

**INTRODUCTORY LOCAL LAW # 1 OF
2022 – A LOCAL LAW AMENDING THE
CODE OF THE VILLAGE OF
SCARSDALE WITH RESPECT TO
WIRELESS TELECOMMUNICATIONS
FACILITIES**

BE IT ENACTED by the Board of Trustees of the Village of Scarsdale as follows:

Section 1: Purpose and Intent: The Board of Trustees finds that it is necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within and outside of the Village’s public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.

Section 2: Article XII of Chapter 310 of the Code of the Village of Scarsdale entitled Wireless Telecommunications Facilities is hereby repealed in its entirety and replaced with the following:

“Article XII **[Intentionally Omitted]**”

Section 3: The Code of the Village of Scarsdale is hereby amended to include a new Chapter 306 entitled “Wireless Telecommunications Facilities” to read as follows:

“Chapter 306 **Wireless Telecommunications Facilities**

GENERAL REFERENCES

Historic Preservation – See Ch. **182**

Noise – See Ch. **205**

Trees, Grass, Brush and Weeds – See Ch. **281**

Article I General Provisions

§ 306-1 **Title**

This chapter may be cited as the “Wireless Telecommunications Facilities Law of the Village of Scarsdale.”

§ 306-2 **Findings and Purpose.**

The purpose of this chapter consistent with federal and state law, is to assure access of our local residents to telecommunications technologies while at the same time maintaining the aesthetic qualities of our neighborhoods, scenic locales and historic areas, managing the deployment and

controlling the potential proliferation of wireless telecommunications facilities, ensuring meaningful input by the community into important land use decisions, encouraging cooperation between telecommunications providers and resulting in the fewest possible intrusions on traffic, streets and sidewalks. This chapter is intended to minimize the aesthetic impacts of wireless communications facilities by encouraging the exploration of alternatives that use methods to disguise or camouflage the facilities, by minimizing the height of the facilities, by encouraging collocation of facilities and by locating facilities on existing structures whenever possible. This chapter is not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor to discriminate among providers of functionally equivalent services. In furtherance of these goals, the Village shall give consideration to the Comprehensive Plan, Zoning Map, existing land uses and environmentally sensitive areas in approving sites for the location of Wireless Facilities. While the Village has no control over the use of county and state lands, in recognition of the fact that there are approximately 900 acres of county and state lands within the Village, Wireless Service Providers will be encouraged, if consistent with the provisions of this chapter, to consider sites on these lands in addition to those under Village jurisdiction.

§ 306-3 Definitions.

The words and phrases set forth below have the following meanings when used in this chapter.

ABANDONED or ABANDONMENT

Any Wireless Telecommunications Facility which has not been operational for six (6) consecutive months.

ANTENNA

A device used to collect and/or transmit Personal Wireless Services or radio signals.

APPLICATION

A formal request, including all required and requested documentation and information, submitted by an applicant to the Village for a Wireless Permit or Wireless Encroachment Permit as the case may be.

APPLICANT

A person filing an application for placement or modification of a Wireless Facility within or outside of the Public Right-of-Way.

BASE STATION

Shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(1), or any successor provision.

COLLOCATION

The mounting or installation of an additional Antenna on an existing Tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

ELIGIBLE FACILITIES REQUEST

Shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

EQUIPMENT FACILITY

Any structure, including but not limited to cabinets, shelters, a buildout of an existing structure and pedestals, used to contain ancillary equipment as part of a Wireless Facility.

FCC

The Federal Communications Commission or its lawful successor.

LAND SITE, OR SITE

A tract or parcel of land that contains a Personal Wireless Facility and associated parking, and may include other uses associated with and ancillary to the transmission of Personal Wireless Services.

MICROWAVE BACKHAUL

The transport network that uses microwaves to connect the radio access network (RAN) to the core network.

MUNICIPAL INFRASTRUCTURE

Village-owned or controlled property, structures, objects, and equipment in the ROW, including, but not limited to, streetlights, traffic control structures, banners, street furniture, bus stops, billboards, or other poles, lighting fixtures, or electroliers located within the ROW.

PERMITTEE

Any person or entity granted a Wireless Permit or Wireless Encroachment Permit as the case may be, pursuant to this chapter.

PERSONAL WIRELESS SERVICES

Shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

PUBLIC RIGHT-OF-WAY, OR ROW

Means the surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public easement, right-of-way or any other public ground or water within or in which the Village now or hereafter holds any property interest.

ROADWAY CLASSIFICATION MAP

The existing Roadway Classification Map included in the Village's 1994 Comprehensive Plan as same has been and may be amended from time to time.

SMALL CELL FACILITY

Shall have the same meaning as "small wireless facility" in 47 C.F.R. Section 1.6002(l), or any successor provision (which is a Personal Wireless Services Facility that meets the following conditions that, solely for convenience, have been set forth below):

(1) The facility—

- (i) is mounted on a structure 50 feet or less in height, including antennas, as defined in 47 C.F.R. Section 1.1320(d), or
 - (ii) is mounted on a structure no more than 10 percent taller than other adjacent structures, or
 - (iii) does not extend an existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna in 47 C.F.R. Section 1.1320(d)), is no more than three cubic feet in volume;
 - (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
 - (4) The facility does not require antenna structure registration under 47 C.F.R. Part 17;
 - (5) The facility is not located on Tribal lands, as defined under 36 C.F.R. Section 800.16(x); and
 - (6) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. Section 1.1307(b).

STRAND MOUNTED FACILITY

Means a facility that:

- (1) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height, including all mounting brackets, fasteners, cabling and antennas;
- (2) has an exterior antenna, if any, not longer than 11 inches; and
- (3) is mounted on a preexisting cable or wire.

SUPPORT STRUCTURE

Any structure designed and constructed to support an antenna array, including Utility Poles, self-supporting lattice Towers, guy-wire support Towers or monopole Towers, or a Base Station.

TOWER

Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for Personal Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as Unlicensed Wireless Services and fixed wireless services such as Microwave Backhaul, and the associated Site. This definition does not include Utility Poles.

UNDERGROUND AREAS

Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right of way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

UTILITY POLE

A structure in the ROW designed to support electric, telephone and similar utility lines. A Tower is not a Utility Pole.

WIRELESS ENCROACHMENT PERMIT

A permit issued pursuant to this chapter authorizing the placement or modification of a Wireless Facility of a design specified in the permit at a particular location within the ROW; and the modification of any existing Support Structure to which the Wireless Facility is proposed to be attached.

WIRELESS FACILITY, OR FACILITY

The transmitters, antenna structures and other types of installations used for the provision of wireless services at a fixed location, including, without limitation, any associated Tower(s), Support Structure (s), and Base Station(s).

WIRELESS INFRASTRUCTURE PROVIDER

A person that owns, controls, operates or manages a Personal Wireless Facility or portion thereof outside of the Public Rights-of-Way or a Wireless Facility or portion thereof within the ROW.

WIRELESS PERMIT

A permit issued pursuant to this chapter authorizing the placement or modification of a Personal Wireless Facility of a design specified in the permit at a particular location outside of the Public Rights-of-Way; and the modification of any existing Support Structure to which the Facility is proposed to be attached.

WIRELESS REGULATIONS

Those regulations that may be adopted pursuant to this chapter and implementing the provisions of this chapter.

WIRELESS SERVICE PROVIDER

An entity that provides Personal Wireless Services to end users.

WIRELESS TELECOMMUNICATIONS FACILITY

The transmitters, antenna structures and other types of installations used for the provision of Personal Wireless Services at a fixed location, including, without limitation, any associated Tower(s), Support Structure(s), and Base Station(s).

Article II Wireless Telecommunications Facilities Within the Village's Rights-of-Way.

§ 306-4 Scope.

- A.** In General. There shall be a type of encroachment permit entitled a “Wireless Encroachment Permit.” Unless exempted, every person who desires to place a Wireless Facility in the Public Right-of-Way or modify an existing Wireless Facility in the Public

Right-of-Way must obtain a Wireless Encroachment Permit authorizing the placement or modification in accordance with this article. Except for Small Cell Facilities, Facilities qualifying as Eligible Facilities Requests, or any other type of Facility expressly allowed in the Public Right-of-Way by state or federal law, no other Wireless Facilities shall be permitted pursuant to this article.

- B.** Exemptions. This article does not apply to:
- (1) The placement or modification of facilities by the Village or by any other agency of the state solely for public safety purposes.
 - (2) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement, or removal of existing facilities.
 - (3) Installation of a Wireless Facility on the strand between two Utility Poles, provided that they meet the definition of Strand Mounted Facility set forth in § 306-3 of Village Code.
- C.** Other Applicable Requirements. In addition to the Wireless Encroachment Permit required herein, the placement of a Wireless Facility in the ROW requires the persons who will own or control those Facilities to obtain all permits required by applicable law, and to comply with applicable law, including, but not limited to, applicable law governing radio frequency (RF) emissions.
- D.** Pre-Existing Facilities in the ROW. Any Wireless Facility already existing in the ROW as of the date of this article's adoption shall remain subject to the standards and conditions of the Village Code in effect prior to this article, unless and until a renewal of such Facility's then-existing permit is granted, at which time the provisions of this article shall apply in full force going forward as to such Facility. The review of any request for a renewal of a permit for such pre-existing facilities shall be conducted pursuant to this article, rather than the portion(s) of the Village Code that it was previously reviewed under.
- E.** Public Use. Except as otherwise provided by New York law, any use of the Public Right-of-Way authorized pursuant to this article will be subordinate to the Village's use and use by the public.
- G.** Every Wireless Encroachment Permit issued pursuant to this article shall be subject to compliance with the Village's applicable Design and Development Guidelines as same may be amended from time to time by resolution of the Board of Trustees.

§ 306-5 Administration.

- A.** Applications for permits for Wireless Facilities in the Public Right-of-Way, shall be subject to approval of the Village Planning Board. Such Applications shall be filed with the Village

Engineer or their designee who is responsible for administering this article. As part of the administration of this article, the Village Engineer may:

- (1) Interpret the provisions of this article;
- (2) Develop and implement standards governing the placement and modification of Wireless Facilities consistent with the requirements of this article, including regulations governing collocation and resolution of conflicting Applications for placement of Wireless Facilities;
- (3) Develop and implement acceptable designs and development standards for Wireless Facilities in the Public Right-of-Way, taking into account the zoning districts bounding the Public Right-of-Way;
- (4) Develop forms and procedures for submission of Applications for placement or modification of Wireless Facilities, and proposed changes to any Support Structure consistent with this article;
- (5) Determine the amount of and collect, as a condition of the completeness of any Application, any fee established by this article;
- (6) Establish deadlines for submission of information related to an Application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- (7) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a Wireless Encroachment Permit should be issued;
- (8) Require, as part of, and as a condition of completeness of any Application, notice in accordance with § 306-9.A.(24) herein below to members of the public including any homeowners' association or condominium association if applicable, that may be affected by the placement or modification of the Wireless Facility and proposed changes to any Support Structure;
- (9) Take such other steps as may be required to assist the Planning Board in timely acting upon Applications for placement of Wireless Facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an Application.
- (10) Appeals.
 - (a) Any person or entity adversely affected by the decision of the Planning Board pursuant to this Article may appeal such decision to the Village Board of Trustees which may decide the issues de novo, and whose written decision will be the final decision of the Village.

- (b) All appeals must be filed within two (2) business days of the written decision of the Planning Board, unless the Planning Board extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.
- (c) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

§ 306-6 General Standards for Wireless Facilities in the Public Rights-of-Way.

- A.** Generally. Wireless Facilities in the ROW shall meet the minimum requirements set forth in this article and the Wireless Regulations, in addition to the requirements of any other applicable law.
- B.** Regulations. The Wireless Regulations and decisions on Applications for placement of Wireless Facilities in the ROW shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that Applicant has established that denial of an Application would, within the meaning of federal law, prohibit or effectively prohibit the provision of Personal Wireless Services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this article may be waived, but only to the minimum extent required to avoid the prohibition or violation.
- C.** Minimum Standards. Wireless Facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities in Underground Areas, avoids installation of new Support Structures or equipment cabinets in the Public Right-of-Way, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the Facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the Rights-of-Way; and ensures that the Village bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the Rights-of-Way, or hinder the ability of the Village or other government agencies to improve, modify, relocate, abandon, or vacate the public rights of way or any portion thereof, or to cause the improvement, modification, relocation, vacation, or abandonment of Facilities in the Rights-of-Way.
- D.** Location Preferences. All Applicants should, to the extent feasible, collocate new Facilities and substantial changes to existing Facilities with existing Facilities. Collocations should, to the extent feasible, be proposed on structures in accordance with the following preferences.
 - (1) Restricted Site Locations. All of the following locations will be deemed “Restricted Site Locations” that require an exception pursuant to § 306-6.D.(6) of this article, except to the extent that same would result in the prohibition or effective prohibition of service:

- (a) Village Center Area Zones;
 - (b) any location within 500 feet from a residential dwelling unit;
 - (c) any location within 500 feet from a daycare facility or school;
 - (d) any location within 500 feet from a house of worship; and
 - (e) any location within parkland;
- (2) Location Preferences. To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with Small Wireless Facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates by clear and convincing evidence in the written record that: (a) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible; and (b) if the proposed site or the most-preferred location within 500 feet from the proposed site is within a Restricted Site Location, the applicant qualifies for an exception pursuant to § 306-6.D.6 of this article.
- (3) The Village requires Small Cells in the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:
- (a) locations within business zones on or along arterials as shown on the Roadway Classification Map;
 - (b) locations within business zones along collector roads as shown on the Roadway Classification Map;
 - (c) locations within business zones on or along residential streets as shown on the Roadway Classification Map;
 - (d) any location within 1,000 feet from an existing/proposed Small Wireless Facility;
 - (e) any location not less than 500 feet from any Restricted Site Location (as defined in § 306-6.D.(1) above);
 - (f) locations within residential zones on or along arterials as shown on the Roadway Classification Map;
 - (g) locations within residential zones on or along collector roads as shown on the Roadway Classification Map;

- (h) locations within residential zones on or along local/residential streets as shown on the Roadway Classification Map;
- (4) To minimize visual clutter, the collocation of any Facility within a location class identified in subsection (2) above is preferred over a new site within that same class. Such preference assumes that the collocation can be accomplished without negating any stealth requirements of the permit governing the site.
- (5) In the event that a proposed Facility would be within 500 feet of a residence, the technically feasible location furthest from all residences will be deemed to be the most preferred alternative. In the event that a proposed facility would be located within a Restricted Site Location (as defined in § 306-6.D.(1), and the proposed facility qualifies for an exception pursuant to § 306-6.D.(6) of this article, the facility must be located in the feasible location of highest priority class while not simultaneously located in a lower priority class pursuant to this § 306-6.D.
- (6) The Planning Board may grant an exception to the standards in this § 306-6 hereof to the extent same would result in the prohibition or effective prohibition of service, and to the extent necessary to avoid any other conflict with applicable federal or state laws or regulations or would require a technically infeasible facility design or installation. Each exception is specific to the facts and circumstances in connection with each application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance. Exceptions shall not be approved to override any fire safety or other public safety standard determined to be appropriate by the Village.

 - (a) An applicant may request an exception only at the time the applicant submits an Application in conformance with § 306-7 hereof. The Planning Board or their designee may consider additional information provided by the applicant after submittal to supplement the initial exception request. Any request for an exception after the initial submittal shall be deemed to be a new Application.
 - (b) Due to the technical nature of issues likely to be raised, independent consultant review will generally be appropriate when considering an exception request.
 - (c) The applicant shall have the burden to prove to the Planning Board that an exception should be granted pursuant to this § 306-6.D.(6). The standard of evidence shall be the same as required by applicable federal or state law for the issue raised in the applicant's request for an exception.
 - (d) The approval of any exception request shall require the consultation of the Village Attorney as to the validity and legal justification for the exception. All legal fees reasonably incurred hereunder shall be paid by the Applicant.

- (e) If the Planning Board or their designee finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this article to the least extent necessary to avoid the prohibition, violation, or technically infeasible design or installation.

E. Design Standards. Permits for Personal Wireless Services Facilities shall incorporate specific concealment elements to minimize visual impacts and design requirements ensuring compliance with all standards for noise emissions, unless it is determined that another design is less intrusive, or placement is required under applicable law. The Board of Trustees may develop, implement and amend acceptable designs and development standards for Wireless Facilities in the Public Right-of-Way, taking into account the zoning districts bounding the Public Right-of-Way.

§ 306-7 Applications.

A. Submission. Unless the Wireless Regulations provide otherwise, Applicant shall submit a paper copy and an electronic copy of any Application, amendments, or supplements to an Application, or responses to requests for information regarding an Application to:

Village of Scarsdale
ATTN: Village Engineer
1001 Post Road
Scarsdale, NY 10583

Unless otherwise prohibited by law or deemed the commencement of any applicable shot-clock, an Applicant is encouraged to schedule a pre-Application meeting with the Planning Board to discuss the proposed Wireless Facility, the requirements of this article, and any potential impacts of the proposed Facility prior to filing an Application for a Wireless Permit.

B. Content. An Applicant shall submit an Application on the form approved by the Village Engineer, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the Village Engineer to make required findings and ensure that the proposed Facility will comply with applicable federal and state law, the Village Code, and will not endanger the public health, safety, or welfare.

C. Fees. Application fee(s) shall be required to be submitted with any Application for a Wireless Encroachment Permit. The Board of Trustees is hereby authorized to determine, or cause to be determined, the amount, type, and other terms of such fee(s) from time to time by means of resolution. The Village Engineer may require an Applicant to deposit with the Village such funds in an amount as set forth in the Village's Master Fee Schedule to cover the Village's initial costs in reviewing and processing the request. The Village may draw from the deposit account after providing the Applicant written notice of the reasonable costs to be paid from the account. Applicants shall be responsible for payment of such additional reasonable costs as the Village may incur in reviewing the Application. Such

reasonable costs may include, but are not limited to, internal staff time, and reasonable costs associated with the retention of outside counsel and consultants to provide additional expertise where needed. In the event such additional expenses are required, the Village shall so advise the applicant. Any outstanding amount shall be due upon final action on the Application and must be paid prior to the Village's execution of any Permit. Any amounts not expended in the review, excluding a reasonable, estimated share of the Village's costs in developing the agreement, shall upon written request to the Village be returned to the Applicant.

- D.** Waivers. Requests for waivers from any requirement of this section shall be made in writing to the Village Engineer or their designee. The Village Engineer may grant or deny a request for a waiver pursuant to this subsection. The Village Engineer may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the Village Engineer will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to this subsection shall be granted only on a case-by-case basis, and narrowly tailored to minimize deviation from the requirements of the Village Code.
- E.** Incompleteness. For Personal Wireless Facilities and Eligible Facilities Request, Applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an Application is incomplete, the Village Engineer shall notify the Applicant in writing, and specify the material omitted from the Application.

§ 306-8 Findings; Decisions; Consultants.

- A.** Findings Required for Approval.
 - (1)** Except for Eligible Facilities Requests, the Planning Board or their designee shall approve an Application if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:
 - (a)** The Facility complies with this article and all applicable design and development standards; and
 - (b)** The Facility meets applicable requirements and standards of state and federal law;
 - (2)** For Eligible Facilities Requests, the Planning Board or their designee shall approve an Application if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:
 - (a)** That the Application qualifies as an Eligible Facilities Request; and
 - (b)** That the proposed Facility will comply with all generally-applicable laws.

- B. **Decisions.** Decisions on an Application by the Planning Board or their designee shall be in writing and include the reasons for the decision.
- C. **Independent Consultants.** The Planning Board or their designee, in its discretion, may select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any Application under this article. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an Application, including, but not limited to, Application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency emissions standards. The full cost of such independent consultant(s) shall be borne by the Applicant.

§ 306-9 Conditions of Approval.

- A. **Generally.** In addition to any supplemental conditions imposed by the Planning Board or their designee, all permits granted pursuant to this article shall be subject to the following conditions, unless modified by the approving authority:
 - (1) **Code Compliance.** The Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to use of the Public Right-of-Way.
 - (2) **Permit Duration.** A Wireless Encroachment Permit shall be valid for a period of five (5) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of five (5) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a Wireless Encroachment Permit must either (1) remove the Facility within thirty (30) days following the Permit's expiration (provided that removal of Support Structure owned by Village, a utility, or another entity authorized to maintain a Support Structure in the Right-of-Way need not be removed, but must be restored to its prior condition, except as specifically permitted by the Village); or (2) at least ninety (90) days prior to expiration, submit an Application to renew the permit, which Application must, among all other requirements, demonstrate that the impact of the Wireless Facility cannot be reduced. The Wireless Facility must remain in place until it is acted upon by the Village and all appeals from the Village's decision exhausted.
 - (3) **Timing of Installation.** The installation and construction authorized by a Wireless Encroachment Permit shall begin within one (1) year after its approval, or it will expire without further action by the Village. The installation and construction authorized by a Wireless Encroachment Permit shall conclude, including any necessary post-installation repairs and/or restoration to the ROW, within ninety (90) days following the day construction commenced.
 - (4) **Commencement of Operations.** The operation of the approved Facility shall commence no later than sixty (60) days after the completion of installation, or the

Wireless Encroachment Permit will expire without further action by the Village. The Village Engineer is authorized to develop means by which to verify operations and the costs for such verification shall be captured in the Application fee established in § 306-7.(C).

- (5) **As-Built Drawings.** The Permittee shall submit an as-built drawing, or four-sided photo array accompanied with a measurable index of the Facility, within ninety (90) days after installation of the Facility. As-builts shall be in an electronic format acceptable to the Village.
- (6) **Inspections; Emergencies.** The Village or its designee may enter onto the Facility area to inspect the Facility upon twenty-four (24) hours' prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its Facility by the Village. The Village reserves the right to enter or direct its designee to enter the Facility and support, repair, disable, or remove any elements of the Facility in emergencies or when the Facility threatens imminent harm to persons or property. The Village shall make an effort to contact the Permittee prior to disabling or removing any Facility elements, but in any case shall notify Permittee within twenty-four (24) hours of doing so.
- (7) **Contact.** The Permittee shall at all times maintain accurate contact information for all parties responsible for the Facility, which shall include a twenty-four hour contact number, a business hours phone number, street mailing address and email address for at least one natural person.
- (8) **Insurance.** The Permittee shall furnish to the Village insurance, evidenced by a certificate or certificates of insurance naming the Village as additional insured, in form satisfactory to the Village Attorney, with the following limits: general bodily injury of not less than \$1,000,000.00 per each occurrence, general property damage of not less than \$3,000,000.00 per each occurrence. Such insurance shall insure the Village, its officers, employees and agents against any liability for personal injury, including without limitation claims pertaining to RF exposure, or property damage, directly or indirectly resulting from or arising out of the granting of any such permit or any such construction or the method and manner of doing any work permitted or required by any such permit or under this article or from the maintenance and repair of said improvements following completion of said improvement, or any negligent act or omission in connection therewith on the part of the Permittee, Permittee's employees or agents, provided that a public service corporation may, at its option, file an undertaking, in form satisfactory to the Village Attorney, to indemnify and save harmless the Village, its officers, employees and agents from any such liability, covering all construction made by it. At a minimum, the following insurance requirements shall be satisfied:
 - (a) A Permittee shall not commence construction or operation of the Wireless Facility without obtaining all insurance required under this section and approval of such insurance by the Village Engineer, or their designee, nor

shall a Permittee allow any contractor or subcontractor to commence work on its contract until all similar such insurance required of the same has been obtained and approved by the Village Engineer, or their designee. The required insurance must be obtained and maintained for the entire period the Wireless Facility is in existence. If the Permittee, its contractors or subcontractors do not have the required insurance, the Village will order such entities to cease operation of the facility until such insurance is obtained and approved by the Village Engineer, or their designee.

- (b) Certificate(s) of insurance verifying such insurance shall be filed with the Village Engineer, or their designee, at the time of Application. For entities that are entering the market, the certificate(s) shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse of coverage. Such certificate(s) should provide the name, address and phone number of the insurance carrier; and identify an agent in case of inquiries.
 - (c) The certificate(s) of insurance shall contain a provision that coverages afforded under such policies shall not be canceled until at least 30 days' prior written notice has been given to the Village. All insurance policies shall be issued by companies authorized to do business under the laws of the State of New York.
 - (d) Where applicable, in the event that the insurance certificate(s) provided indicates that the insurance will terminate or lapse during the term of the lease agreement with the Village, then in that event the Wireless Service Provider shall furnish a renewed certificate of insurance as proof that equal and like coverage remains in effect for the balance of the lease term, at least 30 days' prior to the expiration of the date of such insurance.
 - (e) A Permittee and its contractors or subcontractors engaged in work on the provider's behalf shall maintain minimum insurance in the amounts determined by the Village Engineer, or their designee, to cover liability, bodily injury, and property damage. The insurance shall cover, but not be limited to, the following exposures: premises, operations, and certain contracts. Such coverage shall be written on an occurrence basis and shall also be required under any lease agreement between the Village and the Permittee.
- (9) Indemnities. The Permittee and, if applicable, the owner of the property upon which the Wireless Facility is installed shall defend, indemnify and hold harmless the Village, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the Village or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the Village's approval of the permit, and (ii) from

any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, lawsuits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, including without limitation claims pertaining to RF exposure, death or property damage, arising out of or in connection with the activities or performance of the Permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the Village becomes aware of any such actions or claims, the Village shall promptly notify the Permittee and, if applicable, the property owner and shall reasonably cooperate in the defense. The Village shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Village's defense, and the property owner and/or Permittee (as applicable) shall reimburse Village for any costs and expenses directly and necessarily incurred by the Village in the course of the defense.

- (10) Performance Bond.** Prior to issuance of a Wireless Encroachment Permit, the Permittee shall file with the Village, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety, a letter of credit, or another form of security for the removal of the Facility in the event that the use is abandoned or the permit expires, or is revoked, or is otherwise terminated. The security shall be in an amount as deemed satisfactory by the Village Engineer as necessary to cover the cost of physically removing the Facility and all related facilities and equipment on the site, based on the higher of two contractor's quotes for removal that are provided by the Permittee. In addition, the security shall be applied to all penalties incurred by the Permittee in this article. The Permittee shall reimburse the Village for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the Board of Trustees. Reimbursement shall be paid when the security is posted and during each administrative review.
- (11) Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the Facility. While not the sole basis for denial, the Planning Board or their designee may consider adverse impacts on the property values of any adjacent properties when deciding on an Application. The Facility shall be designed and constructed in accordance with all applicable national building standards for such facilities and structures, including but not limited to the standards developed by the Electronics Industry Association, Institute of Electrical and Electronics Engineers, Telecommunications Industry Association, American National Standards Institute and Electrical Industry Association.
- (12) Noninterference.** Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the Village shall be moved to accommodate a permitted activity or encroachment, unless the Village determines that such movement will not adversely affect the Village or any surrounding businesses or

residents, and the Permittee pays all costs and expenses related to the relocation of the Village's structure, improvement, or property. Prior to commencement of any work pursuant to a Wireless Encroachment Permit, the Permittee shall provide the Village with documentation establishing to the Village's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property within the Public Right-of-Way or Village utility easement to be affected by Permittee's facilities. Nor shall any Permittee remove, damage or otherwise trim any tree except in accordance with Chapter 281 hereof, "Trees, Grass, Brush and Weeds", nor cause any building or structure to be altered or in any way compromised in violation of Chapter 182 hereof, "Historic Preservation", nor violate Chapter 205 hereof, "Noise."

- (13)** No Right, Title, or Interest. The permission granted by a Wireless Encroachment Permit shall not in any event constitute an easement on or an encumbrance against the Public Right-of-Way. No right, title, or interest (including franchise interest) in the Public Right-of-Way, or any part thereof, shall vest or accrue in Permittee by reason of a Wireless Encroachment Permit or the issuance of any other permit or exercise of any privilege given thereby.
- (14)** No Possessory Interest. No possessory interest is created by a Wireless Encroachment Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that Village has given to Permittee such notice as may be required by law. The use or occupancy of any public property pursuant to a Wireless Encroachment Permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this permit.
- (15)** General Maintenance. The Site and the Facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the Permittee within forty-eight (48) hours after notification from the Village.
- (16)** RF Exposure Compliance. The Permittee has a non-delegable duty to ensure full compliance with FCC RF exposure standards pursuant to FCC Regulations, Title 47, Part 1, Section 1.1307. The Village Engineer, or their designee, will consult with an independent engineer regarding the choice of a monitoring protocol to be used. This may include the Cobbs Protocol, the FCC OET Bulletin 65, Edition 97-01, August 1997, referenced in FCC Regulations, Title 47, Part 1, Section 1.1307 as IEEE C95.3 1991, or any other protocol that the Planning Board adopts as the technology changes. The same protocol will be used from year to year until such time as new protocols are developed. All facilities must comply with all

standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the Facility, Permittee or its representative must conduct on-site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.

- (a) Pre-testing. After the granting of the applicable permit and before the facility begins transmission, the Applicant shall pay for an independent consultant RF engineer, chosen and hired by the Village Engineer, or their designee, to monitor the background levels of EMF radiation around the proposed facility site and at appropriate distances from it, and/or at any repeater locations to be utilized for the Applicant's Wireless Facilities. The independent consultant shall use the specified monitoring protocol. A report of the monitoring results shall be prepared by the independent consultant and submitted to the Village Engineer, or their designee.
- (b) Post-testing. Within 30 days after transmission begins, the owner(s) of any Wireless Services located on the Tower/Facility Site shall pay for an independent consultant RF engineer, chosen and hired by the Village Engineer, or their designee, to conduct an initial post-installation test of the EMF radiation emitted from said site, and thereafter, as follows:

 - (i) There shall be routine annual monitoring of emissions by the independent RF engineer using actual field measurements of radiation, utilizing the monitoring protocol. This monitoring shall measure levels of EMF radiation from the Facility Site's primary antennas as well as from repeaters (if any). A report of the monitoring results shall be prepared by the RF engineer and submitted to the Village Engineer, or their designee.
 - (ii) Any major modification of an existing Facility, or the activation of any additional permitted channels, shall require new monitoring.
- (c) Excessive emissions. Should the monitoring of a Facility reveal that the Site exceeds the current FCC standards and guidelines, then the owner(s) of all facilities utilizing the Site shall be notified. In accordance with FCC requirements, the owner(s) must immediately reduce power or cease operation as necessary to protect persons having access to the Site, Facility, or Antennas. In addition, the owner(s) shall submit to the Village Engineer, or their designee, an analysis of what caused the problem and a plan for the reduction of emissions to a level that complies with the FCC standards within 10 business days of noncompliance. Failure to accomplish this reduction of emissions within ten

business days of initial notification of noncompliance shall be a violation of this chapter subject to fines and such other remedies as are otherwise available to the Village.

- (17) Testing. Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- (18) Modifications. No changes shall be made to the approved plans without review and approval in accordance with this article.
- (19) Agreement with Village. An Applicant seeking to construct, attach, or operate a Facility on Municipal Infrastructure shall enter into the appropriate agreement with the Village, as determined by the Village. The Applicant shall provide evidence of such an agreement with their permit Application or such an Application shall be returned as incomplete. A Wireless Encroachment Permit is not a substitute for such agreement.
- (20) Conflicts with Improvements. For all Facilities located within the ROW, the Permittee shall remove or relocate, at its expense and without expense to the Village, any or all of its facilities when such removal or relocation is deemed necessary by the Village by reason of any change of grade, alignment, or width of any Public Right-of-Way, for installation of services, water pipes, drains, storm drains, power or signal lines, traffic control devices, Public Right-of-Way improvements, or for any other construction, repair, or improvement to the Public Right-of-Way.
- (21) Abandonment. If a Facility is not operated for a continuous period of six (6) months, the Wireless Encroachment Permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the six (6) month period (i) the Village Engineer has determined that the Facility has resumed operations, or (ii) the Village has received an Application to transfer the permit to another service provider. No later than forty-five (45) days from the date the Facility is determined to have ceased operation or the Permittee has notified the Village Engineer of its intent to vacate the site, the Permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Village Engineer. The Permittee shall provide written verification of the removal of the facilities within thirty (30) days of the date the removal is completed. If the Facility is not removed within thirty (30) days after the permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the Village may cause the Facility to be removed at Permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single Facility or Support Structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

- (22) Collocation. Where the Facility site is capable of accommodating a co-located Facility upon the same site in a manner consistent with the permit conditions for the existing Facility, the owner and operator of the existing Facility shall allow collocation of third party facilities, provided collocation is technically feasible and the parties can mutually agree upon reasonable terms and conditions.
- (23) Records. The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the Facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the Village, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.
- (24) Notification. Once an Application for a Wireless Facility is submitted, a public notice shall be sent by certified mail, return receipt requested by the applicant to all owners of real property, including the owner of the Site if any part of which is located within one thousand (1,000) feet of the proposed Wireless Facility location, and to the President-At-Large of the Scarsdale Neighborhood Association, as well as the president of the neighborhood association in which the Wireless Facility is proposed. The notices will be distributed through the United States mail using the recipient list prepared by the Village. The notice must contain, at minimum: (1) a general description of the proposed project, including the project location, plans, photo simulations, or renderings that depict the Wireless Facility installation in context of the natural and built environment; (2) the Applicant's name and contact information as provided on the Application form; (3) contact information and (4) how to request a copy of the decision. In addition to the mailed public notice, a notice shall be placed on the Utility Pole, the traffic signal control pole, the streetlight, or other proposed Facility location, as feasible at eye level, but in no event more than five (5) feet off the ground. To the greatest extent practicable, this notice shall be posted for the entire duration that the Application is pending a decision.
- (25) Attorney's fees. In the event the Village determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a Wireless Encroachment Permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the Village, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the Village should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
- B. Eligible Facilities Requests.** In addition to the conditions provided in § 306-9.A. of this article and any supplemental conditions imposed by the Village Engineer or their designee,

all Wireless Encroachment Permits for an Eligible Facility Request granted pursuant to this article shall be subject to the following additional conditions, unless modified by the approving authority:

- (1) Permit Subject to Conditions of Underlying Permit. Any permit granted in response to an Application qualifying as an Eligible Facilities Request shall be subject to the terms and conditions of the underlying permit.
- (2) No Permit Term Extension. The Village's grant or grant by operation of law of Wireless Encroachment Permit qualifying as an Eligible Facilities Request constitutes a federally-mandated modification to the underlying permit or approval for the subject Tower or Base Station. Notwithstanding any permit duration established in another permit condition, the Village's grant or grant by operation of law of a Wireless Encroachment Permit qualifying as an Eligible Facilities Request will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject Tower or Base Station.
- (3) No Waiver of Standing. The Village's grant or grant by operation of law of an Eligible Facilities Request does not waive, and shall not be construed to waive, any standing by the Village to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

C. Small Cell Facilities Requests. In addition to the conditions provided in § 306-9.A. of this article and any supplemental conditions imposed by the Village Engineer or their designee, all Wireless Encroachment Permits for a Small Cell Facility granted pursuant to this article shall be subject to the following condition, unless modified by the approving authority:

- (1) No Waiver of Standing. The Village's grant of a Wireless Encroachment Permit for a Small Cell Facility request does not waive, and shall not be construed to waive, any standing by the Village to challenge any FCC orders or rules related to Small Cell Facilities, or any modification to those FCC orders or rules.

§ 306-10 Breach; Termination of Permit.

- A. For Breach. A Wireless Encroachment Permit may be revoked for failure to comply with the conditions of the permit or applicable law. Upon revocation, the Wireless Facility must be removed; provided that removal of a Support Structure owned by Village, a utility, or another entity authorized to maintain a Support Structure in the Public Right-of-Way need not be removed, but must be restored to its prior condition, except as specifically permitted by the Village. All costs incurred by the Village in connection with the revocation and removal shall be paid by entities who own or control any part of the Wireless Facility.
- B. For Installation Without a Permit. A Wireless Facility installed without a Wireless Encroachment Permit (except for those exempted by this article) must be removed;

provided that removal of Support Structure owned by Village, a utility, or another entity authorized to maintain a Support Structure in the right of way need not be removed, but must be restored to its prior condition, except as specifically permitted by the Village. All costs incurred by the Village in connection with the revocation and removal shall be paid by entities who own or control any part of the Wireless Facility.

§ 306-11 Infrastructure Controlled by Village.

The Village, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of Wireless Facilities on those structures shall be subject to such agreement. The agreement shall specify the compensation to the Village for use of the structures. The person seeking such agreement shall additionally reimburse the Village for all costs the Village incurs in connection with its review, including consultants' review, and action upon the applicant's request for, such an agreement. The location of any Village-owned infrastructure utilized for the placement of Wireless Facilities at the time of the effective date of this law shall be deemed grandfathered for the purposes of this article.

§ 306-12 Nondiscrimination.

In establishing the rights, obligations and conditions set forth in this article, it is the intent of the Village to treat each Applicant in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular Applicant.

§ 306-13 Execution.

The Village Engineer, or their designee, is directed to execute all documents and to perform all other necessary Village acts to implement this article.

§ 306-14 Severability.

If any section, subsection, provision, sentence, clause, phrase or word of this article is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this article, it being the intent of the Village that the remainder of the article shall be and shall remain in full force and effect, valid, and enforceable.

§ 306-15 Violations and Penalties

- A.** The Village may use any combination of the following enforcement actions, remedies, and penalties to stop, abate, and enjoin a violation of this article:
 - (1)** Citation Noting Violation. The Village Engineer or their designee may issue a notice of violation to the person pursuing the activity or activities in violation of this article. Such violation shall be punishable by a fine not exceeding \$10,000.00 per day per occurrence or imprisonment of Permittee's local executive responsible

for the Permit, for a period not to exceed 15 days. Each day's continued violation shall constitute a separate offense. Installation of Wireless Facilities without a Wireless Permit shall result in all fines assessed being doubled.

- (2) Stop Work Order. The Village Engineer or their designee may issue and serve upon a person pursuing the activities in violation of this article a stop work order requiring that the person stop all activities in violation of this article.
 - (3) Permit Suspension or Revocation. Any Wireless Encroachment Permit, or other form of authorization required under this article may be suspended or revoked if the Village Engineer or their designee determines that:
 - (a) There is a failure to comply with the approved plans, specifications, terms or conditions required under the Wireless Encroachment Permit;
 - (b) The Wireless Encroachment Permit was procured by false representation; or
 - (c) The Wireless Encroachment Permit was issued in error.
- B.** Written notice of suspension or revocation shall be mailed or served upon the property owner, agent, applicant, or other person to whom the Wireless Encroachment Permit was issued or such notice may be posted in a prominent location at the place of violation. No work or construction shall proceed after service of the notice.
- C.** Civil Remedies. In addition to all other remedies and penalties outlined in this article, the Village Engineer or their designee may initiate an action or proceeding for injunction or mandamus or other appropriate action or proceeding to prevent, abate, or correct a violation of this article.

Article III Wireless Telecommunications Facilities Outside the Village's Rights-of-Way.

§ 306-16 Exclusions.

The following Facilities are exempt from the requirements of this article but may be governed by other laws and other portions of Village Code.

- A.** Consumer-End Antennas. Consumer-end antennas shall be exempt from the provisions of this article if they meet the following requirements, as applicable.
- (1) A satellite dish less than one meter (39.37 inches) in diameter and that, if mounted on a mast, is mounted no higher than needed to receive or transmit an acceptable quality signal and in no event higher than twelve (12) feet above roofline.
 - (2) An antenna designed to receive over-the air broadcast signals, no higher than needed to receive or transmit an acceptable quality signal and in no event higher than twelve (12) feet above roofline.

- (3) A broadband radio service antenna one meter or less in diameter or diagonal measurement and that, if mounted on a mast, is mounted no higher than needed to receive or transmit an acceptable quality signal and in no event higher than twelve (12) feet above roofline.

B. Amateur Radio Antennas. Any federally licensed amateur radio operator operating on the effective date of this article, shall be exempt from the provisions of this article. Any federally licensed amateur radio operator that seeks to deploy new facilities may apply to the Planning Board for an exemption from any provision of this article upon a showing that strict conformance therewith would interfere with the operator's ability to receive or transmit signals or would impose unreasonable costs on the amateur radio operator. Such application must be accompanied by:

- (1) Proof of a current federal license for an amateur radio operator;
- (2) Site plans drawn to scale and dimensions showing the proposed location of the antenna;
- (3) Manufacturer's specifications of the antenna structure;
- (4) Details of footings and supports;
- (5) If applicable, details of attaching or affixing the antenna to the roof; and
- (6) Elevations drawn to scale and dimensioned so as to fully describe the proposed structure.

C. Certain Temporary Facilities. The following temporary Wireless Facilities that will be placed for less than fourteen (14) consecutive days, provided any necessary building permit or other approval is obtained and the landowner's written consent is provided to the Village:

- (1) Facilities installed and operated for large-scale events; and
- (2) Facilities needed for coverage during the temporary relocation of an existing and already-approved Facility.

D. Legally Existing Wireless Facilities. Any Wireless Facility already legally constructed and in operation as of this article's effective date shall remain subject to the provisions of the version of the Village Code in effect prior to this revision, unless and until a revised permit, substantial conformance, or other modification is approved on such Facility, at which time the provisions of this article shall apply in full force going forward as to such Facility. Notwithstanding the immediately prior sentence, the testing provisions in § 306-9.A.(16) hereof shall apply.

§ 306-17 Administration for Wireless Permit.

A. The Village of Scarsdale Planning Board is responsible for administering this article. As part of the administration of this article, the Village of Scarsdale Planning Board may:

- (1) Interpret the provisions of this article;

- (2) Develop and implement standards governing the placement and modification of Wireless Facilities consistent with the requirements of this article, including regulations governing collocation and resolution of conflicting Applications for placement of Wireless Facilities;
- (3) Develop and implement acceptable designs and development standards for Wireless Facilities outside of the Public Right-of-Way;
- (4) Develop forms and procedures for submission of Applications for placement or modification of Wireless Facilities, and proposed changes to any Support Structure consistent with this article;
- (5) Determine the amount of and collect, as a condition of the completeness of any Application, any fee established by this article;
- (6) Establish deadlines for submission of information related to an Application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;
- (7) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
- (8) Require, as part of, and as a condition of completeness of any Application, notice to members of the public that may be affected by the placement or modification of the Wireless Facility and proposed changes to any Support Structure;
- (9) Determine whether to approve, approve subject to conditions, or deny an Application; and
- (10) Take such other steps as may be required to timely act upon Applications for placement of Wireless Facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an Application.
- (11) Appeals.
 - (a) Any person or entity adversely affected by the decision of the Planning Board pursuant to this Article may appeal such decision to the Village Board of Trustees which may decide the issues de novo, and whose written decision will be the final decision of the Village.
 - (b) All appeals must be filed within two (2) business days of the written decision of the Planning Board, unless the Planning Board extends the time therefore. An extension may not be granted where extension would result in approval of the application by operation of law.

- (c) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

§306-18 Standards.

- A.** Generally. Wireless Facilities outside of the Public Right-of-Way shall meet the minimum requirements set forth in this article and the Wireless Regulations that may be authorized by this article, in addition to the requirements of any other applicable law.
- B.** Regulations. The Wireless Regulations and decisions on Applications for placement of Wireless Facilities in the Village, outside of the Public Right-of-Way, shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that Applicant has established that denial of an Application would, within the meaning of federal law, prohibit or effectively prohibit the provision of Personal Wireless Services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this article may be waived, but only to the minimum extent required to avoid the prohibition or violation.
- C.** Minimum Standards. Wireless Facilities shall be installed and modified in a manner that minimizes risks to public safety and otherwise maintains the integrity and character of the areas in which the Facilities are located.
- D.** Location Preferences. All Applicants should, to the extent feasible, collocate new Facilities and substantial changes to existing Facilities with existing Facilities. Collocations should, to the extent feasible, be proposed on structures in accordance with the following preferences.
 - (1)** Restricted Site Locations. All of the following locations will be deemed “Restricted Site Locations” that require an exception pursuant to § 306-6.D.(6) of this article except to the extent that same would result in the prohibition or effective prohibition of service:
 - (a)** any location within 500 feet from a residential dwelling unit;
 - (b)** any location within 500 feet from a daycare facility or school;
 - (c)** any location within 500 feet from a house of worship;
 - (d)** any location within parkland; and
 - (2)** Location Preferences. To better assist applicants and decision makers understand and respond to the community’s aesthetic preferences and values, this subsection sets out listed preferences for locations to be used in connection with Wireless Facilities in an ordered hierarchy. Applications that involve lesser-preferred locations may be approved so long as the applicant demonstrates that: (a) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible; and (b) if the proposed site or the most- preferred location within 500 feet from the

proposed site is within a Restricted Site Location, the applicant qualifies for an exception pursuant to § 306-6.D.6 of this article.

- (3)** The Village requires Small Cells outside of the public rights-of-way to be installed in locations, ordered from most preferred to least preferred, as follows:

 - (a)** locations within business, retail, PUD and office zones on or along arterials as shown on the Roadway Classification Map;
 - (b)** locations within business, retail, PUD and office zones on or along collector roads as shown on the Roadway Classification Map;
 - (c)** locations within business, retail, PUD and office zones on or along local streets as shown on the Roadway Classification Map;
 - (d)** any location within 1,000 feet from an existing/proposed Small Wireless Facility;
 - (e)** any location not less than 500 feet from any Restricted Site Location (as defined in § 306-6.D.(1) above);
 - (f)** locations within residential zones on or along arterials as shown on the Roadway Classification Map;
 - (h)** locations within residential zones on or along collector roads as shown on the Roadway Classification Map;
 - (i)** locations within residential zones on or along local/residential streets as shown on the Roadway Classification Map;
- (4)** To minimize visual clutter, the collocation of any Facility within a location class identified in subsection (2) above is preferred over a new site within that same class. Such preference assumes that the collocation can be accomplished without negating any stealth requirements of the permit governing the site.
- (5)** In the event that a proposed Facility would be within 500 feet of a residence, the technically feasible location furthest from all residences will be deemed to be the most preferred alternative. In the event that a proposed Facility would be located within a Restricted Site Location (as defined in § 306-6.D.(1), and the proposed Facility qualifies for an exception pursuant to § 306-6.D.(6) of this article, the technology must be located in the feasible location of highest priority class while not simultaneously located in a lower priority class pursuant to this § 306-6.D.
- (6)** The Planning Board may grant an exception to the standards in this article upon determining that denial of the Application would result in prohibition or effective prohibition of service, violate applicable laws and regulations, or require a technically

infeasible design or installation of a Wireless Facility. Each exception is specific to the facts and circumstances in connection with each Application. An exception granted in one instance shall not be deemed to create a presumption or expectation that an exception will be granted in any other instance. Exceptions shall not be approved to override any fire safety or other public safety standard determined to be appropriate by the Village.

- (a) An Applicant may request an exception only at the time the Applicant submits an Application in conformance with § 306-20 hereof. The Planning Board may consider additional information provided by the Applicant after submittal to supplement the initial exception request. Any request for an exception after the initial submittal shall be deemed to be a new Application.
- (b) If the Planning Board finds that an exception should be granted, the exception shall be narrowly tailored so that the exception deviates from this article to the least extent necessary to avoid the prohibition, violation, or technically infeasible design or installation.

§ 306-19 Design Standards and Location Preferences.

Every Wireless Permit issued pursuant to this article shall be subject to compliance with the Village's applicable Design and Development Guidelines as same may be amended from time to time by resolution of the Board of Trustees.

§ 306-20 Applications.

- A. Unless the Wireless Regulations provide otherwise, an Applicant shall submit a paper copy and an electronic copy of any Application, amendments, or supplements to an Application, or responses to requests for information regarding an Application to: Village of Scarsdale Planning Board, 1001 Post Road, Scarsdale, NY 10583.
- B. Unless otherwise prohibited by law or deemed the commencement of any applicable shot-clock, an Applicant is encouraged to schedule a pre-Application meeting with the Planning Board to discuss the proposed Wireless Facility, the requirements of this article, and any potential impacts of the proposed Facility prior to filing an Application for a Wireless Permit.
- C. An Applicant shall submit an Application on the form approved by the Planning Board, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the Planning Board to make required findings and ensure that the proposed Wireless Facility will comply with applicable federal and state law, the Village Code, and will not endanger the public health, safety, or welfare.
- D. Application fee(s) shall be required to be submitted with any Application for a Wireless Permit.

- E.** Applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an Application is incomplete, the Planning Board shall notify the Applicant in writing, and specify the material omitted from the Application.

§ 306-21 Findings; Decisions; Consultants.

- A.** Findings required for approval.

- (1)** Except for Eligible Facilities Requests, the Planning Board shall approve an Application if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:

- (a)** The Facility is not detrimental to the public health, safety, and welfare;
 - (b)** The Facility complies with this article and all applicable design and development standards; and
 - (c)** The Facility meets applicable requirements and standards of state and federal law.

- (2)** For Eligible Facilities Requests, the Village of Scarsdale Planning Board shall approve an Application if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:

- (a)** The proposed Wireless Facility qualifies as an Eligible Facilities Request, satisfying each element specified in FCC regulations and orders defining an Eligible Facilities Request, as the same may be hereafter amended;
 - (b)** The proposed development is located on a legally created lot;
 - (c)** The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivision, setbacks, and any other applicable provisions of Village Code, and all applicable zoning violation enforcement and processing fees have been paid; and
 - (d)** The proposed development is in compliance with all Village wide permits, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) permit.

- B.** Decisions. Decisions on an Application by the Planning Board shall be in writing and include the reasons for the decision.

- C.** The Planning Board is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any Application under this article, the cost of which consultant shall be paid by the Applicant. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an Application, including, but not limited to,

Application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency (RF) emissions standards.

§ 306-22 Conditions of Approval.

- A. Generally. In addition to any supplemental conditions imposed by the Planning Board, all Wireless Permits granted pursuant to this article shall be subject to the following conditions, unless modified by the approving authority.
- (1) Code Compliance. The Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to the installation or modification of a Wireless Facility outside of the Public Right-of-Way.
 - (2) Permit Duration. A Wireless Permit shall be valid for a period of five (5) years, unless pursuant to another provision of the Village Code or these conditions, it expires sooner or is terminated. At the end of five (5) years from the date of issuance, such Wireless Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a Wireless Permit must either (1) remove the Facility within thirty (30) days following the Wireless Permit's expiration (provided that removal of Support Structure owned by the Village, a utility, or another entity authorized to maintain the Support Structure need not be removed, but must be restored to its prior condition, except as specifically permitted by the Village); or (2) at least ninety (90) days prior to expiration, submit an Application to renew the Wireless Permit, which Application must, among all other requirements, demonstrate that the impact of the Wireless Facility cannot be reduced. The Wireless Facility must remain in place until it is acted upon by the Village of Scarsdale Planning Board and all appeals from the Village of Scarsdale Planning Board's decision exhausted.
 - (3) Timing of Installation. The installation and construction authorized by a Wireless Permit shall begin within one (1) year after its approval, or it will expire without further action by the Village. The installation and construction authorized by a Wireless Permit shall conclude, including any necessary post-installation repairs and/or restoration to the Village or private property, within ninety (90) days following the day construction commenced.
 - (4) Commencement of Operations. The operation of the approved Wireless Facility shall commence no later than sixty (60) days after the completion of installation, or the Wireless Permit will expire without further action by the Village.
 - (5) As-Built Drawings. The Permittee shall submit an as-built drawing, or four-sided photo array accompanied with a measurable index of the Facility, within ninety (90) days after installation of the Wireless Facility. As-builts shall be in an electronic format acceptable to the Village.

- (6) **Inspections; Emergencies.** The Village of Scarsdale Planning Board or its designee may enter onto the Wireless Facility area to inspect the Facility upon twenty-four (24) hours' prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its Facility by the Village of Scarsdale Planning Board or its designee. The Village of Scarsdale Planning Board reserves the right to enter or direct its designee to enter the Facility and support, repair, disable, or remove any elements of the Facility in emergencies or when the Facility threatens imminent harm to persons or property. The Village of Scarsdale Planning Board or its designee shall make an effort to contact the Permittee prior to disabling or removing any Facility elements, but in any case shall notify Permittee within twenty-four (24) hours of doing so.
- (7) **Contact.** The Permittee shall at all times maintain accurate contact information for all parties responsible for the Wireless Facility, which shall include a phone number, street mailing address and email address for at least one natural person.
- (8) **Insurance.** The Permittee shall furnish to the Village insurance, evidenced by a certificate or certificates of insurance naming the Village as additional insured, in form satisfactory to the Village Attorney, with the following limits: general bodily injury of not less than \$1,000,000.00 per each occurrence, general property damage of not less than \$3,000,000.00 per each occurrence. Such insurance shall insure the Village, its officers, employees and agents against any liability for personal injury or property damage, or claims pertaining to RF exposure, directly or indirectly resulting from or arising out of the granting of any such Wireless Permit or any such construction or the method and manner of doing any work permitted or required by any such Wireless Permit or under this article or from the maintenance and repair of said improvements during a one-year period following completion of said improvement, or any negligent act or omission in connection therewith on the part of the Permittee, Permittee's employees or agents, provided that a public service corporation may, at its option, file an undertaking, in form satisfactory to the Village Attorney, to indemnify and save harmless the Village, its officers, employees and agents from any such liability, covering all construction made by it. At a minimum, the following insurance requirements shall be satisfied:

 - (a) A Permittee shall not commence construction or operation of the Facility without obtaining all insurance required under this section and approval of such insurance by the Planning Board, or their designee, nor shall a Permittee allow any contractor or subcontractor to commence work on its contract until all similar such insurance required of the same has been obtained and approved by the Planning Board, or their designee. The required insurance must be obtained and maintained for the entire period the Wireless Facility is in existence. If the Permittee, its contractors or subcontractors do not have the required insurance, the Village will order such entities to cease operation of the Facility until such insurance is obtained and approved by the Planning Board, or their designee.
 - (b) Certificate(s) of insurance verifying such insurance shall be filed with the Planning Board, or their designee, at the time of Application. For entities that are entering the market, the certificate(s) shall be filed prior to the

commencement of construction and once a year thereafter, and as provided below in the event of a lapse of coverage. Such certificate(s) should provide the name, address and phone number of the insurance carrier; and identify an agent in case of inquiries.

- (c) The certificate(s) of insurance shall contain a provision that coverages afforded under such policies shall not be canceled until at least 30 days' prior written notice has been given to the Village. All insurance policies shall be issued by companies authorized to do business under the laws of the State of New York.
 - (d) Where applicable, in the event that the insurance certificate(s) provided indicates that the insurance will terminate or lapse during the term of the lease agreement with the Village, then in that event the Permittee shall furnish a renewed certificate of insurance as proof that equal and like coverage remains in effect for the balance of the lease term, at least 30 days' prior to the expiration of the date of such insurance.
 - (e) A Permittee and its contractors or subcontractors engaged in work on the provider's behalf shall maintain minimum insurance in the amounts determined by the Planning Board, or their designee, to cover liability, bodily injury, and property damage. The insurance shall cover, but not be limited to, the following exposures: premises, operations, and certain contracts. Such coverage shall be written on an occurrence basis and shall also be required under any lease agreement between the Village and the Wireless Service Provider.
- (9) **Indemnities.** The Permittee and, if applicable, the owner of the property upon which the Wireless Facility is installed shall defend, indemnify and hold harmless the Village, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, lawsuits, writs of mandamus, and other actions or proceedings brought against the Village or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the Village's approval of the Wireless Permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, lawsuits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, including without limitation claims pertaining to RF exposure, death or property damage, arising out of or in connection with the activities or performance of the Permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the Village becomes aware of any such actions or claims, the Village shall promptly notify the Permittee and, if applicable, the property owner and shall reasonably cooperate in the defense. The Village shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Village's defense, and the property owner and/or Permittee (as applicable) shall reimburse Village for any costs and expenses directly and necessarily incurred by the Village in the course of the defense.
- (10) **Performance Bond.** Prior to issuance of a Wireless Permit, the Permittee shall file with the Village, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety, a letter of credit, or another form of

security, in an amount to be set by the Village Engineer, for the removal of the Wireless Facility in the event that the use is abandoned, or the Wireless Permit expires, or is revoked, or is otherwise terminated. In addition, the security shall be applied to all penalties incurred by the Permittee in this article. The security shall be in the amount sufficient to pay the cost of physically removing the Facility and all related facilities and equipment on the Site, based on the higher of two contractor's quotes for removal that are provided by the Permittee. The Permittee shall reimburse the Village for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the Board of Trustees. Reimbursement shall be paid when the security is posted and during each administrative review.

- (11) **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the Wireless Facility. While not the sole basis for denial, the Planning Board, or their designee, may consider adverse impacts on the property values of any adjacent properties when deciding on an Application. The Facility shall be designed and constructed in accordance with all applicable national building standards for such facilities and structures, including but not limited to the standards developed by the Electronics Industry Association, Institute of Electrical and Electronics Engineers, Telecommunications Industry Association, American National Standards Institute and Electrical Industry Association.
- (12) **Noninterference.** Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the Village shall be moved to accommodate a permitted activity, unless the Village determines that such movement will not adversely affect the Village or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the Village's structure, improvement, or property. Prior to commencement of any work pursuant to a Wireless Permit, the Permittee shall provide the Village with documentation establishing to the Village's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property to be affected by Permittee's Facilities. Nor shall any Permittee remove, damage or otherwise trim any tree except in accordance with Chapter 281 hereof, "Trees, Grass, Brush and Weeds", nor cause any building or structure to be altered or in any way compromised in violation of Chapter 182 hereof, "Historic Preservation", nor violate Chapter 205 hereof, "Noise."
- (13) **No Right, Title, or Interest.** The permission granted by a Wireless Permit shall not in any event constitute an easement on or an encumbrance against the private property or any Village property. No right, title, or interest (including franchise interest) in the private property or any Village property, or any part thereof, shall vest or accrue in Permittee by reason of a Wireless Permit or the issuance of any other permit or exercise of any privilege given thereby.

- (14) No Possessory Interest. No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that the Village has given to Permittee notice as required by law. The use or occupancy of any public property pursuant to a Wireless Permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this Wireless Permit.
- (15) General Maintenance. The site and the Wireless Facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on Facilities must be removed at the sole expense of the Permittee within forty-eight (48) hours after notification from the Village.
- (16) RF Exposure Compliance. The Permittee has a non-delegable duty to ensure full compliance with FCC RF exposure standards pursuant to FCC Regulations, Title 47, Part 1, Section 1.1307. The Planning Board, or their designee, will consult with an independent engineer regarding the choice of a monitoring protocol to be used. This may include the Cobbs Protocol, the FCC OET Bulletin 65, Edition 97-01, August 1997, referenced in FCC Regulations, Title 47, Part 1, Section 1.1307 as IEEE C95.3 1991, or any other protocol that the Planning Board adopts as the technology changes. The same protocol will be used from year to year until such time as new protocols are developed.
- (a) Pre-testing. After the granting of a Wireless Permit and before the Facility begins transmission, the Applicant shall pay for an independent consultant RF engineer, chosen and hired by the Village Engineer, or their designee, to monitor the background levels of EMF radiation around the proposed Facility and at appropriate distances from it, and/or at any repeater locations to be utilized for the Applicant's Wireless Facilities. The independent consultant shall use the specified monitoring protocol. A report of the monitoring results shall be prepared by the independent consultant and submitted to the Village Engineer, or their designee.
- (b) Post-testing. Within 30 days after transmission begins, the owner(s) of any Wireless Services located on the Facility shall pay for an independent consultant RF engineer, chosen and hired by the Village Engineer, or their designee, to conduct an initial post-installation test of the EMF radiation emitted from said site, and thereafter, as follows:
- (i) There shall be routine annual monitoring of emissions by the independent RF engineer using actual field measurements of radiation, utilizing the

monitoring protocol. This monitoring shall measure levels of EMF radiation from the Facility's primary antennas as well as from repeaters (if any). A report of the monitoring results shall be prepared by the RF engineer and submitted to the Planning Board, or their designee.

- (ii) Any major modification of an existing Facility, or the activation of any additional permitted channels, shall require new monitoring.
- (d) Excessive emissions. Should the monitoring of a Facility reveal that the site exceeds the current FCC standards and guidelines, then the owner(s) of all facilities utilizing the site shall be notified. In accordance with FCC requirements, the owner(s) must immediately reduce power or cease operation as necessary to protect persons having access to the Site, Facility, or Antennas. In addition, the owner(s) shall submit to the Planning Board, or their designee, an analysis of what caused the problem and a plan for the reduction of emissions to a level that complies with the FCC standards within 10 business days of noncompliance. Failure to accomplish this reduction of emissions within 10 business days of initial notification of noncompliance shall be a violation of this chapter subject to fines and such other remedies as are otherwise available to the Village.
- (17) Testing. Testing of any equipment associated with a Wireless Facility shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- (18) Safety. The Wireless Facility shall be safe and in accordance with applicable Village Code, and the surrounding properties will not be negatively affected by the Facility, falling ice or debris. All Wireless Facilities shall be fitted with anti-climbing devices, as comply with industry standards.
- (19) Modifications. No changes shall be made to the approved plans without review and approval in accordance with this article.
- (20) Agreement with Village. If not already completed, Permittee shall enter into the appropriate agreement with the Village, as determined by the Village of Scarsdale Planning Board, prior to constructing, attaching, or operating a Wireless Facility on Village-owned Infrastructure outside of the Public Rights-of-Way. A Wireless Permit is not a substitute for such agreement.
- (21) Abandonment. If a Wireless Facility is not operated for a continuous period of six (6) months, the Wireless Permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the six (6) month period (i) the Village of Scarsdale Planning Board has determined that the Facility has resumed operations, or (ii) the Village has received an Application to transfer the Wireless Permit to another Wireless Service Provider. When a Wireless Service provider has filed with the FCC a notice of intent to cease operations, the operator

shall provide the Village of Scarsdale Planning Board with a copy of such notice within thirty (30) days. No later than ninety (90) days from the date the Wireless Facility is determined to have ceased operation, or the Permittee has notified the Village of Scarsdale Planning Board of its intent to vacate the Site, the Permittee shall remove all equipment and improvements associated with the use and shall restore the site to its original condition to the satisfaction of the Village of Scarsdale Planning Board. The Permittee shall provide written verification of the removal of the Wireless Facilities within thirty (30) days of the date the removal is completed. If the Wireless Facility is not removed within thirty (30) days after the Wireless Permit has been discontinued pursuant to this subsection, the site shall be deemed to be a nuisance, and the Village may cause the Facility to be removed at Permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single Wireless Facility or Support Structure, then this provision shall apply to the specific elements or parts thereof that were abandoned but will not be effective for the entirety thereof until all users cease use thereof.

- (22) Required Collocation. Where the Wireless Facility is capable of accommodating a collocated Facility upon the same site in a manner consistent with the Wireless Permit conditions for the existing Facility, the owner and operator of the existing Facility shall allow collocation of third-party facilities, provided it is technically feasible, and the parties can mutually agree upon reasonable terms and conditions.
- (23) Notification. Once an Application for a Wireless Facility is submitted, a public notice shall be sent by certified mail, return receipt requested by the applicant to all owners of real property, including the owner of the Site if any part of which is located within one thousand (1,000) feet of the proposed Wireless Facility location, and to the President-At-Large of the Scarsdale Neighborhood Association, as well as the president of the neighborhood association in which the Wireless Facility is proposed. The notices will be distributed through the United States mail using the recipient list prepared by the Village. The notice must contain, at minimum: (1) a general description of the proposed project, including the project location, plans, photo simulations, or renderings that depict the Wireless Facility installation in context of the natural and built environment; (2) the Applicant's name and contact information as provided on the Application form; (3) contact information and (4) how to request a copy of the decision. In addition to the mailed public notice, a notice shall be placed on the Utility Pole, the traffic signal control pole, the streetlight, or other proposed Facility location, as feasible at eye level, but in no event more than five (5) feet off the ground. To the greatest extent practicable, this notice shall be posted for the entire duration that the Application is pending a decision.
- (24) Annual report. In January of each year, the Permittee shall pay the registration fee established from time to time by the resolution of the Board of Trustees and shall provide the Village of Scarsdale Planning Board with the following information:
 - (a) The name and address of the owner of the Facility and telephone number of the appropriate contact person in case of emergency.

- (b) The name and address of the property owner on which the Facility is located.
 - (c) The location of the Facility by geographic coordinates, indicating the latitude and longitude.
 - (d) Output frequency of the transmitter.
 - (e) The type of modulation, digital format and class of service.
 - (f) Antenna(s) gain.
 - (g) The certified and effective radiated power of the Antenna(s).
 - (h) The number of transmitters, channels, and Antenna(s).
 - (i) A copy of the owner's or operator's FCC authorization.
 - (j) Antenna(s) height.
 - (k) Power input to the Antenna(s).
 - (l) Distance to the nearest Base Station.
 - (m) A certification signed by two officers of the Applicant that Facility is continuing to comply with this article and all applicable governmental regulations.
- (25) FCC License. The Applicant shall submit a copy of its current Federal Communications Commission License.
- (26) Records. The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the Wireless Facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the Village, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.
- (27) Attorney's Fees. In the event the Village determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a Wireless Permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the Village, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the Village

should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.

- B.** Eligible Facilities Requests. In addition to the conditions provided in this article and any supplemental conditions imposed by the Village of Scarsdale Planning Board, all permits for an Eligible Facility Requests granted pursuant to this article shall be subject to the following additional conditions, unless modified by the approving authority.
- (1) Permit subject to conditions of underlying permit. Any permit granted in response to an Application qualifying as an Eligible Facilities Request shall be subject to the terms and conditions of the underlying permit.
 - (2) No permit term extension. The Village of Scarsdale Planning Board's grant or grant by operation of law of an Eligible Facilities Request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject Tower or Base Station. Notwithstanding any permit duration established in another permit condition, the Village of Scarsdale Planning Board's grant or grant by operation of law of a Wireless Permit for an Eligible Facilities Request will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject Tower or Base Station.
 - (3) No waiver of standing. The Village of Scarsdale Planning Board's grant or grant by operation of law of an Eligible Facilities Request does not waive, and shall not be construed to waive, any standing by the Village to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

§ 306-23 Violations and Penalties

- A.** The Village may use any combination of the following enforcement actions, remedies, and penalties to stop, abate, and enjoin a violation of this article:
- (1) Citation noting violation. The Planning Board or a Village of Scarsdale Code Enforcement Officer may issue a citation to the person pursuing the activity or activities in violation of this article, requiring appearance before the municipal court.
 - (2) Stop order. The Planning Board, or a Village of Scarsdale Code Enforcement Officer may issue and serve upon a person pursuing the activities in violation of this article a stop work order requiring that the person stop all activities in violation of this article.
 - (3) Permit suspension or revocation. Any Wireless Permit, or other form of authorization required under this article may be suspended or revoked if Permittee fails to abate any violation within ten (10) days after a written notice has been sent by the

Planning Board, or a Village of Scarsdale Code Enforcement Officer after they determine that:

- (a) There is a failure to comply with the approved plans, specifications, terms or conditions required under the Wireless Permit;
 - (b) The Wireless Permit was procured by false representation; or
 - (c) The Wireless Permit was issued in error.
- (4) Fine. A violation of this article is hereby punishable by a fine not exceeding \$10,000.00 per day per occurrence or imprisonment of Permittee's local executive responsible for the Permit for a period not to exceed fifteen (15) days. Each day's continued violation shall constitute a separate offense. Installation of Wireless Facilities without a Wireless Permit shall result in all fines assessed being doubled.
- B.** Written notice of suspension or revocation shall be mailed or served upon the property owner, agent, applicant, or other person to whom the Wireless Permit was issued or such notice may be posted in a prominent location at the place of violation. No work or construction shall proceed after service of the notice. Each Permittee is responsible for notifying the Village of any change in the name, address and telephone number of the person to whom notice may be sent under this article.
- C.** Civil remedies. In addition to all other remedies and penalties outlined in this article, the Village of Scarsdale Planning Board may initiate an action or proceeding for injunction or mandamus or other appropriate action or proceeding to prevent, abate, or correct a violation of this article.

§ 306-24 Infrastructure Controlled by Village.

The Village, as a matter of policy, will negotiate agreements for use of Municipal Infrastructure. The placement of Wireless Facilities on those structures shall be subject to such agreement. The agreement shall specify the compensation to the Village for use of the structures. The person seeking such agreement shall additionally reimburse the Village for all costs the Village incurs in connection with its review, including vendor review, of, and action upon the applicant's request for, such an agreement. The location of any Village-owned infrastructure utilized for the placement of Wireless Facilities at the time of the effective date of this law shall be deemed grandfathered for the purposes of this article.

§ 306-25 Village of Scarsdale Planning Board Authority.

The Village of Scarsdale Planning Board, or its designee is directed to execute all documents and to perform all other necessary acts to implement and enforce this article.

§ 306-26 Severability.

If any section, subsection, provision, sentence, clause, phrase or word of this article is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity

shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this article, it being the intent of the Village that the remainder of the article shall be and shall remain in full force and effect, valid, and enforceable.

Section 3: Effective Date: This Local Law shall take effect immediately upon filing with the Secretary of State.