gap(s) in coverage;
 - (vi) that a facility of a lesser height, or multiple shorter facilities at less intrusive sites, would be sufficient to remedy any significant gap(s) in coverage.
- (4) Whether or not the granting of the application at issue would be consistent with the legislative intent of the *Telecommunications Facilities and Services* section.

Add 325-29.13 Application Procedures,

A . Application and Review Process – Public ROW Permit e) Notwithstanding the location preference guidelines indicated in this document, for each application proposing an installation within a residential zone or within 200 feet of a residential zone, no less than 5 days prior to installation, applicant shall mail or hand deliver notice to all residences within 300 feet of the proposed installation, and no less than 30 days prior to installation, post the location with a sign providing information as to where the application may be viewed and how the public may contact the applicant about the proposed installation. Signs can be obtained from the Planning & Economic Development Division at a cost of \$15.00 per sign (checks payable to "City of Ithaca"). Proof that the sign(s) have been posted will be required in the form of a DATE-STAMPED PHOTOGRAPH(s). Applicant shall provide proof of mailing and a list of addresses receiving the notification with the application.

(k) Amend § 325-29.14 “Staff reports” as follows:

A. The City of Ithaca Department of Planning and Development shall prepare staff reports for all PWSF applications. The staff report shall contain the following:

(1) Description of the proposed PWSF.

(a) Other PWSF's in the area.

(b) Nearest three PWSF sites to the proposed PWSF for the same carrier.

(2) Location.

(a) Identification of whether the proposed PWSF is an avoidance area.

(b) Identification of whether the proposed PWSF is at an opportunity site.

(c) Determination of whether location standards have been met.

(3) Siting.

(a) Determination of whether siting standards have been met.

(b) Identification of any necessary practical measures to avoid, minimize and/or mitigate (in that order of preference) adverse impacts of the proposed PWSF.

(4) Design.

(a) Type of mount.

(b) Type of antenna(s).

(c) Treatment of equipment cabinet or shelter.

(d) Determination of whether design standards have been met.

(5) Alternatives analysis.

- (a) Alternatives provided by the applicant.
- (b) Alternatives studied by City staff.
- (c) Comparison and ranking of the proposed PWSF and the alternatives as provided in § 325-29.11.

(6) Description of narrative attachments.

(7) Recommended decision or in the case of a Tier One application, Planning Department staff's approval or denial, which shall include the following:

- (a) Findings of fact.
- (b) Approve or deny, with specific reasons included.

(l) Insert the following as a new section 325-29.15 and renumber the remainder of the Article accordingly:

§325.29.15 Notice

For all PWSF applications, the applicant is responsible for demonstrating compliance with the following:

A. Upon submission of the application, the applicant shall no less than 30 days prior to installation, post the location with a sign providing information as to where the application may be viewed and how the public may contact the applicant about the proposed installation.

B. The applicant shall provide the City with the names and addresses of all property owners and provide written notice of the public hearing, by certified mail, return receipt requested as follows:

a. For a new cell tower, all properties situated within 1,500 feet of the parcel's property line on which a proposed new cell tower is to be located.

b. For all other PWSF installations, all properties adjacent to, or within 300 feet of, the proposed site.

(m) Amend existing §325-29.16 "Collocations/Public sites" (upon enactment of this ordinance, will become 325-29.17) to insert the following subsection:

E. Collocation Generally. Collocation of facilities is generally preferred over new support structures if it can be accomplished in a way that better compliments the character of the surrounding area. The order of preference for the configuration for PWSFs from most preferred

to least preferred is: (a) Collocation with existing PWSFs; (b) Roof-mounted; (c) Building-mounted; (d) Mounted on an existing pole or utility pole; (e) Mounted on a pole or utility pole that will replace an existing pole or utility pole; (f) Mounted on a new telecommunication tower. Where an existing facility or support structure can potentially accommodate collocation of a new wireless facility, collocation will be required unless the applicant submits evidence that the collocation will not remedy a significant gap in coverage, or the owner of the existing facility or support structure is unwilling to accommodate the applicant's equipment and cannot be required to cooperate.

(n) Amend existing § 325-29.17 “Registry, monitoring, inspection, abandonment and obsolescence” (upon enactment of this ordinance, will become 325-29.18) to insert the following subsections:

...

A. Signage.

Every pole or structure in the public rights of way that holds a 5G antenna be labeled indicating RF-radiation being emitted above. This label should be at eye level and legible from nine feet away. Radiofrequency warning or alerting signs should be used to provide information on the presence of RF radiation or to control exposure to RF radiation within a given area. Standard radiofrequency hazard warning signs are commercially available from several vendors.

Appropriate signs should incorporate the format recommended by the Institute for Electrical and Electronics Engineers (IEEE) and as specified in the IEEE standard: IEEE Std C95.2-1999 (Web address: <http://www.ieee.org>). Guidance concerning the placement of signs can be found in the IEEE Standard: IEEE Std C95.7-2005 (available for free through the IEEE Get Program). When signs are used, meaningful information should be placed on the sign advising affected persons of: (1) the nature of the potential hazard (i.e., high RF fields), (2) how to avoid the potential hazard, and (3) whom to contact for additional information. In some cases, it may be appropriate to also provide instructions to direct individuals as to how to work safely in the RF environment of concern. Signs should be located prominently in areas that will be readily seen by those persons who may have access to an area where high RF fields are present.

B. Inspection.

- (1) The owner or operator of PWSF shall provide for and conduct an inspection of mounts at least once every five years. A report shall be provided to the Department of Planning and Development verifying compliance with previous approvals and the City Code. Licensee shall maintain accurate maps and other appropriate records of its Small Cell Equipment as they are actually constructed in the Right of Way and will provide GIS location and information data to the City upon application. Licensee's location and information data provided to the City shall be GIS compatible and include exact locations of and information concerning all components of a Small Cell Installation, including to the extent available to the Licensee, wire, fiber optic strands, innerduct or other items supporting Licensee's Equipment. Such maps and records shall be promptly updated and provided to the City in the event of relocation or removal of any Small Cell Equipment.

- (2) The owner or operator of PWSF shall provide for and conduct an inspection of radio frequency radiation at least once annually by a licensed radio frequency engineer. Three copies of a report shall be provided to the Department of Planning, and Development, verifying that the radio frequency radiation is in compliance with FCC Guidelines.

(3) The City shall have the right to employ a qualified RF engineer to conduct an annual random and unannounced test of PWSF and small cell wireless installations located within the City to certify their compliance with all FCC radio-frequency emission limits as they pertain to exposure to the public. The reasonable cost of such tests shall be paid by the carriers as a pro rata percentage based on the carrier's total number of PWSF installed within the City and the total number of PWSF installations within the City.

- C. Abandonment and removal. Any PWSF that is out of peroration for a continuous period of 12 months shall be considered abandoned, and the owner of such PWSF shall remove same within 90 days of notice from the Department of Planning and Development that the PWSF is abandoned. If such PWSF is not removed within said 90 days, the City of Ithaca may have the PWSF removed at the PWSF owner's expense.
- D. Hazardous materials. A PWSF shall be registered as a hazardous facility if petroleum products are used to fuel power supplies, or any toxins are contained in equipment cabinets or shelters or alternative power sources.
- E. All PWSF and small wireless facility attachments shall meet the following requirements:
1. Be reviewed and approved by a licensed professional structural engineer in the State of New York, which shall include review of any structures and foundations. All pertinent calculations shall be stamped by a Professional Engineer and submitted to the City as part of the permit application and review process.
 2. All installations shall meet or exceed all applicable structural standards, clearance standards, and provisions of the latest National Electrical Safety Code (NESC).

(o) *Amend existing § 325-29.18 "Radio frequency radiation emissions" (upon enactment of this ordinance, will become 325-29.19) as follows:*

- A. FCC Guidelines. A statement certifying that, as proposed, the PWSF complies with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines) concerning radio frequency radiation and emissions shall be provided at the time of final site plan review or building permit application for facilities not requiring site plan review.
- B. The statement shall include FCC compliance report, verified under oath, and under penalties of perjury, by the person who prepared any such report. The cover page shall specify the following:
- i. Whether the PWSF complies with the FCC standards for *General Population Exposure Limits* or the *Occupational Exposure Limits*; and

- ii. the minimum distance factor, measured in feet, which the applicant used to calculate the radiation emission levels to which the proposed facility would expose members of the general public or others.

C. No contravention of FCC Guidelines. A PWSF that meets the FCC Guidelines shall not be conditioned or denied on the basis of radio frequency impacts.

D. If the compliance report as described in this section or the results of any inspection or reporting as required by **325-29.18** demonstrates that a PWSF is not compliance with the relevant FCC Guidelines for RF Emissions, the City shall notify the carrier of the findings. Upon such a finding:

- i. The City may in the City's sole discretion test and inspect any or all of the carrier's PWSF within the City at the carrier's sole cost.
- ii. Upon proper written notice, not less than 30 days delivered to the most recent contact on file for the PWSF or carrier, the City shall promptly schedule a public hearing before the Board of Zoning Appeals in which the carrier must show cause why the non-compliant PWSF and related equipment should not be removed at the carrier's cost.
- iii. The Board of Zoning Appeals, upon hearing the evidence and arguments of the carrier in the public hearing, may require replacement, removal, or any other remedy reasonably necessary to bring the PWSF(s) into compliance with FCC guidelines.
- iv. A carrier's failure to appear before the Board of Zoning Appeals and/or comply with the remedy ordered, if any, by the Board of Zoning Appeals, may result in revocation of any license or franchise granted by the City pursuant to Chapter 170, the City's removal of non-compliant PWSF and equipment by the City at the carrier's cost.
- v. A carrier's failure to comply with the findings and order of the Board of Zoning Appeals shall constitute a violation of this Article, and the City reserves the right to impose any and all other penalties or other remedies specified in this Article.

(p) Amend existing § 325-29.24 "Certificate of insurance required" (upon enactment of this ordinance, will become 325-29.25) as follows:

The Applicant shall maintain adequate and sufficient liability insurance during the construction period and thereafter, the Carrier shall maintain liability insurance meeting the criteria of this section throughout the life of any PWSF erected within the City of Ithaca. Prior to the issuance of any necessary permit, whether special permit or building permit, documentation that liability insurance in the amount of at least \$1,000,000 single occurrence, \$3,000,000 aggregate has been secured identifying the City as coinsured shall be submitted to the Department of Planning and Development, such policy shall not include a pollution exclusion. The Carrier's maintenance without interruption of liability insurance in like or greater amount with the City named as coinsured is a continuing condition of any permit or certificate of building compliance.

(q) Insert the following as a new section, and renumber the remainder of the section accordingly:

325-29.26 Reasonable accommodations requests

A resident with a disability as defined by the Americans with Disabilities Act may petition the Board of Zoning Appeals to consider any requested reasonable accommodation and file a complaint for lack of accommodations with the City's chief executive officer.

(r) Insert the following subsection (D) to existing § 325-29.25 (upon enactment of this ordinance, will become 325-29.27):

D. If a PWSF is found to have RF Emissions exceeding *General Population Exposure Limits*, this Code provision establishes a private right of action by any City resident against the facility owner to secure its removal with reimbursement of attorneys' fees and costs in the event that the resident prevails.

(s) Insert the following as a new section 325-29.28:

§325-29-28 Appeals and variances

Any applicant may seek appeal of any order, requirement, decision, interpretation, or determination and/or seek a variance from the provisions of this Article in accordance with Section 325-40 "Board of Appeals; variances."

(t) Insert the following as a new section 325-29.29:

§ 325-29.29 Revocability

In the event of a change in federal or state regulations or statutes governing telecommunications rendering any PWSF installation authorized in accordance with this Article invalid, illegal, or otherwise unauthorized, the City may require that the effected PWSF installation be removed and replaced in accordance with the then-current federal, state, and local regulations and statutes.

Section 5. Master License Agreement.

The Acting Mayor is hereby authorized to amend, as provided in this paragraph, and thereafter execute the Master License Agreement that was approved on May 6, 2020 by the Common Council, which previous approval was contingent upon subsequent adoption by the Common Council of design guidelines. Because those design guidelines were instead adopted in the form of this ordinance and the amendments that it makes to the City Code, upon effectiveness of this ordinance the design guidelines contingency upon which execution of the Master License Agreement was waiting shall be deemed satisfied, provided however, that before the Acting Mayor executes the Master License Agreement, the City Attorney shall amend paragraph 15(a) thereof to read as follows:

"The parties shall comply with applicable laws including, without limitation, ordinances, local laws or any other orders, notices, directives or code provisions from the City or New York State, the MUTCD, and judicial decisions ("Law" or "Laws"). Specifically, Laws shall include, but not be limited to the City Municipal Code Section 152, the City's uniform directives and specifications for work in the ROW, and the City's Small Wireless Facilities Design Guidelines.

Notwithstanding any other provision of this Agreement, to the extent that any element(s) of the City Municipal Code, as it may be amended from time to time, conflict with, depart from, or in any manner suggest a differing meaning, interpretation, definition, or outcome for any issues related to this Agreement (including any element of this Agreement, of the license(s) granted hereunder, or of the installations permitted hereunder), the applicable element(s) of the City Municipal Code shall take complete precedence and shall control the same."

Section 6. Severability Clause.

Severability is intended throughout and within the provisions of this Ordinance. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, then that decision shall not affect the validity of the remaining portions of this Ordinance.

Section 7. Effective Date.

This ordinance shall take effect immediately and in accordance with law upon publication of notices as provided in the Ithaca City Charter.