

At a Meeting of the Village of Nelsonville Board of Trustees held at Village Hall, 258 Main St., Nelsonville, New York, on the 8th day of July, 2020, at 7:00 PM.

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE VILLAGE OF NELSONVILLE

Identifier: Introducing Local Law Amending Chapter 188 of the Village Code Entitled “Zoning” to adopt a new Article VIII Entitled Small Wireless Telecommunication Facilities

At a regular meeting of the Board of Trustees of the Village of Nelsonville (“Village Board”), held at the Village of Nelsonville Village Hall on the 8th day of July, 2020, at 7:00 p.m., Trustee _____, seconded by Trustee _____, moved the following resolution, to introduce the following proposed local law, to be known as Introductory Local Law No. __ of 2020, entitled “A Local Law Amending Chapter 188 of the Code of the Village of Nelsonville, entitled “Zoning;”

NOW THEREFORE, BE IT ENACTED by the Board of Trustees of the Village of Nelsonville as follows:

Section 1. Statement of Purpose and Intent. The Statement of Purpose and Intent is contained in the Local Law attached hereto as Exhibit “A”;

Section 2. A new Article VIII, §188-73 through §188-98 of the Code of the Village of Nelsonville, is annexed hereto as Exhibit “A” and is introduced by this resolution for further legislative proceedings by the Village Board.

Mayor Bowman advised the Village Board that, pursuant to the Municipal Home Rule Law of the State of New York, it is necessary to hold a public hearing upon this proposed local law.

_____ offered the following resolution to set the date of the public hearing, which was seconded by Trustee _____, to move its adoption:

WHEREAS, Trustee _____ has introduced this proposed local law for the Village of Nelsonville, to be known as Village of Nelsonville Introductory Local Law No. _

of 2020, entitled “A Local Law Amending Chapter 188 of the Code of the Village of Nelsonville, entitled “Zoning””;

RESOLVED, that a public hearing be held in relation to the proposed amendments as set forth in the form of notice hereinafter provided, at which hearing parties in interest shall have an opportunity to be heard, to be held at the Village Hall on July 20, 2020, at 7:30 o’clock p.m., Prevailing Time, and that notice of said hearing shall be published in the official newspaper of general circulation in the Village of Nelsonville by the Village Clerk, at least ten (10) days before such hearing and that such notice shall be in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE that the Board of Trustees of the Village of Nelsonville will hold a public hearing at the Village Hall, 258 Main St., Nelsonville, New York on July 20, 2020, at 7:30 o’clock p.m., Prevailing Time on Introductory Local Law No. _ of 2020, entitled “A Local Law Amending Chapter 188 of the Code of the Village of Nelsonville, entitled “Zoning””, which local law authorizes the Planning Board to approve permits to be issued for installation of Small Cell Telecommunication Facilities in public areas of the Village, consistent with final rules issued by the Federal Communications Commission and other federal law;

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the Village of Nelsonville Village Hall, 258 Main St., Nelsonville, New York, during normal business hours on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all persons interested shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED: Nelsonville, New York
July ____, 2020

MINDY JESEK, VILLAGE CLERK

The foregoing resolution was voted upon with all members voting as follows:

Mayor Bowman _____

Trustee _____

Trustee _____

Trustee _____

Trustee _____

DATED: Nelsonville, New York
_____, 2020

MINDY JESEK, VILLAGE CLERK

EXHIBIT A

TEXT OF LOCAL LAW AMENDING CH. 188 "ZONING" OF THE VILLAGE CODE OF
NELSONVILLE

(NEXT PAGES)

INTRODUCTORY LOCAL LAW NO. ___ of 2020

BOARD OF TRUSTEES
VILLAGE OF NELSONVILLE
A LOCAL LAW TO AMEND
CHAPTER 188 OF THE
CODE OF THE VILLAGE OF NELSONVILLE

BE IT ENACTED by the Village Board of Trustees of the Village of Nelsonville (“Village”) and (“Village Board”) as follows:

Section 1. Chapter 188, entitled “Zoning” is hereby amended by creating a new Article VIII entitled “Small Wireless Telecommunication Facilities,” beginning with § 188-73 as follows:

ARTICLE VIII, § 188-73. Purpose and legislative intent.

The purpose of this article is to establish uniform standards for the siting, design, permitting, maintenance, and use of small wireless telecommunications facilities (“SWTF”) in the Village of Nelsonville. While the Village recognizes the importance of SWTF in providing high-quality communications and internet service to its residents and businesses, the Village also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities.

A. By enacting this article, the Village intends to:

- (1) Provide for the managed development of SWTF in a manner that enhances the benefits of wireless communications and addresses the needs of Village residents and wireless carriers in accordance with federal, state and local laws and regulations;
- (2) Establish fair and efficient processes for review and approval of applications for SWTF Permits;
- (3) Establish procedures for the design, siting, construction, installation, maintenance and removal of SWTF in the Village;
- (4) Provide for new wireless technologies, including, but not limited to, small cells and distributed antenna systems ("DAS") technologies;
- (5) Encourage the co-location of SWTF on existing structures rather than the construction of a new support structure;
- (6) Protect Village residents and businesses from potential adverse impacts of SWTF, to the extent permitted under law, and to preserve the visual character of established

communities and the natural beauty and serenity of the landscape;

- (7) Minimize safety hazards and avoid potential damage to adjacent properties through proper locational, engineering and operational requirements;
- (8) Minimize adverse aesthetic and acoustic impacts of SWTF to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;
- (9) Protect the physical appearance of the Village and preserve its scenic and natural beauty;
- (10) Protect the public health, safety and welfare;
- (11) Protect property values of the community;
- (12) Minimize the impact of such facilities on residential properties;
- (13) Encourage the siting of SWTF on properties and areas which are not used exclusively for residential purposes; and
- (14) Protect, to the maximum extent practicable, aesthetic qualities, the open space character of the Village of Nelsonville, and the communications without interference from other communication providers, while not unreasonably limiting competition among communication providers.
- (15) Mitigate impacts of SWTF on real properties that are listed as landmarks by local, state or federal law, or are located in or near a historic district.
- (16) Mitigate impacts by SWTF on real properties subject to the guidelines for Scenic Areas of Statewide Significance (“SASS”).

§ 188-74 Definitions.

As used in this section, the following terms shall have the meanings indicated:

ACCESSORY OR ANTENNA EQUIPMENT — Any equipment serving or being used in conjunction with SWTF and located on the same property or lot as the SWTF, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, buildings and similar structures, and, when co-located on a structure, which is mounted or installed at the same or subsequent time as an antenna.

ANTENNA – An apparatus designed for the purpose of emitting or receiving radio frequency (RF) radiation, to be operated or operating from a fixed location, for the provision of wireless service (whether on its own or with other types of services). For purposes of this definition, the term "antenna" does not include an unintentional radiator, or mobile station.

BASE STATION — A structure or equipment at a fixed location that enables authorized wireless communications between user equipment and a communications network.

- (1) The term includes, but is not limited to, equipment associated with SWTF such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including DAS and small cell networks).
- (3) The term includes any structure that supports or houses equipment described in paragraphs (1) and (2) above that has been reviewed and approved under the applicable zoning or siting process, even if the structure was not built for the sole or primary purpose of providing such support.
- (4) The term does not include any structure that, at the time the relevant application is filed with the Village under article VII or VIII of this chapter, does not support or house equipment described in paragraphs (1) and (2) of this definition.

CO-LOCATION — The practice of

- (1) Mounting or installing an antenna facility on a preexisting structure; and/or
- (2) Modifying a structure for the purpose of mounting or installing an antenna facility on that structure.

DISTRIBUTED ANTENNA SYSTEM (DAS) — A network of spatially separated antenna sites connected to a common source that provides wireless communications service within a geographic area or structure.

EAF — The environmental assessment form approved by the New York State Department of Environmental Conservation.

FAA — The Federal Aviation Administration, or its duly designated and authorized successor agency.

FCC — The Federal Communications Commission, or its duly designated and authorized successor agency.

HEIGHT — When referring to a structure, the distance measured from the preexisting grade level to the highest point on the structure, including the antenna and any other appurtenances.

LARGE WIRELESS FACILITY — Any wireless telecommunications facility that is subject to Section 188-Article VII, but is not subject to this Article VIII of the Village Code.

MODIFICATION — The improvement, upgrade or expansion of existing SWTF, or the improvement, upgrade or expansion of the SWTF located within an existing equipment compound if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the SWTF.

MONOPOLE — A wireless communications support structure which consists of a single pole, designed and erected on the ground or on top of a structure, to support a small wireless communication antenna and accessory equipment.

NIER — Nonionizing electromagnetic radiation.

PERMIT – Small Wireless Facility Permit.

PERSON — Any individual person, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

PLANNING BOARD – The Village of Nelsonville Planning Board.

PUBLIC RIGHT-OF-WAY (“ROW”) — Any way over which the public possesses the right to travel, which heretofore has been duly laid out, adopted and established by law, whether publicly owned or not. The term "road" includes state, county and Village highways and roads, streets, squares, places, courts, boulevards, parkways and sidewalks and other ways, however designated, over which the public has rights of access either by dedication by the property owner to the Village or by prescription as provided by §6-626 of the Village Law.

REPLACEMENT — The replacement of existing wireless communications antenna on any existing support structure or on existing accessory equipment for maintenance, repair or technological advancement with equipment composed of the same or similar wind loading and structural loading that is substantially similar in size, weight, and height as the existing wireless communications antenna and which does not substantially change the physical dimensions of any existing support structure.

SCENIC AREAS OF STATEWIDE SIGNIFICANCE (“SASS”)—Department of State scenic assessment program that identifies the scenic qualities of coastal landscapes, evaluates them against criteria for determining aesthetic significance, and recommends areas for designation as Scenic Areas of Statewide Significance (SASS). SASS designation protects scenic landscapes through review of projects requiring State or federal actions, including direct actions, permits, or funding. Guidance for assessing the overall visual characteristics of a waterfront is included in the [***Making the Most of Your Waterfront guidebook***](#). The Village has qualified for use of this program.

SMALL WIRELESS CELL — Low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in

size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces. A small cell facility meets both the following qualifications: each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed element, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and all other wireless equipment associated with the facility is cumulatively no more than 17 cubic feet in volume. A small cell may be called a DAS, microcell, picocell or femtocell, or any such name employed to identify a compact, low power base station.

SMALL WIRELESS FACILITY (“SWTF”) — A small wireless telecommunication facility including, but not limited to, DAS and microcells and their associated equipment, that meets each of the following conditions:

- (1) The structure on which antenna facilities are mounted:
 - (a) Is 50 feet or less in height; or
 - (b) Is no more than 10% taller than other adjacent structures; or
 - (c) Is not extended to a height of more than 10% above its preexisting height as a result of the co-location of new antenna facilities; and
- (2) The facility does not require antenna structure registration under Part 17;
- (3) The facility is not located on tribal lands, as defined under 36 CFR 800.16(x); and
- (4) The facility does not result in human exposure to radio-frequency radiation in excess of the applicable safety standards specified in Parts 1 and 2 of the FCC's Rules and Regulations [47 C.F.R. 1.1307(b), 1.1310, 2.1091, 2.1093].

STEALTH TECHNOLOGY — Camouflaging methods applied to small cell wireless communications facilities which render them more visually appealing or which serve to blend the proposed facility into the existing structure or visual backdrop in such a manner as to render it less visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted facilities, building-mounted antennas painted to match the existing structure, and facilities constructed to resemble trees, shrubs, and the like.

STRAND --- A cable or wire run between two utility poles or between a utility pole and a structure

STRUCTURE — A pole, base station supporting hardware, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of wireless service (whether on its own or commingled with other types of services).

SUBSTANTIAL CHANGE — A modification substantially changes the physical dimensions of an eligible support structure if it exceeds any of the following criteria:

- (1) The mounting of a proposed antenna or small cell on existing structures that would increase the height of the structure by more than 5 feet.

2) The mounting of the proposed antenna or small cell would involve adding an appurtenance to the body of an existing wireless telecommunications support structure that would protrude from the edge of the original support structure more than three feet, or more than the original width of the support structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna or small cell may exceed the size limits herein if necessary to shelter the antenna from inclement weather or to provide stealth shielding for the antenna or small cell.

(3) The mounting of the proposed antenna would involve excavation outside the current existing structure site, defined as the current boundaries of the leased or owned property surrounding the existing structure and any access or utility easements currently related to the site.

(4) The modification defeats concealment and/or stealth elements of the support structure.

(5) The modification does not comply with prior conditions of the approval for the existing structure and/or site; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

TRANSMISSION EQUIPMENT — Equipment that facilitates transmission for any Commission-licensed or -authorized wireless communications service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

UTILITY POLE — A pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function, regardless of ownership, including Village-owned poles or poles owned by other utility companies. Any utility pole in excess of 50 feet shall be deemed a tower and not eligible as a location for SWTF.

SMALL WIRELESS TELECOMMUNICATIONS SUPPORT FACILITY (SWT Support) — A structure, facility or location designed or intended to be used as, or used to support, antennas, along with any antennas located on such structure and any accessory equipment. It includes, monopoles, DAS, microcell or small wireless facilities on utility poles or strand-mounted in the public right-of-way or property of the Village or within the Village and similar structures that employ stealth technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It includes any structure, antennas and accessory equipment intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave telecommunications or other cellular communications technologies, but excluding those used exclusively for the Village's fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

WIRELESS TELECOMMUNICATIONS PROVIDER — A Commission-licensed service provider offering wireless telecommunications employing macro-cellular and/or small cell technology to deliver such telecommunications services. These services may include, but are not limited to, voice, data, or video in either licensed or un-licensed spectrum. An enterprise business offering to host licensed or unlicensed service providers by deploying small cell technology such as, but not limited to, DAS and similar small cells.

§188-75. Permits for SWTF.

- (1) Except as otherwise provided by this Article VIII, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of SWTF without having first obtained a small wireless Permit for a SWTF from the Planning Board as provided herein.
- (2) Notwithstanding anything to the contrary in this section, any application to modify or replace an existing SWTF that does not substantially change the dimensions of a wireless telecommunications facility shall not require a small wireless facility Permit. In the event that a modification to, or replacement of, an existing wireless telecommunications facility does not substantially change such existing SWTF, all that shall be required is a building permit from the Village Building Inspector.
- (3) A repair and/or maintenance of an existing SWTF shall not require a SWTF Permit.
- (4) In addition to the requirements set forth for the issuance of a SWTF permit for a SWTF to be located in a public right-of-way as set forth in this section, any telecommunications provider seeking to place a small wireless telecommunications facility in the public right-of-way shall also comply with the procedures and requirements set forth in Chapter 165 of the Village Code relating to conducting construction activities within the public right-of-way and Chapter 77 relating to Administration and Enforcement of the NYS Uniform Fire Prevention and Building Code. To the extent any provisions in Chapter 165 are inconsistent with the provisions set forth in this section, the provisions in this section shall control.
- (5) Notwithstanding the provisions set forth in this § 188-75, in the event an application seeks to place a SWTF on property owned or controlled by the Village, other than within a Village-owned public right-of-way, such application shall be exempt from the requirements of this article and shall remain within the sole and absolute discretion of the Village Board, which may impose such conditions on any such use as it deems appropriate. Nothing herein shall be deemed to create any right or entitlement to use Village property for such SWTF.
- (6) In the event any conflict exists between federal or state laws or regulations and any provision of this article VIII, the provisions of the most recently adopted federal or state laws or regulations shall be applied and control.

§ 188-76. Small wireless facility permit required.

- (1) All SWTF shall require a small wireless facility Permit to be issued by the Planning Board as a condition to issuance of a building permit for SWTF.
- (2) The Planning Board shall be empowered to condition the issuance of a building permit upon implementation of stealth technologies or other measures which mitigate visual impacts.
- (3) All applications for SWTF permits shall comply with all applicable provisions of this section. However, notwithstanding anything to the contrary, where appropriate, the Planning Board shall have the authority to waive any requirements set forth in this article relating to an application for, or approval of, a SWTF permit, provided that it would further the purposes of this article VIII.
- (4) Unless otherwise set forth in this chapter, a DAS facility, microcell facility or other type of wireless telecommunications facility not meeting the requirements set forth for SWTF shall require a special use permit from the Planning Board and building permit.

§ 188-77 Applications for SWTF.

- (1) Upon receipt of an application for a SWTF, the Planning Board shall review said application and plans in accordance with the standards and requirements set forth in this article.
- (2) The Planning Board may attach such conditions and safeguards to any SWTF Permit and SWTF site development plan as are, in its opinion, necessary to ensure initial and continued compliance to all applicable standards and requirements.
- (3) No application shall be accepted and no SWTF Permit shall be issued for a property where the Building Inspector has found, or there exists, a violation of the Village Code and where such violation has not been corrected.
- (4) Granting a SWTF Permit shall not require SWTF site plan approval, or site plan fees.
- (5) An application for a SWTF Permit shall be signed on behalf of the applicant by the Person preparing the same with knowledge of the contents and representations made therein and attesting to the truth and completeness of the application. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application.
- (6) The applicant must provide documentation to verify it has a legal property interest in the site, if not within the public right-of-way. Said documentation may be in the form of a deed, contract or sale or lease for the property, depending on whether the applicant is the property owner, contract vendee or lessee.
- (7) The applicant shall include a statement, in writing, that:

(a) The applicant's proposed SWTF shall be maintained in a safe manner and in compliance with all conditions of the SWTF Permit, without exception, as well as all applicable and permissible federal, state and local laws, statutes, codes, rules and regulations; and

(b) The construction of the SWTF is legally permissible, including, but not limited to, the fact that the applicant is authorized to do business in New York State.

(8) If proposing a new structure for the purpose of supporting a SWTF, the application shall be accompanied by a map which shows the applicant's existing and proposed area of coverage. Such map should locate all existing wireless telecommunications facility sites within the Village and within two miles of the proposed SWTF, and all residences located within 250 feet of the SWTF proposed location(s), and the Applicant shall notify the owners of all such residences of such application and public hearing.

(9) In addition to all other required information as stated in this section, all applications for the construction or installation of a new SWTF or modification of an existing SWTF shall contain the following information:

(a) A descriptive statement of the objective(s) for the new SWTF or modification, including and expanding on a need such as coverage and/or capacity requirements;

(b) Documentation that demonstrates the need for the SWTF to provide service primarily and essentially within the Village. Such documentation shall include, but not be limited to: (i) information relating to all other SWTF and antennas associated with such SWTF that are to be deployed in the Village in conjunction with the proposed small wireless facility; and (ii) propagation studies of the proposed site including, but not limited to, both drive test and calibrated predicted coverage plots, and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage and/or if a capacity need, including an analysis of current and projected usage;

(c) The name, address and phone number of the person preparing the report;

(d) The name, address, and phone number of the property owner, operator and applicant;

(e) The postal address and Tax Map parcel number of the property;

(f) The zoning district or designation in which the property is situated;

(g) The size of the property, stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines, if the proposed small wireless facility is located outside the public right-of-way;

(h) The location of the nearest residential structure;

(i) The location, size and height of all existing and proposed structures on the property which is the subject of the application;

- (j) The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed small wireless facility is located outside the public right-of-way;
- (k) The number, type and model of the antenna(s) and associated small cell equipment proposed, with a copy of the specification sheets;
- (l) The make, model, type and manufacturer of the utility pole, monopole or other structure on which any antenna or accessory equipment for a SWTF is to be located and a design plan stating the structure's capacity to accommodate multiple users;
- (m) A site plan describing any new proposed structure and antenna(s) and all related fixtures, accessory equipment, appurtenances and apparatus, including, but not limited to, height above preexisting grade, materials, color and lighting;
- (n) The frequency, modulation and class of service of radio or other transmitting equipment;
- (o) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
- (p) Direction of maximum lobes and associated radiation of the antenna(s);
- (q) Applicant's proposed maintenance and inspection procedures and related system of records;
- (r) Documentation justifying the total height of any proposed antenna and structure and the basis therefor. Such justification shall be to provide service within the Village, to the extent practicable, unless good cause is shown;
- (s) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC and the State of New York;
- (t) A certified statement of an appropriately licensed professional that the proposed installation will not cause physical or RF interference with other telecommunications devices;
- (u) A copy of the FCC license applicable for the intended use of the SWTF;
- (v) Certification that a topographic and geomorphologic study and analysis has been conducted and that, taking into account the subsurface and substrate and the proposed drainage plan, the site is adequate to assure the stability of the proposed SWTF on the proposed site, though the certifying engineer need not be approved by the Village;
- (w) Information relating to the expected useful life of the proposed small wireless facility;

(x) Certification that the SWTF will not exceed 45 dBA of acoustic noise, measured five feet from the unit in any direction or violate any applicable noise law or nuisance law, including Chapter 129 of the Village Code;

(y) Full EAF with visual renderings;

(z) Proof of mailing of such notice to owner of each residence within 250 feet of the location of the proposed SWTF;

(z1) Evidence of FCC NEPA review.

(10) The applicant shall furnish written certification that the SWTF and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the wireless facility is subsequently approved and constructed, as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished to the Village prior to issuance of any certificate of occupancy or compliance.

(11) All proposed SWTF shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, will employ stealth technologies as directed by the Planning Board, where appropriate, and will thereby have the least-adverse visual impact on the environment, the character of the community, surrounding properties and on the residences in the area of the SWTF.

§ 188-77 General and Specific Requirements for SWTF.

(1) Design. All SWTF 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, and National Electrical Code. All small wireless facilities shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Village.

(2) Wind and ice. All SWTF structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).

(3) Aviation safety. SWTF shall comply with all federal and state laws and regulations concerning aviation safety.

(4) Public safety communications. SWTF shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.

(5) Radio frequency emissions. A SWTF shall not, by itself or in conjunction with other Wireless

Cell Facilities (WCFs), generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended. When a SWTF is complete, as-built readings will be taken and submitted to the Village.

(6) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:

(a) SWTF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

(b) Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Village's residents.

(c) All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.

(7) Separation from Residences. In a residential zoning district, no SWTF shall be located within 50 feet of any house or other occupied residential structure.

§ 188-78 Approval procedures.

(1) For SWTF applications, the Planning Board may, at its discretion, require a public hearing.

(2) In any zoning district, the Planning Board may grant a SWTF Permit for the construction of the SWTF.

(3) All decisions of the Planning Board involving applications for a SWTF Permit shall be in writing and supported by substantial evidence contained in a written record.

(4) Time frames for approval.

(a) Within 60 days of receipt of a complete application for the colocation of a SWTF on a preexisting utility pole, monopole or other existing wireless telecommunications facility support structure, the Planning Board shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

(b) Within 90 days of receipt of a complete application for a SWTF on a new utility pole, monopole or other new SWTF support structure, the Planning Board shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

(c) Within 10 days of receipt of an incomplete application for a SWTF, the Village shall notify the applicant in writing of any supplemental information required to complete the application. Upon receipt of an applicant's supplemental information in response to the initial

notification of incompleteness by the Village, the applicable shot clock will reset to zero, and the Village shall have the full 60 days or 90 days permitted by law to act on the completed application.

(d) For any subsequent determinations of incompleteness beyond the initial determination by the Planning Board, the Village shall notify the applicant of any required supplemental information within 10 days of receipt of the supplemental submission, and such notice shall toll the applicable shot clock until the applicant submits the required supplemental information.

(5) All time periods set forth in this section reference calendar days.

(6) EAFs shall be approved and negative declaration voted during the time frame above.

§188-79 Location.

(1) Applications for SWTF shall locate, site and erect said facility in accordance with the following priorities, (a) being the highest priority and (g) being the lowest priority.

(a) Co-location on existing utility poles, monopoles or other SWTF support structures on lands owned or controlled by the Village, not including the public rights-of-way;

(b) Co-location on a site with existing SWTF or other wireless telecommunications facility structures in the Village;

(c) On other lands owned or controlled by the Village, including, but not limited to, the Village public right-of-way;

(d) On lands owned or controlled by other municipal corporations within the Village, to the extent permitted by such other municipal corporation;

(e) On nonresidential zoned properties;

(f) On residential zoned properties,

(g) Applications for Permits for real property within designated historical landmarks and real property located within a historic district shall not be eligible for SWTF Permit if any alternate locations are available in the Village but not a landmark or in a historic district.

(2) If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a SWTF Permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

(3) An applicant may not bypass sites of higher priority by stating the site proposed is the only

site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Planning Board why co-location is commercially impracticable.

(4) Notwithstanding the above, the Planning Board may approve any site located within the Village, including locations in the NYS Route 301 Public Right of Way, provided that the Planning Board finds that the proposed site will further the purposes of this section, is in the best interest of the safety, public welfare, character and environment of the Village and will not have a deleterious effect on the nature and character of the community and surrounding properties.

§ 188-80 Height.

(1) SWTF shall be no higher than the minimum height necessary. The proposed height, which may be in excess of the maximum height permitted for other structures in the applicable zone, shall address any additional height necessary to accommodate co-location by additional antenna arrays or small cells, but under no circumstances is the height to be in excess of what is permitted for small wireless facilities in this article.

§ 188-81 Setback.

All wireless telecommunications support structures for SWTF located outside the public right-of-way shall be set back from the property line of the lot on which they are located a distance equal to not less than the total height of the facility, including the support structure, 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, other forms of screening and/or structural characteristics of the proposed support structure.

§ 188-82 Visibility.

(1) All SWTF shall be sited so as to have the least-adverse visual effect on the environment and its character, on existing vegetation and on the residents in the area of the SWTF sites. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under federal, state and local laws, statutes, codes, rules or regulations.

(2) Both the SWTF and any and all accessory equipment shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.

(3) SWTF shall not be artificially lighted or marked, except as required by law.

(4) Electrical and land-based telephone lines extended to serve the SWTF sites shall be installed underground if feasible.

(5) Stealth technologies shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.

(6) Landscaping shall be provided, if appropriate.

§ 188-83 Security.

(1) All small SWTF and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

(a) All small cells, associated equipment, and antennas and other supporting structures shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed, or shall be designed to be protected in such a way as to minimize fire or catastrophic injury if collided with; and

(b) Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

§ 188-83-1. Aesthetics.

SWTF shall be consistent with the Village Comprehensive Plan and the guidelines established for regions with the Scenic Areas of Statewide Significance (“SASS”) designation. The SWTF Permit may require the SWTF to be designed and located in a manner that will reasonably maximize the aesthetic features of the SWTF, including architectural features, colors, materials, visibility, character of the Village and other objective standards, balanced with the available design elements and costs of such design.

§188-83-2 Historic resources.

No proposed SWTF Permit application pursuant to this article VIII shall be approved if to do so will have a significant adverse impact on scenic or historic resources. Any significant adverse visual impact identified during the Permit application shall require a demonstration that such impact may be mitigated by suitable landscaping, buffering and other techniques to a low to moderate level of significance. Real property located in an existing historic district and properties and structures designated as landmarks are the principal types of historic resources entitled to protection by this subsection.

§ 188-84 Escrow for Village Consultant Expense.

The Planning Board may notify the applicant when a SWTF application is filed that the applicant will be billed for the cost of the engineer, attorney and SWTF consultant’s review and assistance

for the application. Such costs are in addition to the application fee. The application shall not be deemed complete if a deposit in an amount set by the Planning Board is not submitted to the Village Clerk. The Planning Board may suspend review of the application if the applicant fails to keep the escrow account funded as required by notice from the Board. Such reimbursements to the Village shall be reasonable in rate and total, and applicant may dispute a bill.

§ 188-85 Application fees.

At the time that a person submits an application for a SWTF, such person shall pay a nonrefundable application fee in an amount as determined by the Board of Trustees as set forth in the Village Fee Schedule, in addition to any other fee required by local law or the Fee Schedule adopted by the village board.

§ 188-86 Performance security for SWTF.

As a condition of approval of a SWTF Permit and Building Permit, the applicant for SWTF Permit shall provide the Village with security sufficient to provide for the removal or repair of the SWTF, including landscaping and screening. Acceptable security may include surety bonds, irrevocable bank letters of credit, funds held in escrow and cash on deposit.

§ 188-87 Authority to inspect.

In order to verify that the holder of a SWTF Permit and any and all lessees, renters, and/or licensees of SWTF place and construct such facilities, including supporting structures, accessory equipment and antennas, in accordance with all applicable technical, safety, fire, building, and zoning laws, statutes, codes, rules, regulations and other applicable requirements, the Village may inspect at any time, upon providing reasonable notice, all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, structures, antennas, accessory equipment and electromagnetic output.

§188-88 Liability insurance.

(1) An applicant for a SWTF Permit shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the SWTF Permit in amounts as set forth below:

(a) For co-location on an existing wireless telecommunications facility structure, the insurance policies shall be in the following amounts:

- i. Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;

- ii. Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- iii. Workers' compensation and disability: statutory amounts.

(b) For a SWTF located on a new SWTF structure, the insurance policies shall be in the following amounts:

- i. Commercial general liability covering personal injuries, death and property damage: \$5,000,000 per occurrence;
- ii. Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- iii. Workers' compensation and disability: statutory amounts.

(2) For a SWTF on Village property, the commercial general liability insurance policy shall specifically include the Village, the Board of Trustees, other elected officials, and the Village's officers, board members, employees, committee members, attorneys, agents and consultants as additional insureds.

(3) The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.

(4) The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least 30 days' prior written notice in advance of the cancellation of the insurance.

(5) Renewal or replacement policies or certificates shall be delivered to the Village at least 15 days before the expiration of the insurance that such policies are to renew or replace.

(6) Prior to the issuance of a permit for a SWTF, the applicant shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.

§ 188-89 Indemnification.

Any approval for SWTF that is proposed for Village property or in a public right-of-way pursuant to this section shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village and its elected officials, officers, board members, employees, committee members, attorneys, agents and consultants 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; excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to

the negligent or intentional acts or omissions of the Village or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village.

§ 188-90 NIER re-certification.

The holder of any SWTF Permit shall certify to the Planning Board, or its authorized designee, that NIER levels at the site where a SWTF is located are within the threshold levels adopted by the FCC and the State of New York any time modifications are made to the SWTF transmitting equipment or additional SWTF transmitting equipment is added to the site. In addition, the Village, at its own cost and expense, shall be permitted to conduct its own certification test of the NIER levels at the site where any SWTF is located, with or without notice to the wireless telecommunications provider. Once operational, but prior to providing service to customers, as-built readings may be requested by the Village.

§ 188-91 Default and/or revocation of SWTF Permit.

(1) If any SWTF are constructed, repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this section or of the SWTF Permit conditions and requirements, or it is determined conclusively that the applicant made materially false or misleading statements during the application process, then the Planning Board or the Building Inspector, or their designee, shall notify the holder of the SWTF Permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this section, if the violation or noncompliance causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Planning Board or Building Inspector may, at their sole discretion, order the violation remedied within 24 hours.

(2) If, within the period set forth in Subsection (1) above, the SWTF are not brought into compliance with the provisions of this section, or of the permit, or substantial steps are not taken in order to bring the affected SWTF into compliance, then the Planning Board or the Building Inspector may revoke such SWTF Permit and apply to the Supreme Court for relief.

§ 188-92 Additional requirements relating to SWTF Permits.

(1) Noncommercial usage exemption. Village residents utilizing satellite dishes, citizens' band or amateur radios, and antennas for the purpose of maintaining television, phone, radio communications and/or internet connections at their residences shall be exempt from the regulations relating to SWTF enumerated in this section.

(2) Prohibited on certain structures. No SWTF shall be located on single-family detached

residences, single-family attached residences, twin-homes, duplexes, or any residential accessory structure on lot.

§ 188-93 Regulations applicable to SWTF Permits in the public right-of-way.

(1) In addition to the applicable SWTF Permit provisions listed in this section, all SWTF located in the public right-of-way shall be required to comply with the following regulations:

(a) Location. SWTF in the public right-of-way shall be co-located on existing wireless telecommunications facilities, whenever possible. If co-location is not technologically feasible, the applicant shall locate its SWTF on existing utility poles or other structures

(b) Design requirements:

- i. All equipment shall be the smallest and least visibly intrusive equipment feasible.
- ii. Small cells and antennas and accessory equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
- iii. Pole and strand mounted small cells shall be a minimum of 250 feet apart radially. This radius extends around corners and into alleys. They shall be located in line with trees, existing streetlights, utility poles, and other street furniture when possible.
- iv. No more than two small cell enclosures with associated antennas shall be mounted to a freestanding pole or structure, except that the Planning Board may permit more than two small cell enclosures on a structure where evidence justifies the conclusion that such a waiver does not create a dangerous condition.

(c) Equipment location. SWTF and any accessory equipment in the public right-of-way shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists and/or residents/occupants of buildings, or to otherwise inconvenience public use of the public right-of-way as determined by the Village. In addition:

- i. In no case shall ground-mounted accessory equipment, walls, or landscaping be located within 18 inches of the face of the curb, or within four feet of the edge of the cartway, or within an easement extending onto a privately-owned lot;
- ii. To the extent feasible, accessory equipment shall be placed underground. Ground-mounted accessory equipment that cannot be placed underground shall be screened from surrounding views, to the fullest extent possible,

through the use of landscaping or other decorative features to the satisfaction of the Village. Ground-mounted accessory equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted accessory equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology to the satisfaction of the Village.

- iii. Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Village.
- iv. Any graffiti on any SWTF support structure or any accessory equipment shall be removed within 30 days upon notification by the Village, at the sole expense of the owner.
- v. Any proposed underground vault related to SWTF shall be reviewed and approved by the Village.
- vi. Accessory equipment attached to a SWTF support structure shall have such vertical clearance as the Planning Board may determine or utility company may require.

(d) Relocation of SWTF in the public right-of-way. Within 90 days' following written notice from the Village, or such longer period as the Village determines is reasonably necessary, or such shorter period in the case of an emergency, an owner of a SWTF and any accessory equipment in the public right-of-way shall, at its own expense, temporarily or permanently remove, relocate, or change the position of any SWTF or accessory equipment when the Village, consistent with its police powers and any applicable Public Service Commission regulations, shall have determined that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:

- i. To construct, repair, maintain or install any Village or other public improvement located in the public right-of-way;
- ii. To prevent interference with the operations of the Village or other governmental entity, in the public right-of-way;
- iii. Abandonment of a street or road or the release of a utility easement; or
- iv. An emergency as determined by the Board of Trustees.

§ 188-94 Reimbursement for the use of the public right-of-way.

In addition to permit fees for a SWTF Permit, every SWTF located in the public right-of-way is

subject to the Village's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way and for ROW access. Such compensation for use of the public right-of-way shall be directly related to the Village's actual public right-of-way management costs, including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other public right-of-way management activities by the Village. The owner of each SWTF Permit shall pay an annual fee to the Village to compensate the Village for the Village's costs incurred in connection with the activities described above as determined by the Board of Trustees and as set forth in the Village Fee Schedule.

§ 188-95. Penalties for offenses.

In addition to any other remedies in this section, a violation of any provision of this section with respect to SWTF is hereby declared to be an offense, punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six months, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense, all of which were committed within a period of five years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Each continued violation shall constitute a separate additional violation.

§ 188-96 Adherence to state and/or federal rules and regulations.

(1) The holder of a SWTF Permit issued pursuant to this Article shall adhere to and comply with all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards, aesthetics, fees charged by municipality for access to ROW and for attachment to property in the ROW, shot clock requirements and other requirements as published in Declaratory Ruling and Third Report and Order dated September 26, 2018 and published in FCC 18-133.

(2) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security, are amended and/or are modified during the duration of a SWTF Permit, then the holder of such Permit shall conform the permitted SWTF to the applicable amended and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

§ 188-97 Fees.

ROW access fees and fees for the use and occupancy of Village property in the ROW and review fees for SWTF applications comply with FCC requirements if the fees: 1) reasonably approximate the Village's costs to review the applications, 2) the costs are objectively reasonable and the fees are no higher than fees charged to similarly situated competitors in similar situations, as such fees may change often, the Board of Trustees may set the fees pursuant to a simple resolution without a public hearing.

§188-98 Variances.

The Zoning Board of Appeals of the Village is authorized to interpret this local law and to grant variances for matters involving height and size of SWTF equipment.

Section 2. Numbering and Codification.

It is the intention of the Village and it is hereby enacted that the provisions of this Local Law shall be included in the Cost of the Village of Nelsonville; that the sections and subsections of this Local Law may be re-numbered or re-lettered by the Codifier to accomplish such intention; that the Codifier shall make no substantive changes to this Local Law; that the word "Local Law" shall be changed to "chapter," "section," "article" or other appropriate word as required for codification; and that any such rearranging of the numbering and editing shall not affect the validity of this Local Law or the provisions of the Code affected thereby.

Section 3. Severability.

The provisions of this Local Law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words or parts of this Local Law or their petition to other persons or circumstances. It is hereby declared to be the legislative intent that this Local Law would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and if such person or circumstance to which the Local Law or part hereof is held inapplicable had been specifically exempt there from.

Section 5. Effective date. This Local Law shall take effect upon filing with the Secretary of State and shall apply to applications for small wireless telecommunications facilities that are filed on or after such date.