

Regular Town Board Meeting of the Town Board of the Town of Van Buren, held on October 15, 2019 at 7:00 pm at the Van Buren Town Hall, 7575 Van Buren Road, Baldwinsville, New York.

Present:

Mrs. Wendy Van Der Water	Councilor
Ms. Darcie Lesniak	Councilor
Mr. Howard Tupper	Councilor
Ms. Patricia Dickman	Councilor
Mr. Ronald Dudzinski	Councilor
Ms. Mary Frances Sabin	Deputy Supervisor
Mr. Claude Sykes	Supervisor

Also present:

Mr. Kevin Gilligan	Town Attorney
Mr. Jason Hoy	Town Engineer
Mr. Douglas Foster	Highway Superintendent
Ms. Lynn Precourt	Town Clerk

Pledge of Allegiance and Roll Call.

Approve minutes of the Regular Town Board Meeting on October 1, 2019:

206-19-000 MOTION BY Ms. Dickman, seconded by Mr. Dudzinski, to approve the minutes of the Regular Town Board Meeting on October 1, 2019 as published.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Public Hearing on Local Law H-2019 extension of Solar Moratorium:

207-19-000 MOTION BY Ms. Sabin, seconded by Mr. Dudzinski, to recess the regular meeting, open the public hearing and waive reading the legal notice published in the *Post Standard* on September 22, 2019.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Mr. Sykes said the Land Use Committee needs a little more time to finalize the proposed changes.

Mr. Sykes asked if there was anyone to speak in favor of this proposed local law.

Mr. Peter Wilder, 105 Highview Drive, said he supports both appropriate commercial and residential solar applications. He said he hopes the proposed changes are more favorable to residential property owners who want to use solar technology. He said this proposed law, once adopted, should be revisited often as new technology becomes available.

Mr. Sykes asked if there was anyone opposed to the proposed local law. No one spoke.

208-19-000 MOTION BY Ms. Sabin, seconded by Mr. Dudzinski, to close the public hearing and resume the regular at 7:08 pm.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Consider adoption of Local Law H-2019:

209-19-030 MOTION BY The following resolution was offered by Ms, Sabin, who moved its adoption, seconded by Mr. Dudzinski to wit:

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, proposed Local Law H-2019 Extending for an Additional Three (3) months the Moratorium on Commercial Free Standing Solar Photovoltaic (PV) Systems Within the Town of Van Buren, was presented and introduced at a regular meeting of the Town Board of the Town of Van Buren held September 17, 2019; and

WHEREAS, a public hearing was held to consider said proposed Local Law No. H-2019 on October 15, 2019 by the Town Board of the Town of Van Buren and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Van Buren in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

WHEREAS, this proposed local law was referred to the Onondaga County Planning Board, which took no position; and

WHEREAS, at its September 17, 2019 meeting the Town Board determined that this proposed legislation is a Type II action for purposes of SEQR, thus concluding the environmental review process; and

WHEREAS, it is in the public interest to enact said Proposed Local Law No. H-2019.

NOW, THEREFORE, it is

RESOLVED AND DETERMINED, that the Town Board of the Town of Van Buren, Onondaga County, New York, does hereby enact Proposed Local Law No. H-2019 as Local Law No. 8-2019 as follows:

TOWN OF VAN BUREN

LOCAL LAW NO. 8-2019

A Local Law Extending for an Additional Three (3) Months the Moratorium on Commercial Free-Standing Solar Photovoltaic (PV) Systems Within the Town of Van Buren

Be it enacted as follows:

Section 1: Intent

It is the intent of the Town Board of the Town of Van Buren to extend the existing moratorium originally adopted on May 7, 2019 for an additional three (3) months on commercial free standing solar photovoltaic systems within the Town of Van Buren. This local law is enacted under the authority of Section 10 of the New York Municipal Home Rule Law.

Section 2: Legislative Purpose

The Town of Van Buren has in effect Chapter 160-4 of the Code of the Town of Van Buren (Code), titled “Solar Photovoltaic (PV) Systems and Chapter 200 of the Code, titled “Zoning” which address “PV” uses within the Town. The Town Board is of the opinion that a period of time is necessary to determine whether additional regulation of commercial free-standing PV systems is necessary in order to preserve and protect the health, safety and welfare of its residents. Commercial free-standing PV systems are generally larger, more obtrusive and can pose a hazard and danger to residents by distraction, obstruction, and the power supply systems involved with such installations may pose a risk. This moratorium will enable town officials to review and comprehensively address the various issues involved with commercial free-standing PV systems.

The Town recognizes the potential benefits and desirability of solar power and renewable energy sources but determines that time and study is necessary in order to determine if and how to properly regulate such installations. The Town Board deems this moratorium emergent and immediately necessary for the Town.

Section 3: Definitions

Commercial Free Standing Solar Photovoltaic (PV) Systems

A free standing solar photovoltaic (PV) system and area of land principally used to convert solar energy to electricity with the primary purpose of supplying electricity to a utility grid for wholesale or retail sales of electricity to the general public or utility provider.

Section 4: Moratorium

A. The Town Board hereby enacts an extension of the moratorium which shall prohibit the placement, construction or erection of a commercial free standing solar photovoltaic (PV) system anywhere within the Town of Van Buren.

B. This moratorium shall extend the existing moratorium originally adopted on May 7, 2019 and shall be in effect for a period of three (3) months from the effective date of this local law and shall expire on the earlier of (i) the date three (3) months from said effective date of this local law, unless renewed; or (ii) the enactment by the Town Board of a resolution indicating the Town Board is satisfied that the need for the moratorium no longer exists.

C. This moratorium shall apply to all zoning districts and all real property within the Town.

D. Commercial free standing solar photovoltaic systems which have previously been approved or are located on Town-owned property are hereby expressly excluded from this moratorium.

Section 5: Relief from Provisions of this Local Law

A. The Town Board reserves to itself the power to vary or adapt the strict application of the requirements of this Local Law in the case of unusual hardship which would deprive the owner of all reasonable use of the lands involved.

B. Application for relief shall be filed in triplicate with the Town Code Enforcement Officer together with a filing fee of \$250.00. The application shall specifically identify the property involved, recite the circumstances pursuant to which the relief is sought and the reasons for which the relief is claimed. Any costs, including expert consulting fees or attorney's fees, incurred by the Town, shall be reimbursed to the Town by the Applicant. The Town Board shall apply Use Variance criteria as set forth in the New York State Town Law, Section 267-b (2) in reviewing any application for relief.

C. The Town Board may refer any applications for relief herein to the Town Planning Board for its advice and recommendations, but all decisions on granting or denying such relief shall be made solely by the Town Board after determining whether or not the requested relief is compatible with any contemplated amendments to the Town Zoning Law. Unless completely

satisfied that the proposed relief is compatible, the Town Board shall deny the application.

D. The Town Board shall conduct a public hearing on any request for relief within forty-five (45) days of receipt by the Town Code Enforcement Officer and shall issue its final decision on requests for relief within thirty (30) days from the date of the public hearing.

Section 6: Penalties

Any person, who shall construct, reconstruct, relocate, enlarge or modify any site to be used for a commercial free-standing solar photovoltaic system in violation of the provisions of this local law, shall be subject to:

A. A fine not to exceed One Thousand and 00/100 Dollars (\$1,000.00) or imprisonment for a term not to exceed fifteen (15) days, or both. Each day a violation continues shall be considered a new violation.

B. A civil action inclusive of injunctive relief in favor of the Town to cease any and all such actions which conflict with this local law and, if necessary, to remove any constructions, improvements, or related items or byproducts which may have taken place in violation of this local law.

Section 7: Enforcement

This local law shall be enforced by the Code Enforcement Office of the Town of Van Buren or such other zoning enforcement individual(s) as designated by the Town Board. It shall be the duty of the enforcement individual(s) to advise the Town Board of all matters pertaining to the enforcement of this local law.

Section 8: Validity & Severability

If any section or part of this local law is declared invalid or unconstitutional, it shall not be held to invalidate or impair the validity, force or affect any other section of this local law.

Section 9: Effective Date

This local law shall take effect immediately upon the expiration of the previously adopted and existing moratorium enacted by Town of Van Buren Local Law No. 2-2019 and shall remain in force and effect for a period of three (3) months from the effective date.

Roll Call Votes: Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Public Hearing on Local Law I-2019, Small Cell Wireless Deployment Requirements:

210-19-000 MOTION BY Ms. Dickman, seconded by Ms. Sabin, to recess the regular meeting, open the public hearing and waive reading the legal notice published in the *Post Standard* on September 22, 2019.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Mr. Gilligan said this proposed law addresses only 5G, small cell wireless technology. He said the federal government is very much in favor of this new technology and the town has little it can do to restrict its installation. He said the town can regulate aesthetics. This law also establishes standards and guidelines for how far back from the roadside they can be.

He said this technology is different from cell towers, which are tall and can be far apart to transfer signals and instead these are smaller, about the size of a dorm room refrigerator but need to be placed much closer together and that is what makes the wireless signal faster. He said in most cases they will be attached to existing poles, like utility poles. But, in any case the town can do very little in the way of regulation.

Mr. Sykes asked if there was anyone to speak in favor of this proposed local law. No one spoke.

Mr. Sykes asked if there was anyone to speak against this proposed local law. No one spoke.

211-19-000 MOTION BY Ms. Sabin, seconded by Mrs. Van Der Water, to close the public hearing and resume the regular meeting at 7:10 pm.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Consider adoption of Local Law I-2019:

Ms. Dickman asked what happens in areas with underground utilities.

Mr. Gilligan said they will have to go up somehow and the town can do very little to stop them .

Mrs. Van Der Water asked if multiple cell companies can come into an area and all want to put them up.

Mr. Gilligan said yes. He said in some cases they may co-locate, but, again, if they choose not to the town cannot stop them from installing the boxes.

Ms. Sabin asked if property owners can enter into contracts with the companies to locate the boxes on their property.

Mr. Gilligan said yes they can, and again, because the federal government has deemed this technology favorable the FCC has given local governments very little ability to regulate their placement and no authority to deny their installation.

212-19-030 The following resolution was offered by Ms. Dickman, who moved its adoption, seconded by Ms. Sabin to wit:

WHEREAS, pursuant to the provisions of the Municipal Home Rule Law, proposed Local Law I-2019 amending the Code of the Town of Van Buren by creating a new Chapter 151 titled “Small Cell Wireless Deployment Requirements,” was presented and introduced at a regular meeting of the Town Board of the Town of Van Buren held September 17, 2019; and

WHEREAS, a public hearing was held to consider said proposed Local Law No. I-2019 on October 15, 2019 by the Town Board of the Town of Van Buren and proof of publication of notice of such public hearing, as required by law, having been submitted and filed, and all persons desiring to be heard in connection with said proposed local law having been heard, and said proposed local law having been in the possession of the members of the Town Board of the Town of Van Buren in its final form in the manner required by Section 20 of the Municipal Home Rule of the State of New York; and

WHEREAS, at its September 17, 2019 meeting the Town Board determined that this proposed legislation is an unlisted action for purposes of SEQR, reviewed the Environmental Assessment Form and determined that the proposed local law, which will streamline and accelerate the wireless infrastructure siting review process while regulating aesthetics and addressing public safety concerns, would have no adverse environmental impacts and rendered a negative declaration, thus concluding the environmental review process; and

WHEREAS, proposed Local Law I-2019 was duly referred to the Onondaga County Planning Board pursuant to General Municipal Law Section 239 l, m and n; and

WHEREAS, upon its review of proposed Local Law I-2019 the Onondaga County Planning Board took no position and returned the matter for local determination; and

WHEREAS, the rights reserved by the Town of Van Buren, as set forth in the proposed local law, are consistent with rights recognized in the Declaratory Ruling and Third Report and Order, known as FCC 18-133 or “Order,” as issued by the Federal Communications Commission (“FCC”), which allow local governments to impose aesthetic requirements and safety considerations upon small cell wireless communications facilities; and

WHEREAS, proposed Local Law I-2019 is also consistent with the intent expressed by the Town of Van Buren Town Board in its Resolution dated April 2, 2019, wherein the Town Board noted its desire to preserve and maintain all of its legal rights and options to address and reasonably regulate additional telecommunication technologies, which rights and options included the ability to establish standards and requirements relative to the siting, construction, operation, maintenance, and permitting of such small commercial wireless facilities; and

WHEREAS, the Town Board desires to regulate the deployment of small cell wireless communications facilities throughout the Town in conformance with the guidance and rules set forth in the Order and, to accomplish this, desires to adopt the “Town of Van Buren Design Standards and General Guidelines for Small Cell Telecommunications Facilities,” as attached hereto as Exhibit “A” and as previously distributed; and

WHEREAS, it is in the public interest to enact said Proposed Local Law No. I-2019 and adopt the “Town of Van Buren Design Standards and General Guidelines for Small Cell Telecommunications Facilities.”

NOW, THEREFORE, it is

RESOLVED AND DETERMINED, that for the reasons set forth above the Town Board of the Town of Van Buren, Onondaga County, New York does hereby approve the enactment of proposed Local Law No. I-2019; be it further

RESOLVED AND DETERMINED, that the Town Board of the Town of Van Buren, Onondaga County, New York, does hereby enact Proposed Local Law No. I-2019 as Local Law No. 9-2019 as follows:

**“TOWN OF VAN BUREN
LOCAL LAW NO. 9-2019**

A Local Law Creating Chapter 151, Titled “Small Cell Wireless Deployment Requirements” of the Code of the Town of Van Buren

BE IT ENACTED by the Town Board of the Town of Van Buren as follows:

Section 1.

The Code of the Town of Van Buren is hereby amended to include a new Chapter 151, titled “Small Cell Wireless Deployment Requirements,” which shall read as follows:

“Chapter 151. Small Cell Wireless Deployment Requirements

ARTICLE I – PURPOSE AND DEFINITIONS

Section 151-1.1 Purpose and Intent.

- a. Purpose. The purpose of this Chapter is to regulate the placement of certain 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 of the following, which the Town shall consider when reviewing an Application:
 - (i) The location of the ground-mounted Communication Facilities;
 - (ii) The location of a Wireless Facility on a Pole or other device;
 - (iii) The appearance and concealment of certain wireless Communication Facilities, including those relating to materials used for arranging, screening and landscaping;
 - (iv) The design and appearance of a wireless Support Structure including any height requirements adopted in accordance with this Chapter.

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

- b. Intent. In enacting this Chapter, the Town is establishing uniform standards to address issues presented by certain wireless facilities, including without limitation, to:
 - (i) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - (ii) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (iii) Prevent interference with existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
 - (iv) Ensure efforts are made to preserve the character of neighborhoods in which facilities are installed;
 - (v) Protect against environmental damage, including damage to trees, public and private property; and
 - (vi) Facilitate the appropriate and reasonable deployment of small wireless facilities to provide the benefits of reliable access to wireless telecommunications technology, broadband and 9-1-1 services to homes, businesses and schools within the Town.

Section 151-1.2 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 Code Enforcement Officer 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 Van Buren or any agency, subdivision or any instrumentality thereof.
- g. “Collocate” means to install or mount a Small Wireless Facility 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(s) within the Public ROW or on public or 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 public or private property, a Communications Facility, Tower or a Pole to support a Communications Facility.
- r. “Permittee” means an Applicant who 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 who 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 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 three (3) 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 freestanding structure 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 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(s) 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 Infrastructure Provider” means a Person who builds or installs wireless communication transmission equipment, wireless telecommunications facilities or wireless telecommunications support structures, but that is not a Wireless Services Provider.
- ee. “Wireless Services” means any services provided using wireless telecommunications facilities.
- ff. “Wireless Services Provider” means a Person who provides Wireless Services and is authorized to provide such services pursuant to an FCC license.

ARTICLE II – GOVERNANCE OF DEPLOYMENT IN ROW

Section 151-2.1 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 License Agreement (“License Agreement”) with the Town, which shall be filed with the Onondaga County Clerk’s Office, expressly authorizing use of the Public ROW for the Communications Facility, Pole or Tower proposed to be installed.

- (i) General Terms. The License Agreement shall include:
 - (A) The term of the License Agreement shall be annual, which shall renew automatically unless terminated by the Town upon ninety (90) days' written notice.
 - (B) The License 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 License Agreement, subject to applicable Laws, this Chapter and the terms and conditions of the License Agreement. The License 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 License 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 the execution of an "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 on a primary, non-contributory basis. The Provider shall provide the Town with proof of such insurance in a form acceptable to legal counsel for the Town. Each insurance policy shall contain an endorsement obligating the insurance company to furnish the Town with at least 30 days' written notice prior to the cancellation of the insurance policy. The insurance policies shall be issued by an insurance company licensed to do business in New York State and shall have a Best's rating of at least A.
 - (E) The License 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 License 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 Public ROW for 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 License 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 License 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. Above-ground 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 above-ground 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 aboveground 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, 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 thirty (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 Officer, 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 the location of equipment in the Public 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 a single up-front Application, which Application may include up to five (5) Small Wireless Facilities, and \$100.00 per Application for each additional Small Wireless Facility thereafter. The fee shall be paid upon submission of the Application.
- (ii) Every Applicant for a new pole in the Public ROW shall pay a Permit application fee of \$1,000.00. The fee shall be paid upon submission of the Application.

- (iii) License Agreement Fee. Every Person requesting a License Agreement from the Town shall pay an administrative fee of \$340.00, which shall include the legal costs of drafting such License Agreement.
- (iv) 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 License Agreement is effective. The ROW Use Fee shall be due and payable within thirty (30) days of issuance of the License Agreement.
- (v) Attachment Fees. The Provider shall be subject to an additional attachment fee of \$500.00 per attachment 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.
- (vi) 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.
- (vii) No Refund. Except as otherwise provided in a License 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 151-2.2 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 or 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 above-ground facilities or structures, accurate visual depictions or representations, if not included in the construction drawings.
 - (viii) If new construction, a plan demonstrating 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 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 authority 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, if the failure to complete construction is a result of circumstances beyond the reasonable control of the Applicant.
- 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 151-2.3 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 License 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.
- 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 standards 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 ROW 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 151-2.4 Discretionary Review and Approval. All other uses within the Public ROW 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 200-79(B) 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; and, (iv) the density fulfillment needs of the neighborhood.

Section 151-2.5 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 Public 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 DIG SAFELY NEW YORK, INC.
- b. Compliance with Permit.
- (i) 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) 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.

Section 151-2.6 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 as part of the Administrative Review process, that each of the following conditions has been met:

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

Section 151-2.7 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. The Effective Date.

This Local Law shall become effective upon its filing with the New York Secretary of State;”

be it further

RESOLVED AND DETERMINED, that the Town Board of the Town of Van Buren does hereby adopt the “Town of Van Buren Design Standards and General Guidelines for Small Cell Telecommunications Facilities,” as attached hereto as Exhibit “A.”

Exhibit “A”

**TOWN OF VAN BUREN
Design Standards and General Guidelines
For Small Cell Telecommunications Facilities**

These Standards and General Guidelines were adopted by the Town of Van Buren Town Board on October 15, 2019, pursuant to Chapter 151 Section 2.3(d) of the Town of Van Buren Town Code, relating to the placement of small cell wireless facilities in the Town of Van Buren.

A. General Design Guidelines.

(1) Compliance. All Communications Facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, the Town of Van Buren Town Code, and any other applicable local, state, and federal rules and regulations.

(2) Underground Utilities. All service lines to the proposed Communications Facility shall be underground if all other utilities in the immediate area are also underground.

(3) Power and Fiber Optic Supply.

a. Independent Power Source Required. Communications Facilities subject to a License Agreement may not use the same power source providing power for the existing facilities original to the purpose of the Support Structure, unless specifically authorized by the owner of the Support Structure and approved by the Town Engineer. An independent power source must be contained within a separate conduit on the existing Support Structure.

b. Providers shall coordinate, establish, maintain and pay for all power and communication connections with private utilities.

(4) Wiring, Cables and Conduit Requirements.

- a. All wiring and cables must be housed within the steel or other metal Support Structure pole and extended vertically within a flexible conduit. In non-steel or solid Support Structures, all wiring and cables must be appropriately protected and covered with a material that matches the non-steel or solid Support Structure so as not to be visible from public view.
- b. Above-ground wires, cables, connections and conduits are prohibited, except as specified in this Design Guideline Manual based on the Support Structure.
- c. Spools and/or coils of excess fiber optic or coaxial cables or any other wires shall not be stored on the Pole except completely within the approved enclosures or cabinets.

(5) Lighting. Lighting associated with Communications Facilities is prohibited, except when incorporated into new or existing approved decorative poles. Any internal lights associated with electronic equipment must be shielded from public view.

(6) Signage. Signage is prohibited on all Communications Facilities and Support Structures, including stickers, logos, and other non-essential graphics and information unless required by the FCC.

(7) Work Permits. All Providers must obtain a work permit from the Town for any activity described in Chapter 151 of the Code.

(8) Public Safety Communications. Small Wireless Facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by the occupants of nearby properties.

B. Existing Support Structures.

(1) Collocation Encouraged. The collocation of Communications Facilities on existing Poles, Towers and Support Structures is strongly encouraged to minimize the extent of intrusion of redundant Support Structures within the Public ROW or on private property.

(2) Structural Integrity of Existing Support Structures.

- a. The Town shall not authorize any attachments to Town-owned infrastructure, Pole, Tower or Support Structure that negatively impacts the structural integrity of said infrastructure, Pole, Tower or Support Structure.
- b. The Town may condition approval of the Collocation on replacement or modification of the Communications Facility at the Provider's cost if the Town determines that replacement or modification is necessary for compliance with the construction and/or safety standards of the Town. A replacement or modification of the Communications Facility shall

conform to the applicable design guideline(s) and the Town's applicable specifications for the type of structure being replaced. The Town shall retain ownership of a replacement Support Structure.

(3) **Maximum Permitted Height.** For an existing Communications Facility, the Antenna and any associated shroud or concealment material which are permitted to collocate at the top of the existing Support Structure shall not increase the height of the existing Support Structure by more than five (5) feet or a total of thirty-five (35) feet from grade.

(4) **Reserved Space.** The Town may reserve space for future public safety or transportation uses in the Public ROW or on a Pole, Tower or Support Structure owned by the Town in accordance with an approved plan in place at the time an Application is filed.

- a. A reservation of space shall not preclude placement of a Pole or the Collocation of a Communications Facility.
- b. If replacement of the Town's Pole or Support Structure is necessary to accommodate the Collocation of the Communications Facility and the future use, the Provider shall pay for the replacement of the Pole or Support Structure and shall design and construct the replacement Pole or Support Structure in a manner that is able to accommodate the future use.

C. **New Pole, Tower or Support Structures.**

(1) **Location.**

a. **Required Setbacks.**

1. The centerline of a new Pole, Tower or Support Structure shall be installed in alignment with existing street trees and other poles along the same Public ROW whenever possible.

2. In no case shall a new Pole, Tower or Support Structure be located less than what is required in the License Agreement from any of the roadway/face of curb, sidewalk, or shared use path as measured to the nearest part of the Support Structure.

3. New Poles, Towers or Support Structures shall be located a minimum of six (6) feet from any permanent object, structure or existing lawful encroachment into the Public ROW, or as determined in the License Agreement.

4. Support Structures for Small Wireless Facilities located outside of the Public ROW shall be set back from the property line of the lot on which it is located a distance equal to not less than the total height of the facility, including the Support Structure, as measured from the highest

point of such Support Structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. The Planning Board may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, and other forms of screening and/or structural characteristics of the proposed Support Structure.

- b. Required Spacing. A minimum of 300 linear feet between Poles, Towers, Support Structures or Communication Facilities is required. To the extent feasible, any new or replacement Pole, Tower or Support Structure constructed in the Public ROW shall be located at the property line between two (2) residentially zoned properties and not in the direct line of site from the front of a residential structure.

(2) Maximum Permitted Height.

- a. For a new Support Structure in a Local Business District, General Business District, Industrial A District, or Industrial B District, the overall height of the Pole, Tower and Support Structure and any collocated Antennas shall not be more than forty feet (40') in height above established grade measured at the base of the Support Structure.
- b. The Town shall limit the maximum permissible height of wireless Pole, Tower or Support Structure in residential zones, including the Business/Residence Buffer District, and the Rural Hamlet District to not more than thirty-five feet (35') in height above established grade measured at the base of the structure.

(3) Design Requirements.

- a. Shape and Dimensions. All new Poles, Towers or Support Structures shall be constructed of solid hot-dipped galvanized steel and shall be round with the Pole shaft tempered in diameter from the base to the top with a maximum of twelve (12) inches at the base.
- b. Aesthetics. In appropriate locations and districts, decorative poles shall be used to complement the existing character of the surrounding area.
- c. Transformer Base. All new Poles, Towers or Support Structures shall include a one-piece cast aluminum allow transformer base in a breakaway design, consistent with engineering standards subject to the Engineer for the Town's review and approval.
- d. Foundation/Footer.
 - 1. All new Poles, Towers or Support Structures shall be supported with a reinforced concrete foundation or footer that is designed by a

professional engineer, subject to the Engineer for the Town's review and approval.

2. Anchor bolts must be constructed from steel (high strength) per ATSM A36, threaded (J-Type/L-Type), hot dip galvanized steel per ODOT CM Item No. 711.02, and in a strength and diameter recommended by a professional engineer, subject to the Engineer for the Town's review and approval.

3. All anchor bolts must be concealed from public view with an appropriate Pole boot or cover, powder coated to match the Pole, Tower or Support Structure.

e. Color. New Poles, including decorative poles, Towers or Support Structures, including the breakaway transformer base, shall have a powder coated finish in dark earth tone colors such as dark green, dark brown, gray, or black, consistent with the color of other Poles, Towers or Support Structures in the immediate vicinity, unless other colors are approved by the Town.

(4) Multiple Requests. If multiple requests are received by the Town to install two (2) or more Poles, Towers or Support Structures that result in the violation of the applicable spacing requirements outlined herein, or to collocate two (2) or more Communications Facilities on the same Pole, Tower or Support Structure, the Town may resolve conflicting requests through whatever reasonable and nondiscriminatory manner it deems appropriate.

(5) Alternate Location. The Town reserves the right to propose an alternate location to any proposed location of a new Pole, Tower or Support Structure, that is within one hundred feet (100') of the proposed location or within a distance that is equivalent to the width of the Public ROW in or on which the new structure is proposed, whichever is greater, which the Provider shall use if it has the right to do so on reasonable terms and conditions and the alternate location does not impose technical limits or significant additional costs.

(6) Waiver.

a. A Provider may seek a waiver from the Planning Board of the undergrounding or alternative location requirements for the placement of a new Pole, Tower or Support Structure to support Communications Facilities if the Provider is unable to achieve its service objective using a Communications Facility under the following circumstances:

1. From a location in the Public ROW where the prohibition does not apply;

2. In a utility easement the Provider has the right to access; or

3. In or on other suitable locations or structures made available by the Town subject to reasonable rates, fees, and terms.

b. The Town shall process waivers in a reasonable and nondiscriminatory manner that does not have the effect of prohibiting the provision of Wireless Services.

D. Antenna.

(1) Location. All Antenna to be installed on new or existing Poles, Towers or Support Structures shall be mounted to the top of the Pole, Tower or Support Structure and aligned with the centerline of the Pole, Tower or Support Structure, unless otherwise agreed to by the Town based on the specific context and characteristics of the Communications Facility.

(2) Size. Each Antenna shall be located entirely within an enclosure of not more than three (3) cubic feet in volume or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an enclosure of not more than twelve (12) cubic feet in volume.

(3) Design.

a. Shape. Antennas shall be cylindrical in shape or shall be located entirely within a cylindrical canister or shroud.

b. Color. Exposed Antennas and Antenna enclosures shall match the color specifications of the Pole, Tower or Support Structure, unless other colors are approved by the Town.

E. Small Wireless Facilities Installed on Support Structures.

(1) Size. Exclusive of the Antenna, all wireless equipment associated with the Communications Facility shall not cumulatively exceed twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(2) Equipment Enclosures. All Communications Facilities mounted to Poles, Towers or Support Structures or located on the ground shall be fully contained within enclosures or cabinets.

(3) Required Clear Height. All Communications Facilities mounted to a Pole, Tower or Support Structure shall provide a minimum of ten (10) feet of clear space on the Pole as measured from established grade to the lowest point of any facility/equipment cabinets or concealment apparatus mounted to the Pole, Tower or Support Structure.

- (4) Maximum Horizontal Offset from Support Structure. Communications Facility equipment cabinets or enclosures shall not extend more than ten (10) inches beyond the Pole, Tower or Support Structure centerline in all directions.
- (5) Design.
 - a. Cabinet or Enclosure Shape. Communications Facility equipment cabinets or enclosures shall be rectangular in shape, with the vertical dimensions being greater than the horizontal. Generally, the cabinet or enclosure shall be no wider than the maximum diameter of the Support Structure.
 - b. Installation. All Pole mounted equipment cabinets or enclosures must be installed as flush to the Pole as possible. Any installation brackets connecting the cabinets or enclosure to the Pole shall not extend more than two (2) inches from the Pole and shall include metal flaps (or wings) to fully conceal the gap between the cabinet and Pole.
 - c. Color. Cabinets or enclosures shall match the color specification of the Pole, Tower and/or Support Structure, unless other colors are approved by the Town.

F. Ground Mounted Small Wireless Facilities.

- (1) Location.
 - a. Required Setbacks.
 - 1. Ground mounted Small Wireless Facilities shall be located no less than required in the License Agreement from the road-way/face of curb, sidewalk, or shared use path as measured to the nearest part of the cabinet or enclosure.
 - 2. Ground mounted Communications Facilities and associated required screening or shrouding shall be located a minimum of six (6) feet from any permanent object or existing lawful encroachment into the Public ROW.
- (2) Size. All Communications Facility equipment shall not cumulatively exceed twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.
- (3) Maximum Permitted Height. The maximum height for ground mounted Communications Facilities shall not exceed two and one-half (2 ½) feet as measured from established grade at the base of the facility.

(4) Equipment Enclosures Required. All ground mounted Communications Facilities shall be fully contained within enclosures or cabinets.

(5) Design Requirements.

- a. Concealment. Ground-mounted equipment shall incorporate concealment elements into the proposed design matching the materials of the Support Structure, unless other materials are approved by the Town. Concealment may include, but shall not be limited to, landscaping, strategic placement in less obtrusive locations. Landscaping concealing equipment enclosures shall be planted in such quantity and size such that 100% screening is achieved within two (2) years of installation.
- b. Concrete Pad or Slab. In accordance with state and local standards approved by the Code Enforcement Officer.
- c. Breakaway Design. All objects placed within the Public ROW shall feature breakaway design.
- d. Color. Ground mounted Communication Facility cabinets and enclosures shall have a powder coated finish in dark earth tone colors such as dark green, dark brown, gray, or black, unless other colors are approved by the Town.

G. Construction and Safety Requirements.

(1) Approval of the collocation, replacement or modification of a Pole, Tower or Support Structure is conditioned upon the Provider's assumption of costs if the Town determines such is necessary for compliance with its written construction or safety standards.

(2) Prevention of failures and accidents. Any Provider who owns a Communications Facility sited in the Public ROW or upon Town-owned property shall at all times employ ordinary and reasonable care and shall install, maintain and use nothing less than the best available technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.

(3) Compliance with fire safety and FCC regulations. Communications Facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property, public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

(4) Wind and Ice. All Communications Facilities shall be designed to withstand the effects of wind gusts and ice to the standard designed by ANSI, as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/ EIA/ TIA-222, as amended).

(5) Surety bond or equivalent financial tool for cost of removal. All Providers shall procure and provide to the Town a renewable bond, or shall provide proof of an equivalent financial mechanism, which may include a funds set-aside and a letter of credit, to ensure compliance with all provisions of these Standards and Guidelines. The renewable bond or equivalent financial method shall cover the cost to remove unused or abandoned Small Wireless Facilities or damage to Town property caused by a Provider or its agent for each Communications Facility which the Provider installs in the Public ROW or upon Town-owned property.

H. Indemnify and Hold Town Harmless. Any Provider who owns or operates a Communications Facility or a Pole, Tower or Support Structure in the Public ROW or upon Town-owned property shall, to the fullest extent permitted by law, indemnify, protect, defend, and hold the Town and its elected officials, officers, employees, agents, and volunteers harmless from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, product performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fee, consultants' fees and expert witness fees are included in those costs that are recoverable by the Town.

Said Provider shall also hold the Town and/or its agent(s) harmless in the event any action by the Town and/or its agent(s) negligently or recklessly disrupts, destroys, and incapacitates the small cell facility or wireless support structure situated in the Public ROW or Town-owned property in accordance with these Design Guidelines and Standards.

Roll Call Votes: Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Appointment of Casey Palmer as Codes Department Head and Fire Marshall at a rate of \$30.00/hr effective October 7, 2019:

213-19-038 MOTION BY Mr. Tupper, seconded by Ms. Lesniak, to appoint Casey Palmer Codes Department Head and Fire Marshall at a rate of \$30.00 an hour effective October 7, 2019.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Approval of Supervisor to execute MVP Retiree Health Insurance contracts:

214-19-029 MOTION BY Mr. Dudzinski, seconded by Mrs. Van Der Water, to approve the Supervisor to execute the MVP Retiree Health Insurance contracts.

Regular Town Board Meeting October 15, 2019

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Set public hearing for 2020 Preliminary Town and Special Districts Budgets:

215-19-039 MOTION BY Ms. Sabin, seconded by Mrs. Van Der Water, to set the public hearings to hear comments on the 2020 Preliminary Town and Special Districts Budgets on November 6, 2019 at 7:00 pm.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Councilor Committee Reports & Comments:

Ms. Sabin said there is a Land Use Committee meeting scheduled for October 22, 2019 at 4:00 pm to discuss the proposed changes to the solar law. She said they have a meeting tentatively scheduled for October 29, 2019 at 3:30 pm in case they do not finish up the work at the October 22nd meeting. She said once they are done with the solar law changes they will begin meetings to discuss proposed changes to the property maintenance law.

Highway Superintendent Comments: None

Supervisor Comments: None

Engineer Comments: None

Attorney Comments: None

Citizens Comments: None

216-19-000 MOTION BY Ms. Sabin, seconded by Mr. Dudzinski, to adjourn to the next Regular Town Board Meeting on Wednesday, November 6, 2019 at 7:00 pm.

Mrs. Van Der Water – Yes, Ms. Lesniak – Yes, Mr. Tupper – Yes, Ms. Dickman – Yes, Mr. Dudzinski – yes, Ms. Sabin – Yes, Mr. Sykes – Yes

All Ayes – Motion Carried & Adopted

Meeting closed 7:22 pm

Respectfully submitted,

Lynn Precourt

Town Clerk

Dated: 10/16/1