

Article I. Title and Definitions

**Section 1.1** Title SMALL CELL WIRELESS DEPLOYMENT REQUIREMENTS

**Section 1.2** Purpose. The purpose of this Chapter is to regulate the placement of wireless Communication Facilities in the Town. The standards set forth herein are created to provide objective, technically feasible criteria applied in a non-discriminatory manner that reasonably match the aesthetics and character of the immediate area regarding all the following, which the Town shall consider in reviewing an Application:

- a. The location of the ground-mounted Communication Facilities;
- b. The location of a Wireless Facility on a Pole or other devise;
- c. The appearance and concealment of Communication Facilities, including those relating to materials used for arranging, screening and landscaping;
- d. The design and appearance of a wireless Support Structure including any height requirements adopted in accordance with this Chapter.

This Chapter applies to Public ROW but does not restrict the Town's right to regulate Communication Facilities on non-Town owned property or outside of the Public ROW under the same terms and conditions set forth herein.

**Section 1.3** Definitions.

- a. "Administrative Review" means ministerial review of an Application by the Town relating to the review and issuance of a Permit, including review by the Director of Codes Enforcement to determine whether the issuance of a Permit is in conformity with the applicable provisions of this Chapter.
- b. "Antenna" means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- c. "Applicable Codes" means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted, or incorporated, by the Town.
- d. "Applicant" means any Person who submits an Application under this Chapter.
- e. "Application" means a written request, on a form provided by the Town, for a Permit.
- f. "Authority" or "Town" means the Town of Lysander or any agency, subdivision or any instrumentality thereof.
- g. "Collocate" means to install or mount a Small Wireless Facility in the Public ROW on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the Application. "Collocation" has a corresponding meaning.

h. "Communications Facility" means, collectively, the equipment at a fixed location or locations within the Public ROW or on private property that enables Communications Services, including: (i) radio transceivers, Antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. A Communications Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.

i. "Communications Service" means cable service, as defined in 47 U.S.C. § 522(6); information service or broadband, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).

j. "Communications Service Provider" means a provider of Communications Services and includes a cable operator, as defined in 47 U.S.C. § 522(5).

k. "Decorative Pole" means a Pole that is specially designed and placed for aesthetic purposes.

l. "Discretionary Review" means review of an Application by the Town Planning Board relating to the review and issuance of a Permit that is other than an Administrative Review.

m. "Eligible Facilities Request" means an eligible facility request as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time.

n. "FCC" means the Federal Communications Commission of the United States.

o. "Laws" means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.

p. "Ordinary Maintenance and Repair" means inspections, testing and/or repair of existing Communication Facilities that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower, that does not require blocking, damaging or disturbing any portion of the Public ROW.

q. "Permit" means a written authorization (in electronic or hard copy format) to install, at a specified location(s) in the Public ROW or at a specific location on private property, a Communications Facility, Tower or a Pole to support a Communications Facility.

r. "Permittee" means an Applicant that has received a Permit under this Chapter.

s. "Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.

t. "Pole" means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within the Public Right of Way. A Pole does not include a Tower or Support Structure.

u. "Provider" means a Communications Service Provider or a Wireless Services Provider, and includes any Person that owns and/or operates within the Public ROW any Communications Facilities, Wireless Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers.

v. "Public Right of Way" or "Public ROW" means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Chapter shall include Public Utility Easements, but only to the extent the Town has to permit use of the area or Public Utility Easement for Communications Facilities or Poles, Towers and Support Structures that support Communications Facilities. The term does not include a federal interstate highway or other areas that are not within the legal jurisdiction, ownership or control of the Town.

w. "Public Utility Easement" means, unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities. Public Utility Easement does not include an easement dedicated solely for Town's use, or where the proposed use by the Provider is inconsistent with the terms of any easement granted to the Town.

x. "Replace" or "Replacement" means, in connection with an existing Pole, Support Structure or Tower, to replace (or the replacement of) same with a new structure, substantially similar in design, size and scale to the existing structure and in conformance with this Chapter and any other applicable Town [charter/code regulations], in order to address limitations of the existing structure to structurally support Collocation of a Communications Facility.

y. "Small Wireless Facility" means a Wireless Facility that meets both of the following qualifications:

(i) each Antenna could fit within an enclosure of no more than six (6) cubic feet in volume; and

(ii) all other wireless equipment associated with the Antenna, including the Provider's preexisting equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume

z. "State" means the State of New York.

aa. "Support Structure" means a structure in the Public ROW other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.

bb. "Tower" means any structure in the Public ROW built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

cc. "Wireless Facility" means the equipment at a fixed location or locations in the Public ROW that enables Wireless Services. The term does not include: (i) the Support Structure, Tower or Pole on, under, or within which the equipment is located or Collocated; or (ii) coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility.

dd. "Wireless Services" means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

ee. "Wireless Services Provider" means a Person who provides Wireless Services. Article II. Governance of Deployment in the Public ROW

**Comment [TF1]:** Need to check these definitions

ARTICLE II – GOVERNANCE OF DEPLOYMENT IN ROW

**Section 2.1** Access to Public ROW:

a. Agreement. Prior to installing any Communications Facility in a Public ROW, or any Pole built for the sole or primary purpose of supporting a Communications Facility, or any Tower, a Person shall enter into a Right of Way Agreement (“ROW Agreement”) with the Town expressly authorizing use of the Public Right of Way for the Communications Facility, Pole or Tower proposed to be installed.

(i) General Terms. The Right of Way Agreement shall include:

(A) the term of the ROW Agreement shall be annual, which shall renew automatically unless terminated by the Town upon ninety (90) days’ written notice.

(B) The ROW Agreement authorizes the Provider’s non-exclusive use of the Public ROW for the sole purpose of installing, maintaining and operating Communications Facilities, including any Pole built for the sole or primary purpose of supporting the Communications Facilities and any Tower, to provide the services expressly authorized in the ROW Agreement, subject to applicable Laws, this Chapter and the terms and conditions of the ROW Agreement. The ROW Agreement authorizes use only of the Public ROW in which the Town has an actual interest. It is not a warranty of title or interest in any Public ROW and it does not confer on the Provider any interest in any particular location within the Public ROW. No other right is granted except as expressly set forth in the ROW Agreement. Nothing herein shall authorize the use of the Town’s Poles, Towers, Support Structures, or other structures in the Public ROW. All use of Town Poles, Towers, Support Structures, and other structures in the Public ROW shall require a separate agreement (Attachment Agreement), and the payment of separate fees for such use.

(C) The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public ROW in a safe condition, and in good order and repair.

(D) The Provider shall keep and maintain liability insurance in the amount of \$1,000,000 for each incident and an umbrella policy in the amount of \$5,000,000 for each Communication Facility in a Public ROW. The Town shall be named an additional insured on each policy.

(E) The ROW Agreement shall include the name and contact information for the Provider to be called in cases of emergencies.

(F) Licensees using space in ducts, conduits and on Poles must comply with the terms of this ROW Agreement, unless expressly exempted by the Town.

(G) The Town shall have the right to access books and records, including audit rights, of the Provider to determine that all applicable fees and payments have been made to the Town.

(H) The Provider shall provide proof to the Town that it has a license or authority from the owner to use an existing Pole, Tower or Support Structure in the ROW a Communications Facility.

(I) The terms and conditions set forth herein are not exclusive and the Town reserves the right to require additional terms and conditions to the ROW Agreement.

(ii) Public ROW Construction and Installation Requirements:

(A) ROW Permit.

1. Unless expressly authorized in this Chapter or in writing by the Town, no Person may construct, maintain or perform any other work in the Public ROW related to Communications Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers without first receiving a Permit to the extent required under this Chapter, and any other permit or authorization required by applicable Laws.

2. The Town shall not issue a Permit unless the Applicant, or a Provider on whose behalf the Applicant is constructing Communications Facilities, Poles or Towers, has executed a ROW Agreement required by this Chapter, or otherwise has a current and valid franchise with the Town expressly authorizing use of the Public ROW for the Communications Facilities, Poles or Towers proposed in the Application, and all applicable fees have been paid.

(B) Location of New Facilities.

1. The Provider shall not locate or maintain its Communications Facilities, Poles and Towers so as to unreasonably interfere with the use of the Public ROW by the Town, by the general public or by other persons authorized to use or be present in or upon the Public ROW.

2. Aboveground placement of new poles and equipment cabinets shall meet the requirement set forth in Section 2.3(d) of this Chapter;

3. Unless otherwise agreed to in writing by the Town or otherwise required by applicable Laws, whenever any existing electric utilities or Communications Facilities are located underground within a Public ROW, the Provider with permission to occupy the same portion of the Public ROW shall locate its Communications Facilities underground at its own expense. The Town may, in its sole discretion, approve aboveground placement of equipment cabinets, pedestals and similar equipment, pursuant to Section 2.3(d) of this Chapter. For facilities or equipment such as Wireless Facilities that cannot, by their nature, operate unless located above-ground, the Provider and Town shall work to find a suitable location for such facilities or equipment, which may be outside the Public ROW.

(C) Construction Standards. In performing any work in or affecting the Public ROW, the Provider, and any agent or contractor of the Provider, shall comply with the provisions of Section 2.5 of this Chapter and all other applicable Laws.

(D) Restoration Requirements.

1. The Provider, or its agent or contractor, shall restore, repair and/or replace any portion of the Public ROW that is damaged or disturbed by the Provider's Communications Facilities, Poles, Towers or work in or adjacent to the Public ROW as required in Section 2.5 of this Chapter and all other applicable Laws.
2. If the Provider fails to timely restore, repair or replace the Public ROW as required in this subsection, the Town or its contractor may do so and the Provider shall pay the Town's costs and expenses in completing the restoration, repair or replacement.

(E) Removal, Relocation and Abandonment.

1. Within sixty (60) days following written notice from the Town, the Provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles, Support Structures or Towers within the Public ROW, including relocation of above-ground Communications Facilities underground (consistent with the provisions of this Chapter), whenever the Town has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Town improvement, the operations of the Town in, under or upon the Public ROW, or otherwise is in the public interest. The Provider shall be responsible to the Town for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate Communications Facilities, Poles, Support Structures or Towers as required in this subsection.
2. The Town retains the right and privilege to cut or move any Communications Facility, Pole, Support Structure or Tower located within the Public ROW of the Town, as the Town may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Town shall notify the Provider and give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole, Support Structure or Tower. In all cases the Town shall notify the Provider after cutting or removing the Communications Facility, Pole, Support Structure or Tower as promptly as reasonably possible.
3. A Provider shall notify the Town of abandonment of any Communications Facility, Pole, Support Structure or Tower at the time the decision to abandon is made, however, in no case shall such notification be made later than 30 days prior to abandonment. Following receipt of such notice, the Provider shall remove its Communications Facility, Pole, Support Structure or Tower at the

Provider's own expense, unless the Town determines, in its sole discretion, that the Communications Facility, Pole, Support Structure or Tower may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles, Support Structures and Towers until they are removed from the Public ROW unless the Town agrees in writing to take ownership of the abandoned Communications Facilities, Poles, Support Structures or Towers. Upon the issuance of a Permit, the Provider shall provide a removal bond in the amount estimated for the removal of all of the Communication Facilities that are the subject of an Application, such estimated amount to be determined by the Code Enforcement Director, after consultation with the Engineer for the Town.

4. If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles, Support Structures or Towers or remove any of its abandoned Communications Facilities, Poles, Support Structures or Towers as required in this subsection, the Town or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Town incurs arising from the delay.

(F) As-builts and Maps - Maps showing location of equipment in ROW and as-builts after construction shall be provided to the Town, within thirty (30) days after completion of construction, in conformance to the requirements of the Engineer for the Town.

b. Fees and Charges.

(i) Permit Application Fee. Every Applicant for a co-location shall pay a Permit application fee of \$500.00 for each Application up to five (5) Small Wireless Facilities and \$100.00 for each additional Small Wireless Facility. The fee shall be paid upon submission of the Application.

(ii) Every Application for a new pole in the Right of Way shall pay a Permit application fee of \$1000.00. The fee shall be paid upon submission of the Application.

(iii) ROW Agreement Fee. Every Person requesting a ROW Agreement from the Town shall pay an administrative fee of \$340.00, which shall include the legal costs of drafting such ROW Agreement.

(iii) ROW Use Fee. In exchange for the privilege of non-exclusive occupancy of the Public ROW, the Provider shall pay the Town \$270 per Small Wireless Facility, per year, for as long as the ROW Agreement is effective. The ROW Use Fee shall be due and payable within thirty (30) days of issuance of the ROW Agreement

(iv) Attachment Fees. The Provider shall be subject to an additional attachment fee of \$500.00 if the Small Wireless Facilities will be attached to property (either real or personal) owned by the Town. No attachment will be allowed except after issuance of a permit pursuant to an Attachment Agreement.

(iv) Other Fees. The Applicant or Provider shall be subject to any other generally applicable fees of the Town or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable Laws, as well as attachment fees for the use of Town owned Poles, Towers, Support Structures, ducts, conduits or other structures in the Public ROW, as set forth in attachment agreements authorizing such use.

(v) No Refund. Except as otherwise provided in a ROW Agreement, the Provider may remove its Communications Facilities, Poles or Towers from the Public ROW at any time, upon not less than thirty (30) days prior written notice to the Town, and may cease paying to the Town any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the Public ROW. In no event shall a Provider be entitled to a refund of fees paid prior to removal of its Communications Facilities, Poles or Towers.

## **Section 2.2 Permit Applications**

a. Permit Required. Unless expressly authorized in this Chapter or in writing by the Town, no Person may construct, install or maintain in the Public ROW any Communications Facilities, Poles built for the primary purpose of supporting Communications Facilities, or Towers, including the installation or Collocation of Communications Facilities on existing Poles, Towers, Support Structures or other structures within the Public ROW, without first receiving a Permit. Notwithstanding the foregoing, in the event of an Emergency, a Provider or its duly authorized representative may work in the Public ROW prior to obtaining a Permit, provided that the Provider shall attempt to contact the Town prior to commencing the work and shall apply for a Permit as soon as reasonably possible, but not later than twelve (12) hours after commencing the Emergency work. For purposes of this subsection, an "Emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

b. Permit Application Requirements. The Application shall be made by the Provider or its duly authorized representative and shall contain the following:

(i) The Applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.

(ii) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application.

(iii) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Chapter. The Applicant shall state whether the Applicant believes the proposed work is subject to Administrative Review or Discretionary Review and if the Permit is an Eligible Facilities Request.

(iv) If applicable, a copy of the authorization for use of the property from the Pole, Tower or Support Structure owner on or in which the Communications Facility will be placed or attached.

(v) Detailed construction drawings regarding the proposed Communication Facility.

(vi) To the extent the proposed facility involves Collocation on a Pole, Tower or Support Structure, a structural report performed by a duly licensed engineer evidencing that the Pole,

Tower or Support Structure will structurally support the Collocation (or that the Pole, Tower or Support Structure will be modified to meet structural requirements) in accordance with Applicable Codes.

(vii) For any new aboveground facilities or structures, accurate visual depictions or representations, if not included in the construction drawings.

(viii) If new construction, a plan that would show how co-locations on the new Pole, Tower or Support Structure would be possible for other Providers who may wish to deploy small cell technology in the geographic area of the subject Application.

c. Proprietary or Confidential Information in Application. Applications are public records that may be made publicly available pursuant to the New York State Freedom of Information Law. Notwithstanding the foregoing, Applicant may designate portions of its Application materials that it reasonably believes contain proprietary or confidential information as “proprietary” or “confidential” by clearly marking each portion of such materials accordingly, and the Town shall treat the information as proprietary and confidential, subject to the requirements of the New York State Freedom of Information Law and the Town’s determination that the Applicant’s request for confidential or proprietary treatment of Application materials is reasonable.

d. Ordinary Maintenance and Repair. A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable Laws and shall notify the Town in writing at least forty-eight (48) hours before performing the Ordinary Maintenance and Repair.

e. Material Changes. The Town may require payment of an additional Permit application fee in the event the Town determines, in its sole discretion, that material changes to an Application after submission amount to a new Application and will materially increase the time and/or costs of the Permit review process. Unless otherwise agreed to in writing by the Town, any material changes to an Application, as determined by the Town in its sole discretion, shall be considered a new application for purposes of the time limits set forth in Section 2.3.b.(ii), unless otherwise provided by applicable Laws.

f. Application Fees. Unless otherwise provided by applicable Laws, all Applications pursuant to this Chapter shall be accompanied by the Fees required under Section 2.1.b.

g. Effect of Permit. A Permit from the Town authorizes an Applicant to undertake only the activities in the Public ROW specified in the Application and Permit, and in accordance with this Chapter and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public ROW; a Permittee or Provider must obtain all necessary approvals and pay all necessary fees from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant Town to the Applicant to interfere with other existing uses of the Public ROW.

h. Duration. Any Permit for construction issued under this Chapter shall be valid for a period of ninety (90) days after issuance and can be extended for an additional ninety (90) days upon written request of the Applicant, at the sole consent of the Town.

i. An Applicant may simultaneously submit up to five (5) Applications for Communications Facilities, or may file a single, consolidated Application covering a batch of not more than twenty (20) such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the Town. If the Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each Communication Facility were a separate Application. No Applicant shall submit more than one (1) consolidated application over a six (6) month period. The Code Enforcement Officer has the discretion to determine whether a Provider is submitting a consolidated Application through the submission of multiple single Small Wireless Facilities.

### **Section 2.3 Administrative Review**

a. Permitted Use. The following uses within the Public ROW shall be permitted uses, subject to Administrative Review and issuance of a Permit as set forth in this Section 2.3. All such uses shall be in accordance with all other applicable provisions of this Chapter, including without limitation, those set forth in Section 2.5 below and the terms of any ROW Agreement. Administrative Review will not be available for consolidated Applications or simultaneous Applications for more than five (5) Communication Facilities.

- (i) Collocation of a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3.c or a Collocation that qualifies as an Eligible Facilities Request.
- (ii) Modification of a Pole, Tower or Support Structure or Replacement of a Pole for Collocation of a Communications Facility where the modification or Replacement qualifies as an Eligible Facilities Request.
- (iii) Construction of a new Decorative Pole or a monopole Tower (but no other type of Tower) to be used for a Small Wireless Facility that does not exceed the maximum height set forth in Subsection 2.3.c, provided that there are existing poles of similar height within one hundred (100) feet of either side of the proposed new Pole or monopole Tower.
- (iv) Construction of a Communications Facility, other than those set forth in subsections (i), (ii) or (iii) in this Section 2.3.a, involving the installation of coaxial, fiber-optic or other cabling, that is installed underground or aboveground between two or more existing Poles or an existing Pole and an existing Tower and/or existing Support Structure, and related equipment and appurtenances.
- (v) Collocation of a Small Wireless Facility on a Pole, Tower, Support Structure or building that is in the Federal, State or County Right of Way or on private property.

#### **b. Application Review.**

- (i) The Town shall review the Application either under the Administrative Review or Discretionary Review, as the case may be, and, if the Application conforms with applicable provisions of Section 2.2 and this Section, the Town shall issue the Permit, subject to the design standard set forth in Section 2.3(d) of this Chapter.
- (ii) Except as otherwise provided by applicable Laws, the Town shall:

(A) Within ten (10) days of receiving an Application, notify the Applicant if the Application is incomplete, and identify the missing information. The Applicant may resubmit the completed Application within thirty (30) days without additional charge, in which case the Town shall have ten (10) days from receipt of the resubmitted Application to verify the Application is complete, notify the Applicant that the Application remains incomplete or, in the Town's sole discretion, deny the Application; and

(B) Make its final decision to approve or deny the Application within sixty (60) days for a collocation, and ninety (90) days for any new structure, after the Application is complete (or deemed complete in the event the Town does not notify the Applicant that the Application or resubmitted Application is incomplete).

(iii) The Town shall advise the Applicant in writing of its final decision.

c. Maximum Height of Permitted Use. Small Wireless Facilities, and new, modified or Replacement Poles, Towers and Support Structures in the Public Right of Way may be approved through Administrative Review as provided in Section 2.3.a only if the following requirements are met:

(i) Each new, modified or Replacement Pole, Tower or Support Structure installed in the Public ROW shall not exceed thirty-five (35) feet in height.

(ii) New Small Wireless Facilities in the Public ROW shall not exceed thirty-five (35) feet in height.

d. Design Standards. The Design Standards for Communication Facilities, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers shall be adopted by the Town Board and shall be published on the official Town Website and made available to all Applicants at their request or upon submission of an Application. The Design Standards shall be subject to change upon thirty (30) days' notice to an Applicant and upon a majority vote of the Town Board.

**Section 2.4** Discretionary Review and Approval. All other uses within the Public ROW or on private property not expressly set forth or referenced in Section 2.3.a shall require compliance with, and issuance of, a site plan approval pursuant to Section 320-39 of the Town Code. In determining the deployment and placement of Communication Facilities, the Planning Board shall consider the following criteria and its impact on the surrounding neighborhood during the Site Plan review process: (i) the design standards set forth in Section 2.3(d) of this Chapter; (ii) the compatibility of further deployments and their potential impact on the surrounding neighborhood; (iii) the potential for Collocation of other Provider's Communication Facilities; (iv) the density fulfillment needs of the neighborhood.

**Section 2.5** General Public ROW Installation Requirements.

a. General Work Requirements.

(i) General safety and compliance with laws. The Permittee shall employ due care during the installation, maintenance or any other work in the ROW, and shall comply with all safety and Public ROW protection requirements of applicable Laws, Applicable Codes, and any generally applicable Town guidelines, standards and practices, and any additional commonly accepted

safety and Public ROW-protection standards, methods and devices (to the extent not inconsistent with applicable Laws).

(ii) Traffic control. Unless otherwise specified in the Permit, the Permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The Permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed by the Town.

(iii) Interference. The Permittee shall not interfere with any existing facilities or structures in the Public ROW, and shall locate its lines and equipment in such a manner as not to interfere with the usual traffic patterns (vehicular or pedestrian) or with the rights or reasonable convenience of owners of property that abuts any Public ROW.

(iv) Utility Locates. Before beginning any excavation in the Public ROW, the Permittee shall comply with CALL BEFORE YOU DIG.

b. Compliance with Permit.

(i) State that the Permittee must follow permit requirements. All construction practices and activities shall be in accordance with the Permit and approved final plans and specifications. The Town and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements. All work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the Permittee. The Town may stop work in order to assure compliance with the provision of this Chapter.

(ii) Address any needed additional permits. In addition to obtaining a Permit for installation of a Communications Facility, Poles built for the sole or primary purpose of supporting Communications Facilities, or Towers in the Public ROW, an Applicant must obtain all other required permits.

c. Mapping Data. The Permittee shall provide to the Town as-builts, in a format designated by the Town or otherwise compatible with such format, showing the location of Communications Facilities, Poles, Support Structures and Towers upon completion of the permitted work.

d. Participation in Dig Safe NY utility locating.

**Section 2.6** Attachment to and Replacement of Decorative Poles. Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, or replace a Decorative Pole with a new Decorative Pole unless the Town has determined, in its sole discretion, that each of the following conditions has been met:

a. The Application qualifies for issuance of a Permit under Section 2.3.a;

b. The attachment and/or the replacement Pole is in keeping with the aesthetics of the Decorative Pole; and

c. Notwithstanding anything to the contrary in this Chapter, an Applicant may not install a Small Wireless Facility on a Decorative Pole, replace a Decorative Pole with a new Decorative Pole, or install new above-ground Communications Facilities in a Residential Zoning District unless the Town has determined, in its sole discretion, that each of the following conditions has been met:

- (i) The Application qualifies for issuance of a Permit under Section 2.3.a; b. The attachment and/or the replacement Pole is in keeping with the aesthetics and character of the Decorative Pole and/or the Residential Zoning District;

**Section 2.7** Violation of this Chapter. Violation of any of the provisions of this Chapter shall be a violation punishable with a civil penalty of \$250 for each violation. Each day that a violation occurs or is permitted to exist by the Applicant or Provider constitutes a separate offense.

**Section 2.8** Effective Date. This Chapter shall take effect upon the filing with the Secretary of State.