

TOWN OF ITHACA

LOCAL LAW NO. \_\_\_\_ OF THE YEAR 2023

**A LOCAL LAW AMENDING THE TOWN OF ITHACA CODE, CHAPTER 270  
ENTITLED “ZONING,” TO REPLACE TELECOMMUNICATIONS FACILITIES  
PROVISIONS WITH PERSONAL WIRELESS SERVICE FACILITIES PROVISIONS**

Be it enacted by the Town Board of the Town of Ithaca as follows:

**Section 1.** Chapter 270 (Zoning) of the Town of Ithaca Code, Article XXVI (Special Regulations) is amended by deleting Section 270-219 (Telecommunications facilities) and replacing it with the following new Section 270-219 (Personal wireless service facilities):

**“§ 270-219 Personal wireless service facilities.**

**A. Purpose and legislative intent.**

- (1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of Personal Wireless Service Facilities in the Town of Ithaca. While the Town recognizes the importance of Personal Wireless Service Facilities in providing high-quality communications service to its residents, businesses and institutions, the Town also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities.
- (2) By enacting this section, the Town intends to:
  - (a) Provide for the managed development of Personal Wireless Service Facilities in a manner that accommodates the needs of Town residents, businesses, and institutions to receive, and Wireless Carriers to provide, communication signals without interference from other communication providers, in accordance with federal, state, and local laws and regulations,
  - (b) Establish fair and efficient processes for review and approval of applications,
  - (c) Establish procedures for the design, siting, construction, installation, maintenance, and removal of Personal Wireless Service Facilities in the Town,
  - (d) Encourage the co-location of Personal Wireless Service Facilities on existing structures rather than the construction of new support structures,
  - (e) Minimize the number of Personal Wireless Service Facilities used to provide Personal Wireless Service coverage, and avoid unnecessary, redundant wireless infrastructure,
  - (f) Protect Town residents, businesses and institutions from potential adverse impacts of Personal Wireless Service Facilities, to the maximum extent permitted under law,

- (g) Avoid and minimize safety hazards and avoid potential damage to adjacent properties through proper locational, engineering, and operational requirements,
- (h) Protect the physical appearance of the Town and preserve its scenic and natural beauty by avoiding and minimizing adverse visual and aesthetic impacts of Personal Wireless Service Facilities to the maximum extent practicable through careful design, siting, landscaping, screening, and innovative camouflaging techniques,
- (i) Protect the public health, safety, and welfare,
- (j) Protect property values of the community,
- (k) Minimize the impact of such Facilities on residential properties, and
- (l) Encourage the siting of Personal Wireless Service Facilities on properties and in areas which are not used exclusively for residential purposes.

**B. Definitions.** As used in this section, the following terms shall have the meanings indicated:

**ANTENNA**-An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communication Commission authorization, for the provision of Personal Wireless Services and any commingled information services. For purposes of this definition, the term Antenna does not include an unintentional radiator, mobile station, or device authorized under 47 CFR Part 15 (Radio Frequency Devices).

**ANTENNA EQUIPMENT**-Equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with an Antenna, located at the same fixed location as the Antenna, and, when Co-located on a PWSF Structure, is mounted or installed at the same time as such Antenna.

**ANTENNA FACILITY**-An Antenna and associated Antenna Equipment.

**BASE STATION**-Shall have the definition in the FCC's regulations at 47 CFR § 1.6100.

**CARRIERS**-See Wireless Carriers.

**CO-LOCATION and/or CO-LOCATE**-The mounting or installation of an Antenna Facility on a pre-existing PWSF Structure, or the modification of a PWSF Structure for the purpose of mounting or installing an Antenna Facility on that PWSF Structure.

**DEPLOYMENT**-The placement, construction, or modification of a Personal Wireless Service Facility.

**DIRECTOR OF CODE ENFORCEMENT**-The Town of Ithaca's Director of Code Enforcement, or their designee.

**DIRECTOR OF PLANNING**-The Town of Ithaca's Director of Planning, or their designee.

**ELIGIBLE FACILITIES REQUEST**-A request that meets the requirements in 47 CFR § 1.6100 for modification of an existing Tower or Base Station that does not substantially change the physical dimensions of such Tower or Base Station and involving:

- (a) Co-location of new transmission equipment,
- (b) Removal of transmission equipment, or
- (c) Replacement of transmission equipment.

**EFFECTIVE PROHIBITION**- Denial by the Town of a PWSF approval or permit for a Personal Wireless Service Facility that is the Least Intrusive Means of remedying a significant gap in Personal Wireless Service coverage (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network).

**FAA**-The Federal Aviation Administration.

**FACILITY**-See Personal Wireless Service Facility or PWSF.

**FCC**-The Federal Communications Commission.

**GENERAL POPULATION/UNCONTROLLED EXPOSURE LIMITS**-The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (ii), made applicable pursuant to 47 CFR §1.1310(e)(3).

**HEIGHT**-The distance measured from the pre-existing grade level to the highest point of a Personal Wireless Service Facility.

**IN-KIND CALL TESTING**-Testing designed to measure the gap in Personal Wireless Service coverage asserted by an applicant. In-Kind Call Testing for a claimed gap in Personal Wireless Services in buildings means call testing performed in buildings to establish the existence or absence of such a gap, unless the applicant provides an affidavit sworn under penalties of perjury demonstrating good faith but unsuccessful attempts to secure access to buildings to conduct such testing. In-Kind Call Testing for a claimed gap in Personal Wireless Services in vehicles or in the open air means call testing performed in vehicles or in the open to establish the existence or absence of such a gap.

**LAST-MINUTE SUBMISSIONS**-An applicant's submission of new and/or additional materials in support of an application within 48 hours of the expiration of an applicable Shot Clock Period, or at an otherwise unreasonably short period of time before the expiration of the Shot Clock Period, making it impracticable for the Planning Board, Director of Planning or Director of Code Enforcement to adequately review and consider such submissions due to their complexity, volume, or other factors, before the expiration of the Shot Clock Period.

**LEAST INTRUSIVE MEANS**- The location and design of a Personal Wireless Service Facility that would remedy a significant gap in Personal Wireless Service coverage and (1) does the least

disservice to the objectives stated in § 270-219A(2), and (2) deviates as little as possible from (a) the preferential order of location in subsection K (Priority of siting locations) and (b) applicable design standards in subsection L.

**MAINTENANCE-** Plumbing, electrical, or mechanical work that may require a building permit but that does not constitute a modification to the Personal Wireless Service Facility. It is work necessary to assure that a Facility exists and operates reliably and in a safe manner, presents no threat to persons or property, and remains compliant with the provisions of this chapter and FCC requirements.

**NEPA-**The National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.

**NHPA-**The National Historic Preservation Act, 54 U.S.C. §§ 300101 et seq., and its regulations at 36 CFR Part 800 et seq.

**NODE-**A fixed Antenna and Antenna Equipment installation that operates as part of a system of spatially separated Antennas, all of which are connected through a medium through which they work collectively to provide Personal Wireless Services.

**OCCUPATIONAL EXPOSURE LIMITS-**The applicable radiofrequency radiation exposure limits set forth within 47 CFR §1.1310(e)(1), Table 1 Section (i), made applicable pursuant to 47 CFR §1.1310(e)(2).

**PERMITTEE-**A holder of a Personal Wireless Service Facility Permit.

**PERSONAL WIRELESS SERVICE, PERSONAL WIRELESS SERVICES-**Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, within the meaning of 47 U.S.C. §332(c)(7)(C)(i), and as defined therein.

**PERSONAL WIRELESS SERVICE FACILITY or PWSF-** An Antenna Facility and a PWSF Structure, or any components thereof, used for the provision of Personal Wireless Service, whether such Personal Wireless Service is provided on a stand-alone basis or commingled with other wireless communications services.

**PERSONAL WIRELESS SERVICE FACILITY PERMIT or PWSF PERMIT-**The permit granted by the Director of Code Enforcement pursuant to which an applicant is allowed to construct and use a Personal Wireless Service Facility.

**PWSF-**Personal Wireless Service Facility.

**PWSF STRUCTURE-** A pole, Tower, Base Station, or other building, whether or not it has an existing Antenna Facility, that is used or to be used for the provision of Personal Wireless Service (whether on its own or comingled with other types of services). PWSF Structure also includes the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, and cabinets associated with that PWSF Structure but not installed as part of an Antenna.

**REPAIRS**-The replacement or repair of any components of a Personal Wireless Service Facility where the replacement is substantially identical to the component or components being replaced, or for any matters that involve the normal repair and Maintenance of a Facility without the addition, removal, or change of any of the physical or visually discernible components or aspects of a Facility that will impose new visible intrusions of the Facility as originally permitted.

**RF**-Radiofrequency.

**SEQRA**-The New York State Environmental Quality Review Act (New York Environmental Conservation Law Article 8), and its implementing regulations at 6 NYCRR Part 617.

**SHOT CLOCK PERIOD**- The sum of the number of days specified by federal regulation as the presumptively reasonable time for the Town to act on the relevant Personal Wireless Services Facility application type, plus the number of days of any applicable Tolling period, per 47 CFR § 1.6003.

**SHPO**-The New York State Historic Preservation Office.

**SMALL WIRELESS FACILITY**-A Personal Wireless Service Facility that meets all the following criteria:

- (a) The Facility
  - (i) is mounted on a PWSF Structure 50 feet or less in Height, including its Antennas, or
  - (ii) is mounted on a PWSF Structure no more than 10 percent taller than other adjacent structures, or
  - (iii) does not extend the existing PWSF structure on which it is located to a Height of more than 50 feet or by more than 10 percent, whichever is greater,
- (b) Each Antenna associated with the Deployment, excluding associated Antenna Equipment, is no more than three (3) cubic feet in volume,
- (c) All other wireless equipment associated with the PWSF Structure, including the wireless equipment associated with the Antenna and any pre-existing associated equipment on the PWSF Structure, is no more than 28 cubic feet in volume,
- (d) The Facility does not require Antenna structure registration under 47 CFR Part 17 (Construction, Marking, and Lighting of Antenna Structures),
- (e) The Facility is not located on tribal lands, as defined under 36 CFR § 800.16(x), and
- (f) The Facility will not result in human exposure to radiofrequency radiation in excess of the applicable FCC safety standards set forth within Table 1 of 47 CFR §1.1310(E)(1).

**SMALL WIRELESS FACILITY STRUCTURE**-A PWSF Structure for a Small Wireless Facility.

**STEALTH**-A design or treatment that minimizes adverse aesthetic and visual impacts on the

land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of a Personal Wireless Service Facility. This shall mean building the least visually and physically intrusive Facility under the facts and circumstances.

**STRUCTURE**-See PWSF Structure.

**TCA**-The Telecommunications Act of 1996, 47 U.S.C. §332(c).

**TOLLING or TOLLED**-The pausing of the running of the time period under the applicable Shot Clock Period.

**TOWER**- A structure built for the sole or primary purpose of supporting FCC-licensed or authorized Antennas. The term Tower also includes the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, and cabinets associated with that Tower but not installed as part of an Antenna.

**TOWN**-The Town of Ithaca.

**WIRELESS CARRIERS**-Companies that provide Personal Wireless Services to end-use consumers.

### **C. General approval and permit requirements for Personal Wireless Service Facilities.**

- (1) Subject to the provisions of this section, Personal Wireless Service Facilities (“PWSFs”) are allowed in every zoning district in the Town.
- (2) No person shall be permitted to Deploy PWSFs, or operate or prepare any site for the Deployment of PWSFs, without having first obtained the applicable approvals and permits required by this section.
- (3) Repairs to and Maintenance of a legally existing PWSF shall not require site plan approval, a special permit, or a PWSF Permit.
- (4) In addition to the requirements set forth in this section for the issuance of a PWSF Permit and, where applicable, site plan and special permit approval, any applicant seeking to place a PWSF in the public right-of-way shall also comply with the procedures and requirements set forth in Chapter 230 (Streets and Sidewalks) of the Town Code relating to conducting construction activities within the public right-of-way. To the extent any provisions in Chapter 230 are inconsistent with the provisions set forth in this section, the provisions in this section shall control.
- (5) Exceptions. The requirements set forth in this § 270-219 shall not apply to:
  - (a) PWSFs on property owned or controlled by the Town are not subject to § 270-219, except PWSFs within a Town (owned or by use) public right-of-way are subject to § 270-219. The Town Board has sole and absolute discretion to determine whether to

allow an applicant to place a PWSF that is not subject to § 270-219 on Town property, and the Town Board may impose such conditions on any such placement and use as it deems appropriate. Nothing herein shall be deemed to create any right or entitlement to use Town property for such PWSF.

(b) Any Facilities exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial telecommunications.

(6) Nonconforming Facilities. The lawful use of any PWSF legally existing on the date of adoption of this §270-219 may be continued even though such PWSF does not conform to § 270-219. Any proposed modification to a PWSF is subject to the requirements of this § 270-219. Maintenance and Repairs are not considered modifications.

#### **D. Approvals and permits required for each type of Personal Wireless Service Facility.**

(1) All PWSFs shall require a building permit issued by a Code Enforcement Officer, where the New York State Uniform Fire Prevention and Building Code or the Ithaca Town Code requires a building permit.

(2) A Small Wireless Facility proposed to be Co-located on an existing Small Wireless Facility, where the completed Facility would still constitute a Small Wireless Facility after the Co-location, shall require a PWSF Permit issued by the Director of Code Enforcement.

(3) A PWSF proposed to be Co-located on an existing PWSF that is not a Small Wireless Facility, shall require a PWSF Permit issued by the Director of Code Enforcement. In addition, site plan and special permit approvals by the Planning Board are required if the proposed PWSF Co-location will:

(a) Increase the approved Height of the PWSF Structure by more than 15%,

(b) Increase the number of Antennas by more than 50% over the previously approved number of Antennas,

(c) Increase the square footage of accessory buildings by more than 200 square feet over the previously approved square footage of accessory buildings,

(d) Add one or more microwave Antenna dishes, or

(e) Expand the footprint of the PWSF Structure.

(4) Where more than one PWSF is proposed and at least one PWSF will not be Co-located on an existing structure, all of the proposed PWSFs (including Co-located PWSFs) shall require a PWSF Permit issued by the Director of Code Enforcement, and site plan and special permit approvals by the Planning Board.

- (5) All other PWSFs shall require a PWSF Permit issued by the Director of Code Enforcement, and site plan and special permit approvals by the Planning Board. All Planning Board considerations and approvals of site plans and special permits shall be in accordance with Chapter 270 (Zoning), Article XXIII (Site Plan Review and Approval Procedures) and Article XXIV (Special Permits and Special Approvals), respectively.
- (6) Any site plan, special permit or Personal Wireless Service Facility Permit granted hereunder shall be valid only for the dimensions and number of Antenna Facilities and PWSF Structures for the Facility contained in the original application as so approved. Any subsequent changes or modifications shall require a new application for same following the procedures set forth in this section.
- (7) Notwithstanding subsections 2-5 above, any application that asserts Spectrum Act § 6409(a) applies and that meets the requirements in 47 CFR § 1.6100 for an Eligible Facilities Request shall not require site plan or special permit approval and shall require a PWSF Permit issued by the Director of Code Enforcement. A building permit issued by a Code Enforcement Officer is also required if the New York State Uniform Fire Prevention and Building Code or the Ithaca Town Code requires a building permit.

#### **E. Shot Clock Periods and Tolling.**

- (1) To comply with the requirements of 47 U.S.C. § 332(c)(7)(B)(ii) of the TCA, and unless Tolloed, extended by agreement, or subject to reasonable delays due to circumstances beyond the Town's control, as described in subsection F below, the Planning Board and Town officials shall issue, grant or deny PWSF site plans, special permits, PWSF Permits, building permits and other required Town permits within the following number of days from Town receipt of an application for same:

- (a) For individual Co-located Facilities:

- [1] Sixty (60) days for PWSFs that meet the requirements in 47 CFR § 1.6100 for an Eligible Facilities Request.

- [2] Sixty (60) days for Co-location of a new Small Wireless Facility upon an existing Small Wireless Facility Structure, where the completed Facility would still constitute a Small Wireless Facility after the Co-location.

- [3] Ninety (90) days for all other Co-locations of a PWSF on an existing structure.

- (b) For individual non-Co-located Facilities:

- [1] Ninety (90) days for a new Small Wireless Facility.

- [2] One hundred fifty (150) days for all other PWSFs.



(c) For batched applications:

[1] If a single application seeks authorization for multiple Deployments, all of which fall within subsection (a)[2] above, or all of which fall within subsection (b)[1] above, then the presumptively reasonable period of time for the application as a whole is equal to that for a single Deployment within the category applicable to the Deployments.

[2] If a single application seeks authorization for multiple Deployments, the components of which are a mix of Deployments that fall within subsections (a)[2] and (b)[1] above, then the presumptively reasonable period of time for the application as a whole is 90 days.

- (2) Upon receipt of an application, the Director of Planning and Director of Code Enforcement shall review the application for completeness. If the Director of Planning or Director of Code Enforcement determines the application is: (a) incomplete, (b) is the wrong type of application, or (c) is otherwise defective, then the Director of Planning shall send the applicant a Notice of Incompleteness by the Town's digital software program, email, or first-class mail to the email or mailing address provided by the applicant.
- (3) For Small Wireless Facilities, the Notice of Incompleteness shall be sent within ten (10) days of the Town's receipt of the application. For all other PWSFs, the Notice of Incompleteness shall be sent within thirty (30) days of the Town's receipt of the application.
- (4) The Notice of Incompleteness shall describe why the application is incomplete, is the wrong type, or is otherwise defective, and shall specifically identify any missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information.
- (5) For proposed Small Wireless Facilities, the Director of Planning's sending of a Notice of Incompleteness shall reset and Toll the relevant Shot Clock Period. The reset Shot Clock Period shall begin running at zero on the day the Town receives all the documents and information identified by the Town to render the application complete.
- (6) For proposed PWSFs other than Small Wireless Facilities, the Director of Planning's sending of a Notice of Incompleteness shall Toll (but not reset) the relevant Shot Clock Period. The Shot Clock Period shall be Tolloed beginning the day after the date when the Town sends the applicant the Notice of Incompleteness that specifically identifies any missing documents or information and the specific rule or regulation creating the obligation to submit such documents or information. The last day of Tolling shall be the date when the applicant submits all the documents and information identified by the Town to render the application complete.

- (7) If upon receipt of responsive materials and information from the applicant, the Director of Planning or the Director of Code Enforcement determines that the application is still incomplete or otherwise defective, then the Director of Planning shall, within ten (10) days of receipt of such responsive materials, send the applicant another Notice of Incompleteness by the Town's digital software program, email, or first-class mail to the email or mailing address provided by the applicant. Regardless of the type of PWSF, the Director of Planning's sending of this second Notice of Incompleteness shall again Toll (but shall not reset) the relevant Shot Clock Period, The Shot Clock Period shall be Tolloed beginning the day after the date when the Town sends the applicant the second Notice of Incompleteness. The last day of Tolling shall be the date when the applicant submits all the documents and information identified by the Town to render the application complete. The same procedure may continue to be repeated with subsequent applicant submissions and Notices of Incompleteness.
- (8) Shot clock date. The shot clock date for an application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the relevant Shot Clock Period. If the date calculated in this manner is a "holiday" as defined in 47 CFR § 1.4(e)(1), or is a legal holiday in New York State, Tompkins County or the Town, the shot clock date is the next business day after such date. The term "business day" means any day as defined in 47 CFR § 1.4(e)(2) and any day that is not a legal holiday as defined by New York State, Tompkins County or the Town.

#### **F. Extensions & reasonable delay periods.**

- (1) Shot Clock Period Extension by Mutual Agreement.  
The Planning Board (if applicable) or Director of Code Enforcement may extend any applicable Shot Clock Period by mutual agreement with an applicant. The agreement may either be in writing or stated on the record at any public meeting.
- (2) Reasonable Delay Extensions of Shot Clock Periods.  
Any applicable Shot Clock Period shall be extended to the extent extension is required due to circumstances beyond the control of the Planning Board (if applicable) or Director of Code Enforcement, as follows:
- (a) If the Planning Board and/or Director of Code Enforcement acts with reasonable diligence to complete its SEQRA review and to ascertain the applicant's compliance with the National Environmental Policy Act, and these actions require a period of effort that extends beyond the expiration of the applicable Shot Clock Period, the delays beyond such Shot Clock Period attributable to such actions shall be deemed reasonable.
- (b) If the Planning Board and/or Director of Code Enforcement acts with reasonable diligence to ascertain the applicant's compliance with the National Historic Preservation Act, and these actions require a period of effort that extends beyond the

expiration of the applicable Shot Clock Period, the delays beyond such Shot Clock Period attributable to such actions shall be deemed reasonable.

- (c) If an applicant tenders Last-Minute Submissions to the Town in the form of: a) expert reports; b) expert materials; or c) materials which require a significant period for review due either to their complexity or their sheer volume, the Planning Board and/or Director of Code Enforcement shall be afforded a reasonable time to review such late-submitted materials. If the Planning Board and/or Director of Code Enforcement acts with reasonable diligence to complete such review, and the review requires a period of effort that extends beyond the expiration of the applicable Shot Clock Period, the delays beyond such Shot Clock Period attributable to such review shall be deemed reasonable.
- (d) Force majeure. In the event and to the extent that the rendering of a final decision upon a site plan or special permit application or a PWSF Permit application is delayed due to events and/or forces which are not within the reasonable control of the Town (including reasonable control of the Planning Board or Town officers and employees), including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lock-outs, strikes or other labor disputes (whether or not relating to the Town's workforce), or power outage, such delays shall constitute reasonable delays and shall be recognized as acceptable grounds for extending the period for review and the rendering of final determinations and permit issuance beyond the period allotted under the applicable shot clock.

#### **G. Applications for Personal Wireless Service Facilities.**

Applications shall be made via the Town's digital software program to the Director of Planning for site plan approvals and special permits, and to the Director of Code Enforcement for PWSF Permits, building permits and all other Town permits and Town approvals required by local, state, or federal law or regulation. Each application for a site plan approval, special permit, PWSF Permit and/or building permit shall include the following materials. An application for any Town permit or approval is incomplete if it is missing any item listed below, it does not contain everything required by law or regulation, or the Director of Planning or Director of Code Enforcement determines that the application contains inconsistent, contradictory, or unclear information.

- (1) Applications for Section 6409(a) eligible facilities must include:
  - (a) Identification of all applicants, site developers and FCC-licensed Wireless Carriers on whose behalf the application is being submitted, as well as the property owner of the proposed site.
  - (b) All applicable application and other fees then being charged by the Town for such applications, and any deposits the Town requires be submitted with the application.

- (c) An email address and a US mail address to which the Town may email or mail notices to comply with any notice requirement under this section, as well as under any local, state and/or federal law or requirement.
- (d) Copies of the Federal Communications Commission (FCC) license, if applicable, and of all documents submitted to the FCC or any other governmental agency having jurisdiction over the proposed eligible facilities.
- (e) Written documentation sufficient to show that the proposed Deployment is an Eligible Facilities Request. This documentation shall include a drawn-to-scale depiction containing complete calculations for all of the proposed eligible facilities to show whether they, when installed, will meet the physical size limitations and other requirements to qualify them as Section 6409(a) eligible facilities.
- (f) Written documentation sufficient to show that the proposed Deployment complies with all applicable building, structural, electrical and safety codes and with all other laws codifying objective standards reasonably related to health and safety. This documentation shall include a certification by a professional engineer licensed to practice in the State of New York that the eligible facilities have been designed in accordance with generally accepted good engineering practices and in accordance with generally accepted industry standards (including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI)), and if constructed, operated and maintained in accordance with the plans the eligible facilities (including the PWSF Structure), and other PWSFs and FCC-authorized wireless communication service facilities on the site will be safe, will be in accordance with all applicable governmental building codes, laws and regulations and in accordance with generally accepted good engineering practices and industry standards, including without limitation, acceptable standards as to stability, wind and ice loads, and bird protection.
- (g) An FCC compliance report, as described in subsection I below.
- (h) Written documentation sufficient to show compliance with all relevant federal requirements, including all applicable FCC, FAA, NEPA, and NHPA requirements. If NEPA review requirements apply and the applicant asserts the proposed Personal Wireless Service Facility falls under any categorical exclusions, the applicant shall identify which categorical exclusion(s) the applicant is asserting applies, and submit proof that the Facility falls under the categorical exclusion(s).
- (i) Completed Part 1 of the relevant New York State environmental assessment form.
- (j) All of the information required by Town Code § 125-5 (Building permits), if applicable.

- (k) Where an applicant is not the owner of the real property upon which the applicant seeks to Co-locate Section 6409(a) eligible facilities, proof of the property owner's consent to the Deployment of the eligible facilities on the real property and agreement to comply with this § 270-219. If the applicant is leasing all or a portion of real property upon which it intends to install its new eligible facilities, the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.
  - (l) Where an applicant is not the owner of the existing Tower or Base Station upon which the applicant seeks to Co-locate Section 6409(a) eligible facilities, proof of the Tower or Base Station owner's consent to the Co-location of the eligible facilities onto the existing Tower or Base Station and agreement to comply with this chapter.
- (2) Applications for all other PWSFs must include:
- (a) Completed project application forms in such detail and containing such information as the Director of Planning or Director of Code Enforcement may require, including identification of all applicants, site developers and FCC-licensed Wireless Carriers on whose behalf the application is being submitted, as well as the property owner of the proposed site.
  - (b) All applicable application and other fees then being charged by the Town for such applications, including any right-of-way fees that the Town Board may set from time to time by resolution, and any deposits required by the Town for application to the costs of any consultants retained by the Town as provided below.
  - (c) An email address and a US mail address to which the Town may email or mail notices to comply with any notice requirement under this section, as well as under any local, state and/or federal law or requirement.
  - (d) Copies of the Federal Communications Commission (FCC) license, if applicable, and of all documents submitted to the FCC or any other governmental agency having jurisdiction over the Facility.
  - (e) If the applicant claims that its proposed installation qualifies as a Small Wireless Facility within this section, a drawn-to-scale depiction that includes complete calculations for all of the components of the Facility depicting that, when completed, the Facility will meet the physical size limitations which enable the Facility to qualify as a Small Wireless Facility.
  - (f) Written documentation sufficient to show that the proposed Facilities comply with all applicable building, structural, electrical and safety codes and with all other laws reasonably related to health and safety. This documentation shall include a certification by a professional engineer licensed to practice in the State of New York

that the Facilities (including any proposed Co-locations) have been designed in accordance with generally accepted good engineering practices and in accordance with generally accepted industry standards (including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI)), and if constructed, operated and maintained in accordance with the plans the Facilities will be safe, will be in accordance with all applicable governmental building codes, laws and regulations and in accordance with generally accepted good engineering practices and industry standards, including without limitation, acceptable standards as to stability, wind and ice loads, and bird protection.

- (g) An FCC compliance report, as described in subsection I below.
- (h) Written documentation sufficient to show compliance with all applicable federal requirements, including all applicable FCC, FAA, NEPA, and NHPA requirements. If NEPA review requirements apply and the applicant asserts the proposed Personal Wireless Service Facility falls under any categorical exclusions, the applicant shall identify which categorical exclusion(s) the applicant is asserting applies, and submit proof that the Facility falls under the categorical exclusion(s).
- (i) Completed Part 1 of the relevant New York State environmental assessment form.
- (j) A visual impact analysis, as described in subsection J below.
- (k) All of the information required by Town Code § 125-5 (Building permits), if applicable.
- (l) Where site plan review is required, a site plan and other documentation that complies with Town Code §270-186 (Site plan requirements), and also contains the following:
  - [1] The exact location of the proposed Facility, including its geographic coordinates.
  - [2] The maximum Height of the proposed Facility, including all appurtenances.
  - [3] A detail of the Antenna Facility and PWSF Structure, including engineering drawings from the Facility manufacturer for any proposed Towers (monopole, guyed, freestanding, or other).
  - [4] The location, type, and intensity of any lighting on the Facility.
  - [5] Property boundaries and names of all adjacent landowners.
  - [6] The location of all other structures on the parcel and all structures on any adjacent parcels within 100 feet of the property lines, together with the distance of these structures from any proposed Tower.
  - [7] The location, nature and extent of any proposed fencing, landscaping, and

screening.

[8] The location and nature of any proposed utility easements and access roads or drives.

- (m) Where an applicant is not the owner of the real property upon which the applicant seeks to Deploy Facilities, proof of the property owner's consent to the Deployment of the Facilities on the real property and agreement to comply with this § 270-219. If the applicant is leasing all or a portion of real property upon which it intends to install its new Facilities, the applicant shall provide a written copy of its lease with the owner of such property. The applicant may redact any financial terms contained within the lease, but it shall not redact any portion of the lease which details the amount of area leased nor the specific portion of the real property to which the applicant has obtained the right to occupy, access, or preclude others from entering.
- (n) Where an applicant seeks to Co-locate Facilities and is not the owner of the PWSF Structure upon which the applicant seeks to Co-locate the Facilities, proof of the PWSF Structure owner's consent to the Co-location of the proposed Facilities onto the existing PWSF Structure.
- (o) An agreement by the owner and operator (if different from owner) that complies with the requirements set forth in subsection P below for removal of all Personal Wireless Service Facilities and restoration of the site to its original condition if the Facility becomes obsolete or ceases to be used for its intended purpose for 120 consecutive days.
- (p) Agreement that the applicant will negotiate in good faith with any subsequent applicant seeking to Co-locate a Personal Wireless Service Facility on the initial applicant's PWSF Structures. This agreement shall commit the initial applicant and landowner and their respective successors in interest to:

[1] Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.

[2] Negotiate in good faith for shared use by third parties, where such shared use is, or may be made, technologically and structurally feasible.

[3] Allow shared use if an applicant agrees in writing to pay reasonable charges for same.

[4] Make no more than a reasonable charge for shared use, based upon generally accepted accounting principles. The charge may include but is not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and Maintenance, financing, return on equity, and depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference or

causing uses on the site to emit electromagnetic radiation in excess of levels permitted by the FCC.

- (q) Information required by, and proof of compliance with, subsection H (Co-location) below.
- (r) If site plan approval and special permit are required, and if Co-location onto an existing structure is not proposed and is not feasible, an alternative site analysis of all potentially less intrusive alternative sites not involving Co-location which the applicant has considered. This alternative site analysis shall document each site's respective location, elevation, and suitability to remedy a significant gap in the coverage of the applicant's Personal Wireless Services (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network). For suitable alternative sites that an applicant claims are unavailable, the applicant shall submit evidence of good-faith efforts to secure use of each such site from its owner.
- (s) If site plan approval and special permit are required, evidence of the existence of a significant gap in the coverage of the applicant's Personal Wireless Services (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network).

[1] Such evidence shall include the nature of each gap and its geographic location and boundaries.

[2] Evidence that a gap exists shall include In-Kind Call Testing for each frequency at which the applicant provides Personal Wireless Services. The applicant shall provide the Town with the actual testing data recorded during such tests, in a simple format which shall include for each frequency, in table format:

[a] the date and time for the test,

[b] the location, in longitude and latitude, of each point at which signal strength was recorded, and

[c] each signal strength recorded, measured in decibel-milliwatts (dBm), for each frequency.

[3] The applicant shall also submit test maps, depicting the actual signal strengths recorded during all In-Kind Call Testing, for each frequency at which the applicant provides Personal Wireless Services.

[4] The applicant shall also provide dropped call records and denial of service records evidencing the number, percentage and locations of voice calls that were unable to be initiated or maintained between wireless telephones and land-lines connected to the national telephone network.



- [5] The applicant shall also submit evidence of a compelling need to address any significant gaps in the applicant's Personal Wireless Services through the proposed Facilities and not through any other solution. The applicant shall submit evidence showing applicant considered other sites and other means of addressing the gaps, and evidence showing the feasibility of addressing the gaps through the use of other sites and other means. The applicant shall also submit evidence that the Facility presents a minimal intrusion on the community.
- (t) Where the applicant asserts that a denial would constitute an Effective Prohibition, the applicant shall submit evidence that the proposed Facilities are the Least Intrusive Means of addressing a significant gap in the applicant's Personal Wireless Services (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network).
  - (u) A noise study or written statement, prepared by a professional engineer licensed to practice in the State of New York, assessing the proposed Personal Wireless Service Facility's compliance with the noise requirements in subsection M. The assessment shall include noise from equipment, such as air conditioning units and back-up generators.
  - (v) An economic analysis study of the property value impacts that the construction and operation of the PWSF may have on all adjacent properties located within 500 feet of the parcel boundaries on which the PWSF is located.

#### **H. Co-location.**

- (1) The shared use of existing PWSF Structures or other structures shall be preferred to the construction of new PWSF Structures. Any PWSF Permit or site plan or special permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to Co-locate on an existing PWSF Structure or upon another existing structure.
- (2) The application shall include an adequate inventory report specifying existing PWSF sites and any structures (except -one-family dwellings, two-family dwellings, multiple residences, and accessory structures associated with such dwellings and multiple residences) within a one mile radius of the proposed Facility. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to the proposed location, along with a map showing the location of each site inventoried, the Heights of the PWSF Structures, and the heights of other structures on the sites of the inventoried locations.
- (3) The applicant must demonstrate that the proposed PWSF cannot be accommodated on existing PWSFs in the inventory due to one or more of the following reasons:
  - (a) The planned equipment would exceed the structural capacity of existing and approved

PWSFs or other structures, considering existing and reasonably anticipated future use for those Facilities and other structures.

- (b) The planned equipment would cause radiofrequency interference with other existing or planned equipment, which cannot be reasonably prevented.
- (c) The planned equipment would cause of exceedance of FCC RF exposure limits, which cannot be reasonably prevented.
- (d) Existing or approved PWSFs or other structures do not have space and cannot be modified to provide space on which proposed equipment can be placed so it can function effectively and reasonably.
- (e) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing PWSFs or other structures.
- (f) The property owner or owner of the existing PWSF or other structure fails to reach agreement after negotiating in good faith to allow such Co-location.

#### **I. FCC compliance report.**

- (1) The FCC Compliance Report required by this section shall be prepared by a professional engineer licensed to practice in the State of New York, and certified under penalties of perjury, that the content thereof is true and accurate, wherein the engineer shall certify that the proposed Facility will be FCC compliant (including compliance with applicable FCC regulations and bulletins) as of the time of its installation, including that the Facility will comply with the relevant limits for human exposure to radiofrequency (RF) fields adopted by the FCC.
- (2) If it is anticipated that there will be more than one RF emitter on the Facility, the FCC Compliance Report shall take into account anticipated exposure from all emitters and shall indicate whether or not the combined exposure levels will exceed the permissible General Population Exposure Limits in locations accessible to the public, and, where applicable, the Occupational Exposure Limits.
- (3) Such FCC Compliance Report shall provide the calculation or calculations which the engineer used to determine the levels of RF emissions and RF exposure levels.
- (4) On the cover page of the report, the report shall explicitly specify:
  - (a) Whether the applicant and their engineer are claiming that the applicable FCC limits are the General Population Exposure Limits or the Occupational Exposure Limits. If the applicant and their engineer are asserting that only the Occupational Exposure Limits apply to the proposed installation, they shall provide a factual basis as to why they claim that only the Occupational Exposure Limits apply, and
  - (b) The exact minimum distance factor, measured in feet, which the applicant's engineer

used to calculate the level of radiation emissions to which the proposed Facility will expose members of the general public or, where applicable, persons in the workplace. The minimum distance factor is the closest distance (i.e., the minimum distance) to which a person shall be able to gain access to the Antennas mounted upon, or which shall be a part of, the proposed Facility.

## **J. Visual impact analysis.**

Each application shall include a visual impact analysis that contains an assessment of the proposed Facility's visual impact on abutting properties and streets, taking into consideration any PWSF Structure that is to be constructed, as well as the rest of the Facility. The visual impact analysis shall, at a minimum, include the following:

(1) Small Wireless Facilities:

- (a) line-of-sight drawings
- (b) detailed elevation maps
- (c) visual simulations, including photographic images, depicting the Height at which the proposed Facility shall stand when completed (including all portions and attachments to the Facility), taken from the perspectives of the public right-of-way, and of any properties situated in closest proximity to the location being proposed for the Facility siting. Photos should also be taken from the perspectives of any properties that would reasonably be expected to sustain significant adverse aesthetic impacts due to their elevation relative to the site, or due to the Facility location and the property location.
- (d) before and after renderings
- (e) alternate Facility designs and color schemes
- (f) possible impacts to any important/scenic views listed in the Tompkins County or Town of Ithaca Scenic Resources Inventories

(2) Personal Wireless Service Facilities which do not meet the definition of a Small Wireless Facility:

- (a) A "Visibility Map" to determine locations from where the Facility will be seen.
- (b) line-of-sight drawings
- (c) detailed elevation maps
- (d) visual simulations, including photographic images, depicting the Height at which the proposed Facility shall stand when completed, taken from the perspectives of the public right-of-way, and of any properties situated in closest proximity to the location being proposed for the Facility siting. Photos should also be taken from the

perspectives of any properties that would reasonably be expected to sustain significant adverse aesthetic impacts due to their elevation relative to the site, or due to the Facility location and the property location.

(e) before and after renderings

(f) alternate Facility designs and color schemes

(g) possible impacts to any important/scenic views listed in the Tompkins County or Town of Ithaca Scenic Resources Inventories

#### **K. Priority of siting locations.**

In determining whether a site is appropriate, and if it is determined a need exists for the Facility, the preferential order of location, to the extent the same may be, or may be made, technically feasible, is as follows:

(1) Co-located on existing Towers.

(2) Co-located on any other existing radio or other tower that would not require any increase in Height nor significant noticeable structural additions to accommodate the Facility.

(3) Within any industrial zones or existing planned development zones that permit industrial activities.

(4) Within any light industrial zones or existing planned development zones that permit light industrial activities.

(5) Within any existing community commercial zones or existing planned development zones which permits all of the activities permitted in a community commercial zone.

(6) On any other property in the Town.

#### **L. Design standards.**

All PWSFs shall be sited, designed, and constructed in a manner which minimizes to the maximum extent practicable i) visual impact, and ii) adverse impacts upon migratory and other birds and other wildlife.

(1) Aesthetic criteria applicable to Small Wireless Facilities:

For Co-locations (except Section 6409(a) eligible facilities Co-locations):

(a) There shall be no exposed wires. All cables and wires associated with the Facility leading to and away from the Facility must be fully concealed and the cable covering or conduit shall match the color of the PWSF Structure on which the Facility is located. There shall be no external cables and wires related to the Facility hanging off or otherwise exposed.

- (b) Each Antenna shall be located within a Stealth enclosure that matches the materials, color, and design of the PWSF Structure on which the Antenna is located.
- (c) All equipment enclosures shall be as small as possible and undergrounded when possible. Building-mounted enclosures shall be located within a Stealth enclosure that matches the materials, color, and design of the PWSF Structure on which the enclosure is located. Ground-mounted enclosures shall have appropriate vegetative buffering to buffer the view from neighboring residences, recreation areas and public roads. The Planning Board may require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public. Co-locations along New York State-designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such districts and corridors shall not be impaired or diminished by the placement of PWSFs.
- (d) There shall be no illumination, except in accord with state or federal regulations.
- (e) No portion of the PWSF Structure or other parts of the Facility shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers, and balloons.
- (f) Access to the Facility shall be achieved by using existing public or private roads; no new accessway, driveway or parking area shall be constructed. Equipment or vehicles not used in direct support, renovations, additions, or Repair of any Facility shall not be stored or parked on the Facility site.
- (g) The Facility shall be located at least 300 feet from any structure that contains a dwelling unit.

For Small Wireless Facility Nodes:

- (a) If the Node is located within a public ROW, then the preferable placement locations are as follows: most preferred= Co-location on existing Towers, utility poles or other structures; least preferred= installing all new poles)
- (b) If Co-location is not possible, then all new poles and equipment must be the same height, color, and finish as surrounding poles.
- (c) There shall be no exposed wires. All cables and wires associated with the Facility leading to and away from the Facility shall be installed underground. If undergrounding is not possible, then all cables, wires and connectors must be fully concealed on the PWSF Structure and the cable covering or conduit shall match the color of the PWSF Structure. There shall be no external cables and wires related to the Facility hanging off or otherwise exposed on the PWSF Structure.
- (d) Each Antenna shall be located entirely within a shroud or canister type enclosure or a Stealth facility. The diameter of an Antenna enclosure at its widest point should not be wider than two times the diameter of the top of the PWSF Structure.
- (e) All Antenna enclosures shall either be mounted to the top of the PWSF Structure and aligned with the centerline of the PWSF Structure or mounted to the side of the PWSF Structure such that the vertical centerline of the Antenna enclosure will be parallel with the PWSF Structure. Stealth enclosures shall match the architecture, materials, color, and design of the PWSF Structure on which they are located (e.g., streetlight pole, building rooftop chimney, cupolas, etc.) Photo examples of Stealth applications include the following (source: [stealthconcealment.com](http://stealthconcealment.com)):



- (f) All equipment enclosures shall be as small as possible and undergrounded when possible. Ground-mounted equipment shall incorporate concealment elements into the proposed design, matching the color and materials of the PWSF Structure. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations and placement within existing or replacement street furniture (see photo example of Stealth pole above).
- (g) Tree “topping” is prohibited. Any proposed pruning or removal of trees, shrubs or other landscaping already existing in the right-of-way must be noted in the site plan application and must be approved by the Planning Board.
- (h) There shall be no illumination, except in accord with state or federal regulations, or unless the illumination is integral to the camouflaging strategy (e.g., design intended to look like a streetlight pole).
- (i) Guidelines on placement: Node Facilities, including their PWSF Structures, shall be located:
- [1] No closer than 1,500 feet away, radially, from another Small Wireless Facility, unless the Wireless Carrier can prove that the Facilities need to be closer together to meet a specified legal standard.
  - [2] In alignment with existing trees, utility poles, and streetlights.
  - [3] Equal distance between trees, when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
  - [4] Shall not be located along a parcel’s front lot line where a building on the parcel: is listed on the National or State Register of Historic Places; is located in an historic district listed on the National or State Register of Historic Places; or has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.
  - [5] At least 300 feet from any structure that contains a dwelling unit.
  - [6] Facilities along New York State-designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such districts and corridors shall not be impaired or diminished by the placement of such PWSFs.
  - [7] If a streetlight is present, a combination PWSF Structure and streetlight pole should only be located where an existing pole can be removed and replaced, or at a location where the Town has identified that a streetlight is necessary.
- (j) No portion of the PWSF Structure or other parts of the Facility shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers, and balloons.

For Individual Small Wireless Facility Sites:

- (a) There shall be no exposed wires. All cables and wires associated with the Facility leading to and away from the Facility shall be installed underground. If undergrounding is not possible, then all cables, wires and connectors must be fully concealed and the cable covering or conduit shall match the color of the PWSF Structure. There shall be no external cables and wires related to the Small Wireless Facility hanging off or otherwise exposed.
- (b) Each Antenna shall be located within a Stealth enclosure that matches the architecture, materials, color and design of the PWSF Structure on which the Antenna is located (e.g., streetlight pole, building rooftop chimney, cupola, etc.). Examples of Stealth applications include the following. Photo examples of Stealth applications include the following (source: [stealthconcealment.com](http://stealthconcealment.com)):



- (c) All equipment enclosures shall be as small as possible and undergrounded when possible. Building-mounted enclosures shall be located within a Stealth enclosure that matches the architecture, materials, color and design of the PWSF Structure on which the enclosure is located (see photo examples above). Ground-mounted enclosures shall have appropriate vegetative buffering to buffer the view from neighboring residences, recreation areas and public roads. The Planning Board may require screening adjacent to waterways, landmarks, refuges, community facilities, or conservation or historic areas within common view of the public. Co-locations along New York State-designated Scenic Byways or located within an area listed in the Tompkins County or Town of Ithaca Scenic Resources Inventory must be as visually inconspicuous as possible. The views of, and vistas from, such districts and corridors shall not be impaired or diminished by the placement of such PWSFs.
- (d) There shall be no illumination, except in accord with state or federal regulations, or unless the illumination is integral to the camouflaging strategy (e.g., design intended to look like a streetlight pole).
- (e) No Small Wireless Facility shall be located along a parcel's front lot line where a building on the parcel: is listed on the National or State Register of Historic Places; is located in an historic district listed on the National or State Register of Historic Places; or has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places.
- (f) No portion of the PWSF Structure or other parts of the Facility shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers, and balloons.
- (g) Access to the Small Wireless Facility shall be achieved by using existing public or private roads; no new accessway, driveway or parking area shall be constructed. Equipment or vehicles not used in direct support, renovations, additions, or Repair of any Facility shall not be stored or parked on the Facility site.
- (h) The Small Wireless Facility shall be located at least 300 feet from any structure that contains a dwelling unit.

(2) Aesthetic criteria applicable to Non-Small Cell Wireless Facilities:

- (a) The Facility shall have the least practical visual effect on the environment, as determined by the Planning Board.
- (b) There shall be no exposed wires except for any guy wires. All cables and wires associated with the Facility leading to and away from the Facility must be fully concealed and the cable covering or conduit shall match the color of the PWSF Structure. There shall be no external cables and wires related to the Facility hanging off or otherwise exposed.
- (c) There shall be no illumination, except in accord with state or federal regulations and with subsection O below. Towers shall not be artificially lighted and marked beyond the requirements of the FAA.
- (d) Any Tower that is not subject to FAA marking as set forth above shall otherwise have a galvanized finish or shall be painted gray above the surrounding tree line and gray or green below the tree line, as deemed appropriate by the Planning Board, or be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the Facility to perform its designed function.
- (e) Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings. Ground-mounted enclosures and fences shall have appropriate vegetative buffering to buffer the view from neighboring residences, recreation areas and public roads. The Planning Board may require screening adjacent to waterways, landmarks, parkland, community facilities, or conservation or historic areas within common view of the public.
- (f) No portion of the PWSF Structure or other parts of the Facility shall be used for signs or promotional or advertising purposes, including, but not limited to, company name, phone numbers, banners, streamers, and balloons.
- (g) Existing on-site vegetation shall be preserved to the maximum extent possible. Tree “topping” is prohibited. There shall be no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) in connection with the proposed Facility prior to the granting of site plan approval. Any proposed pruning or removal of trees, shrubs or other existing landscaping must be noted in the site plan application and must be approved by the Planning Board.
- (h) Equipment or vehicles not used in direct support, renovations, additions, or Repair of any Facility shall not be stored or parked on the Facility site.
- (i) Where permitted, accessways shall make maximum use of existing public or private roads to the extent practicable. New accessways constructed solely for PWSFs must be at least twelve, but no more than twenty-four feet wide, and closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- (j) Where permitted, parking areas shall be sufficient to accommodate the usual number of service vehicles expected on the premises at any one time. Driveways or parking areas shall provide adequate interior turnaround, such that service vehicles will not have to back out onto a public thoroughfare.
- (k) The Facility shall be located at least 300 feet from any structure that contains a dwelling unit.



#### **M. Noise.**

No Personal Wireless Service Facility shall produce noise in violation of Town of Ithaca Code Chapter 184 (Noise). In addition, noise from a Personal Wireless Service Facility shall at no time be audible at the property line of any lot (i) zoned Residential or Conservation, or (ii) on which a dwelling unit exists.

#### **N. Dimensional standards.**

- (1) A fall zone around any Tower constructed as part of a non-Small Wireless Facility must have a radius at least equal to the Height of the Facility. The entire fall zone may not include public roads and must be located on property either owned or leased by the applicant or for which the applicant has obtained an easement, and may not, except as set forth below, contain any structure other than those associated with the Facility. If the Tower is attached to an existing structure, relief may be granted by specific permission of the Planning Board on a case-by-case basis if it is determined by such Board after submission of competent evidence, that the waiver of this requirement will not endanger the life, health, welfare or property of any person. In granting any such waiver, the Board may impose any conditions reasonably necessary to protect the public or other property from potential injury.
- (2) All non-Small Wireless Facilities and their fall zones shall be located on a single parcel.
- (3) All Personal Wireless Service Facilities shall comply with the height, setback, frontage, minimum lot size, and (except as specified below) yard standards of the underlying zoning district and the fall zone requirements of this section. To the extent there is a conflict, the more restrictive provision shall govern. If the proposed Height of the Facility exceeds the permitted height of structures in the zoning district in which the Facility is proposed to be located, notwithstanding any other provisions of this chapter, a height variance from the Zoning Board of Appeals shall also be required. Setbacks shall be measured by the distance between any portion of a Personal Wireless Service Facility and the lot line of the parcel on which the proposed Facility will be placed. Small Wireless Facilities do not need to meet the front yard standards of the underlying zoning district, but they must be located at least 300 feet from any structure that contains a dwelling unit. The size of the leased or owned lot shall be, at a minimum, sufficiently large to include the entire fall zone. All lots leased or owned for the purpose of construction of a Tower as part of a Personal Wireless Service Facility shall conform, at a minimum, to the lot size requirements of the underlying zoning district or the size of lot necessary to encompass the entire fall zone, whichever requirement results in a larger lot.
- (4) The front, side, and rear yard requirements of the underlying zoning district in which a Facility is erected shall apply to all parts of the Facility.

#### **O. Security.**

- (1) Non-Small Wireless Facility Towers, anchor points of guyed Towers, and their accessory structures shall each be surrounded by fencing at least eight feet in height, the top foot of which shall be comprised of three strands of barbed wire to discourage unauthorized access to the site.
- (2) Motion-activated or staff-activated security lighting around the base of a Tower or accessory structure entrance may be provided if such lighting does not project off the site and otherwise complies with Town Code Chapter 173 (Lighting, Outdoor). Such lighting should only occur when the area within the fenced perimeters has been entered.
- (3) There shall be no permanent climbing pegs within 15 feet of the ground of any Tower.

**P. Removal.**

- (1) The Personal Wireless Service Facility owner and operator (if different from owner) shall at their expense remove all Personal Wireless Service Facilities and restore the site to its original condition (including where applicable the seeding of exposed soils), and to incur all expenses therefor, if the Facility becomes obsolete or ceases to be used for its intended purpose for 120 consecutive days. Removal of such obsolete or unused Facilities and restoration of the site to its original condition shall take place within 90 days and shall comply with all New York State and Town stormwater laws, rules and regulations. If removal and restoration are not completed within 90 days, the bond or other guaranty secured by the owner and operator shall be used to perform and complete these actions.
- (2) As security for the performance of the requirements set forth above, the owner and operator (if different from owner) shall, upon the granting of required approvals and permits under this section and prior to the installation of any Personal Wireless Service Facilities, execute and file with the Town Clerk a bond or other form of security or undertaking which shall be approved as to form, manner of execution, and sufficiency for surety, by the attorney for the Town and the Town Engineer. Any bond or guaranty shall be provided by or placed with a solvent surety corporation duly licensed in the State of New York. Such bond or undertaking shall be conditioned upon the faithful performance of the provisions of this section, and in the event of default the bond or undertaking shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The bond or undertaking shall remain in full force and effect until the removal of all Personal Wireless Service Facilities, and all site restoration has been completed. The value of the bond shall be equal to 125% of the cost of Facility removal and restoration of the site, as determined by the Town Engineer after evaluation of the applicant's detailed estimate of such cost. No such decommissioning or removal bond shall be secured by an indemnity agreement with the owner or operator or any party affiliated with them.
- (3) At least once every three years after any approval or permit is issued by the Town, the owner and operator (if different from owner) of the Personal Wireless Service Facility shall provide updated certified cost estimates for removal of all Personal Wireless Service Facilities and all site restoration. If the resulting 125% cost requirement shows that the existing security or bond is monetarily insufficient, then the owner and operator (if

different from the owner) shall update such bond or undertaking, or see to its replacement or supplementation in an amount to equal such updated 125% cost number.

**Q. Town consultants.**

- (1) The Town, at the expense of the applicant, may employ its own consultants to examine the application and related documentation. The consultants that the Town may retain include, but are not limited to, professional structural and/or electrical engineers, attorneys, and other experts reasonably required by the Town to competently and fully evaluate any application and the resulting construction. Such consultants may be requested, among other matters, to make recommendations as to whether the criteria for granting approvals and permits have been met, including whether the applicant's conclusions regarding a significant gap in coverage, Co-location, safety analysis, visual analysis, and structural inspection, are valid and supported by generally accepted and reliable engineering and technical data and standards, and whether the Personal Wireless Service Facility as constructed will be in compliance with the approved plans and in accordance with generally accepted good engineering practices and industry standards.
- (2) To assure sufficient funds are available to the Town to pay for the consultants referred to in the preceding subsection, an applicant shall be required to deposit review fees in escrow, in accordance with the terms of Town Code § 153-2D, as the same may be amended from time to time. The Town Board shall set from time to time by resolution the minimum initial escrow deposit for any Personal Wireless Service Facility application which anticipates construction of any type of Tower exceeding 50 feet.

**R. Special permit approvals.**

Except as provided in subsection (4) below, the Planning Board may approve a special permit or special permit modification relating to a PWSF only if the Planning Board finds:

- (1) Federal law compliance: The PWSFs comply with all relevant federal statutory and regulatory requirements, including all applicable FCC, FAA, NEPA, and NHPA requirements.
- (2) The applicable standards in Chapter 270 (Zoning), Article XXIV (Special Permits and Special Approvals), § 270-200 (Considerations for approval) are met, and
- (3) All of the following additional standards are met:
  - (a) Public utility status: Services provided by the proposed PWSFs are considered public utility services, and the provider of such services is considered a public utility, in the State of New York.
  - (b) Need. The applicant has proven a compelling need to address any significant gaps in the applicant's Personal Wireless Services (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national

telephone network) through the proposed Facilities and not through any other solution, and the Facility presents a minimal intrusion on the community.

[1] To determine whether a gap is significant, the Planning Board shall consider, among other things, dropped call and failure rates, whether a gap is relatively large or small in geographic size, whether the number of the applicant's customers affected by the gap is relatively small or large, whether or not the location of the gap is situated on a lightly or heavily traveled road, or in a sparsely or densely occupied area, and whether the applicant's customers are affected for only a limited period of time. A significant gap cannot be established simply because the applicant's Personal Wireless Services operate on a frequency which is not the frequency most desired by the applicant. An applicant's claim of need for future capacity does not constitute evidence of a significant gap.

[2] In making the finding of compelling need, the Planning Board shall consider the evidence of a significant gap, applicant's consideration of other sites and other means of addressing the gaps, and the feasibility of addressing the gaps through the use of other sites or other means.

- (c) Compliance with Chapter 270 (Zoning) and other Town Code requirements: Complies with all requirements of this § 270-219, with all other requirements of this Chapter 270 (unless expressly superseded by this § 270-219), and all other applicable Ithaca Town Code requirements.
- (d) Co-location on proposed Towers: For non-SWFs, when construction of a Tower is proposed, such a Tower is designed to accommodate future shared use by at least two other PWSF providers.
- (e) Aesthetic impacts: The proposed PWSFs will not inflict a significant adverse aesthetic impact upon properties that are located adjacent or in close proximity to the proposed site(s), or upon any other properties situated in a manner that such properties might reasonably be expected to sustain adverse aesthetic impacts.
- (f) Impacts upon real estate values: The proposed PWSFs will not inflict a significant adverse impact upon the property values of properties that are located adjacent or in close proximity to the proposed site(s).
- (g) Impact upon the character of the surrounding community: The proposed PWSFs will not be incompatible with the use and character of properties located adjacent or in close proximity to the proposed site(s), or with any other properties situated in a manner that the PWSFs might reasonably be expected to be incompatible with such properties.
- (h) Mitigation: The applicant has mitigated the potential adverse impacts of the proposed PWSFs to the greatest extent reasonably feasible through siting, location and design.

(4) If the applicant asserts that a denial would constitute an Effective Prohibition, and the denial is based on a failure to comply with any of the standards in subsection (2) or (3) above, then pursuant to federal law the Planning Board must consider whether the proposed Facilities are the Least Intrusive Means of addressing a significant gap in the applicant's Personal Wireless Services (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network). A significant gap is not established simply because the applicant's Personal Wireless Services operate on a frequency which is not the frequency most desired by the applicant. An applicant's claim of need for future capacity does not constitute evidence of a significant gap.

(a) The Planning Board shall consider, among other things, (a) whether the proposed site is the least intrusive location at which a Personal Wireless Service Facility that remedies an identified significant gap may be located, and the applicant has reasonably established a lack of potential alternative less intrusive sites and lack of sites available for Co-location, (b) whether the specific location on the proposed portion of the selected site is the least intrusive portion of the site for the proposed installation (c) whether the Height proposed for the Personal Wireless Service Facility is the minimum Height necessary to remedy an established significant gap in service, (d) whether a pre-existing structure can be used to camouflage the Personal Wireless Service Facility, (e) whether the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of Stealth design, screening, use of color, and noise mitigation measures, and (f) whether there is a feasible alternative to remedy the gap through alternative, less intrusive substitute Facilities, such as the installation of more than one shorter Facility instead of a single Facility.

(b) If the Planning Board finds that the proposed Facilities are the Least Intrusive Means of addressing a significant gap in the applicant's Personal Wireless Services, then pursuant to federal law the Planning Board must grant site plan and special permit approvals.

#### **S. PWSF Permit issuance, duration and renewals.**

(1) The Director of Code Enforcement shall issue a Personal Wireless Service Facility Permit upon (i) submission of the proof of insurance required by Subsection V, and (ii) the Director of Code Enforcement's determination that the following standards are met:

(a) For PWSFs that require site plan approval and special permit: The Planning Board has approved a final site plan and special permit, and the applicant has received any necessary variances from the Zoning Board of Appeals.

(b) For Section 6409(a) eligible facilities: All fees and required documents for Section 6409(a) eligible facilities applications per § 270-219G have been submitted to the Town.

(c) For all other PWSFs that do not require site plan approval and special permit:

- [1] Federal law compliance: The PWSFs comply with all relevant federal statutory and regulatory requirements, including all applicable FCC, FAA, NEPA, and NHPA requirements.
  - [2] Public utility status: The Services provided by the proposed PWSFs are considered public utility services, and the provider of such services is considered a public utility, in the State of New York.
  - [3] Compliance with Chapter 270 (Zoning) and other Town Code requirements: Complies with all requirements of this § 270-219, with all other requirements of this Chapter 270 (unless expressly superseded by this § 270-219), and all other applicable Ithaca Town Code requirements.
  - [4] If the applicant asserts that a denial would constitute an Effective Prohibition, and the denial is based on a failure to comply with any of the standards in subsections [2] or [3] above, then pursuant to federal law the Director of Code Enforcement must consider whether the proposed Facilities are the Least Intrusive Means of addressing a significant gap in the applicant's Personal Wireless Services (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network). A significant gap is not established simply because the applicant's Personal Wireless Services operate on a frequency which is not the frequency most desired by the applicant. An applicant's claim of need for future capacity does not constitute evidence of a significant gap.
    - [a] The Director of Planning shall make a recommendation to the Director of Code Enforcement on this determination. The Director of Code Enforcement shall consider, among other things, (a) whether the Height proposed for the Personal Wireless Service Facility is the minimum Height necessary to remedy an established significant gap in service, (b) whether the installation mitigates adverse impacts to the greatest extent reasonably feasible, through the employ of Stealth design, screening, use of color, and noise mitigation measures, and (c) whether there is a feasible alternative to remedy the gap through alternative, less intrusive substitute Facilities.
    - [b] If the Director of Code Enforcement finds that the proposed Facilities are the Least Intrusive Means of addressing a significant gap in the applicant's Personal Wireless Services, then pursuant to federal law the Director of Code Enforcement must issue the Personal Wireless Service Facility Permit.
- (2) A Personal Wireless Service Facility Permit shall have a term of two (2) years and may be renewed for successive two (2) year terms pursuant to the terms of this subsection.
- (3) A Permittee seeking to renew a Personal Wireless Service Facility Permit must file a

renewal application with the Director of Code Enforcement no later than six (6) months prior to the expiration date of the existing Permit. The renewal application shall include a completed Town renewal application form, the renewal fee then being charged by the Town for such renewal applications, and the following:

- (a) A certification of compliance with RF exposure limits that meets the requirements of subsection T below, based on tests and inspections undertaken within six (6) months prior to the certification submission,
  - (b) A written report from a professional engineer licensed to practice in the State of New York, based on tests and inspections undertaken within six (6) months prior to the report submission, certifying that the permitted Personal Wireless Service Facilities comply with the noise requirements in subsection M,
  - (c) The documentation listed in subsection G(1)(f) or G(2)(f) above (whichever is applicable) showing compliance with all applicable building, structural, electrical and safety codes and with all other laws reasonably related to health and safety, and
  - (d) An affidavit from an attorney admitted and registered to practice law in the State of New York stating that services provided by the PWSFs covered by the Permit are considered public utility services, and the provider of such services is considered a public utility, in the State of New York. The affidavit shall also contain information supporting the statement.
- (4) The Director of Code Enforcement shall renew a PWSF Permit for a two (2) year term, provided that they find:
- (a) the Permittee submitted all required renewal application materials and fees,
  - (b) the Permittee is in compliance with all terms of its Permit, all requirements of this § 270-219, all other requirements of this Chapter 270 (unless expressly superseded by this § 270-219), all other relevant Ithaca Town Code requirements, and all relevant federal statutory and regulatory requirements, and
  - (c) services provided by the PWSFs covered by the Permit are considered public utility services, and the provider of such services is considered a public utility, in the State of New York.
- (5) If the applicant is in compliance with its Permit, asserts that a denial would constitute an Effective Prohibition, and the denial is based on a failure to comply with any of the non-federal standards in subsections (b) or (c) above, then pursuant to federal law the Director of Code Enforcement must consider whether the Facilities are the Least Intrusive Means of addressing a significant gap in the applicant's Personal Wireless Services (the ability of wireless telephones to make and receive voice calls to and from land-lines that are connected to the national telephone network). The process and requirements in subsection (1)(c)[4] above shall apply.

- (5) If the Director of Code Enforcement denies a renewal application, a Permittee may request a hearing before the Town Board, upon an application made to the Town Clerk demonstrating that the Permittee was entitled to renewal pursuant to the terms of this subsection. Such hearing shall be requested, in writing, with the request addressed to and received by the Town Clerk within five business days of the Permittee's receipt of the denial of the renewal application. Within 30 days of the Permittee's written request, the Town Board shall hold a hearing to determine whether to reverse the denial. The Town Board shall issue its written decision within 15 days after the hearing.
- (6) If a Permittee does not qualify for renewal, the Director of Code Enforcement denies the renewal application, or upon appeal the Town Board upholds the denial, the Permittee may file a new application for a Personal Wireless Service Facility Permit for the permitted Personal Wireless Service Facilities at the same locations. All provisions of this § 270-219 that apply to new applications shall apply to such applications.
- (7) Upon Permit expiration (including where renewal is denied), the owner and operator of the PWSFs covered by the Permit shall immediately cease operation of such PWSFs.

**T. Certification of compliance with RF exposure limits.**

- (1) Within forty-five (45) days of initial operation or modification of a PWSF, the owner and operator (if different than the owner) of each Antenna shall submit to the Director of Code Enforcement a written certification by a professional engineer licensed to practice in the State of New York, sworn to under penalties of perjury, that the PWSF's radiofrequency emissions comply with the applicable FCC Maximum Permissible Exposure (MPE) limits for General Population/Uncontrolled Exposure codified in 47 CFR § 1.1310(e)(1), Table 1 or any successor regulation.
- (2) The licensed professional engineer shall measure the emissions of the approved PWSF as well as (where required by FCC regulation, bulletin, order or guidance) the cumulative emissions from other nearby PWSFs, and determine if such emissions are within the FCC's MPE limits referenced above.
- (3) The PWSF owner and operator (if different than the owner) shall submit to the Director of Code Enforcement a report of these measurements and the engineer's findings with respect to compliance with the FCC's MPE limits.
- (4) If the report shows that the PWSF does not comply with applicable limits, then the owner and operator shall immediately cease operation of the PWSF until the PWSF is brought into compliance with such limits. Proof of compliance shall be a written certification by a professional engineer licensed to practice in the State of New York, sworn to under penalties of perjury, that the PWSF's radiofrequency emissions comply with the applicable FCC MPE limits. The Town may require, at the applicant's expense, independent verification of the results of this analysis.



- (5) After submission of the proof of compliance with the FCC's MPE limits described above, the PWSF owner and operator (if different than the owner) shall thereafter provide proofs of compliance with the applicable FCC MPE limits no less frequently than twelve (12) months after the date of submission of the last proof of compliance. All of the provisions applicable to the initial submission shall apply to subsequent submissions.
- (6) The Town shall have the right to employ a licensed professional engineer to conduct random and unannounced tests of PWSFs located within the Town to certify their compliance with the FCC's MPE limits. The Town may cause such random testing to be conducted as often as the Town may deem appropriate. However, the Town may not require the owner and/or operator to pay for more than one Town test per PWSF per calendar year, unless such testing reveals that one or more of the owner and/or operator's PWSFs are exceeding the FCC's MPE limits. In such a case, the owner and operator shall immediately cease operation of all PWSFs that do not comply with the MPE limits until the owner or operator submits proof of compliance as described above. Within forty-five (45) days of the Town's receipt of such proof of compliance, the Town may conduct a follow-up test at the expense of the owner and the operator (if different than the owner) to verify compliance.

#### **U. Structural integrity inspections.**

Every Personal Wireless Service Facility shall be inspected at least every second year for structural integrity by a professional engineer licensed to practice in the State of New York. A copy of the inspection report shall be submitted to the Director of Code Enforcement. Any unsafe condition revealed by such report shall be corrected within 10 days of notification of same to the record landowner on which the Facility is constructed. The time period for correction may, on application of the landowner or owner of the Facility, be extended by the Director of Code Enforcement if it is impracticable to complete the correction within said 10 days and if there is no imminent danger to life, limb, or other person's property. If the unsafe condition is not corrected within the applicable time period, or if the required inspection is not provided to the Town, the Personal Wireless Service Facility Permit for construction of the Facility may, after a hearing by the Town Board on at least 10 days' prior notice to the landowner of record given by overnight mail, certified mail, return receipt requested, or other equally effective manner of providing notice, be revoked by the Town Board. Revocation may occur only if the Town Board finds either a) that the required inspection has not been provided or b) that there is an unsafe condition which poses a risk of bodily injury or significant property damage. Upon such revocation, the Facility shall be removed or dismantled to the point of removing all unsafe conditions.

#### **V. Insurance.**

- (1) Minimum Coverages. Each PWSF Permittee shall maintain in full force and effect, throughout the term of a PWSF Permit, an insurance policy or policies. Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee's operations, as follows:

- (a) Commercial General Liability insurance with limits of insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate for bodily injury and property damage, including contractual liability, personal injury, products and completed operations.
- (b) Commercial Umbrella insurance with limits of not less than \$5,000,000.
- (c) Pollution Liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate, with any deductible not to exceed \$25,000 each occurrence.

(2) Other Insurance Requirements.

- (a) Said policy or policies shall include the Town and its officers and employees as additional insureds.
- (b) Said policy or policies shall be endorsed to provide thirty (30) days advance written notice of cancellation or any material change to the Town.
- (c) Should any of the required insurance be provided under a claims-made form, a Permittee shall maintain such coverage continuously throughout the term of a Personal Wireless Service Facility Permit, and, without lapse, for a period of three (3) years beyond the expiration or termination of the Permit, to the effect that, should occurrences during the term of the Permit give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

- (3) Proof of Insurance. Before the Town will issue a Personal Wireless Service Facility Site Permit, a Permittee shall furnish to the Town certificates of insurance and additional insured policy endorsements with insurers that are authorized to do business in the State of New York and that are satisfactory to the Town evidencing all coverages set forth in this subsection V.

**W. Compliance required.**

A PWSF must comply at all times with:

- (1) All conditions imposed on any site plan approval, special permit approval, and variances,
- (2) Its PWSF Permit, all relevant requirements of this § 270-219, all other relevant requirements of this Chapter 270 (unless expressly superseded by this § 270-219), and all other relevant Ithaca Town Code requirements, and
- (3) All relevant federal statutory and regulatory requirements, including but not limited to applicable FCC Maximum Permissible Exposure (MPE) limits for General Population/Uncontrolled Exposure codified in 47 CFR § 1.1310(e)(1), Table 1 or any successor regulation.

## **X. Americans with Disabilities Act accommodations.**

The Town seeks to comply with the Americans with Disabilities Act, and shall comply with same in the event that any person who is disabled within the meaning of the Act seeks a reasonable accommodation, to the extent that they are entitled to same under the Act.

## **Y. Suspension or revocation of PWSF Permit.**

- (1) The Code Enforcement Officer may issue a notice of intent to suspend or revoke a Personal Wireless Service Facility Permit for any violation. The notice of intent to suspend or revoke shall describe the violation and require the Permittee to immediately correct the violation or cause the violation to be corrected.
- (2) The notice of intent shall be provided to the Permittee by personal service, or by regular, overnight, certified or registered mail to the address submitted with the permit application.
- (3) If the Permittee fails to immediately correct the violation or cause the violation to be corrected, the Code Enforcement Officer shall suspend or revoke the permit.
- (4) A Permittee shall be entitled to request a hearing on suspension or revocation before the Town Board, upon application made to the Town Clerk demonstrating that the Permittee was not in violation of the permit. Such hearing shall be requested, in writing, with the request addressed to and received by the Town Clerk within five business days of the 'Permittee's receipt of the notice of intent. Any suspension or revocation remains in effect unless modified by the Town Board. Within 30 days of the 'Permittee's written request, the Town Board shall hold a hearing to determine whether to reverse or modify the suspension or revocation. The Town Board shall issue its written decision within 15 days after the hearing.

## **Z. Enforcement.**

- (1) Whenever the Code Enforcement Officer finds that there has been a violation of this section, the Code Enforcement Officer is authorized to issue an order to remedy.
- (2) An order to remedy shall be in writing; identify the Facility at issue; specify the condition or activity that violates this section; specify the provisions of this section which are violated by the specified condition or activity; and include a statement that the violations must be corrected within 30 days after the date of the order to remedy (or, if the violations are not reasonably capable of cure within 30 days, shall include a statement that the owner or operator must commence to cure such violations within such 30 day period and thereafter diligently and with continuity prosecute such cure to completion in a period not to exceed 90 days after the Town's notice). The order may direct the person

served with the order to begin to remedy the violation(s) immediately or within some other stated period of time that can be less than 30 days after the date of the order; direct that compliance be achieved within the specified period of time; and shall state that an action or proceeding to compel compliance and/or seek penalties, fines and/or imprisonment may be instituted if compliance is not achieved within the specified period of time.

- (3) The order to remedy, or a copy thereof, may be served by personal service, by mailing by registered or certified mail sent to the address set forth in the application for any permit submitted to the Town or to the property address, or by posting a copy thereof on the premises that are the subject of the order to remedy and mailing a copy, enclosed in a prepaid wrapper, addressed to the last known address of the owner as set forth in the Town of Ithaca records, or if none, in the most recent tax roll available to the Town of Ithaca. The Code Enforcement Officer shall be permitted, but not required, to cause the order to remedy, or a copy thereof, to be served on any property owner, PWSF operator, or any other person taking part or assisting in the operation of a PWSF at the affected property personally or by registered mail or certified mail; provided, however, that failure to serve any person mentioned in this sentence shall not affect the efficacy of the order to remedy.
- (4) Civil penalties. In addition to the remedies (including fines, imprisonment and injunctive relief) provided in § 270-239 (Violations and penalties) and in Town Law § 268, any person who violates any provision of this section, any term or condition of any Personal Wireless Facility Service Permit, order to remedy, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this section shall be liable for a civil penalty of not more than \$5,000 for each day or part thereof during which such violation continues. The civil penalties provided by this subsection shall be recoverable in an action instituted in the name of the Town of Ithaca.
- (5) An action or proceeding in the name of the Town of Ithaca may be commenced in any court of competent jurisdiction to prevent, restrain, enjoin, correct, or abate any violation of, or to enforce, any provision of this section, or any term or condition of any Personal Wireless Service Facility Permit, order to remedy, or other notice or order issued by the Code Enforcement Officer pursuant to any provision of this section. Such remedy shall be in addition to penalties, fines and other remedies otherwise prescribed by law.
- (6) Remedies not exclusive. No remedy, fine or penalty specified in this section shall be the exclusive remedy, fine or penalty available to address any violation described in this section, and each remedy, fine or penalty specified in this section shall be in addition to, and not in substitution for or limitation of, the other remedies, fines or penalties specified in this section, or in any other applicable law. Any remedy, fine or penalty specified in this section may be pursued at any time, whether prior to, simultaneously with, or after the pursuit of any other remedy, fine or penalty specified in this section, in any other section of this chapter, or in any other applicable law.
- (7) Conviction of a violation of this section shall constitute and effect an immediate

forfeiture of any permit hereunder held by the person or entity so convicted.

**AA. Severability.**

If any clause, sentence, paragraph, section or part of this § 270-219 shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remaining portions hereof, but shall be confined to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.”

**Section 2.** In the event that any portion of this law is declared invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be affected by such declaration of invalidity.

**Section 3.** This local law shall take effect immediately upon filing with the New York Secretary of State.