# AGENDA FOR THE TOWN MEETING

**November 27, 2017**
**7:00 p.m.**

| | |
|---|---|
| Red Indicates – | Action Item |
| Green Indicates – | Ordinance Introduction |
| Blue Indicates – | Link to Additional Information |

## PLEDGE TO THE FLAG

## CALL TO ORDER

## CONSENT AGENDA

- Town Meeting Minutes
  - November 2, 2017 -Town Workshop
  - November 13, 2017 – Town Meeting

## PERSONAL REQUESTS FOR AGENDA:

- *Rusty Monroe, The Center for Municipal Solutions, Wireless Telecommunications Ordinance*

## UNFINISHED BUSINESS:

- Introduction Ordinance 17-10-01 – Telecommunication Facilities
- Introduction Ordinance 17-10-02 – Work Within Public Right-of-Ways
- Memar Annexation

## NEW BUSINESS:

-

## PUBLIC COMMENTS:

## ANNOUNCEMENTS:

- *Christmas in the Valley – Saturday, December 2, 2017 from 4PM-8PM*

## ADJOURNMENT

# *BURGESS AND COMMISSIONERS*
## *OF MIDDLETOWN MARYLAND*

## TOWN MEETING MINUTES

**WORKSHOP MEETING** **November 2, 2017**

The workshop meeting of the Burgess and Commissioners of Middletown was called to order on November 2, 2017, by Burgess Miller at 7:00 p.m. in the Middletown Municipal Center, 31 W. Main Street, Middletown, Maryland. Present were: Commissioners Larry Bussard, Jennifer Falcinelli, Christopher Goodman, and Rick Dietrick.

**PERSONAL REQUESTS FOR AGENDA:**
Ann Payne and Joyce Tuten – Pollinator Resolution for Best Management Practices – resolution will be presented to the Board next week to review prior to the meeting. Goal is to make Middletown a more pollinator friendly community.

**STAFF REPORTS:**
Community Deputy Report - DFC Rowe gave the deputy report for October.
Staff Planner Report – Cindy was not present but submitted her report.
Main Street Manager Report – no report.
Engineers Report – Bruce gave his report.
Zoning Administrator's Report – Ron was not present but submitted his report for the Board's review.

**UNFINISHED BUSINESS:**
**Frederick County Amendments to Comprehensive Plan - Growth Tier Maps** – Burgess Miller stated that Frederick County is just looking for comments from us on what they are proposing. This is on the agenda for the Joint Meeting on November 6th with the Planning Commission.
**Memar Annexation- Clubhouse/Community Center Options** – Burgess Miller stated that he proposed to Farhad the option of a possible Morton Building as a Community Center. Commissioner Bussard asked once this building is built who will maintain that building?
**Discussion of Use of Municipal Center by Community Groups -**

**REPORT OF COMMITTEES:**
**WATER & SEWER – no report**
**PUBLIC WORKS – no report**
**SUSTAINABILITY – no report**
**PLANNING COMMISSION – no report**
**PARKS and RECREATION – no report**
**PUBLIC INFORMATION – no report.**

**NEW BUSINESS:**
**Lions Club Donation of Bike Racks (3) for Town Parks** – The Town received a letter from the Lion's Club wanting to donate 3 bike racks 1 for each or our parks.
**Resolution 17-07: Pollinator Habitat Best Management Practices**
**Resolution 17-08: Adoption of the Frederick County Hazardous Mitigation Plan**
**Action Plan – MEA Energy Reduction Plan**

**Sanitary Sewer Improvements – Inflow & Infiltration Bids** – JR our Project Manager will have these bids and his recommendation.

**COMMENT:**

**ANNOUNCEMENTS:**

- *Christmas in the Valley – Saturday, December 2, 2017from 4-8pm.*

Workshop adjourned at 8:45pm.

Respectfully submitted,

Ann Griffin
Office Manager

DRAFT

# *BURGESS AND COMMISSIONERS*
## *OF MIDDLETOWN MARYLAND*

## TOWN MEETING MINUTES

**REGULAR MEETING** **November 13, 2017**

The first monthly meeting of the Burgess and Commissioners of Middletown was called to order on November 13, 2017, by Burgess Miller at 7:00 p.m. in the Middletown Municipal Center, 31 W. Main Street, Middletown, Maryland. Present were: Commissioners Jennifer Falcinelli, Larry Bussard, Rick Dietrick and Chris Goodman.

**CONSENT AGENDA**
*Financial Statements*
*Town Meeting Minutes – October 23, 2017 - Town Workshop*
Commissioner Bussard motioned to accept this consent agenda as presented, seconded by Commissioner Falcinelli and passed unanimously.

**PERSONAL REQUESTS FOR AGENDA:**
**Ann Payne and Joyce Tuten** – Pollinator Resolution for Best Management Practices – Ann Payne stated that in their research on bee keeping, they discovered that Maryland had lost 60.9% of its honey bees. Maryland was the 5th worse state in the nation.

**Streetscape SHA** – Jerry Burgess, Project Engineer, Eddie Poffenberger, Area Engineer and Neil Haines, Assistant District Engineer were all present tonight to address the resident's concerns on the East end of Town in the "Airview" section of East Main Street.
Drew stated that there are 2 types of roads State roads and local roads. Alternate 40 (Main Street) and Route 17 (Church Street) are State roads in Middletown. The state controls what happens on both Main and Church Streets.
Drew stated that during the design of this Streetscape project the Town didn't agree with the design that the State was planning but ultimately the Town has no say in this project. Drew stated that the plans for this project have been publicly available both at the Municipal Center as well as on our website but, if you are not an engineer you probably wouldn't be able to make them out.
Jerry Burgess stated that he has been in contact with Chris Webber in regard to the impact this project is having on a few property owners on the East side of Town. The State will look at what they can do to lessen the impact on these residents. Mr. Burgess stated that he is in the process of meeting with each property owner in this area to discuss what they can do.
Janet Wiles, 716 East Main Street – stated that with the proposed grade from the curb to her house her neighbor (Ms. Moser) won't be able to mow her yard with a riding mower. Ms. Wiles stated that she and her neighbor are older, and they can't afford to pay someone to pay to mow their yards as they both are on a fixed income.
Merilyn Moser, 718 East Main Street – stated that with the slope from the sidewalk her yard will become a water hole.
Matt Axline, 714 East Main Street – stated that when you raise the yards 2 feet, you're decreasing any swale, it is going to flow back into the house, they are looking at potential flooding in their basements.
Kevin Corcoran, 709 East Main Street – stated that Jerry (project engineer) has been very good to work with. Mr. Corcoran had a concern about who is going to bare the expense of his colored gravel that he

currently has in his driveway. Mr. Corcoran stated that he feels that by raising the road 2 feet it's going to cause more safety issues with the property owners coming in/out of their driveways
Lera Straits, 720 East Main Street – thanked Jerry Burgess and the SHA but, Mrs. Straits wants to be assured 100% by SHA that none of the property owners in this area will incur any financial hardships with this project?
Most of the residents in attendance to address their concerns stated that they did not receive notification from the State in regard to what would be done to their properties.
Mr. Haines – stated that the SHA design engineers identified a low spot on East Main Street about 300 feet long that limited visibility to the east of Coblentz Road. The State believes the limited line of sight has contributed to crashes at East Main Street and Coblentz Road. Mr. Haines stated that raising the road is the less intrusive way of solving the problem. Mr. Haines stated that it does look quite drastic right now, it is a change of profile in the road by 2 feet. Mr. Haines stated that there were two ways to address the low spot, we either shaved down the road which would've cause at least a 2-month detour or fill it in and the SHA chose to fill it in.

**Unfinished Business:**
**Frederick County Amendments to Comprehensive Plan – Growth Tier Maps** – Frederick County Growth limit map of Middletown does not show 2 parcels of land currently on our Comprehensive Plan. The back parcel of the Middletown Glen and the Memar parcel off Coblentz Road. The Board agreed to include these parcels on their maps.
Motion by Commissioner Falcinelli to include these parcels in the Frederick County Growth limit maps to match our Comprehensive Plan, seconded by Commissioner Goodman. Motion carried 5-0.
**Memar Annexation – Clubhouse/Community Center Options** – Burgess Miller stated that there are still some issues that the Town is working with Memar on. Burgess Miller stated that he has a meeting with the developer on Wednesday, November 15th at 1pm.
**Discussion of use of Municipal Center by Community Groups** – Burgess Miller stated that with Main Street Middletown purchasing a property on West Main Street, this will allow for us to move the Zoning Administrator into the Main Street Manager's current office and the desk that the Zoning Administrator uses will go into the Staff Planner's office. Burgess Miller also stated that he has spoken with MVAA asking them to move out their trophy cases as well as a cabinet they have in this area. Burgess Miller stated the plan is to then move the table & chairs from the Heritage Gallery into this area for Community Groups to use.

**REPORT OF COMMITTEES:**
**WATER & SEWER** – Commissioner Falcinelli reported:
Water use for October – 335,860 gal., spring flow for October – 61,054, East WWTP treated 231,000 gals. and the WTTP treated 172,000 gals.
Well Field Stream Improvement project is well underway.
Hydrants were flushed in October use 691,000 gallons less than normal.
No meeting in November.
**PUBLIC WORKS** – Commissioner Bussard reported:
Layla Drive & Smithfield Drive have been striped.
The guys prepared for the scarecrows, they put up the new Veteran banners and are also getting ready for winter.
**SUSTAINABILITY** – Commissioner Dietrick reported:
We have created a form for residents to nominate residents for doing green practices which will go out in with the January water/sewer bills.
Several eagle scouts have contacted Cindy for projects.
**PLANNING COMMISSION** – no report.
**PARKS AND REC. COMMITTEE** – Commissioner Goodman reported:

No meeting in November.
**PUBLIC INFORMATION** – Commissioner Falcinelli reported:
Encouraged the residents to sign up for the Alert Frederick County.

**NEW BUSINESS:**
**Lion's Club Donation of Bike Racks (3) for Town Parks –** Burgess Miller stated that the Lion's club has donated 3 bike racks 1 to go at Memorial Park, 1 at Remsberg Park and 1 at Wiles Branch Park.
**Resolution 17-07: Pollinator Habitat Best Management Practices –** It was the consensus of the Board to approve Resolution 17-07 as presented.
**Resolution 17-08: Adoption of the Frederick County Hazardous Mitigation Plan –** Drew stated that the Board previously approved this plan but, he didn't realize that we had to do it in resolution form. It was the consensus of the Board to approve Resolution 17-08 as presented.
**Proclamation for Municipal Government Works Month** – Burgess Miller stated that November is Municipal Government Works Month.
**Sanitary Sewer Improvements – Inflow & Infiltration Bids –** We received 3 bids for the North Church Street Sanitary Sewer Main Rehabilitation project. JR the Town's CIP project manager reviewed the bids and is recommending that we go with Mr. Rehab with a bid of $160,636.66.
Commissioner Falcinelli motioned to approve the bid from Mr. Rehab in the amount of $160,636.66, seconded by Commissioner Bussard. Motion carried 5-0.

**PUBLIC COMMENT:**

**ANNOUNCEMENTS:**

- *Christmas in the Valley – Saturday, December 2, 2017 from 4-8pm.*

**ADJOURNMENT**

Meeting adjourned at 9:00pm.

Respectfully submitted,

Ann Griffin
Office Manager

**ORDINANCE NO. 17-10-01**

**AN ORDINANCE TO REGULATE WIRELESS TELECOMMUNICATION FACILITIES AND COMPLEXES WITHIN THE TOWN OF MIDDLETOWN.**

**SECTION I. BE IT ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown that Title 5, of the Middletown Municipal Code be, and hereby is, amended by adding thereto the attached Ordinance entitled "Wireless Telecommunications Facilities or Complexes" which is incorporated by reference herein, said Ordinance to be codified in the Code as Title 5, Chapter 5.12 "Wireless Telecommunications Facilities or Complexes".

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED** that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

**INTRODUCED ON THE _____ DAY OF _____, 2017**

**PASSED ON THE _____ DAY OF _____, 2017**

**EFFECTIVE DATE: _____, 2017**

**ATTEST:**

**BURGESS AND COMMISSIONERS OF MIDDLETOWN**

_____
Andrew J. Bowen, Town Administrator

By:_____
John D. Miller, Burgess

DRAFT

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# Wireless Telecommunications Facilities or Complexes

## Section 1. Purpose and Legislative Intent

1. The Telecommunications Act of 1996 affirmed the Town of Middletown's authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities or Complexes. This ordinance provides for the safe and efficient integration of Wireless Facilities or Complexes Necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

2. The Town of Middletown (Town) finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. To assure that the placement, construction or Modification of a Facility or Complex is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facility or Complex application and permitting process. The intent of this Ordinance is to minimize the physical impact of Wireless Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town.

## Section 2. Severability

1. If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

2. Any Special Use Permit issued pursuant to this Ordinance shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town.

## Section 3. Definitions

For purposes of this Ordinance, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

1. **"Accessory Facility** or **Structure"** means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities or Complexes, including but not limited to utility or transmission equipment storage sheds or cabinets.

2. **"Amend", "Amendment"** and **"Amended"** mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.

3. **"Applicant"** means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.

4. **"Application"** means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.

5. **"Antenna"** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

6. **"Certificate of Completion"** or **"COC"** means a required document issued by the Town that confirms that all work represented in the application i) was properly permitted; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the Facility or Complex passed the final inspection.

7. **"Co-location"** means the use of an existing approved structure to support Antenna for the provision of wireless services.

8. **"Commercial Impracticability"** or **"Commercially Impracticable"** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable".

9. **"Completed Application"** means an Application that contains all necessary and required information and/or data as set forth in this Ordinance and that is necessary to enable an informed decision to be made with respect to an Application and action on the Application.

10. **"Complex"** means the entire site or Facility, including all structures and equipment located at the site.

11. **"DAS"** or **"Distributive Access System"** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.

12. **"Eligible Facility"** means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification. An Eligible Facility Application shall be acted upon administratively and shall not require a Special Use Permit, but shall require Staff Administrative Approval.

13. **"FAA"** means the Federal Aviation Administration, or its duly designated and authorized successor agency.

14. **"Facility"** means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

15. **"FCC"** means the Federal Communications Commission, or its duly designated and authorized successor agency.

16. **"Height"** means, the distance measured from the pre-existing grade level to the highest point on the Tower or support structure, even if said highest point is an Antenna or lightening protection device. As regards increasing the height of an existing structure, Height means the height above the top of the structure prior to any work related to a wireless Facility.

17. **"In-Kind Replacement"** means replacing a component(s) that is malfunctioning with a properly functioning component of the same weight and dimensions and increase the compensation paid to the owner or manager of the support structure.

18. **"Maintenance"** means plumbing, electrical, carpentry or mechanical work that may or may not require a building permit, but that does not constitute a Modification of the WTF.

19. **"Modification"** or **"Modify"** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless Facility or Complex with identical components, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to an existing support structure or Tower as a co-location is a Modification, unless the height, profile or size of the compound is increased, in which case it is not a Modification.

20. **"Necessary"** or **"Necessity"** or **"Need"** all mean what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in the effect of prohibiting the provision of service as intended and described in the narrative of the Application. Necessary, Necessity or Need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an Applicant's specific chosen design standards.

21. **"NIER"** means Non-Ionizing Electromagnetic Radiation.

22. **"Person"** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

23. **"Personal Wireless Facility"** See definition for 'Wireless Telecommunications Facilities'.

24. **"Personal Wireless Services"** or **"PWS"** or **"Personal Telecommunications Service"** or **"PTS"** shall have the same meaning as defined and used in the 1996 Telecommunications Act.

25. **"Repairs and Maintenance"** means the replacement or repair of any components of a wireless Facility or Complex where the replacement is effectively identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless Facility or Complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless Facility or Complex that will impose new visible burdens of the Facility or Complex as originally permitted. Any work that changes the services provided to or from the Facility, or the equipment, is not Repairs or Maintenance.

26. **"Special Use Permit"** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use a Facility or Complex as granted or issued by the Town.

27. **"Stealth"** or **"Stealth Siting Technique"** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean building the least visually and physically intrusive facility and Complex that is not technologically or commercially impracticable under the facts and circumstances. Stealth technique includes such techniques as i) DAS or its functional equivalent; or ii) camouflage where the Tower is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Facility or Complex.

28. **"State"** means the State of Maryland.

29. **"Structural Capability"** or **"Structural Capacity"** or **"Structural Integrity"** means, notwithstanding anything to the contrary in any other standard, code, regulation or law, up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.

30. **"Substantial Modification"** means a change or Modification that

a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or

b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance; or

c. increases the square footage of the existing equipment compound by more than 2,500 square feet.

31. **"Telecommunications"** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

32. **"Telecommunications Site"** See definition for Wireless Telecommunications Facilities.

33. **"Telecommunications Structure"** means a structure used primarily to support equipment used to provide wireless communications or was originally constructed primarily for such purpose.

34. **"Temporary"** means not permanent in relation to all aspects and components of this Ordinance and that will exist for fewer than ninety (90) calendar days.

35. **"Tower"** means any structure designed primarily to support an antenna and/or other equipment for receiving and/or transmitting a wireless signal and is the lesser of i) more than ten feet (10') taller than the adjacent buildings or trees; or ii) taller than forty feet (40').

36. **"Town"** means the Burgess and Commissioners of Middletown, Maryland

37. **"Wireless Telecommunications Facility** or **Facilities (WTF or WTFs)", "Facility", "Site", "Complex", "Telecommunications Site"** and **"Personal Wireless Facility Site"** all mean a specific location at which a structure that is designed or intended to be used to house, support or accommodate Antennas or other transmitting or receiving equipment is located. This includes without limit, Towers and support structures of all types and kinds, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures associated with the Complex used to provide, though not limited to, radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services, Internet access service and any commercial wireless telecommunication service whether or not licensed by the FCC.

## Section 4. General Policies and Procedures for Applications under this Ordinance

In order to ensure that the location, placement, construction and Modification of a Facility or the components of a Complex do not endanger or jeopardize the Town's health, safety, public welfare, environmental features, the nature and character of the community or neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the Town hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or Administrative Approval granted authority for Wireless Facilities for the express purpose of achieving the following outcomes:

1. The Town shall not be required to issue a permit for a carrier to achieve its goal from a single location and facility only, and instead may require that multiple smaller and less intrusive facilities be used to achieve the Applicant's goal.

2. Requiring a Special Use Permit for any new Complex, Facility or any Substantial Modification of a Facility or Complex or for a Co-Located Facility;

3. Requiring Administrative Approval and a properly issued Building Permit for any co-location or Modification of a Facility or Complex that is not a Substantial Modification or Substantial Co-location.

4. Implementing an Application process and requirements;

5. Establishing procedures for examining an Application and issuing a Special Use Permit or Administrative Approval that are fair and consistent;

6. Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;

7. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of attachments to a Facility or Complex in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth siting techniques.

8. Requiring that the Facility and Complex shall be the least visually intrusive among those options that are not technologically impracticable given the facts and circumstances.

9. The Town is the officially designated agency or body of the municipality to whom applications for a Special Use Permit for a Facility or Complex must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Special Use Permits applied for under this Ordinance. However, the Town shall possess the sole right to grant all Special Use Permits.

10. The Town hereby designates the Town Administrator or the Town Administrator's designee as the authority for requests for all Administrative Approvals, i.e. for anything other than a Substantial Modification or a new tower or support structure.

11. Prior to the submission of an application there shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site or telephonically as deemed appropriate by the Town Administrator. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the review and permitting process; and ii) specific issues or concerns the Town or the Applicant may have. Costs of the Town's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a fee set forth in the Town's Schedule of Fees, which shall have been paid to the Town prior to any site visit or pre-application meeting or any work related to an intended application preceding the site visit or per-application meeting in excess of one (1) hour related to the application.

12. If there has not been a prior site visit for the requested Facility or Complex within the previous six (6) months a site visit shall be conducted.

13. An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. If Town action is required, applications will not be transmitted to the Town for consideration until the application is deemed Complete by staff or the Town's expert consultant.

14. If the proposed site is within one (1) mile of another jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.

15. The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record, unless the owner is the Town, in which case, to prevent a conflict of interest, the Town shall not be a party to the Application.

16. All Applicants shall closely follow the instructions for preparing an Application. Not following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the time allowed for action on an Application until a Complete Application is received.

17. Within thirty (30) days of the date of submission of an Application the Applicant shall be notified in writing of any deficiencies related to the completeness of the Application. Remediation of deficiencies in an Application shall be deemed an amendment of the Application that was received.

18. The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the Application Complete has been afforded. Applications will be deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.

19. No work of any kind on or at a Facility or Complex shall be started until the Application is reviewed and approved and the Special Use Permit or Administrative Approval, as applicable, has been issued, and a Building Permit has been issued in accordance with the Town's Code.

20. Any and all representations made by the Applicant or that are made in support of the Application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.

21. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued where the Facility or Complex is not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility or Complex not in full compliance with this Ordinance shall be required to be brought into full compliance before any Permit of any kind will be issued.

22. An Application shall be signed on behalf of the Applicant(s) by a person vested with the authority to bind and commit the Applicant attesting to the truthfulness, completeness and accuracy of the information presented

23. The Applicant must provide documentation to substantiate that it has the right to proceed as proposed on the site or at the Complex in the form of an executed copy of the lease with the landowner or landlord or a signed letter of agency granting authorization. If the applicant owns the Site or Complex, a copy of the ownership record is required.

24. Applications shall include written commitment statements to the effect that:

    a. the applicant's Facility or Complex shall at all times and without exception be maintained in a safe manner, and in compliance with all conditions of all permits, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable Town, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Town in writing; and

    b. the construction of the Facility or Complex is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.

25. Where a certification is called for in this Ordinance, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.

26. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technique as may be required by the Town.

27. All utilities at a Complex or site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to applicable electrical codes.

28. At a Facility or Complex needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.

29. All work at a Facility or Complex shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

30. A holder of a Special Use Permit or Administrative Approval granted authority granted under this Ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

31. Unless such is proven to be technologically impracticable, the Town requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new Complex or support structure or increasing the height, footprint or profile of a Facility or Complex beyond the conditions of the approved Special Use Permit for an existing Facility or Complex. In instances not qualifying as an Eligible Facility, the Applicant shall submit a comprehensive report inventorying all existing structures more than fifty feet (50') in height within one-half (1/2) mile of the location of any proposed new Facility or Complex.

32. An Applicant intending to co-locate on or at an existing Facility or Complex shall be required to document the intent of the existing owner to permit its use by the Applicant.

33. Co-located equipment shall consist only of the minimum Antenna array technologically Needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.

34. A DAS system that is owned or operated by a commercial carrier and is part of a commercial wireless system, or are used for commercial purposes, is expressly included in the context of this Ordinance, regardless of the location or whether the Facility or any of its components is located inside or outside a structure or building.

35. The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Ordinance, as well as other applicable land use and zoning regulations. An Applicant may not by-pass sites of higher siting priority than the priority chosen solely because the site proposed is under lease or an option to lease exists. If a site other than the number 1 priority, or attaching to an existing structure is proposed, the applicant must demonstrate and explain to the reasonable satisfaction of the Town why co-location is technically or commercially impracticable. Contractual or Build-to-Suit agreements between carriers and a proposed Tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with the siting priorities.

36. Any technical information must be provided in such a manner, detail and form that the content and any conclusions are able to be verified by a third party using the information used and provided by the applicant.

37. All costs associated with the preparation and submission of an Application and/or necessitated by the requirements for obtaining and maintaining any and all Town permits shall be borne by the Applicant or Permittee.

38. Any new Wireless Facility shall be designed and constructed so as to be the least visually intrusive, create the least visual impact reasonably possible and have the least negative impact on nearby property values, provided that pursuant to 47 U.S.C. 332(c)(7)(B)(II) compliance with this requirement does prohibit or effectively serve to prohibit the provision of the intended service from one or more Facilities.

39. No new Facility or antenna array shall be identifiable, recognizable or discernable as a Wireless Facility or antenna by a typical lay-person from a distance of two-hundred fifty feet (250') or more.

39. The fact that a proposed use satisfies all specific requirements for a Special Use Permit in a given type of zoning or land use district does not create a presumption that the use is compatible or in harmony with nearby properties within one thousand feet (1,000') and, in itself, is not sufficient to require the grant of a Special Use Permit.

40. Inventory of existing sites. Each applicant for approval of an antenna and/or a tower shall provide to the Town Administrator an inventory of its existing antennas and towers that are within the jurisdiction of the Town of Middletown, including specific information about the location, height and design characteristics of each tower or antenna. Applicants are encouraged to submit an inventory of potential future tower sites within the jurisdiction of the Town of Middletown. The Town Administrator may share such information with other applicants applying for administrative approval under this section or other organizations seeking to locate towers or antennas within the jurisdiction of the governing authority; provided, however, that the Town Administrator is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

41. Buffering of the site shall be installed to screen and/or mitigate the impacts of the wireless facility on surrounding areas, properties, or rights-of-way. In order to provide spatial separation and create a visual block from adjacent properties and streets, a buffer shall be installed around the outside of all improvements on the site, including the tower, any ground buildings or equipment, and security fencing. Depending upon the specific situation for the location involved and the impact of such, ground-mounted equipment cabinets and buildings may be located outside the buffered area if they are constructed so the exterior appearance of the equipment cabinet or building has the appearance of surrounding structures. The applicant shall submit scaled elevations of such buildings to assist in the evaluation of compliance with this appearance criteria.

## Section 5. Responsible Party(s)

With the exception of the Town itself, the owner(s) of a Facility or Complex, any support structure used to accommodate wireless Facilities, and of the land upon which a Facility support structure or Complex is located, shall at all times be jointly and individually responsible for: (1) the clean, neat, non-littered and safe condition of the Facility or Complex, support structure and all components on the site related to the Facility or Complex; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the Facility or Complex, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility or Complex; and (3) assuring the proper permitting as required by this Article and other Town regulations by all lessees and users of the Facility or Complex, including but not limited to any upgrades and/or Modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the Facility or Complex is operated in compliance with this Ordinance, other Town regulations and any Special Use Permit.

## Section 6. Fees

All fees and charges, including but not limited to Application fees, Expert Assistance fees, Inspection fees and Permit fees, shall be as set forth in the Town's Schedule of Fees and Charges. For new towers or other support structures or for substantial modifications, the Expert Assistance fee shall be as set forth in the Town's Fee Schedule. The Town may choose to waive their application fee if the applicant locates on Town Owned property, not including in the Town's public rights-of-ways.

## Section 7. Existing Facilities and Complexes

**A.** Any legally permitted Facility, Tower or other support structure or Complex that exists on the effective date of this Ordinance of the Town's codes shall be allowed to continue as it presently exists, provided that i) all work was properly permitted; ii) the Facility or Complex is in compliance with all applicable local, State and federal laws, rules regulations, orders and permit conditions; iii) the Site is in compliance with the latest version of TIA ANSI 222 as regards the physical condition of the Site; and iv) a Certificate of Completion (COC) was issued for the most recent work performed;

**B.** Any work not properly previously permitted prior to the adoption of this Ordinance must be properly permitted within ninety (90) days of the effective date of this Ordinance or prior to any Modification of, on or at the site or Facility.

**C.** Any new Co-location and/or Modification of a Facility, Tower or other support structure or Complex or a Carrier's equipment located on the Tower or Facility, must be permitted under this Ordinance and the entire Facility or Complex and any new Co-location or Modification shall comply with all applicable laws, rules and regulations, including obtaining a valid COC.

## Section 8. Certificate of Completion

**A.** No work shall be allowed to be done at or on any Facility or Complex, excepting normal repair and maintenance work as defined in this Ordinance, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the Facility, Tower or other support structure or Complex shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the Facility or Complex does not pass the initial final inspection, the owner shall be required to pay for any subsequent re-inspection prior to the re-inspection being conducted. A passing final inspection is required prior to the issuance of a COC.

**B.** If no COC can be produced for previously done work, at the discretion of the Town Administrator, per day per violation fines and other penalties as allowed by law may be imposed until the Facility or Complex is compliant and the required COC has been issued. The time used for the determination of the start date for such fines and penalties shall be thirty (30) days from the date the previously done work was permitted, unless the Applicant can dispositively prove to the contrary.

## Section 9. Exclusions

The following shall be exempt from this Ordinance:

**A.** Any facilities expressly exempt from the Town's zoning, land use, siting, building and permitting authority.

**B.** Any reception or transmission devises expressly exempted under the Telecommunications Act of 1996.

**C.** A Facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 50' above ground level.

D. Facilities used exclusively for providing wireless service(s) or technologies where i) there is no charge for the use of the wireless service; ii) the Facility or Complex does not require a new Tower or increase the height or profile of the structure being attached to; and iii) the service is not intended to be useable more than seventy-five feet (75') from the Antenna.

## Section 10. Application Requirements for a New Tower, Support Structure, or a Substantial Modification or Co-location

A. All Applicants for a Special Use Permit for a new Wireless Facility or Complex, including for a new Tower or other new support structure or that constitutes a Substantial Modification, shall comply with the requirements set forth in this Section. In addition to the required information set forth in this Section, all applications for the construction or installation of new Wireless Facility or Complex or Substantial Modification shall contain the information hereinafter set forth prior to the issuance of a Building Permit. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

**Ownership and Management**

1. The Name, address, phone number and e-mail address of the person preparing the Application;
2. The Name, address, phone number and e-mail address of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name, e-mail address and all Necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license(s) applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands to be used;
5. The Applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower or support structure that it constructs or has constructed for it;

**Zoning and Planning**

6. The Zoning District or designation in which the property is situated;
7. The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all property lot lines;
8. The location, size of the footprint and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the Application;
9. A site plan to scale, not a hand drawn sketch, showing the footprint of the Support Structure and the type, location and dimensions of access drives, proposed landscaping and buffers in compliance with the Town's Building or Development Code, including but not limited to fencing and any other requirements of site plans;
10. Elevation drawings showing the profile or the vertical rendition of the Tower or support structure at the Facility or Complex and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
11. The type of Tower or support structure, the number of antenna arrays proposed to be able to be accommodated and the basis for the calculations of the Tower's or support structure's capability to accommodate the required number of antenna arrays for which the structure must be designed;
12. Disclosure in writing of any agreement in existence prior to the submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
13. A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all equipment of the Applicant at the Facility. To verify the accuracy of the information, the Town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

**Safety**

14. the age of the Tower or support structure and Complex stated in years, including the date of the grant of the original permit;
15. a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or other type of support structure;
16. for a tower, the make, model, type and manufacturer of the Tower and the structural design analysis and report, including the calculations, certified by a Professional Engineer licensed in the State, proving the Tower or support Structure's capability to safely accommodate the Facilities of the Applicant without change or Modification.
17. if a Substantial Co-location, change or Modification of a Facility or Complex is needed, a detailed narrative explaining what changes are needed and why they are needed;
18. a Complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design for the Facility;
19. if Substantially Modifying or Co-locating on an existing Tower or other support structure, a Complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the Complex and all of its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Town regarding the physical condition and/or safety of the Facility, unless and until all remediation work that is deemed needed has been completed, or a schedule for the remediation work has been approved by the Town Administrator;
20. In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower where the array will be thirty-three feet (33') or more above ground level, and not within 100 feet of areas to which the public has or could reasonably have or gain access to, in lieu of a full RF emissions study, if deemed appropriate by the Town, signed documentation in the form of the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" may in certain cases be allowed to be used and shall be provided to verify that the Facility and Complex with the proposed installation will be in full compliance with the current FCC's RF Emissions regulations;
21. In certain instances, the Town may deem it appropriate to have a post-construction on-site RF survey of the Facility or Complex done after the construction or Modification and activation of the Facility or Complex, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;
22. In the event the Town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding §A, (21) of this Section, the Town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.
23. If not submitted in a previous application, a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.

**B.** A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless Telecommunications Facility or Complex is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting, including any Facility or Complex where the application proposes to increase the height of the existing Tower or support structure.

**C.** New Towers shall be prohibited on private property in Residential Districts, Historic Districts and areas officially deemed to be visual or sensitive scenic areas within the Town's Corporate Limits.

D. All Applications for a proposed Facility or Complex applicable to this Section shall contain clear and convincing evidence that the Facility or Complex is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved. To achieve this goal the Town expressly reserves the right to require the use of Stealth or Camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System), a Small Cell Facility or a functional equivalent as regards size, and such shall be subject to approval by the Town.

E. If proposing a new Tower or support structure, or a Substantial Co-location or Modification of an existing structure, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within the search ring of the proposed site that would be less visually intrusive and that not to permit the proposed new Tower or support structure, or a Substantial Co-location or Modification would result in the prohibition of service or the perpetuation of a significant gap in service.

F. An Applicant proposing a new Tower or support structure shall use the largest search ring technically possible, and may be required to prove with certified technical/engineering documentation that the search ring used is the largest that could be used.

G. In order to better inform the public, in the case of a new Tower or support structure or Substantial Modification, the applicant shall hold a "balloon test" prior to the initial public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon with horizontal stabilizers, at the maximum height of the proposed new Tower or support structure or Substantial Modification. Unless conditions at the time preclude it for reasons of instability vis-à-vis wind speed, the use of spherical balloons shall not be permitted.

H. At the option of the Town Administrator, a community meeting may be held concurrent with the balloon test, the notification of which shall be as set forth in the following §I(4).

I. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4') by eight feet (8') in size and shall be readable from the road by a person with 20/20 vision.

1. Such sign shall be placed off, but as near to, the public right-of-way as is possible.

2. Such sign shall contain the times and date(s) of the balloon test and contact information.

3. The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town and as agreed to by the Town. The Applicant shall inform the Town in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.

4. The Applicant shall notify all property owners and residents located within one-thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the Tower and Facility or Complex and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail. The Town Administrator shall be provided an attested copy of the list of addresses to which notification is provided. The Wireless Telecommunications Facility or Complex shall be structurally designed to accommodate at least four (4) Antenna Arrays, with each array to be flush mounted or as close to flush-mounted as is reasonable possible.

J. The Applicant shall provide certified documentation in the form of a structural analysis and report certified by a licensed Professional Engineer, including all calculations, showing that the Facility or Complex will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent standards shall apply.

K. The Applicant shall furnish a Visual Impact Assessment, which may be required to include:

1. a computer generated "Zone of Visibility Map" at a minimum of a one-mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage; and

2. To-scale photo simulations of "before and after" views from key viewpoints inside of the Town as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s)of each location from the proposed structure;

L. The Applicant shall provide a written description and a visual rendering demonstrating how it shall effectively screen from view at least the bottom fifteen feet (15') of the Facility or Complex and all related equipment and structures associated with the Facility or Complex.

M. A Building Permit shall not be issued for the construction of a new Tower or other support structure until i) there is an Application filed for or by a specific carrier that documents with verifiable technical evidence that the Facility or Complex is Necessary for that carrier to serve the community and that co-location on an existing Structure is not feasible, or ii) that no owner of an existing structure within the Applicant's search ring will allow attachment to the owner's building or other type of structure.

N. Co-location on an existing structure is not reasonably feasible if such is technically or Commercially Impracticable or the owner of the Structure is unwilling to enter into a contract for such use at a fair and reasonable price. If an Applicant feels the price is unreasonable, sufficient documentation in the form of clear and convincing evidence to support such a claim shall be submitted to determine whether co-location on a given existing structure is Commercially Impracticable or otherwise unreasonable.

## Section 11. Requirements for Eligible Facility Co-locations or Modifications

A. For the co-location, modification or upgrade of a wireless facility that qualifies as an Eligible Facilities request under applicable law, the following information shall be required to be contained in an application. Any technical information must be provided in such a manner, form and with such content that it is able to be verified by a third party using the information used and provided by the applicant.

**Safety**

1) the age of the Tower or other support structure in years, including the date of the grant of the original permit;
2) a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or a description of another other type of support structure;
3) certified documentation in the form of a structural analysis and report done by a Professional Engineer licensed in the State of Maryland. Said analysis and report shall include all supporting calculations, showing that the Facility, as it exists, will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not

limited to, the Maryland Building Code and all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply.

4) a copy of i) the installed foundation design, including a geotechnical sub-surface soils investigation report; and if necessary ii) a foundation remediation design and recommendation for the Tower or other structure;
5) a certified, unredacted report and supporting documentation, including photographs, regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection done pursuant to and in compliance with the latest version of TIA/ANSI 222. The inspection shall be done by a qualified individual experienced in performing such inspections and the report shall be signed by an individual with authority to order any needed remediation or resolution of issues.
6) a copy of the FCC licenses for each frequency band applicable for the intended use of the Wireless Telecommunications transmission and/or receive equipment;
7) a list of all frequencies, to be used at the Facility;
8) the number, type and model of the Antenna(s) proposed, along with a copy of the manufacturer's specification sheet(s), i.e. cut sheet(s), for the antennas;
9) certification from the owner of the Facility certifying that the Facility and all attachments thereto are currently in compliance with the conditions of the approved Special Use Permit or Administrative Approval or identifying any non-compliant situation.

**Ownership and Management**

10) the Name, address and phone number of the person preparing the Application;
11) the Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
12) the Postal address and tax map parcel number of the property;
13) a copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

**Construction**

14) The total cost of construction showing the cost of labor all new and/or replacement components and equipment.

**B.** In certain instances, the Town may deem it appropriate to have an on-site RF survey of the facility performed after the construction or Modification and activation of the Facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance. Such study shall reflect the cumulative effects, readings or levels of all active RF equipment at the Site;

**C.** In the event the Town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the previous §B of this Section, the Town expressly reserves the right to seek the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.

E. Attachments to Existing Structures Other Than Towers

1) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facie, the antennas shall be mounted on the facie without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.

2) Utility poles and light standards: If attaching to a utility pole or light standard, no equipment may extend more than ten percent (10%) of the existing height beyond the top of the structure as

originally permitted, and no equipment other than cabling shall be lower than fifteen feet (15') above the ground. Only one (1) increase of the height of a utility pole or light standard shall be allowed.

3) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service or that to do so would be technologically impracticable.

4) Profile: So as to be the least visually intrusive and create the smallest profile reasonably possible under the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached shall be flush mounted or as near to flush mounted as is possible, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

## Section 12. Location of Wireless Telecommunications Facilities

**A.** No tower or other new support structure taller than 35' shall be permitted in any existing or planned (i.e. platted) residential neighborhood, nor within one-half mile of any existing or planned (i.e. platted) residential neighborhood. Said height limit shall not be as-of-right, but shall be the maximum permissible height subject to the verifiable proof-of-technical need information submitted.

**B.** If a new telecommunications support structure is proposed to be located within one-half mile of an existing or planned residential neighborhood and is proven by verifiable clear and convincing technical information to be a Technical Necessity for the Applicant's service to be provided in the intended service area of the proposed facility, irrespective of the type of zoning, the support structure shall not be taller than ten feet (10') above the tallest obstruction between the proposed support structure and a residential neighborhood.

**C.** Applicants shall locate, site and erect all Facilities and associated equipment in accordance with the following priorities, in the following order:

1. On existing structures without increasing the dimensions or size of the structure;
2. On existing structures, more than one thousand feet from the nearest boundary of the public right-of-way without increasing the height or size of the profile of the Tower or structure by more than is allowed for an Eligible Facility.
3. On existing structures without increasing the height of the structure by more than is Needed, as such Need can be proven by clear and convincing verifiable technical evidence.
4. On properties in areas zoned for Commercial use.
5. In designated Historic Districts in the public right-of-way, but without increasing the height or size of the profile of the support structure, and only if Camouflaged or Stealthed to the satisfaction of the Town Administrator.
6. In areas zoned for Residential use, in the public right-of-way, but without increasing the height of the size or dimensions of the support structure, and only if Camouflaged or Stealthed to the satisfaction of the Town Administrator.

**D.** If the applicant proposes and commits to locate on Town-owned property or structures, the Town reserves the right to waive the Town's Application Fee that would otherwise be paid to the Town.

**E.** If the proposed site is not proposed for the highest priority listed above, then a detailed narrative and technical explanation shall be provided as regards why a site from all higher priority designations was not selected. The person seeking such an exception must demonstrate to the satisfaction of the Town the reason or reasons why a Special Use Permit or Administrative Approval should be granted for the proposed Facility.

**F.** Notwithstanding anything else to the contrary, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. The Town

may also direct that the proposed location be changed to another location that is more in keeping with the goals of this Ordinance and the public interest as determined by the Town and that serves the intent of the Applicant.

G. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons:

1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and Fall Zone requirements;
2. Non-Compliance with zoning or land use regulations;
3. The placement and location of a Facility or Complex would create an unacceptable risk, or the reasonable possibility of such, to any person or entity for physical or financial damage, or of trespass on private property;
4. The placement and location of a Facility or Complex would result in a conflict with, compromise in or change in the nature or character of the adjacent and surrounding area, and expressly including but not limited to loss in value as measured over the twelve (12) months preceding the Application having been filed;
5. Conflicts with the provisions of zoning or land use regulations;
6. Failure to submit a Complete Application within sixty (60) days after proper notice and opportunity to make the Application Complete.

H. Notwithstanding anything to the contrary in this Ordinance, for good cause shown such as the ability to utilize one or more shorter, smaller or less intrusive Facilities elsewhere and still accomplish the primary service objective, the Town may require the relocation of a proposed site if relocation could result in a less intrusive Facility or Complex singly or in combination with other locations, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) Facility to provide substantially the same service.

I. Telecommunication towers shall be permitted in the TC (Town Commercial), GC (General Commercial), SC/LM (Service Commercial/Light Manufacturing), and OS (Open Space) zoning districts only, and comply with the maximum permitted height.

## Section 13. Type and Height of Towers

A. No new Towers of a lattice or guyed type shall be permitted.

B. Except in the public rights-of-way and in Residentially zoned areas, the maximum permitted total height of a new tower or other proposed support structure, shall be one hundred feet (100') above pre-construction ground level, unless it can be shown by clear and convincing verifiable technical evidence from a carrier who has committed to use the tower that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the Town. The maximum permitted height is permissive and is expressly not as-of-right.

C. The policy decision has been made that more Facilities of a shorter and less intrusive height is in the public interest, as opposed to fewer but taller support structures. Therefore, spacing or the distance between Facilities shall be such that the service may be provided without exceeding the maximum permitted height.

D. If proposed to be taller than the maximum permitted height, the Applicant for a new Tower or support structure shall submit clear and convincing verifiable technical evidence by a carrier or wireless service provider that has committed to use the Tower or other support structure justifying the total height requested. Technical evidence must be verifiable using the information provided by the Applicant. If the Applicant chooses to provide evidence in the form of propagation studies, to enable verification of the Need for the requested height or location, such must include all modeling information and support data used to produce the studies at the requested height and at a minimum of ten feet (10') lower. The Town or its designee will provide the form that shall be used for providing the modeling information.

E. The Town reserves the right to require a drive test to be conducted under the supervision of the Town or its designee to verify the technical Need for what is requested.

F. At no time shall a Tower or other support structure be of a height that requires lighting by the FAA.

G. Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a Tower or other support structure, so that the height can be increased if Needed.

H. New structures within Rights-of-Ways – Required Design Characteristics. Pursuant to the Town's Right-of-Way regulations, the following shall govern new poles and other support structures in the Rights-of-Way.
   a. Wireless installations shall be consistent throughout the City limits and the extraterritorial jurisdiction (ETJ);
   b. Wireless installations shall be on non-conductive poles or structures;
   c. All antennas shall be undiscernible by an average person from 250 feet away;
   d. Wireless installations shall utilize a "concealed" design, including all cabling being inside a hollow pole;
   e. All radios, network equipment and batteries will be enclosed in a pedestal cabinet near the pole, or in a pole-mounted cabinet or under a pole-mounted shroud;
   f. Cabinets should be consistent in size and no larger than standard DOT streetlight signal cabinets;
   g. Unless proven unfeasible by *clear and convincing evidence*, in lieu of installing new poles, any wireless installation in the PROW shall replace a pre-existing distribution pole, secondary pole or streetlight;
   h. Wireless installations shall be on poles that meet or exceed current NESC standards and wind and ice loading requirements of ANSI 222 Version G;
   i. Any new poles installed shall be environmentally "green" and not leach any volatile organic compounds or toxic materials into the ground; and
   j. To avoid unsightly rust and corrosion, any new or replacement pole installed shall not be metal or reinforced concrete.

## Section 14. Visibility and Aesthetics

A. No Tower, nor any support structure that is not a building and is constructed after the effective date of this Section, shall be tall enough to require lighting by the FAA.

B. Stealth: All new Facilities, including but not limited to Towers, shall utilize Stealth or Camouflage siting techniques that are acceptable to the Town, unless such can be shown to be either Commercially or technologically Impracticable.

C. Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Ordinance.

D. Lighting: Notwithstanding the prohibition of lighting, in the event lighting is subsequently required by the FAA, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any Facility or Complex for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.

E. Retrofitting: In the event a Tower or other support structure that is lighted as of the effective date of this Ordinance is modified, at the time of the first Modification of the Facility the Town

reserves the right to require that the Tower be retrofitted so as to comply with the lighting requirements of the preceding §(D) of this Section or be reduced to a height that does not require lighting.

F. Flush Mounting: Except for omni-directional antennas, all new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as is functionally possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the Applicant can prove that it is technologically impracticable.

G. Placement on Building: If attached to a building, all antennas shall be mounted on the fascia of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas as visually innocuous and undetectable as is reasonably possible given the facts and circumstances involved.

## Section 15. Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

A. All Facilities, including Antennas, Towers and other supporting structures, such as guy anchor points and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be easily climbed or collided with and shall expressly include removing the climbing steps for the first ten feet (10') from the ground on a monopole; and

B. Transmitters and Telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

## Section 16. Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and must be visible from the access point of the Facility or Complex and must identify the equipment owner of the shelter or cabinet. On Tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

## Section 17. Setback and Fall Zone

A. All proposed Towers and any other proposed Wireless support structures shall be set back from abutting parcels, recorded rights-of-way and roads and streets by the greater of the following distances: i) a distance equal to the height of the proposed Tower or support structure plus ten percent (110%) of the height of the Tower or other structure, otherwise known as the Fall Zone; or ii) the existing setback requirement of the underlying zoning district, whichever is greater.

B. For any Facility located within a fenced compound, any Accessory structure shall be located within the fenced compound as approved in the Special Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone or setback shall be measured from the nearest portion of the tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines.

C. The nearest portion of any private access road leading to a Facility shall be no less than ten (10) feet from the nearest property line.

D. There shall be no development of habitable buildings within the Setback area or Fall Zone.

## Section 18. Retention of Expert Assistance Cost to be Borne by Applicant

A. Since retail subscriber rates reflect all capital costs, including costs of permitting such as but not limited to payment of the cost of the Town's expert assistance, and to prevent taxpayers from having to bear the cost related to the issue of permitting and regulating a commercially used Wireless Telecommunications Facilities or negotiating agreements to lease or amend or modify a lease for any Town-owned property or structure, an Applicant shall pay to the Town fees as set forth in the Town's Fee Schedule. The fees are intended to cover all reasonable costs of the expert assistance needed by the Town in connection with the review of any Application, including both the technical and non- technical review, and the permitting, inspection, construction or Modification requested, any Application pre-approval evaluation requested by the Applicant and any lease negotiations. The payment of the Expert Assistance fees to the Town shall precede any work being done that is related to the intended Application or lease, including a pre-application meeting or site visit.

B. The Town may hire any consultant of its choice to assist the Town in reviewing and evaluating Applications and negotiating leases, provided the consultant has at least five (5) years of experience working exclusively for the public sector regulating Towers and Wireless Facilities and negotiating leases, and has not had a recommendation successfully legally challenged.

C. The total amount of the funds needed for expert assistance as set forth in the Town's Fee schedule may vary with the scope and complexity of the Application, the completeness of the Application and other information as may be needed to complete the necessary technical and non-technical reviews, analysis and inspection of any construction or Modification or the amount of time spent responding to an Applicant's arguments as regards its Application as relates to the requirements of this Ordinance.

D. For a new Tower or support structure or a Substantial Modification, to prevent taxpayer subsidization, the expert assistance fee shall be no less than $7,500.

E. The Town will maintain an accounting record for the expenditure of-all such funds.

F. If an Application is Amended, or a waiver or relief is requested from any regulations at any time prior to the grant of the Certificate of Completion required under this Ordinance, the Town reserves the right to require additional payment for the review and analysis equal to, but not exceeding, the cost created for the Town by the Applicant or its Application. Such amount shall be paid to the Town prior to the issuance of the Special Use Permit or Administrative Approval or the Certificate of Completion, whichever is procedurally needed next.

## Section 19. Procedural Requirements for a Granting a Special Use Permit

A. When a Special Use Permit is requested, the following procedures shall apply.

B. When deemed necessary or otherwise in the public interest, as part of the process for any new Towers or Telecommunications Support Structure, the Town may require a Neighborhood Meeting with area residents, the Applicant, a representative(s) from the Town staff and the Town's consultant to discuss the proposed Facility and the effects of such.

C. The Town shall schedule any required public hearing(s) once it finds the Application is Complete and there are no issues of non-compliance or conflict with applicable law, rule or regulation. The Town shall not be required to set a date for a hearing if the Application is not Complete or if there are unresolved issues of non-compliance by the Applicant or a party to the Application. The Town may, at any stage prior to issuing a Special Use Permit or

Administrative Approval, require such additional information as it deems Necessary and that is not expressly prohibited from being required by applicable law as relates to the issue of the siting, construction or Modification of or at a Wireless Telecommunications Facility or Complex.

D. Upon Town approval, a Special Use Permit shall be issued for a new Tower or Substantially Modified Wireless Support Structure or Substantial Co-location. Notwithstanding the preceding, the Building Permit for a new Tower or other proposed support structure shall not be issued until an Applicant has provided clear and convincing substantiating documentation governing the placement of the first antenna array of a carrier who has committed to use the structure prior to its construction and that carrier has been properly permitted under this Ordinance.

## Section 20. Action on an Application

A. The Town will undertake, or have undertaken, a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.

B. The Town may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.

C. Either after the public hearing if a hearing is required, or after Administrative review for an Eligible Facility Application, and after formally considering the Application, the Town may i) approve; ii) approve with conditions; or iii) deny for cause a Permit or Administrative Approval Application. The decision shall be in writing and shall be supported by substantial evidence contained in a written record, which record may be the minutes of any or all official meetings. Throughout the Application and permitting process, the burden of proof for compliance with this Ordinance or the need for a waiver or relief shall always be upon the Applicant.

D. An Applicant shall not be permitted to refuse to provide information needed to establish the substantial written record required under federal law and applicable case law. Refusal for more than sixty days without agreement by the Burgesses shall result in denial of the Application or the Application shall be deemed abandoned.

E. Approval Notification: If the Town approves the Special Use Permit or Administrative Approval, then the Applicant shall be notified of the approval of its Application, including any conditions, within 30 calendar days of the Town's action. The Special Use Permit or Administrative Authorization shall be issued within thirty (30) days after such approval.

F. Denial Notification: If denied, the Applicant shall be notified of the denial of its Application at the Town Meeting, and in writing within 30 calendar days of the Town's action, which notice shall contain the reason or reasons for the denial.

## Section 21. Transfer or Assignment

The extent and parameters of a Special Use Permit or Administrative Authorization for a Facility or Complex shall be as follows:

A. Such Special Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the Town, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.

B. A transfer, assignment or other conveyance of the Special Use Permit or Administrative Authorization shall require the written commitment of the proposed new holder of the Special Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Ordinance.

## Section 22. Violations

A. Following written notice of violation and an opportunity to cure, any Permit or Administrative Approval granted under this Ordinance may be revoked, canceled, or terminated for a violation of the uncured conditions and provisions of the Special Use Permit or other applicable law, rule, regulation or order, and if warranted the payment of a fine(s) as is permissible.

B. If not cured within the time frame set forth in the Notice of Violation, a hearing shall be held upon thirty (30) days prior notice to the Applicant citing the violation and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Special Use Permit.

C. Following the original notice and an opportunity to cure, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines or penalties.

## Section 23. Removal and Performance Security

A. Removal and Performance: The Applicant and the owner of record of any proposed new Tower or other support structure or Complex shall, at its sole cost and expense, be required to execute and file with the Town a bond or other form of security that is acceptable to the Town as to the type of security and the form and manner of execution, in an amount of at least $75,000.00 for a Tower or other support structure and with such sureties as are deemed adequate by the Town to assure the faithful performance of the terms and conditions of this Ordinance and the conditions of any Special Use Permit issued pursuant to this Ordinance. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or, if abandoned, until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit. The amount of the Bond is, in part, determined by the current cost of demolition, removal and site restoration multiplied by the compounding or cumulative effect of a three percent (3%) annual cost escalator over a thirty (30) year projected useful life of the structure.

B. Performance: The owner of any equipment attached to a support structure or located in a Complex shall be required to execute and file with the Town a performance bond or other form of performance security that is acceptable to the Town as to the type of security and the form and manner of execution, in the amount of $25,000.

## Section 24. Reservation of Authority to Inspect Wireless Telecommunications Facilities

A. In order to verify that the holder of a Special Use Permit for a Facility or Complex and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, places, constructs and maintains such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Ordinance, the Town or its designee shall have the right to inspect 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, Towers, Antennas, buildings and equipment and connections contained therein, or other structures constructed or located on the permitted site.

B. Refusal to allow or grant access to the Town's representative upon reasonable notice shall be deemed a violation of this ordinance.

## Section 25. Liability Insurance

A. A holder of a Special Use Permit for a Wireless Telecommunications Support Structure 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 Special Use Permit in amounts as set forth below:

1. Commercial General Liability covering personal injuries, death and property damage: $2,000,000 per occurrence/$5,000,000 aggregate; and
2. Automobile Coverage: $1,000,000.00 per occurrence/ $3,000,000 aggregate; and
3. A $5,000,000 Umbrella coverage; and
4. Workers Compensation and Disability: Statutory amounts.

B. For a Facility or Complex located on Town property, the Commercial General Liability insurance policy shall specifically name the Town and its officers, Boards, employees, committee members, attorneys, agents and consultants as additional insureds.

C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with an AM Best's rating of at least A.

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

E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days prior to the expiration of the insurance that such policies are intended to renew or replace.

F. Before construction of a permitted Wireless Telecommunications Facility or Complex is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the required insurance in the required amounts.

G. A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this Section.

## Section 26. Indemnification

A. Any application for Wireless Telecommunication Facilities that is proposed to be located on Town property shall contain a signed statement fully and completely indemnifying the Town. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, Boards, 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 there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, Modification , location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility or Complex. Notwithstanding the preceding, there shall be no claim of indemnification with respect to any act attributable to the negligent or intentional acts or omissions of the Town, 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 Town.

B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the Town itself, or an agency or department of the Town, applies for and secures a Special Use Permit for a Wireless Telecommunications Facility or Complex.

## Section 27. Fines

A. In the event of a violation of this Ordinance, or any Special Use Permit or Administrative Approval issued pursuant to this Ordinance, the Town may impose and collect, and the holder of the Special Use Permit or Administrative Approval for a Wireless Telecommunications Facility or Complex shall pay to the Town, fines or penalties as set allowed by State law or as otherwise established by the Town.

B. Notwithstanding anything in this Ordinance, the holder of the Special Use Permit or Administrative Approval for a Facility or Complex may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Section or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit in addition to the payment of fines. The Town may also seek injunctive relief to prevent the continued violation of this Ordinance without limiting other remedies available to the Town.

## Section 28. Default and/or Revocation

If a support structure, Facility or Complex is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Special Use Permit or Administrative Approval, then the Town shall notify the holder of the Special Use Permit or Administrative Approval in writing of such violation. A Permit or Administrative Approval holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the Special Use Permit or Administrative Approval shall be subject to revocation.

## Section 29. Moving or Removal of Co-Located Facilities and Equipment

A. If attached to an existing tower or other support structure, unless the Town deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.

B. If the lease for the existing attachment and use expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the Town of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the Town of the lack of impact on the neighborhood or area of the intended new location. Cancellation or abandonment of a lease by a lessee or refusal to agree to terms of a lease that are not Commercially Impracticable shall not be deemed a permissible reason for relocating.

C. The owner of any Facility or Complex shall be required to provide a minimum of thirty (30) days written notice to the Town Clerk prior to abandoning any Facility or Complex.

D. Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Facilities.

1. a Facility or Complex that has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a cumulative total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty-five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;

2. A Support Structure, Facility or Complex falls into such a state of disrepair that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;

3. A Support Structure or Facility or Complex has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or Administrative Approval, and the Special Permit or Administrative Approval may be revoked.

**E.** If the Town makes a determination as noted in §D(2) or D (3) of this section, then the Town shall notify the holder of the Permit or Administrative Approval for the Facility or Complex that said Facility or Complex is to be removed.

**F.** The holder of the Special Use Permit or Administrative Approval, or its successors or assigns, shall dismantle and remove the Facility or Complex and all associated structures and equipment from the site and restore the site to as close to its original condition as is reasonably possible, such restoration being limited only by physical or Commercial Impracticability. Restoration shall be completed within ninety (90) days of the receipt of a written notice from the Town. However, if the owner of the property upon which the Facility or Complex is located wishes to retain any access roadway to the Facility or Complex, the owner may do so with the approval of the Town.

**G.** If a Facility or Complex has not been removed, or substantial progress has not been made to remove the Facility or Complex, within ninety (90) days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove or have removed the Facility or Complex at the sole expense of the owner or Special Use Permit holder.

**H.** If the Town removes, or causes a Facility to be removed, and the owner of the Facility or Complex does not claim and remove it from the site to a lawful location within ten (10) days, the Town may take steps to declare the Facility or Complex abandoned, and sell all remaining equipment and materials.

**I.** Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the Facility or Complex, but for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected Facility or Complex shall be developed by the holder of the Special Use Permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the Special Use Permit or Administrative Approval and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession and dispose of the affected Facility or Complex in the manner provided in this Section and may utilize the bond in Section 23 of this Ordinance.

## Section 30. RF Emissions

**A.** As may be deemed appropriate from time to time, to assure the protection of the public health and safety, the Town expressly reserves the right under its Police Powers to require that a user of a Facility or Complex or the owner of the Facility or Complex, verify compliance with the FCC's regulations regarding cumulative RF emissions at the Site under the observation of a qualified staff member or the Town's consultant, and that all users of the Facility or Complex cooperate with the party responsible for such testing or verification. Failure to cooperate shall be deemed a violation of this Section and subject the non-cooperating party to all applicable and permissible fines and penalties.

**B.** In the event the Town deems it necessary to determine compliance with the FCC's Maximum Permitted Exposure (MPE) rules, and in lieu of the procedure contained in the preceding § (A) of this Section, the Town expressly reserves the right to request the involvement of the FCC and/or OSHA (Occupational Safety and Health Administration) to determine or verify compliance with federal standards and guidelines that the Town, itself, may be prohibited from determining.

**C.** With respect to Support Structures other than Towers, if any section or portion of the structure attached to or to be attached to is not in compliance with the FCC's regulations

regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape, as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger. As deemed warranted by the Town at any time, the right of the Town is expressly reserved to do itself, or order done, an on-site RF emissions survey.

## Section 31. Relief

A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance shall address and identify such at the Pre-Application meeting. The relief or exemption must be contained in the submitted Application for either a Special Use Permit or Administrative Approval, or in the case of an existing or previously granted Special Use Permit or Administrative Approval, a request for Modification of the Facility or Complex and/or equipment. Such relief may be temporary or permanent, partial or complete.

B. The burden of proving the need for the requested relief, waiver or exemption shall be solely on the Applicant to prove.

C. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption.

D. No relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

## Section 32. Adherence to State and/or Federal Rules and Regulations

**A.** To the extent that the holder of a Special Use Permit or Administrative Approval for a Wireless Telecommunications Facility or Complex has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit 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.

**B.** 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 changed and/or are modified during the duration of a Special Use Permit or Administrative Approval for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit or Administrative Approval shall conform the permitted Facility or Complex to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (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.

## Section 33. Conflict with Other Laws

Where this Ordinance differs or conflicts with other Local Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or federal government, the more stringent shall apply.

## Section 34. Authority

This Ordinance is enacted pursuant to applicable authority granted by the State and federal government.

Approved as to Form

_____

**ORDINANCE NO. 17-10-02**

**AN ORDINANCE TO AMEND TITLE 12 "STREETS, SIDEWALKS AND PUBLIC PLACES" OF THE MIDDLETOWN MUNICIPAL CODE BY ENACTING PROVISIONS PERTAINING TO THE REGULATION WORK WITHIN PUBLIC RIGHTS OF WAY TO BE DESIGNATED AS CHAPTER 12.12 "WORK WITHIN PUBLIC RIGHTS-OF-WAY".**

**SECTION I. BE IT ORDAINED AND ENACTED** by the Burgess and Commissioners of Middletown that Title 12, of the Middletown Municipal Code be, and hereby is, amended by adding thereto the attached Ordinance entitled "An Ordinance Regulating The Authorization For Work Within Public Rights-Of-Way; Franchises, Licenses, And Permits" which is incorporated by reference herein, said Ordinance to be codified in the Code as Title 12, Chapter 12.12 "Work Within Public Rights-Of-Way". .

**SECTION II. BE IT FURTHER ENACTED AND ORDAINED** that this Ordinance shall take effect twenty (20) calendar days following its approval by the Burgess and Commissioners.

**INTRODUCED ON THE _____ DAY OF _____, 2017**

**PASSED ON THE _____ DAY OF _____, 2017**

**EFFECTIVE DATE: _____, 2017**

**ATTEST:**

**BURGESS AND COMMISSIONERS OF MIDDLETOWN**

_____
Andrew J. Bowen, Town Administrator

By:_____
John D. Miller, Burgess

DRAFT

# AN ORDINANCE REGULATING THE AUTHORIZATION FOR WORK WITHIN PUBLIC RIGHTS-OF-WAY; FRANCHISES, LICENSES, AND PERMITS

Purpose and Intent:

The Town of Middletown (Town) finds that i) extremely limited space exists in the public Rights-of-Way (PROW) that requires diligent responsible management, including but not limited to responsible and prudent siting policies; ii) protecting the public safety in and near the PROW is of paramount concern; iii) the Facilities that use and occupy the PROW often pose significant concerns regarding the health, safety, public welfare, protecting the nature and character of the Town and its neighborhoods and for the environmental effects of work and Facilities in the PROW. The Town recognizes that facilitating the development of the responsible policies regarding the use of the PROW can be an economic development asset to the Town and of significant benefit to the Town and its residents. To assure that the placement, construction and Modification of Facilities in the PROW are consistent and to the extent practicable for functionally similar Users are not discriminatory, and that the regulations governing the use of the PROW are reasonable and balanced, the Town adopts a single, comprehensive set of regulations governing the use and occupancy of the PROW. The intent of this Ordinance is to i) maximize the efficient use of the limited space of the PROW, minimize the physical impact of Facilities on the PROW and adjacent properties; ii) minimize the impact of Facilities on the community, including but not limited to the visual impact; iii) protect the nature and character of the community to the extent reasonably possible; iv) establish a fair and efficient process for the review of and action on applications; v) facilitate the processing of applications to the extent practicable; vi) assure taxpayers' money in the form of Town funds is not used to subsidize application-related costs normally and traditionally borne by an Applicant; vii) assure a prompt and efficient review of applications; viii) determine any negative environmental impacts associated with the location, construction and Modification of Facilities located in the PROW; and protect the health, safety and welfare of the Town, its residents and visitors.

## Sec. 1. - Definitions.

The following words and terms in this division shall have the meaning given below unless the context indicates otherwise. These meanings shall apply whether a word is capitalized or not, or is singular or plural.

*Application* means a formal request for the authority, right or permission to place or Modify a structure in, and to use and occupy, the public rights-of-way prior to receiving the necessary permit(s), including but not limited to a building permit.

*Attached Equipment* means any equipment attached to a utility pole or other support structure in the PROW.

*Authorization* means written permission from the Town to apply for any required permits needed to construct, place, Modify or temporarily disrupt or do work in the PROW, including but not limited to

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required permits such as building, electrical, street or curb cutting and excavation permits, or to maintain Facilities in the PROW, and includes but is not limited to a Franchise or a Town-granted License. An Authorization is not a permit, but must be issued or granted before applying for any Town permit.

*Best Case* means using that which is the most favorable to serve the intended purpose that is reasonably possible.

*Certificate of Completion* or *COC* means a document required and issued by the Town that confirms that all work represented in the application i) was properly permitted, including but not limited to having obtained all required permits such as building, electrical, street or curb cutting and excavation permits ; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the work and the Facility passed the final inspection.

*"Commercial Impracticability" or "Commercially Impracticable"* means the inability to perform an act on conditions or terms that cumulatively are i) reasonable in commerce; ii) the cause or occurrence of which could not have been reasonably anticipated or foreseen; and that iii) jeopardizes the financial efficacy of the operation. Standing alone for a single facility or application, the inability to achieve a desired financial return on investment or profit shall not deem a situation to be "Commercially Impracticable" and shall not by itself render a requirement "Commercially Impracticable".

*Complete Application* means a document or series of documents containing all required information and that the information contained therein has been verified as being true, accurate and correct, and that all applicable fees and charges related to an Application have been paid.

*Emergency* means a condition that poses a clear and imminent danger to life, health, property damage or a significant loss of property, or requires immediate repair to restore an essential service to a group of Users of such service.

*Excavate* means, without limitation, any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the PROW.

*Facility* means any pole, pipe, culvert, conduit, duct, cable, wire, fiber, amplifier, pedestal, antenna, transmission or receiving equipment, other electronic equipment, electrical conductor, manhole, appliance, sign, pavement structures, irrigation system, monument sign, monument mailbox and any other similar equipment, for public or private use.

*Franchise, License* or *PROW Use and Occupancy Agreement means* a written contractual agreement setting forth both the required terms and conditions for the use and occupancy of the PROW, and any negotiated terms and conditions for such.

*Ground-mounted Equipment* means any equipment associated with the equipment attached to a utility pole or other support structure in the PROW that is located above ground.

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*Holder means* the person or entity issued an Authorization, Franchise, License or Permit or the Transferee or assignee of such.

*Maintenance* means excavation, plumbing, electrical, carpentry or mechanical work that may or may not require a building permit, but that does not constitute a Modification to the WTF.

*Modify* or *Modification means* the addition, removal or change of any of the physical and visually discernable components or aspects of a Facility, including but not limited to the change to, or addition of, anything that changes the structural loading of the support structure, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, the color or materials of any visually discernable components, emergency and vehicular access, parking and/or an upgrade or change in equipment. Adding a User to an existing utility pole or support structure is a Modification of the utility pole or structure, unless the height, profile, diameter or size of the Facility is increased, in which case it is not a Modification, but shall be treated as a new structure.

*Monument* means any permanent, non-commercial structure placed in the public rights-of-way, such as, but not limited to, a mailbox or sign.

*Necessary* or *Necessity* or *Need* means what is technologically required for the equipment or service to function as designed by the manufacturer and that anything less will result in the effect of preventing or prohibiting the provision of service as intended and described in the Application. Necessary, Necessity or Need does not mean what may be desired, preferred or the most cost-efficient approach, and is not related to an Applicant's specific chosen design standards.

*Person* means an individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other organized entity able to contract for the activities described in this Ordinance, whether for profit or not for profit. The term does not include the Town.

*Public Right of Way or PROW* means the area that is used as, or offered, dedicated or reserved for use as a public street, highway, alley, trail, sidewalk, curb, gutter, bike lane, bridge, round-about, tunnel, causeway, or shoulder that is located in the Town or in an area proposed for annexation to the Town. The area also includes, without limitation, drainage areas and dedicated areas, whether with or without surface improvements and that are adjacent to improved areas dedicated for one or more of the above listed uses. The PROW encompasses the surface of the ground, and the area above and below the ground.

*Rubber Stamp or Rubber Stamping* means to review without meaningful, thorough review of an application as represented by the requirements of this Ordinance. Rubber stamping of an Application shall not be permitted.

*Telecommunication(s)*means the provision or exchange of information by electronic, electrical and radio frequency means involving a transmission source and/or a receiving source and includes a single co-arrangement of transmitters and receivers, known as a transceiver.

*Telecommunications devices* means and includes any User owned or controlled communications equipment, including a telephone, computer, television or any functionally equivalent similar device.

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*Telecommunications equipment* means and includes wireless radio frequency transmission or receive equipment, microwave equipment, fiber optic cable, coaxial cable, satellite transmission or received equipment larger than eighteen inches (18") in diameter and any Internet access modem.

*Town* means the Burgess and Commissioners of Middletown, Maryland.

*User or Person* means an individual or entity that uses the PROW to conduct business, excluding the vehicular or pedestrian use of the PROW, and does or proposes to place Facilities in the PROW, places such Facilities, or owns or maintains such Facilities. The term includes, but is not limited to Licensees and Franchisees.

*Warehouse or Warehousing* means obtaining the required Authorization to work, construct, Modify or replace a structure or equipment in the PROW and not expeditiously performing the authorized work in a reasonable time frame as set forth in Section 9 of this Ordinance.

## Sec. 2. - General conditions for use of the PROW.

The provisions of this Ordinance apply to work performed in the PROW and to Facilities that have been or are proposed to be placed in the PROW, except for maintenance and/or repair work. Non-compliance with a requirement in this Ordinance is a violation of the law and is subject to all remedies available under the law. The right to perform work in the PROW and the ability to maintain Facilities in the PROW are allowed subject to the conditions that follow, and as supplemented by those set forth in other sections of this Ordinance, standards adopted by the Town, and requirements contained in Authorizations.

A. An Authorization does not grant an exclusive right to provide a service or to construct, operate, Modify or maintain a Facility in the PROW.

B. The Town retains all rights it may have to use all portions of the PROW for any purpose not prohibited by law.

C. A permit or Authorization does not convey any title to any portion of the PROW.

D. The Town and its officials, officers, and employees shall not be liable for any direct, indirect, or consequential damages that result when Facilities in the PROW are damaged during the construction, installation, Modification, inspection, maintenance, or repair of public improvements that have received funding from a governmental entity or that are installed pursuant to a contract with the Town.

E. Users and persons who cause work to be done in the PROW shall pay for all damage that results, directly or indirectly, from work performed for their benefit in the PROW, and for the installation, repair, maintenance, and operation of their Facilities in the PROW.

F. Non-enforcement or lack of prompt enforcement of one or more provisions of an Authorization does not waive the Town's right to enforce the provisions of an Authorization.

G. An Authorization creates no third-party rights against the Town and is intended only for the benefit of the person(s) receiving the Authorization.

H. An Authorization does not limit the Town's exercise of its regulatory, police, governmental, legislative, or contracting authority. If an Authorization conflicts with the terms of a permit or with the Town code, the more strict shall control.

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I. The owner of a pole or other structure shall be responsible for the Facility as a whole at all times being in compliance with all permitting and safety regulations, including any attachments to the pole(s) or other structure(s). At no time shall an owner allow unpermitted work on or at a Facility.

J. The Town shall review applications to determine whether a use would have a detrimental effect on public safety as it relates to the PROW or would place an undue physical burden on the PROW.

K. In considering an application, the Town may use such outside experts as it deems necessary. In the event the Town deems it necessary to employ an outside expert with respect to a particular application. The reasonable and verifiable cost of such expert shall be borne by the applicant.

L. By the acceptance of a PROW permit, the applicant agrees to assume all liability for all or any damages to persons or property accruing to the public or to the Town which may or might result from the opening or excavation.

M. The issuance of a PROW Authorization for any purpose, including but not limited to construction or replacement of support poles, shall constitute an agreement on the part of the Applicant that it will at any time thereafter, upon notice from the Town, at its own expense, make such change in location or construction of such facility as may be necessary to protect the public safety property values.

## Sec. 3. – Right-of-Way Management.

A. The Town shall have the right to limit activity and the placement of new or additional equipment, materials, or facilities in a PROW if there is insufficient space to reasonably accommodate all requests to occupy and use the PROW.

B. The Town shall consider requests for occupying and using a PROW in the order of receipt of fully completed applications for PROW permits.

C. The Town shall strive, to the extent reasonably possible, to accommodate all requests, but shall be guided by the physical space available in, and the condition of, the PROW at the requested location, and whether such use would have a detrimental effect on public health, safety or welfare as it relates to the PROW.

D. The Town shall have the right, to monitor any equipment or activity located in a PROW.

E. A permit holder shall allow the Town to make inspections of any part of the permit holder's equipment, material, or facilities located in a PROW at any time upon three (3) days' notice or, in the case of an emergency, upon direction or demand by the Town.

F. The Town shall have the right to prohibit a permit holder from attaching any telecommunications antenna or other such equipment to any Town historic-style streetlighting.

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## Sec. 4. - General requirements for work in the PROW.

A. *Authorization; required information.* Persons doing work in the PROW and Users of the PROW, including but not limited to Users with a Franchise or License with the Town, shall obtain an Authorization and all required permits and shall pay applicable application, review, permit, expert assistance and inspection fees. The Town shall not issue an Authorization or Permit(s) if the person or User owes money to the Town for prior fees, restoration costs, or other costs sustained by the Town in connection with an Application for Authorization, work done or Facilities in the PROW, and is more than sixty (60) days in arrears.

B. *Information required.* Applicants for Authorization shall furnish accurate drawings, maps, and any other relevant information that may be required by the Town Administrator for the particular type of work involved, in the form the requests and shall seek approval of construction and Modification plans, if required.

C. *Compliance with requirements; revocation of Authorizations.* Persons and Users shall comply with this Ordinance, with any additional standards adopted by the Town, and with the requirements of Authorizations and permits granted pursuant to Authorizations. As may be permitted by applicable State law, the Town Administrator may revoke an Authorization for noncompliance with any term, condition or implemented standards and requirements, or when, after notice to the holder of the Authorization, an activity continues to hamper or obstruct the use of the PROW or endangers the public health or safety.

D. *Bonds; performance guarantees.* For any new pole or structure located in the PROW, a person or a User conducting activities subject to this Ordinance in the PROW may be required to provide a performance bond or other performance guarantee for the work. The amount, form, and content of the guarantee shall be determined in the discretion of the Town based on the facts and circumstances involved.

(1) Users with multiple Facilities in the PROW shall be allowed to provide a single bond or performance guarantee that covers all of its Facilities in the PROW in the Town.

(2) The Town may increase or decrease the amount of the bond or performance guarantee required.

(3) The Town shall determine, in its discretion, the time period for which a performance guarantee shall be kept in force.

(4) The Town may consider, among other things, the time period for a project and assessment of the performance of the project, the length of a License or Franchise, and/or the projected time during which Facilities will exist in the PROW.

(5) The performance guarantee shall, among other things, ensure compensation for i) damages resulting from the proposed work or a User's maintenance of Facilities in the PROW; ii) direct and indirect costs to the Town of remedying damage to the PROW or Facilities within the PROW; iii) direct and indirect costs to the Town of remedying matters of noncompliance with Town Ordinances or Authorizations; and iv) fines or penalties or fees owed to the Town.

(6) The rights reserved to the Town under a bond or performance guarantee do not limit the claims or rights the Town may bring against a person, except where a bond or guarantee has fully satisfied a Town claim.

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(7) Every bond or performance guarantee shall require the surety to provide notice of cancellation or nonrenewal by registered or certified mail, which notice must be received by the Town Administrator at least 30 days prior to any cancellation or nonrenewal.

E. *Insurance.* The Town may require Users and persons that do work in the PROW to provide insurance in an amount deemed adequate by the Town Administrator, the Town Attorney and/or the Town Risk Manager. The insurance shall be issued by a company authorized to do business in the State, including but not limited to: i) workers' compensation coverage as required by State law; ii) employers' liability insurance; iii) commercial general liability; and iv) business auto policy. The Town's officials, employees and consultants shall expressly be named as additional insureds on such insurance policies. The amount of insurance shall be as determined by the Town, in part based on the scope of the work and the tenure or term of occupancy.

F. *No interference with Town utilities.* Persons doing work in the PROW shall not interfere with existing utilities, including such infrastructure as water, sewer, gas and electric, the natural and constructed storm water system, traffic signals and associated lines, or with the repair or replacement of such systems. Persons doing work in the PROW shall give the Town Administrator at least ten working days advance notice to locate and mark any existing Town utility lines prior to initiating work. Damage to utilities or other infrastructure shall be paid for by the person or User contracting for the work that resulted in such damage.

G. *Compliance with regulations, safety standards, and applicable codes and standards.* Compliance with all applicable federal, state and local regulations, and all applicable federal, state, local and industry codes and standards is required. These include, but are not limited to, compliance with the Occupational Safety and Health Act and applicable rules and regulations subsequently enacted, compliance with the latest versions of the National Electrical Code, National Electrical Safety Code, TIA-ANSI 222, compliance with fiber optic installation standards and telecommunication industry standards, compliance with plumbing and pipe installation codes and standards, and compliance with standards and codes for traffic safety and lane closures. Persons and Users shall provide all equipment and personnel necessary to meet applicable regulations, codes, and standards and shall furnish additional equipment or personnel if directed by the Town. Information requested by the Town regarding compliance with these standards shall be provided within the time frame requested by the Town.

H. *Licensed professionals.* Where required under state law, work in the PROW shall be performed and supervised only by qualified persons and licensed professionals as deemed appropriate by the Town Administrator.

I. *Notice of beginning and end of project.* Persons doing work in the PROW shall promptly notify the Town Administrator upon beginning and ending the work authorized in a given Application, and shall promptly request a final inspection of the work and the condition of the PROW at the location(s) where the work was performed. A copy of a passing final inspection report for the latest work performed at a given location(s) shall be required as part of any future application or Authorization by that person for work at that location(s).

J. *Inspections; fees.* The Town Administrator shall conduct, or have conducted, inspections of work performed in the PROW. Users and Persons performing such work shall comply with all Town directives to facilitate such inspections. The Town Administrator may charge fees as set by the Town for such inspections, which may be varied to account for the nature and scope of the

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project, the number of inspections required, or other relevant factors. The Town Administrator may direct a person or User to do additional work if warranted by the result of an inspection and such person or User shall promptly comply with such directive.

K. *Removal for Violation.* Unless prohibited by State law, if Facilities are installed in violation of this Ordinance, the Town may require their removal, at the owner's sole expense.

L. *Identification*. All utility poles and any other support structure or ground-mounted equipment erected within the boundaries of any public highway, street or other right-of-way shall be lettered or stenciled in a permanent manner with the initials of the owners or with some other designation of ownership, together with a number for the same. A report or map showing the location and number of each pole shall be filed by the owner or owners of said poles with the Town annually on or before July 1st of each year.

M. The filing of an application and the issuance of a permit for the erection of a utility or similar pole shall constitute an agreement on the part of the applicant that it will at any time thereafter, upon notice from the Town, at its own expense, make such change in location, external support and restore the pole to plumb as may be required.

## Sec. 5. – Indemnification, Hold Harmless and Insurance.

A. *Indemnification and Hold Harmless*. A permit holder shall, at its sole cost and expense, after the effective date of this Ordinance indemnify and hold harmless the Town and its elected and appointed officials, employees and agents at all times against any and all claims for personal injury, including death, and property damage arising out of the permit holder's use or occupancy of a right-of-way.

B. A permit holder shall defend any actions or proceedings against the Town in which it is claimed that personal injury, including death, or property damage was caused by the permit holder's use or occupancy of a right-of-way.

C. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, attorneys' fees, reasonable expert fees, court costs and all other costs of indemnification.

D. A permit holder shall not be required to indemnify and hold the Town harmless for claims caused by the Town's or any person's negligence, gross negligence or willful misconduct.

E. A permit holder shall, at all times during the life of a PROW Authorization carry, and require its subcontractors to carry, liability, property damage, workers' disability, and vehicle insurance in such form and amount as shall be determined by the Town and as set forth in the Authorization. A permit holder shall name the Town as an additional insured on its liability insurance policies.

F. All required insurance coverage shall provide for 30 days' notice to the Town in the event of material alteration or cancellation of such coverage prior to the effective date of such material

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alteration or cancellation.

## Sec. 6. - Work in PROW requiring an application; Authorizations; standards; fees.

A. Grandfathered Facilities: All existing Facilities in the PROW as of the date of adoption of this Ordinance shall be grandfathered and not subject to this Ordinance, until such time as an Authorization as required under this Ordinance is needed.

B. *Work requiring an application to the Town.* Persons and Users of the PROW shall make application to the Town Administrator for the following activities in the PROW, and obtain the necessary Authorizations and permits before initiating the work:

(1) The Construction of one (1) or more new poles or other structures, or the replacement of such.

(2) The Installation of Facilities for electrical, gas, video, internet, telephone, cable, hardline or wireless Telecommunications, television, or other information or data transfer service to customers within the Town.

(3) The Excavation or disturbance of the surface within the PROW, including but not limited to construction of new portions of the PROW;

(4) The cutting, moving, alteration or modification of any pipe, conduit, pole or other support structure, meter, hydrant, Telecommunications Facility, or other equipment or structure, or attachment to such structures or Facilities;

(5) The Modification of Facilities within the PROW, including but not limited to equipment enclosures associated with equipment on a utility pole or other support structure, and placing new Facilities or equipment on structures already located in the PROW; and

(6) The Installation or modification of Facilities used for the conveyance of utility or utility-like services, including but not limited to water, sewer, storm water, electricity, hardline or wireless Telecommunications irrespective of the medium or technology used that involves any safety, aesthetic or visual intrusion or impact issues;

C. *Authorizations - Franchises, Licenses, permits, construction drawings, and other approvals.* Depending upon the work involved, including but not limited to the degree or extent of the physical or visual impact involved, the Town Administrator may in its discretion require Authorizations, as well as one or more types of permits such as a building, electrical, excavation and street and/or curb cutting permit for the work described in §(B) of this Section, and may require submission of all information it deems relevant and necessary for the receipt of an Authorization(s). The Town Administrator shall determine, in its discretion, whether Authorization shall be required for work described in §(B) and for Users with Facilities in the PROW.

D. *Unlawful to do work without Authorizations; Emergency.* Except in the event of an emergency, it shall be unlawful to do work in the PROW or maintain Facilities in the PROW without the required Authorizations. In the event of an emergency, a person may do such work as is necessary to address, and if necessary and remedy the emergency situation, but only the emergency situation, and shall immediately notify the Town of such. Application shall immediately be made for necessary Authorizations from the Town, notwithstanding that due to the emergency nature of

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the work, work may have started or been completed, and all required fees shall be paid even if after the fact.

E. *Standards.* The Town Administrator shall develop standards and requirements for PROW Franchises, Licenses, permits, and other approvals, and may attach conditions to such documents. The Town Administrator may also develop specific standards and requirements for doing work in the PROW, even if a Franchise or License may not be required.

F. *List of contractors.* The Town Administrator may require that Applicants and persons who contract to have work performed in the PROW maintain an updated list of the contractors working on their projects, and acknowledge and assume responsibility for the actions of the contractors. All contractors working in the PROW must obtain a Business License from the Town.

G. *Fees; accounts.* The Town Administrator shall charge such fees as are authorized by the Town for applications for Authorizations, review of information and plans in the pursuit of an Authorization, inspections and reinspections, maintenance of Facilities in the PROW, verification of accuracy and correctness of information, oversight or administration of proposed ongoing or completed activities, and for any other work involved in the review of an application or request for Authorization. The Town Administrator may allow persons to establish and fund escrow accounts or other accounts with the Town to which fees may be charged and from which payment may be withdrawn, as long as the amount of any withdrawal is replaced within thirty (30) calendar days of the date of withdrawal.

H. *Reinspection fees.* The Town shall charge fees as are authorized by the Town for additional reviews and inspections required for work not completed to Town standards and/or work that damages existing infrastructure, as well as restoration of disturbed or damaged portions of the PROW.

I. *Civil penalties.* Any person who violates this Ordinance may be subject to all civil and equitable remedies as allowed by law. Notwithstanding the foregoing, the violation of a stop work order issued pursuant to this subsection shall constitute a misdemeanor and may be punishable as such. The Town shall charge civil penalties as are authorized by the Town for:

   (1) Violation of subsections (a) and/or (b).

   (2) Additional violations of subsection (a) and/or (b) by the same User within one-year of the first violation.

J. *Assessment of Civil Penalties.* Civil penalties authorized by this section may be assessed against the User on whose behalf work is being performed and against the contractor or subcontractor who is performing such work. Penalties not paid within 30 days of written demand will be assessed a late fee of one percent of the unpaid balance per month.

K. *Stop work order.* When there is a violation of this Ordinance the Town may issue a stop work order to any person or entity performing work in the PROW. A stop work order shall be in writing, state the date, the location, the work to be stopped and the reasons therefore, and state the conditions under which the work may be resumed.

L. *Barricading work:* All activity in a public PROW must be properly marked and barricaded and, if deemed necessary by the Town Administrator, by flashing amber lights so placed as to indicate from the roadway or pedestrian way in both directions the exact location and limits of said occupation or activity and at all times must be properly guarded. Permit holders are responsible for maintaining safe conditions in and around the area of occupation in a public PROW and in

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areas of related activity at all times during the activity or work. The permit holder shall comply with all applicable safety ordinances, rules, regulations, codes and policies at all times and under all circumstances.

## Sec. 7. - Restoration of surrounding areas.

A. *Obligation to restore disturbed areas.* A person or User that conducts excavation or other activities that disturb the PROW or Facilities within the PROW, shall restore the PROW to a condition equivalent to that prior to the disturbance. The restoration shall include, but is not limited to, installation of pavement, resurfacing nearby or adjacent areas, grading any disturbed unpaved surface areas, restoring below ground Facilities, planting and landscaping, replacing curb and curb ramps to applicable standards, and repairing improvements and Facilities. Restoration shall meet the standards set by the Town Administrator. Such restoration includes any work necessary to maintain the nature and character of the area that existed prior to the work.

B. *Temporary restoration.* Where permanent restoration is impractical because of weather or other circumstances, the Town Administrator may require temporary restoration to be followed by permanent restoration.

C. *Timetable for Restoration.* The Town Administrator shall determine the time period during which restoration must be accomplished on an individual case-by-case basis and such time period shall take into account the extent of the restoration work required, availability of needed materials and other limiting factors.

D. *Repair of inadequate restoration work.* The Town Administrator's inspection and/or approval of original restoration work does not waive the Town Administrator's or the Town's right to require additional restoration where and when warranted. Therefore, where restoration work proves to be inadequate over time, as determined in the Town Administrator's discretion, if the issue is not one of normal wear and tear or is not caused by a third party, but is truly due to the inadequacy of the restoration, the Town Administrator may require additional reasonable restoration. Such additional restoration may be required for a period of three years from the date of completion of the initial restoration work. The person responsible for the work necessitating the original restoration shall be responsible for the costs of the additional restoration and inspection.

E. *Reimbursement to Town of costs of restoration.* If a person responsible for damage to the PROW does not complete required restoration during the period required by the Town Administrator, the Town may complete the restoration. The costs for such shall be promptly reimbursed by the User or the person responsible for the original work that required restoration of the PROW.

## Sec. 8. - Requirements for location, construction relocation, modification, maintenance and removal of Facilities in the PROW.

Users that locate, relocate, modify, repair, maintain, or remove Facilities in the PROW shall comply with the following requirements.

A. *Locations.* The Town Administrator shall have the discretion to determine compliance with this Section and to approve, deny, alter and condition all proposed locations of Facilities in the PROW, and to determine whether placement, if allowed, shall be above ground or below ground, all as

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determined by the technical need of the Applicant for a specific location, or alternatively the technological impracticability of a given location.

B. *Maximum Permitted Height*: Absent a showing by clear and convincing technical or safety-related evidence of the need for a greater specific height for reasons of technical Necessity, technical impracticability or compliance with applicable safety codes, the maximum permitted height for new or replacement poles or other support structures in the PROW, including any increases in height of existing structures and poles, shall be forty feet (40') above pre-construction ground level. Forty feet is not as-of-right, but is the maximum permitted height, and shorter, minimally impactful and intrusive poles and support structures shall be preferred.

C. *Minimum Distance Between Poles or other support structures*: Absent a showing by clear and convincing technical evidence of the technical Need for a greater distance between poles or other support structures in the PROW or for safety-related reason, the minimum distance between poles or other support structures on the same side of a street as measured in any direction shall be one hundred feet (100'). This minimum distance shall not be applicable for poles or support structures that are used to support lines or cables crossing a street or other man-made or natural barrier.

D. *Least Visual Impact.* Any equipment attached to a utility pole or other support structure shall be of a size and be located and constructed so as to create the least visual impact on the immediate surrounding area reasonably possible, and the least physical intrusion and impact on the limited space in the PROW, including occupying both the least amount of vertical and horizontal space reasonably possible. Absent the demonstration by verifiable clear and convincing technical evidence of the inability to use smaller equipment, no equipment shall be allowed in the PROW to be attached to or associated with a utility pole or other support structure of a size large enough to require an Environmental Assessment Analysis and Report under federal or State law or rule.

(1) *Equipment Inside Pole*. Excluding electric utility lines and equipment, after the effective date of this Ordinance cables used to distribute wireline communications service(s) under Title II or Title IV of 47 U.S.C, shall be placed inside the pole or support structure, unless technologically impracticable, or unless doing so would prevent compliance with applicable safety codes or such equipment is able to be attached mid-span to the transmission cable.

(2) *Pole Replacement*. If placement inside a pole is physically or technologically impracticable, then, as determined most appropriate under the facts and circumstances by the Town Administrator, the pole shall i) be replaced in compliance with Section 12 of this Ordinance, or ii) if deemed appropriate under the facts and circumstances the equipment shall be stealthed or camouflaged to the reasonable satisfaction of the Town Administrator. If a pole is to be attached to, replacement of poles in compliance with Section 12 of this Ordinance shall be preferred to stealthing or camouflaging.

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(3) If new equipment to be attached to an existing pole necessitates increasing the height of the pole, the pole shall be replaced with an *approved* type of pole as set forth in Section 12 of this Ordinance.

(4) *Maximum Size of Pole-Mounted Equipment.* Excluding cable, the maximum size of any piece of hardline or wireless communications equipment attached to a pole or other support structure, such as but not limited to amplifiers and antennas or other transceivers, shall not exceed three (3) cubic feet in total volume and would fit within an imaginary enclosure or container three (3) cubic feet in volume.

(5) *New & Replacement Poles or Support Structures*: In addition to all other information required, an application for a new or replacement pole or support structure, must include detailed design characteristics, including overall dimensions, material composition, aesthetic appearance, a detailed site plan and a structural analysis with calculations which must be certified by a Professional Engineer licensed in the State and be able to be independently verified using the information submitted by the Applicant. Depending upon the situation and circumstances involved, to-scale photo simulations may be required showing the Facility as it will appear upon completion, showing the Facility from four (4) directions, each with ninety degrees (90°) azimuth separations.

(6) *Lateral Extensions*: No lateral equipment extensions parallel to the PROW from a pole or other support structure in the PROW, such as but not limited to equipment standoffs, shall exceed three (3) feet in length.

(7) *Riser Cable*: All exterior riser or other vertically run cable attached to the exterior of a pole or other support structure shall be protected with non-conductive, non-degradable material and shall be of a color that matches the color of the pole or other support structure as closely as is reasonably possible.

(8) *Ground-mounted Equipment and Equipment Enclosures*: Absent a showing by clear and convincing technical evidence of the technical Need or for safety reasons for a greater size, nothing larger in size than seventeen (17) cubic foot enclosure may be placed above-ground in the PROW.

(9) *Compliance with NESC and NEC*: All attachments to poles or other structures in the PROW, and all underground work and Facilities placed underground, shall at all times be in compliance with the edition of the National Electrical Safety Code (NESC), the National Electrical Code (NEC), the State Building Code and the Office of Safety Administration (OSHA) regulations in effect at the later of i) the time the Facility was constructed; ii) the time of the last modification of equipment on the pole or other support structure; or the edition in effect at the time of the current application.

(10) *Compliance with TIA-ANSI 222 re Stand-alone communications poles and structures*: All poles or support structures used only by providers of communications service(s) shall comply with the latest version of TIA-ANSI 222 at the time of construction, as well as at

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the time of any Modification. Verification of submitted evidence of compliance with the applicable version of TIA-ANSI 222 shall be a prerequisite for the issuance of a building permit.

E. *Underground locations for wire and fiber.* Wires, fiber, and conduits shall generally be located underground, except in areas zoned for above-ground Facilities. A User that wishes to place such Facilities above ground in an underground area shall demonstrate to the Town's satisfaction why above ground placement is a Necessity.

F. *Existing ducts.* If underground ducts or conduits are available and not technologically impracticable to use, underground wires shall be located in such ducts or conduits. Before installing new ducts or conduits, a User shall make all reasonable effort to procure the right to use existing ducts or conduits upon reasonable terms and charges negotiated by and agreed to by the parties.

G. *Documentation of sufficient space.* A User shall provide verifiable evidence to demonstrate to the Town Administrator's satisfaction that sufficient space exists in the PROW and on any pole for proposed new or modified Facilities to be placed without interfering with existing or future public projects, and that the placement of the pole, other structure and/or equipment will not unduly or unnecessarily disrupt the normal use of the PROW, negatively impact the permanent condition of the PROW or by itself negatively impact adjacent property values.

H. *Public noticing.* Depending upon the facts and circumstances involved, for projects involving the disruption of vehicular or pedestrian traffic in the PROW, breaking the integrity of the surface of pavement or sidewalk, or when involving a new structure(s) or the increase in height of an existing structure by more than ten percent (10%) of its existing height, the Town Administrator shall i) require the Applicant to post notice of the proposed work and its scope on the Town's website or post a reasonably sized notice no smaller than twenty-four inches (24") by eighteen inches (18") on or within three feet (3') of all utility poles along the impacted portion of the PROW or ii) distribute written notices to all individual properties for a distance of two-hundred feet (200') from the location of any such work in or adjacent to the area of PROW, for a minimum of one (1) calendar week prior to the start of the work proposed.

I. *Documentation to Town upon completion.* Upon completion of the authorized work, the person responsible for the work shall give the Town Administrator and the Town all reasonable information either requests regarding the work performed. Such information may include, but is not limited to as-built or other appropriate drawings and maps, in the form required by the Town Administrator.

J. *Maps and information on file with Users.* During the time a person or User has Facilities in the PROW, the User shall maintain up-to-date as-built maps showing both the general and specific placement of its Facilities in the PROW. A User shall also maintain information regarding the function and capacity of its Facilities and, upon request by the Town, furnish said maps and information to the Town Administrator within the time period specified, at no cost to the Town and in such form and detail as the Town requires.

K. *Underground location.* Users with underground Facilities shall maintain a membership in the State's underground locating system and respond to and locate underground Facilities and equipment as required by applicable State regulations and requirements.

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L. *Relocation of Facilities.* A User shall, at its own cost, relocate its Facilities within a reasonable time frame as determined by the Town Administrator, if the Town determines that the Facility(s):

(1) Interferes with a use of the PROW, or the provision of services to Town residents; or

(2) Interferes with the repair or maintenance of any Town-maintained utility; or

(3) Will impede the construction of a project funded in part with public funds, or a project to be dedicated to the public upon completion, or

(4) That the PROW can be better or more efficiently utilized by the relocation of the Facility(s).

M. *Maintenance of Facilities.* Users shall monitor, maintain, and repair their Facilities in the PROW to assure that they function in a safe manner and do not create a risk to persons or property. To allow adequate public notification, Users shall notify the Town Administrator at least forty-eight (48) hours in advance of maintenance and repair work that may disrupt or impede the use of the PROW or its use, including the nature and scope of the work and the estimated duration of the disruption or impedance.

N. *Removal of Facilities in the PROW.* Facilities placed in the PROW without Authorization and all required currently valid permits, and Facilities for which a License or Franchise has expired, shall be removed upon order of the Town. In addition, all abandoned Facilities, or Facilities that do not function as intended for ninety (90) consecutive calendar days, shall be removed by their owner. If Facilities that are required to be removed are not removed within fourteen (14) calendar days of notice by the Town, the Town may remove them or have them removed, with the cost of removal to be borne by the holder of the Authorization or owner of the Facility(s).

O. *Third party use.* Authorized and properly permitted Users shall allow other authorized Users of the PROW to utilize available space in or on the User's Facilities upon reasonable terms and charges or as otherwise proscribed by the State or federal government. For private investor-owned Facilities only, charges calculated in accordance with section 224 of the Communications Act of 1934, as amended, 47 USC 224 shall constitute reasonable charges for pole attachments.

P. *Certificate of Completion.* An Application for the Modification of a Facility, for attachments to a pole or other support structure, or to place a ground-mounted equipment enclosure(s), shall contain a copy of the COC issued for the last previous work at that location or on that Facility that required a final inspection and the issuance of a COC. Such an Application will not be deemed Complete without such previously issued COC.

Q. *Failure to apply for and be granted an Authorization and/or to obtain a Certificate of Completion.* Failure to apply for and be granted an Authorization and/or a COC, each as required under this Ordinance, shall result in the appropriate party being required, as appropriate, to i) apply for and be issued an Authorization and/or ii) obtain a COC prior to any further work being performed at the location or Facility.

R. *Rubber Stamping Prohibited.* As no two locations or Facilities are identical and many are not even substantially the same, it shall be impermissible for an Application for an Authorization issued under this ordinance to be Rubber Stamped by any Department of the Town, and each Facility and location, whether applied for individually, or as part of a consolidated application pursuant to subsection 9(i)(2) of this Ordinance, shall be individually reviewed and analyzed in a meaningful manner so as to identify any issues or matters of concern and for compliance with all applicable laws, rules, regulations, ordinances, codes and accepted practices.

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## Sec. 9. - Exemptions from requirements.

The Town Administrator or the Town may exempt the Town and its contractors and the Maryland Department of Transportation (MdDOT) from particular requirements in Sections 2 through 5 of this Ordinance when substantial compliance has been assured through the Town's contracting system or, in the case of MdDOT, where the need for state infrastructure on Town roads, or a joint undertaking by the Town and MdDOT, or the use of state controlled areas of the PROW makes the application of such requirements unreasonable.

## Sec. 10. - Franchises and Licenses.

A. *Users or Occupants in the PROW subject to a Franchise.* In order to use, place or maintain Facilities in the PROW, all persons that operate utilities, quasi-utilities, Telecommunications Facilities or provide services using the PROW that the Town may legally Franchise or License, shall apply for a Franchise or License from the Town. Services for which a Franchise or License shall be required include, but are not necessarily limited to telephone, Telecommunications irrespective of the medium or technology used, electrical power, water distribution, wastewater collection, sewage collection, gas distribution or transportation, trash and solid waste collection and/or disposal, off-street parking Facilities, and storm water management and drainage Facilities.

B. *Performance guarantee.* All new Users after the effective date of this Ordinance shall provide the Town with a performance bond or other performance guarantee satisfactory to the Town Administrator, the Town attorney and/or the Town Risk Manager.

C. All Users, Licensees and Franchisees shall obtain all required permits prior to performing work in the PROW.

D. *Franchises or Licenses.* After the effective date of this Ordinance, if allowed or required by Town or State law or regulation, a proposed new User applying after the effective date of this Ordinance shall apply for and be issued a Franchise or License, as appropriate, prior to the placement of any equipment or structure in the PROW. The Director of Public Works or the Director's designee, shall determine, in his/her discretion, the necessity of a Franchise or License and the type of Franchise or License, taking into consideration the length of time the Facilities will or are expected to be in the PROW, the potential impact on the PROW, and the Town's prior practice. Facilities for which a Franchise or License shall be required include monument signs, monument mailboxes, coaxial and fiber optic cable, non-Franchised Telecommunications equipment irrespective of the medium or technology used, irrigation systems, specialty street signs, canopies, specialty pavement structures, and other semi-permanent or permanent structures or features in the PROW.

   (1) *Monument signs and mailboxes.* A License shall be required for any monument sign or private mailbox.

   (2) *Telecommunications Facilities and service providers.* After the effective date of this Ordinance, new Telecommunications Users must obtain a PROW use and occupancy agreement, Franchise or License before constructing or adding equipment that is subject to the Telecommunications Act of 1996 (47 U.S.C. as amended), as well as providers of retail or wholesale Telecommunications services using third party-owned Facilities located in the PROW. The Town shall be responsible for granting a Franchise or License

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for Users proposing to construct and maintain Telecommunications Facilities within the PROW.

(3) *License or Franchise for other Facilities.* The Town Administrator may grant a License or Franchise to construct and maintain other Facilities not included in subsection (D)(1) and (2) of this subsection.

E. *Contents of Franchises and Licenses.* Licenses and Franchises shall, at a minimum, contain the following provisions:

(1) The identity and legal status of the User in the State;

(2) The name and contact information of the officer, agent, or employee of the User responsible for communications with the Town, which shall be updated as the information changes;

(3) A general description of existing and proposed Facilities and the specific locations and portions of the PROW to be utilized for such Facilities, with additional specifics as may be required by the Town Administrator;

(4) A description of the Facility(s) proposed to be located in the PROW, including manufacturer's cut sheets for any active electronic device(s) and a to-scale photo of the location prior to construction and a photo simulation of the location showing the Facility after construction from four (4) directions, each with ninety degrees (90°) azimuth separations;

5) A description of the services to be offered within the Town, if any, and identification on a street map of the Town of the specific parts of the Town or properties within the Town where such services will be available, which description and map shall be updated when the service area(s) change;

(6) A description of the services or Facilities to be offered to the Town itself, or to other public or governmental institutions within the Town, if any such services are to be offered;

(7) Acknowledgment that the License or Franchise does not limit the Town's police power and that the Town may enact additional Ordinances, standards, and requirements applicable to Users;

(8) Acknowledgment that the User may be required, at User's sole cost and expense, to obtain certain permits and approvals from the Town in addition to the License or Franchise;

(9) Acknowledgment that the User is responsible for all damage caused by its employees, agents and contractors;

(10) A commitment to pay for all damages that arise in connection with the User's acts or omissions in the PROW;

(11) A commitment to defend and indemnify the Town for all claims and liabilities that arise in connection with the User's acts or inappropriate or impermissible lack of action in the PROW;

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(12) A description, including the amount, of bonds or performance guarantees and insurance that are required;

(13) The proposed length of term of the Franchise or License;

(14) An acknowledgment that transfer or assignment of an Authorization, License, or Franchise requires approval of the Town, such approval not to be unreasonably withheld;

(15) The amount of compensation paid to the Town for the use of the PROW and a schedule of payment of such;

(16) The total fully-allocated capital cost of the project.

F. *Assignment.* Unless an Authorization, Franchise or License prohibits assignment to a different party, notice of the assignment shall be given to the Town Administrator not fewer than 30 days prior to the effective date of the assignment, with ownership and contact information updated to reflect the assignee's ownership and contact information.

G. *Information available to the Town.* All Users, Licensees and Franchisees shall provide the Town within ten (10) calendar days of a request i) all books, data, records, maps, plans, GIS data files, billings, payments, and submissions to the State relating to the User's Facilities and their function, location, income, history, maintenance, and repair, and ii) filings with the State Public Service Commission and the Federal Communications Commission. The documents shall be provided within a reasonable period of time after the filing date, such date not to exceed 30 days. The Town may examine all such information at no cost. If information is copied for the Town, the costs of copying, if any, shall be limited to the actual charges of a commercial copying Facility selected by the Town.

H. *Declaration of forfeiture.* The Town may declare the forfeiture of an Authorization, permit, License or Franchise, and all of the rights arising thereunder, in the event the holder continues not to comply with any material provision(s) of its Authorization, permit, License or Franchise, or is in substantial violation of this Ordinance or other standards adopted by the Town after due and proper notice and reasonable opportunity to cure or remedy. The Town shall give the holder at least thirty (30) calendar days' written notice of its intent to declare a forfeiture, which notice shall include a description of the non-compliant matter and the specific citation(s) at issue. The User shall then have thirty (30) days from receipt of the Town's notice to cure the non-compliance or to make verifiable substantial progress toward such cure, as determined in the reasonable discretion of the Town.

## Section 11. Applications for Support Structures/Poles, Equipment and Equipment Housings and Modifications of Facilities located in the PROW:

A. *Application Required*: An Application must be filed with the Town Administrator for any work other than normal maintenance on any pole or other support structure, including modification, change or replacement of equipment that would be different in size, weight or appearance than the existing equipment.

B. An Application to Modify or replace a Facility shall contain a copy of the last Certificate of Completion issued for that Facility.

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C. *False or Misleading Statements.* During the application process, or in an application, an Applicant may not make statement(s) verbally or in writing that is intended to be relied upon by the Town and is fraudulent, misleading or that causes or are intended to cause a reasonable probability of confusion or misunderstanding as to the legal rights, obligations, or options of the Town, nor fail to inform the Town of a relevant fact material to the application that is known or should be known by the Applicant, the omission of which is deceptive or misleading .

D. *Urgency*. An Applicant shall not misrepresent the urgency of the work represented in an Application, including any asserted deadline by which action by the Town on the Application is needed.

E. *Processing Urgent Requests*. The Town shall attempt to process urgent requests sooner than the required maximum time allowed by State or federal law. Notwithstanding the preceding, due to the effects of having to re-allocate human resources to accommodate such urgent requests, an Applicant shall not misrepresent the urgency of the situation to have a Facility(s) permitted or authorized. It shall be a condition of all Authorizations for an application requesting urgent treatment that the work shall be completed within ninety (90) calendar days of the issuance of the Authorization or pay a penalty of $100 per day per Facility until the final inspection is requested, except for force majeure situations and situations not reasonably within the control of the Applicant.

F. *Warehousing of Authorizations and permit(s) not allowed*. Warehousing of an Authorization shall never be permitted. To prevent Warehousing of Authorizations and/or permit(s) for new structures in the severely limited and scarce space of the PROW and on existing poles, thereby preventing another person or entity from using a given location(s) and space because the proposed structure at the location was not built expeditiously, an application shall contain a proposed date for the completion of the construction or Modification of any structure, including the placement of equipment attached to or associated with the structure. The completion date shall not be more than one-hundred-eighty (180) days after the issuance of a building permit to occupy a given location and space.

G. *Site Visit*: Prior to the submittal of an application and following payment of any required fee(s) or anticipatory deposits , a site visit to each Facility proposed to be Modified or to the proposed location of a new Facility, shall be conducted to determine i) the physical condition of the Facility or proposed location; and ii) to identify issues of concern, non-compliance with applicable laws, rules and regulations, including but not limited to any safety-related issues or concerns and other matters contained in this Ordinance.

H. *Number of Facilities Applied for by a given person or entity*: Due to limited staff resources, to prevent forced de facto pro-forma or rubber-stamping approval of an application without meaningful review for compliance with applicable federal, State and local law and regulations, and to prevent inadvertent non-compliance by the Town with any federal or state-imposed time requirements for reviewing an application, no person or entity may make application for more than ten (10) Facilities or locations under this Ordinance within any thirty (30) consecutive calendar day period.

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I. Facilitating Applications and Mitigating Applicant Costs:

(1) To facilitate the preparation and submittal of an application in compliance with this Ordinance, and thereby expedite the review and permitting of an application, a pre-application meeting shall be held, the Town's costs for such being paid for by the Applicant prior to the meeting.

(2) To facilitate the application process and to mitigate application-related costs for Applicants, depending upon the scope of the proposed work and its impact both visual and physical as determined by the Town Administrator, applications not involving new support structures may be submitted in groups of up to three (3) Facilities in a single consolidated application and be subject to only one (1) application fee. Notwithstanding this, no Application for a new or replacement pole or other support structure shall contain more than a single location or Facility.

J. *No Unidentified Facilities*: No Authorization shall be granted for new support structures, new equipment or a new Facility that is not expressly and individually identified at the time the application is filed, including the specific location and design characteristics of each Facility.

K. *No Taxpayer Subsidization*: Historic, current and anticipated Subscriber rates for services provided using the PROW are assumed to reflect permitting costs, unless verifiable clear and convincing evidence to the contrary is provided. Therefore, Town funds shall not directly or indirectly be used subsidize an Applicant's reasonable application-related review and permitting costs.

L. *Application Fee*: To prevent taxpayer subsidization of application-related costs, an Application Fee shall be required of all Applications involving i) a new or replacement pole(s) or support structure(s); or ii) any modification of a Facility; or iii) any change of existing equipment attached to an existing pole(s) or support structure(s) that is visually discernable, changes the appearance of the Facility, changes the structural loading on the pole or support structure, or involves verification of compliance with an aspect of the National Electrical Safety Code (NESC), the National Electrical Code (NEC) or TIA ANSI 222 not previously applicable to that Facility. The amount of the appropriate Application Fee shall be as set forth in the Town's Schedule of Fees.

M. *Payment for Legal and/or Expert Assistance*: To prevent taxpayer subsidization of application-related costs as required by this Ordinance and determined to be appropriate and necessary by the Town Administrator, Applicants may be required to place on deposit with the Town an amount estimated to be sufficient to pay for reasonable legal and/or other expert assistance costs of the Town attributable to the Application. The minimum amount(s) required shall be as set forth in the Town's Schedule of Fees.

N. *Deposit Required Prior to Work on Application*. An Applicant must deposit the estimated cost of the Town's legal or other expert assistance with the Town prior to any work being done related to an application or an anticipated or intended application. Notwithstanding the preceding,

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inquiries totaling up to one (1) hour of time may be made prior to the required deposit being in place at no cost to the Applicant.

O. *Return of Unexpended Amount of Deposit.* Any unexpended amount submitted in compliance with the preceding §(M) of this Section remaining after the issuance of a Certificate of Completion shall be promptly returned to the Applicant upon written request.

P. *Street opening, street cutting, curb and sidewalk cutting Fee*: Any person or entity proposing to cut or break the integrity of the surface of a paved street, sidewalk, pedestrian or bicycle way, or who proposes to cut any curb shall.

1) pay to the Town a fee(s) as set forth in the Town's schedule of fees prior to the issuance of any permit(s); and

2) obtain a permit for the proposed type of work.

## Section 12. New and Replacement Poles within Rights-of-Ways – Required Design Characteristics.

A. New and replacement installations of a given type shall be consistent throughout the Town limits, and any extraterritorial jurisdiction (ETJ) where this ordinance is of effect;

B. All new or replacement poles shall be of non-wooden, non-conductive and non-corrodible materials;

C. Antennas attached to new poles or structures in the PROW shall be of a type that disguises the fact that they are antennas, unless for reasons proven by verifiable clear and convincing evidence that to do so is technologically impracticable, in which case a Best-Case type of camouflaging shall be used;

D. Where not technologically or Commercially Impracticable, equipment attached to poles in the PROW shall utilize a "concealed" design, including all cabling and any antennas being placed inside the pole or support structure;

E. So as to avoid an Applicant having to bear the cost of doing an Environmental Assessment and report as otherwise required by FCC Rule 14-153, any ground-mounted equipment enclosures shall be i) no larger than is technologically Necessary, but in no case larger than seventeen (17) cubic feet in volume for all users of the equipment shelter cumulatively; ii) of a color determined by the Town Administrator to be harmonious with the particular area; iii) located as near the pole as applicable safety codes allow; and iv) screened with evergreen shrubbery of sufficient size to hide the equipment shelter and, v) if the PROW is landscaped with decorative vegetation, of the same species, color, size and shape as is used to landscape the PROW in the neighborhood of the pole or enclosure;

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F. Pole-mounted cabinets shall be as small as possible, but no larger than is technologically Necessary and reasonably possible, and shall be shielded from view in both directions parallel to the PROW by decorative, non-commercial banners or under a pole-mounted shroud;

G. Unless proven to be physically unfeasible or Commercially Impracticable by verifiable clear and convincing evidence, any person proposing a new attachment to an existing wooden primary electrical distribution pole, wooden secondary electrical distribution pole or wooden streetlight in the PROW shall, instead, replace the existing pole with a pole as described in this subsection;

H. All new poles shall meet or exceed current NESC standards and wind and ice loading requirements of the latest version of ANSI 222 Version G;

I. Any new poles installed shall be "green", not made of wood, and not leach any volatile organic compounds or toxic materials into the ground; and

J. To avoid unsightly rust and corrosion, any new pole installed shall not be made of metal, concrete or cement.

## Section 13. Mailbox Obstructions

The Town shall not be responsible for the repair or replacement of any mailbox placed within any PROW. However, to alleviate the possibility of damage due to snow removal and vehicular traffic, the following guidelines shall be complied with:

A. Mailboxes shall be erected so that the front of a curbside box is set back at least 12 inches from the face of the concrete curb and the structure supporting the box must not encroach on this setback distance.

B. The bottom of a mailbox must be between 42 inches and 48 inches above the finished road surface.

C. Mailboxes and the standards or posts upon which they are erected must be designed and installed to withstand the impact of snow hurled from a passing snowplow.

D. Mailboxes shall not overhang a public sidewalk or pedestrian way.

## Section 14. Relief

A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Ordinance shall address and identify such at the Pre-Application meeting and the relief or exemption shall be contained in the submitted Application. Requested relief may be temporary or permanent, partial or complete in nature.

B. The burden of justifying the Need or appropriateness of the requested relief, waiver or exemption shall be solely on the Applicant.

C. The Applicant shall bear all costs of the Town in considering the request for the relief, waiver or exemption.

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D. Relief, waiver or exemption shall be based on the Applicant's demonstrated Need or appropriateness as evidenced by verifiable clear and convincing evidence satisfactory to the Town Administrator that, if granted, the relief, waiver or exemption will have no significant negative effect on the health, safety or welfare of the Town, its residents and other Users of the PROW, the Town Administrator must find the following:

(1) The proposed special use conforms to the character of the neighborhood, considering the location, type and height of existing buildings or structures and the type and extent of vegetation on the site.

(2) The proposed use will not cause undue traffic congestion or create a traffic, pedestrian or bicycle hazard.

(3) Adequate utilities are available.

(4) The proposed use shall not be noxious or offensive by reason of vibration, noise, odor, dust, smoke or gas.

(5) The proposed Facility and use shall not impede the orderly development and improvement of surrounding property for uses permitted within the applicable zoning district.

(6) The new structure or modification will not reasonably be expected to substantially diminish the value of adjoining or abutting property.

(7) The proposed use is consistent with the officially adopted plans and policies of the Town.

## Section 15. Termination

In addition to all other rights and powers reserved by the Town, the Town reserves the right to terminate a permit and all rights and privileges of a permit holder for any of the following reasons:

A. A permit holder fails or refuses, after 30 days' prior written notice, to comply with any of the material provisions of the permit or this Ordinance.

B. A permit holder becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt.

C. All or part of a permit holder's facilities are sold under an instrument to secure a debt and are not redeemed by the permit holder within 90 days from such sale.

D. A permit holder attempts to or does practice any fraud or deceit in its conduct or relations with the Town under the permit.

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E. The Town condemns all of the property of a permit holder within the Town by the lawful exercise of eminent domain.

F. The permit holder abandons its facilities and does not use them for the intended purpose for which Authorization was granted for ninety (90) consecutive calendar days.

## Section 16. Severability

A. If any word, phrase, sentence, part, section, subsection, or other portion of this Ordinance, or any application thereof to any person or circumstance, is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

B. If any word, phrase, sentence, part, section, subsection, or other portion of any Franchise or License issued pursuant to this Ordinance, or any application thereof to any person or circumstance, is declared void, unconstitutional or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of the Franchise or License, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect.

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