

LOCAL LAW NO. ____ OF 2019

**TOWN BOARD
TOWN OF NEW CASTLE
PROPOSED LOCAL LAW AMENDING
CHAPTER 60 OF THE CODE OF THE TOWN OF NEW CASTLE
SECTION 210, "TERMS DEFINED," SECTION 410, "DISTRICT REGULATIONS,"
AND SECTION 430 "PERMITTED SPECIAL USES"**

A LOCAL LAW to amend Chapter 60, Section 210, Chapter 60, Section 410 and Chapter 60, Section 430 concerning Wireless Telecommunications Facilities.

BE IT ENACTED by the Town Board of the Town of New Castle as follows:

Section 1. The following definitions in Chapter 60, Article II, Section 210 of the Code of the Town of New Castle entitled "Definitions" are hereby amended or added to the Town Code as follows:

ACCESSORY OR ANTENNA EQUIPMENT

Any equipment serving or being used in conjunction with wireless telecommunications facilities and located on the same property or lot as the wireless telecommunications facilities, including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, buildings and similar structures, and, when collocated on a structure, which is mounted or installed at the same time as an antenna.

ANTENNA

An apparatus designed for the purpose of emitting radio frequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service (whether on its own or with other types of services). For purposes of this definition, the term "antenna" does not include an unintentional radiator, mobile station, or device authorized under Part 15 of Title 47 of the United States Code.

BASE STATION

A structure or equipment at a fixed location that enables Commission-licensed or -authorized wireless communications between user equipment and a communications network.

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

COLLOCATION

~~The installation of two or more wireless telecommunications services antennas and related appurtenances on the same monopole or tower. For purposes of this chapter, the installation of two or more structurally mounted wireless telecommunications services antennas on the same building or structure other than a monopole or tower, or the installation of two or more wireless telecommunications services facilities in different locations on the same site, shall not be considered collocation.~~

Consistent with the Nationwide Programmatic Agreement (NPA) for the collocation of wireless antennas:

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

DISTRIBUTED ANTENNA SYSTEM (DAS)

A network of spatially separated antenna sites connected to a common source that provides wireless communications services within a geographic area or structure.

~~FREESTANDING WIRELESS TELECOMMUNICATION SERVICES FACILITY~~

~~A monopole or tower.~~

MICROCELL FACILITY

Microcells are low-powered wireless base stations that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and

metropolitan outdoor spaces. A microcell facility meets both the following qualifications: each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and all other wireless equipment associated with the facility is cumulatively no more than 17 cubic feet in volume.

MODIFICATION OF WIRELESS TELECOMMUNICATIONS FACILITY

The improvement, upgrade or expansion of existing wireless communications facilities, or the improvement, upgrade or expansion of the wireless communications facilities located within an existing equipment compound if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless communications facilities.

MONOPOLE

~~A freestanding pole having a single point of location on the ground comprising a part of a wireless telecommunication services facility. For purposes of this chapter, the term "monopole" shall include, in addition to the pole, all other components of the wireless telecommunication services facility, but shall not include a tower or any other type of freestanding structure.~~

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

NON-SMALL CELL WIRELESS FACILITY

Any wireless telecommunications facility that is not a small wireless facility.

REPLACEMENT OF WIRELESS TELECOMMUNICATIONS FACILITY

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

SMALL WIRELESS FACILITY

A wireless telecommunications facility, including, but not limited to, DAS and microcells, that meets each of the following conditions:

- (1) The structure on which antenna facilities are mounted:
 - (a) Is 50 feet or less in height; or
 - (b) Is no more than 10% taller than other adjacent structures; or
 - (c) Is not extended to a height of more than 10% above its preexisting height as a

result of the collocation of new antenna facilities; and

- (2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and
- (3) All antenna equipment associated with the facility (excluding antennas and backup power and related backup power equipment) is cumulatively no more than 28 cubic feet in volume; and
- (4) The facility does not require antenna structure registration under Part 17;
- (5) The facility is not located on tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facility does not result in human exposure to radio-frequency radiation in excess of the applicable safety standards specified in Rule 1.1307(b).

STEALTH TECHNOLOGY

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

STRUCTURALLY MOUNTED

The attachment of antennas to an existing building or structure other than a monopole or tower having a location on the ground and comprising a part of a wireless telecommunications services facility. For purposes of this chapter, the term "structurally mounted" shall include, in addition to the antennas, all other components of the wireless telecommunications services facility.

STRUCTURALLY MOUNTED WIRELESS TELECOMMUNICATION SERVICES FACILITY (MAJOR)

Any structurally mounted wireless telecommunication services facility that is not a minor structurally mounted wireless telecommunication services facility as defined in this chapter.

STRUCTURALLY MOUNTED WIRELESS TELECOMMUNICATION SERVICES FACILITY (MINOR)

A wireless telecommunication services facility located within a public street or utility right-of-way in which one or more antennas are structurally mounted to an existing utility pole, roadway sign, bridge or other similar type of structure, not exceeding the height of such structure by more than three feet, together with associated equipment to be located on the ground.

SUBSTANTIAL CHANGE

A modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

- (1) The mounting of a proposed antenna on existing towers that would increase the original height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10% or more than 10 feet, whichever is greater.
- (2) The mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter.
- (3) The mounting of the proposed antenna would involve adding an appurtenance to the body of an existing wireless telecommunications support structure that would protrude from the edge of the original support structure more than 20 feet, or more than the original width of the support structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet, except that the mounting of the proposed antenna may exceed the size limits herein if necessary to shelter the antenna from inclement weather or to connect the antenna to the support structure via cable.
- (4) The mounting of the proposed antenna would involve excavation outside the current existing structure site, defined as the current boundaries of the leased or owned property surrounding the existing structure and any access or utility easements currently related to the site.
- (5) The modification defeats concealment and/or stealth elements of the support structure.
- (6) The modification does not comply with prior conditions of the approval for the existing structure and/or site; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above.

TRANSMISSION EQUIPMENT

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

UTILITY POLE

A pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function, regardless of ownership, including Town-owned poles or poles owned by other utility companies. Any utility pole in excess of 50 feet shall be deemed a tower.

WIRELESS TELECOMMUNICATIONS FACILITY

~~Any equipment used in connection with the commercial operation of wireless telecommunications services, as defined herein, and as the term "personal wireless service, facility" is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(e)(7)(C), or as hereafter amended, to transmit and/or receive frequencies, including but not limited to antennas, monopoles, towers and related appurtenances.~~

A structure, facility or location designed or intended to be used as, or used to support, antennas, along with any antennas located on such structure and any accessory equipment. It includes, without limit, freestanding towers, guyed towers, monopoles, DAS, microcell or small wireless facilities on utility poles in the public right-of-way or property of the Town or within the Town and similar structures that employ stealth technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It includes any structure, antennas and accessory equipment intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave telecommunications or other cellular communications technologies, but excluding those used exclusively for the Town's fire, police and other dispatch telecommunications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

WIRELESS TELECOMMUNICATIONS PROVIDER

A wireless telecommunications infrastructure provider or a wireless telecommunications services provider.

Section 2. Chapter 60, Article IV, Section 410, Subsection O of the Code of the Town of New Castle entitled “Small Wireless Facilities” is hereby added as follows:

§ 60-410 District regulations.

...

O. Small Wireless Facilities

- (1) Purpose. The purpose of this subsection is to establish uniform polies and procedures for the deployment and installation of small wireless facilities in the Town of New Castle. While the Town recognizes the importance of wireless telecommunications facilities in providing high-quality communications services to its residents and businesses, the Town also recognizes that it has an obligation to protect public safety and to minimize adverse effects of such facilities.
- (2) Notwithstanding anything to the contrary in this section, any application for a wireless telecommunications facility that does not substantially change the dimensions of a wireless telecommunications facility shall not require a small wireless facility permit. In the event that a modification to, or replacement of, an existing wireless telecommunications facility does not substantially change such existing wireless telecommunications facility, all that shall be required is a building permit from the Town Building Inspector.
- (3) Small wireless facility permit required.
 - (a) All small wireless facilities shall require a small wireless facility permit to be issued by the Planning Board.
 - (b) All applications for small wireless facilities permits shall comply with the applicable provisions of this subsection. However, notwithstanding anything to the contrary, where appropriate, the Planning Board shall have the authority to waive any requirements set forth in this subsection relating to an application for, or approval of, a small wireless facility permit.
 - (c) Unless otherwise set forth in this chapter, a DAS facility, microcell facility or other type of wireless telecommunications facility not meeting the requirements set forth for small wireless facilities shall require a special use permit from the Planning Board pursuant to §60-430O(14).
- (4) Application for small wireless facilities.
 - (a) Upon receipt of an application for a small wireless facility, the Planning Board shall review said application and plans in accordance with the standards and requirements set forth in this subsection.
 - (b) An application for approval of a small wireless facility shall be submitted on the

pertinent forms provided for that purpose by the Town and shall be jointly filed by the operator of the small wireless telecommunications services facility and the owner of the property on which such facility is proposed to be located. The application and documents accompanying the application shall also be submitted in an electronic file format.

- (c) The Planning Board may attach such conditions and safeguards to any small wireless facilities permit and site development plan as are, in its opinion necessary to ensure initial and continued conformance to all applicable standards and requirements.
- (d) Granting a small wireless facilities permit shall not waive the requirement for final site plan approval, including fees, in accordance with § 60-440.
- (e) The applicant shall submit a site plan describing any new proposed structure and antenna and all related fixtures, accessory equipment, appurtenances and apparatus, including, but not limited to height above preexisting grade, materials, color and lighting.
- (f) An application for a small wireless facilities permit shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- (g) The applicant must provide documentation to verify it has a legal interest in the site, if not within the public right-of-way. Said documentation may be in the form of a deed, contract for sale or lease for the property, depending on whether the applicant is the property owner, contract vendee or lessee.
- (h) If proposing a new structure for the purpose of supporting a small wireless facility, the application shall be accompanied by a map which shows the applicant's existing and proposed area of coverage. Such map shall locate all existing wireless telecommunications facility sites, including small wireless facilities and non-small cell wireless facilities, within 1/2 mile of the proposed small wireless facility.
- (i) In addition to the small wireless facility permit application requirements set forth herein, all applications for the construction or installation of a new small wireless facility or modification of an existing small wireless facility shall contain the following information:

[1] A descriptive statement of the objective(s) for the new facility or

modification, including and expanding on a need such as coverage and/or capacity requirements, densifying a wireless network, introducing new services or improving service capabilities;

- [2] The postal address and Tax Map parcel number of the property;
- [3] The location, size, and height of all existing and proposed structures on the property which is the subject of the application;
- [4] Documentation justifying the total height of any proposed antenna and structure and the basis therefor;
- [5] The applicant's name, address, telephone number and email address;
- [6] The name, address, phone number and email of the property owner;
- [7] The names, addresses, telephone numbers, and email addresses of all consultants, if any acting on behalf of the applicant with respect to the filing of the application;
- [8] The size of the property, stated both in square feet and lot line dimensions, and a survey prepared by a licensed professional surveyor showing the location of all lot lines, if the proposed small wireless facility is located outside the public right-of-way;
- [9] The location of the nearest residential structure;
- [10] The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed small wireless facility is located outside the public right-of-way.
- [11] The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
- [12] Identify and disclose the number and locations of any small wireless facility that the applicant has installed in the Town, or locations the applicant has considered in the past year for small wireless facilities located in the Town and those sites submitted or anticipated to be submitted within a one-year period;
- [13] A description of the anticipated maintenance needs, including frequency of service, personnel needs and equipment needs, and the potential traffic safety and noise impact of such maintenance;
- [14] A copy of the FCC license applicable for the intended use of the small wireless facility; and

- [15] Information relating to the expected useful life of the proposed small wireless facility.
- (j) The applicant shall furnish written certification that the small wireless facility and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the wireless facility is subsequently approved and constructed, as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished to the Town prior to issuance of any certificate of occupancy.
 - (k) All proposed small wireless facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, will employ stealth technologies as directed by the Planning Board, where appropriate, and will thereby have the least-adverse visual effect on the environment, the character of the community, surrounding properties and on the residences in the area of the wireless telecommunications facility.
- (5) Small Wireless Facility Fees.
- (a) Application fee. At the time an applicant submits an application for a small wireless facility, such applicant shall pay a nonrefundable application fee in an amount as determined by the Town Board and set forth in the Town Fee Schedule, in addition to any other fees required by law.
 - (b) Reimbursement for use of the public right-of-way. In addition to permit application fees, every small wireless facility located in the public right-of-way is subject to the Town's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way shall be set forth in the Town Fee Schedule.
- (6) Escrow review costs. In accordance with §60-560.B, and to the extent permissible under federal law, for small wireless facility applications, the applicant shall be required to provide funds to an escrow account held by the Town to allow the Planning Board to retain such technical experts and other consultants as may be necessary to review the proposal, including, but not limited to, the review of financial and technical aspects of the proposal and of the financial, legal and technical practicability of alternatives which may be available to the applicant.
- (7) Approval procedures.
- (a) For small wireless facility applications, the Planning Board may, at its discretion require a public hearing.
 - (b) All decisions of the Planning Board involving applications for a small wireless

facility permit shall be in writing and supported by substantial evidence contained in a written record.

- (c) No application shall be accepted and no permit shall be issued for a small wireless facility on a property where the Building Inspector has found, or there exists a violation of the Town Code and where such violation has not been corrected.
- (d) Time frames for approval.
 - [1] Within 60 calendar days of receipt of a complete application for the collocation of a small wireless facility on a preexisting utility pole, monopole or other existing support structure, the Planning Board shall make a final decision on whether to approve the application and shall notify the application in writing of such decision.
 - [2] Within 90 calendar days of receipt of a complete application for a small wireless facility on a new utility pole, monopole or other new support structure, the Planning Board shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.
 - [3] Within 10 calendar days of receipt of an incomplete application for a small wireless facility, the Town shall notify the applicant in writing of any supplemental information required to complete the application. Upon receipt of an applicant's supplemental information in response to the initial notification of incompleteness by the Town, the applicable shot clock will reset to zero, and the Town shall have the full 60 calendar days or 90 calendar days permitted by law to act on the completed application.
 - [4] For any subsequent determinations of incompleteness beyond the initial, the Town shall notify the applicant of any required supplemental information within 10 days of receipt of the supplemental submission, and such notice shall toll the applicable shot clock until the applicant submits the required supplemental information.
- (8) Location and access.
 - (a) Subject to the Planning Board's review and evaluation of technological, structural, safety and financial considerations associated with alternative locations for the siting of small wireless facilities, the locational priorities set forth below are consistent with the Town's obligation to create the least amount of adverse aesthetic impacts.
 - (b) Applicants shall locate, site and erect small wireless facilities in accordance

with the following priorities, [1][a] being the highest priority and [3][e] being the lowest priority.

[1] Industrial Districts.

- [a] Collocation on any Town-owned or federal, state or local government owned existing utility pole, monopole or other support structure;
- [b] Collocation on a privately owned existing utility pole, monopole or other support structure;
- [c] Location on Town-owned property, where there is no existing utility pole, monopole or other support structure;
- [d] Location on lands owned or controlled by other governmental corporations within the Town; where there is no existing utility pole, monopole or other support structure;
- [e] Location on privately owned lands, where there is no existing utility pole, monopole or other support structure.

[2] Business Districts.

- [a] Collocation on any Town-owned or federal, state or local government owned existing utility pole, monopole or other support structure;
- [b] Collocation on a privately owned existing utility pole, monopole or other support structure;
- [c] Location on Town-owned property, where there is no existing utility pole, monopole or other support structure;
- [d] Location on lands owned or controlled by other governmental corporations within the Town, where there is no existing utility pole, monopole or other support structure;
- [e] Location on privately owned lands, where there is no existing utility pole, monopole or other support structure.

[3] Residence Districts

- [a] Collocation on any Town-owned or federal, state or local government owned existing utility pole, monopole or other support structure;
- [b] Collocation on a privately owned existing utility pole,

- monopole or other support structure;
- [c] Location on Town-owned property, where there is no existing utility pole, monopole or other support structure;
 - [d] Location on lands owned or controlled by other governmental corporations within the Town; where there is no existing utility pole, monopole or other support structure;
 - [e] Location on privately owned lands, where there is no existing utility pole, monopole or other support structure.
- (c) No small wireless facilities shall be permitted on any designated historic property or historic district, unless the applicant demonstrates to the Planning Board's satisfaction that the selected site is necessary to provide adequate service and no feasible alternative site exists.
 - (d) If the proposed site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exemption must satisfactorily demonstrate the reason or reasons why a small wireless permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.
 - (e) An applicant may not bypass a site of higher priority by stating the site presented is the only site leased or selected.
 - (f) An application shall address collocation as an option and, if such option is not proposed, the applicant must explain why collocation is commercially or otherwise impracticable.
 - (g) Notwithstanding the above, the Planning Board may approve any site located within the Town, provided that the Planning Board finds that the proposed site meets the requirements set forth in this subsection, is in the best interest of the safety, public welfare, character and environment of the town and will not have a deleterious effect on the nature and character of the community and surrounding properties.
- (9) General and specific requirements for small wireless facilities.
- (a) All small wireless facilities shall be designed, constructed, operated, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code.
 - (b) All small wireless facilities shall at all times be kept and maintained in good

- condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Town.
- (c) Small wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
 - (d) A small wireless facility shall not, by itself or in conjunction with other wireless telecommunications facilities, generate radio frequency emissions in excess of the standards and regulations of the FCC. When a small wireless facility is complete, as-built readings shall be taken and submitted to the Town.
 - (e) The Town reserves the right to inspect any small wireless facility to ensure compliance with the provisions of this subsection and any other provisions found within the Federal Communications Commission regulations, the Town Code, State and Federal Law. The Town and/or its agents shall have the authority to enter the property upon which a small wireless facility is located at any time, upon reasonable notice to the operator and property owner, to ensure such compliance.
 - (f) All antennas and other supporting structures shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with.
- (10) Setback. All wireless telecommunications support structures for small wireless facilities located outside the public right-of-way shall be set back from the property line of the lot on which they are located a distance equal to not less than the total height of the facility, including the support structure, measured from the highest point of such support structure to the finished grade elevation of the ground on which it is situated, plus 10% of such total height. The Planning Board may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, other forms of screening and/or structural characteristic of the proposed support structure. However, in no case shall the Planning board reduce the setback required to less than the applicable setback requirements for principal structures in the district which the property is located.
- (11) Height. Small wireless facilities shall be no higher than the minimum height necessary. The proposed height, which may be in excess of the maximum height permitted for other structures in the applicable zoning district, shall address any additional height necessary to accommodate collocation by additional antenna arrays, but under no circumstances is the height to be in excess of what is permitted for small wireless facilities.
- (12) Visual Mitigation.

- (a) All small wireless facilities shall be sited so as to have the least-adverse visual effect on the environment and its character, on existing vegetation and on the residents in the area of the wireless telecommunications facilities sites. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under federal, state and local laws, statutes, codes, rules or regulations.
 - (b) Both the small wireless facility and any and all accessory equipment shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings.
 - (c) Small wireless facilities shall not be artificially lighted or marked, except as required by law.
 - (d) Electrical and land-based telephone lines extended to serve the wireless telecommunications services facility sites shall be installed underground.
 - (e) Stealth technologies shall be required to be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.
 - (f) Landscaping shall be provided, if appropriate.
 - (g) Small wireless facilities and any accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists.
- (13) Regulations applicable to small wireless facility permits in the public right-of-way. In addition to the applicable small wireless facility permit requirements set forth in this subsection, all small wireless facilities located in the public right-of-way shall be required to comply with the following regulations:
- (a) In no case shall ground-mounted accessory equipment, walls, or landscaping be located within 18 inches of the face of the curb, or within an easement extending onto a privately-owned lot.
 - (b) To the extent feasible, accessory equipment shall be placed underground. Ground-mounted accessory equipment that cannot be placed underground shall be screened from surrounding views, the fullest extent possible through the use of landscaping or other decorative features to the satisfaction of the Town. Ground-mounted accessory equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted accessory equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology to the satisfaction of the Town.

- (c) Any graffiti on any small wireless facility support structure or any accessory equipment shall be removed within 30 days upon notification by the Town, at the sole expense of the owner.
 - (d) Accessory equipment attached to a small wireless facility support structure shall have such vertical clearance as the Planning Board may determine is reasonable.
- (14) Annual NIER certification. The holder of any small wireless facilities permit shall, annually certify to the Planning Board, or its authorized designee, that NIER levels at the site where a small wireless facility is located are within the threshold levels adopted by the FCC. In addition, the Town, at its own cost and expense shall be permitted to conduct its own certification test of the NIER levels at the site where any small wireless facility is located, upon notice to the wireless telecommunications provider.
- (15) Proof of insurance. The applicant and the owner of the property where the small wireless facility is to be located, if different, shall provide the Planning Board with proof of insurance in a sufficient dollar amount in the reasonable, judgment of the Planning Board to cover potential personal and property damage associated with construction and operation of such facility.
- (16) Revocation of small wireless facilities permit.
- (a) If any small wireless facilities are constructed, repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this subsection or of the small wireless facility permit conditions and requirements, or it is determined conclusively that the applicant made materially false or misleading statements during the application process, then the Planning Board or the Building Inspector, or their designee, shall notify the holder of the small wireless facilities permit in writing of such violation. Such notice shall specify the nature of the violation or noncompliance, and the violations must be corrected within seven days of the date of the postmark of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other provision of this subsection, if the violation or noncompliance causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Planning Board or Building Inspector may, at their sole discretion, order the violation remedied within 24 hours.
 - (b) If the small wireless facilities are not brought into compliance with the provisions of this subsection, or of the permit, or substantial steps are not taken in order to bring the affected small wireless facilities into compliance, then the Planning Board or the Building Inspector may revoke such small wireless facility permit and require removal of such small wireless facility.

(17) Removal

- (a) Under the following circumstances, the Town may determine that the safety, public welfare, character and environment of the Town warrant and require the removal of small wireless facilities, under the following circumstances:
- [1] The small wireless facility has been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case repair or removal shall commence within 90 days;
 - [2] A permitted small wireless facility falls into such a state of disrepair that it creates a safety hazard;
 - [3] The small wireless facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required small wireless facilities permit, or any other necessary authorization; or
 - [4] Any small wireless facility is determined to be in violation pursuant to § 60-410.M(11) above and fails to cure such violation within the time set forth in that section.
- (b) If the Planning Board makes a determination pursuant to § 60-410.M(12)(a), then it shall notify the holder of the small facilities permit and the owner of the property in writing that said small wireless facilities are to be removed.
- (c) The holder of the small wireless facilities permit or the owner of the property shall be required to dismantle and remove such small wireless facilities, and all accessory equipment and associated structures, from the site and return the site to its original condition and certify through soils or other testing that no contamination has been created by the facility, such restoration being completed, limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town to remove such small wireless facilities. However, if the owner of the property upon which the small wireless facilities are located wishes to retain any access roadway to the small wireless facilities, the owner may do so with the approval of the Town.
- (d) If the small wireless facilities are not removed or substantial progress has not been made to remove the small wireless facilities within 90 days after the small facility permit holder has received such written notice of removal, then the Planning Board may order officials or representatives of the Town to remove the small wireless facilities at the sole expense of the property owner and/small wireless facility permit holder.
- (e) If the Town removes or causes to be removed the small wireless facilities,

and the owner of the wireless telecommunications facilities does not claim and remove them to a lawful location within 10 days, then the Town may take steps to declare the small wireless facilities abandoned and dispose of or sell them and their components and retain the proceeds therefrom. The Town may also cause the costs associated with the removal and disposal of the small wireless facilities to be assessed on the property in the same manner as a tax or assessment.

DRAFT

Section 2. Chapter 60, Article IV, Section 430, Subsection O, Sub-subsection 14 of the Code of the Town of New Castle entitled “Wireless Telecommunication services facility” is hereby amended as follows:

§ 60-430 Permitted special uses.

...

O. Additional standards and requirements for particular uses.

...

(14) Non-small cell wireless facilities ~~Wireless telecommunication services facility~~. The purpose of this subsection is to establish reasonable regulations for the location, construction and maintenance of wireless telecommunication facilities in the Town of New Castle.

- (a) By enacting this subsection, the Town intends to ~~in order to~~:
- [1] Accommodate the utility infrastructure necessary for the provision of wireless telecommunications services within the Town in accordance with the requirements of the Federal Telecommunications Act of 1996;
 - [2] Encourage the siting of wireless telecommunications services in nonresidential areas of the Town;
 - [3] Encourage collocation of existing and proposed non-small cell wireless facilities ~~wireless telecommunications facilities~~ as the primary option rather than construction of additional new facilities;
 - [4] Minimize safety hazards and avoid potential damage to adjacent properties through proper locational, engineering and operational requirements;
 - [5] Minimize adverse visual and aesthetic impacts of non-small cell wireless facilities ~~wireless telecommunications facilities~~ to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques;
 - [6] Protect the physical appearance of the Town and preserve its scenic and natural beauty;
 - [7] Further the objectives of the Comprehensive Plan;

- [8] Protect the public health, safety and welfare; and
- [9] Protect property values of the community.

(b) Use. Except as provided hereinafter, no ~~non-small cell wireless~~ ~~wireless telecommunications services~~ facility shall be located, constructed or maintained on any lot, building, structure or land area in the Town of New Castle, except in conformity with the requirements of this chapter and all other applicable regulations.

(c) Upon receipt of an application for a non-small cell wireless facility, the Planning Board shall review said application and plans in accordance with the standards and requirements set forth in this subsection. However, notwithstanding anything to the contrary where appropriate, the Planning Board shall have the authority to waive any requirements set forth in this section relating to an application for, or approval of, a special use permit for a non-small cell wireless facility, provide that it would further the purposes of this subsection.

(d) No application shall be accepted and no permit shall be issued for a non-small cell wireless facility on a property where the Building Inspector has found, or there exists a violation of the Town Code and where such violation has not been corrected.

~~(b)~~(e) The Planning Board may attach such conditions and safeguards to any permit as are, in its opinion, necessary to ensure initial and continued conformance to all applicable standards and requirements.

(f) Exemptions.

[1] The provisions of this subsection shall not apply to ~~small wireless facilities regulated by § 60-410.M,~~ or wireless telecommunications services facilities installed wholly within a building, such as but not limited to baby monitors, garage door openers and burglar alarm transmitters, and serving only that building.

[2] Notwithstanding anything to the contrary in this section, any application for a wireless telecommunications facility that does not substantially change the dimensions of a wireless telecommunications facility shall not require a special use permit. In the event that a modification to, or replacement of, an existing wireless

telecommunications facility does not substantially change such existing wireless telecommunications facility, all that shall be required is a building permit from the Town Building Inspector.

(g) Application procedure.

- [1] An application for approval of a non-small cell wireless facility shall be submitted on the pertinent forms provided for that purpose by the Town and shall be jointly filed by the operator of the non-small cell wireless telecommunications services facility and the owner of the property on which such facility is proposed to be located. The application and documents accompanying the application shall also be submitted in an electronic file format.
- [2] The applicant shall provide documentation to verify it has a legal interest in the site where the non-small cell wireless facility is to be located. Said documentation may be in the form of a deed, contract for sale or lease of the property, depending on whether the applicant is the property owner, contract-vendee or lessee.
- [3] The applicant shall submit a site plan describing any new proposed structure and antenna and all related fixtures, accessory equipment, appurtenances and apparatus, including, but not limited to height above preexisting grade, materials, color and lighting.
- [4] An application for a non-small cell wireless facilities permit shall be signed on behalf of the applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the applicant, shall also sign the application. At the discretion of the Planning Board, any false or misleading statement in the application may subject the applicant to denial of the application without further consideration or opportunity for correction.
- [5] If proposing a new structure for the purpose of supporting a non-small cell wireless facility, the application shall be accompanied by a map which shows the applicant's existing and proposed area of coverage. Such map shall locate all existing wireless telecommunications facility sites, including small wireless facilities

and non-small cell wireless facilities, within 1/2 mile of the proposed non-small cell wireless facility.

[6] In addition to all other required information as stated in this subsection, all applications for the construction or installation of new non-small cell wireless facilities, or any substantial change to an existing non-small cell wireless facility, shall contain the following information:

[a] A descriptive statement of the objective(s) for the new facility or modification, including and expanding on a need such as coverage and/or capacity requirements, densifying a wireless network, introducing new services or improving service capabilities;

[b] The postal address and Tax Map parcel number of the property;

[c] The location, size, and height of all existing and proposed structures on the property which is the subject of the application;

[d] Documentation justifying the total height of any proposed antenna and structure and the basis therefor;

[e] The applicant's name, address, telephone number and email address;

[f] The name, address, phone number and email of the property owner;

[g] The names, addresses, telephone numbers, and email addresses of all consultants, if any acting on behalf of the applicant with respect to the filing of the application;

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

[i] The location of the nearest residential structure;

- [j] The type, locations and dimensions of all proposed and existing landscaping and fencing, if the proposed non-small cell wireless facility is located outside the public right-of-way.
- [k] The number, type and model of the antenna(s) proposed, with a copy of the specification sheet;
- [l] Identify and disclose the number and locations of any wireless telecommunication facility the applicant has installed in the Town, or locations the applicant has considered in the past year for wireless telecommunication facilities in the Town, including small wireless facilities and non-small cell wireless facilities, and those sites submitted or anticipated to be submitted within a one-year period;
- [m] A description of the anticipated maintenance needs, including frequency of service, personnel needs and equipment needs, and the potential traffic safety and noise impact of such maintenance;
- [n] A copy of the FCC license applicable for the intended use of the non-small cell wireless facility; and
- [o] Information relating to the expected useful life of the proposed non-small cell wireless facility.
- [p] The applicant shall furnish written certification that the non-small cell wireless facility, structure, foundation, attachments and accessory equipment are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads. If the wireless facility is subsequently approved and constructed, as-built certification indicating that the facility has been constructed in accordance with all standards shall be furnished to the Town prior to issuance of any certificate of occupancy.
- [q] All proposed non-small cell wireless facilities shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, will employ stealth technologies as directed by the Planning Board,

where appropriate, and will thereby have the least-adverse visual effect on the environment, the character of the community, surrounding properties and on the residences in the area of the wireless telecommunications facility.

[7] As a condition of special permit approval, the applicant shall be required to provide a written agreement, in recordable form suitable for filing and prepared to the satisfaction of Town Counsel, acknowledging that it shall be required to allow the collocation of other future non-small cell wireless telecommunications service facilities on its own facility unless otherwise unreasonably limited by technological, structural or other engineering considerations.

[8] Where collocation of a wireless telecommunications services facility is proposed, the added wireless telecommunications services facility shall be permitted as an amendment to the existing site plan or special use permit for the site containing such facility by submission of an application for a building permit and without the need for an application for an amended site plan or special permit approval, provided that such facility meets all of the otherwise applicable requirements of this chapter and no physical modification other than the attachment of the antennas and the installation of associated equipment to be located on the ground is required. An amended written narrative and certification report indicating conformance with all of the pertinent requirements of this chapter shall be provided in addition to all required information in support of the required building permit. An as-built drawing of the modified facilities shall be filed with the Town Building Department as a condition of the continued validity of such building permit. The Town Building Department shall provide written notification to the Planning Board of the submission of the application for building permit upon its receipt.

(h) Non-small cell wireless facility fees.

[1] Application fee. At the time an applicant submits an application for a non-small cell wireless facility, such applicant shall pay a nonrefundable application fee in an amount as determined by the Town Board and set forth in the Town Fee Schedule, in addition to

any other fees required by law.

[2] Reimbursement for use of the public right-of-way. In addition to permit application fees, every non-small cell wireless facility located in the public right-of-way is subject to the Town's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the public right-of-way shall be set forth in the Town Fee Schedule.

(i) Escrow review costs. In accordance with §60-560.B, and to the extent permissible under federal law, for non-small cell wireless facility applications, the applicant shall be required to provide funds to an escrow account held by the Town to allow the Planning Board to retain such technical experts and other consultants as may be necessary to review the proposal, including, but not limited to, the review of financial and technical aspects of the proposal and of the financial, legal and technical practicability of alternatives which may be available to the applicant.

(j) Time frames for approval.

[1] Within 30 calendar days of receipt of any application for a non-small cell wireless facility, the Town shall notify the applicant in writing of any supplemental information required to complete the application. Such notification shall toll the applicable shot clock until the applicant submits the required supplemental information.

[2] Within 90 calendar days of receipt of an application for a collocated non-small cell wireless facility or 150 days of receipt of an application for a new non-small cell wireless facility with accompanying support structure, including such technical information from the applicant as may be required by the Planning Board for a special use permit under the provisions of this section, the Town shall make a final decision on whether to approve the application and shall notify the applicant in writing of such decision.

(k) Location and access.

[1] Subject to the Planning Board's review and evaluation of technological, structural, safety and financial considerations associated with alternative locations for the siting of non-small cell

~~wireless telecommunications services~~ facilities, the following locational priorities shall apply in the order specified, consistent with the Town's obligation to create the least amount of aesthetic impact and preserve the scenic values of the Town.:

~~[a] Collocation on existing wireless telecommunications services facilities previously approved by a duly authorized board of the Town, as identified on an inventory of existing wireless telecommunications services facilities which shall be maintained by the Town (the "Eligible Collocation Sites Inventory"). Collocation shall be required unless it has been demonstrated to the satisfaction of the Planning Board that:~~

~~[b] None of the sites identified on the Eligible Collocation Sites Inventory within the service area can accommodate the proposed wireless telecommunications services facility in a reasonably financially and technologically feasible manner consistent with the wireless communications service carrier's system requirements; or~~

~~[c] None of the sites identified on the Eligible Collocation Sites Inventory within the service area can accommodate the proposed wireless telecommunications services facility with respect to structural or other engineering limitation, including frequency incompatibilities; or~~

~~[d] The owners of the sites identified on the Eligible Collocation Sites Inventory within the service area lawfully refuse to permit the applicant use of the site.~~

~~[e]~~ [b] Sites, buildings and structures located in business and industrial districts containing any other type of existing communications antenna previously approved by a duly authorized board of the Town.

~~[f]~~ [c] Other lands in business and industrial districts.

~~[g]~~ [d] Lands used for nonresidential purposes in a residence district.

~~[h]~~ [e] Other lands in a residence district.

[2] To the extent reasonably practicable, wireless communications services facilities shall not be located within 2,500 feet of any historic district or any site with official designation as a local landmark, or which is listed or designated as eligible for listing on the State or the National Registers of Historic Places.

[3] All new wireless communications services facilities and premises shall be of proper size, location and design to accommodate collocation of other service providers' facilities, unless otherwise permitted by the Planning Board. Wherever possible, such facility shall be attached to an existing building or structure. To the maximum extent practicable, existing roadways shall be used to provide access to the site of a non-small cell wireless ~~wireless~~ telecommunications services facility.

[4] If the proposed site is not the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The person seeking such an exemption must satisfactory demonstrate the reason or reasons why a special permit should be granted for the proposed site and the hardship that would be incurred by the applicant if the permit were not granted for the proposed site.

[5] An applicant may not bypass a site of higher priority by stating the site presented is the only site leased or selected.

[3][6] Notwithstanding the above, the Planning Board may approve any site located within the Town, provided that the Planning Board finds that the proposed site meets the requirements set forth in this subsection, is in the best interest of the safety, public welfare, character and environment of the town and will not have a deleterious effect on the nature and character of the community and surrounding properties.

~~(k) Freestanding wireless telecommunications services facilities. Where the installation of a freestanding wireless telecommunications services facility is proposed, such facility shall be a monopole unless it has been demonstrated to the satisfaction of the Planning Board that:~~

~~[12] Installation of a tower is superior in the particular circumstances and the~~

~~specific reasons therefor;~~

~~[13] Installation of a tower will not have the potential to cause greater adverse impacts; and~~

~~[14] Installation of a tower will further the objectives of the Town with respect to the collocation of wireless telecommunications services facilities and/or will otherwise provide for greater benefits to the Town.~~

(l) General and specific requirements for non-small cell wireless facilities.

[1] All non-small cell wireless facilities shall be designed, constructed, operated, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code.

[2] All non-small cell wireless facilities shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property in the Town.

[3] non-small cell wireless facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.

[4] A non-small cell wireless facility shall not, by itself or in conjunction with other wireless telecommunications facilities, generate radio frequency emissions in excess of the standards and regulations of the FCC. When a non-small cell wireless facility is complete, as-built readings shall be taken and submitted to the Town.

[5] The owner or operator of a non-small cell wireless facility shall maintain standby power generations capable of powering the wireless telecommunications facility for at least 24 hours without additional public utility power, and indefinitely with a continuous or replenished fuel supply. Such standby power shall activate automatically upon the failure of public utility power to the site. Notwithstanding the foregoing, the Planning Board may require standby power longer than 24 hours where circumstances indicate sufficient space exists to accommodate longer period of backup

power.

(m) Setbacks. A non-small cell wireless wireless telecommunications services facility attached to a monopole or tower outside the public right-of-way, shall be setback from the property line of the lot on which it is located a distance equal to not less than two times the otherwise applicable minimum yard requirement for principal structures in the district in which the subject lot is located, or the height of such facility measured from the highest point of such facility to the finished grade elevation of the ground on which it is situated, whichever is greater. The Planning Board may reduce such setback requirements based upon consideration of lot size, topographic conditions, adjoining land uses, landscaping, other forms of screening and/or structural characteristics of the non-small cell wireless wireless telecommunications services facility proposed to be installed. However, in no case shall the Planning board reduce the setback required to less than the applicable setback requirements for principal structures in the district which the property is located.

(n) Height limitations. Notwithstanding the following height limitations, in no case shall a non-small cell wireless wireless telecommunications services facility exceed the minimum height reasonably necessary to accomplish the purpose it is proposed to serve. Coverage requirements, safety, visual impacts, and proximity to occupied buildings are all factors that can be considered in determining the appropriate height.

- [1] The height of any antennas, or other associated equipment, structurally mounted as part of a non-small cell wireless wireless telecommunications services facility shall not exceed by more than 20-10 feet above the highest point of the existing structure on which such antennas or equipment are affixed.
- [2] The height of any monopole or tower utilized in a non-small cell wireless wireless telecommunications services facility shall not exceed 150 feet in height measured from the highest point of such facility to the finished grade elevation of the ground on which it is situated.

(o) Visual buffer mitigation.

- [1] The applicant shall prepare a visual impact assessment of the proposed non-small cell wireless wireless telecommunications services facility based upon appropriate modeling, photography and other pertinent analytical

techniques, taking into account worst case seasonal conditions.

[2] Landscaping and/or other screening, including but not limited to architectural treatment, stealth design, use of neutral or compatible coloring and materials, or alternative technologies, shall be required to minimize the visual impact of such facility from public thoroughfares, important viewsheds and vantage points and surrounding properties to the maximum extent practicable.

[3] No signs, other than exempt signs, shall be erected on any non-small cell wireless ~~wireless telecommunications services~~ facility.

[4] All non-small cell wireless facilities shall be sited so as to have the least adverse visual effect on the environment and its character, on existing vegetation and on the residents in the area of the wireless telecommunication services facility.

[1][5] All equipment enclosures and storage buildings associated with the wireless telecommunication services facilities shall be consistent or compatible with adjacent buildings in terms of design, materials and colors and shall be appropriately landscaped.

(p) Regulations applicable to non-small cell wireless facility in the public right-of-way. In addition to the applicable special permit provisions and requirements listed in this subsection, all non-small cell wireless facilities located in the public right-of-way shall be required to comply with the following regulations:

[1] Non-small cell wireless facilities in the public right-of-way shall be collocated on an existing wireless telecommunications facility whenever possible. If collocation is not technologically feasible, the applicant shall locate its non-small cell wireless facility on existing utility poles, monopoles or other structures that do not already act as wireless telecommunications facility support structures.

[2] All accessory equipment shall be the smallest and least-visibly-intrusive equipment feasible.

[3] Antennas and accessory equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.

[4] Non-small cell wireless facilities, which include wireless telecommunications support structures and accessory equipment in the public right-of-way, shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, or to otherwise create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the right-of-way as determined by the Town. In addition:

[a] In no case shall ground-mounted accessory equipment, walls, or landscaping be located within 18 inches of the face of the curb, within four feet of the edge of the cartway, or within an easement extending onto a privately owned lot.

[b] To the extent feasible, accessory equipment shall be placed underground. Ground-mounted accessory equipment that cannot be placed underground shall be screened from surrounding views, to the fullest extent possible, through the use of landscaping or other decorative features to the satisfaction of the Town. Ground-mounted accessory equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground-mounted accessory equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology to the satisfaction of the Town.

[c] Required electrical meter cabinets shall be screened to blend in with the surrounding area to the satisfaction of the Town.

[d] Any graffiti on any non-small cell wireless facility support structure, base station or any accessory equipment shall be removed within 30 days upon notification by the Town, at the sole expense of the owner.

[e] Any proposed underground vault related to non-small cell wireless facilities shall be reviewed and approved by the Town.

[f] Accessory equipment attached to a non-small cell wireless facility support structure shall have such vertical clearance as the Planning Board may determine.

(q) Materials. A non-small cell wireless ~~wireless telecommunications services~~ facility shall be of galvanized finish or painted black or another neutral or compatible

color determined to be appropriate for the proposed location of such facility in the reasonable judgment of the Planning Board. The mountings of wireless telecommunications antennas shall be nonreflective and of the appropriate color to blend with their background.

- (r) Lighting. A non-small cell wireless ~~wireless telecommunications services~~ facility shall not be artificially lighted unless otherwise required by the Federal Aviation Administration (FAA) or other federal, state or local authority.
- (s) (s)Noise. Noise-producing equipment shall be sited and/or insulated to prevent any detectable increase in noise above ambient levels as measured at the property line of the site containing a non-small cell wireless ~~wireless telecommunications services~~ facility.
- ~~(t) Utility service. Electrical and land-based telephone lines extended to serve wireless telecommunications services facility sites shall be installed underground.~~
- ~~(u) Safety provisions. A wireless telecommunications services facility shall be designed and erected so that, in the event of structural failure, it will fall within the required setback area of the lot on which it is located and, to the maximum extent possible, away from adjacent development.~~
- ~~(v)~~(t) Operational characteristics. Unless otherwise superseded by the Federal Communications Commission (FCC), the design and use of the proposed non-small cell wireless ~~wireless telecommunications services~~ facility, including its cumulative impact with other existing and approved facilities, shall be certified to conform with the maximum NIER exposure standards promulgated by the FCC, as amended. Said certification shall include a report prepared by a licensed professional electrical engineer with expertise in radio communications facilities and/or a health physicist acceptable to the Planning Board. A copy of such certification report shall be submitted to the Planning Board prior to commencing operation of such facility, and a copy shall be filed with the Town Building Department. Except as otherwise provided by law, the Planning Board may require annual certification of conformance with the applicable emissions standards. Additionally, copies of certification reports shall be submitted to the Planning Board whenever they are required to be submitted to the FCC. The Planning Board may hire a qualified professional of its choosing to review and confirm such initial and annual subsequent certification report(s), the cost of which shall be reimbursed by the applicant in accordance with the professional review fee reimbursement procedures set forth in § 60-560 of this chapter. Any violation of

the emissions standards shall require immediate discontinuation and correction of the use responsible for the violation. Any such violation of these requirements of the Zoning Law or the conditions of special permit or site plan approval shall be deemed to be an offense punishable by fine and/or imprisonment in accordance with § 60-530 of this chapter.

(u) Security provisions. A security program shall be formulated and implemented for the site of a non-small cell wireless ~~wireless telecommunications services~~ facility. Such program may include physical features such as fencing, anticleimbing devices or elevating ladders on monopoles or towers and/or monitoring either by staff or electronic devices to prevent unauthorized access and vandalism.

[1] All antennas and supporting structures, including guy anchor points and wires and accessory equipment, shall be made inaccessible to individuals and constructed or shield in such a manner that they cannot be climbed or collided with, and

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

(v) Lease agreement. In the case of an application for approval of a wireless communications services facility to be located on lands owned by a party other than the applicant or the Town, a copy of the lease agreement with the property owner absent the financial terms of such agreement, together with any subsequent modifications thereof, shall be provided to the Planning Board, and copies shall be filed with the Town Clerk and the Town Building Department.

(w) Proof of insurance. The applicant and the owner of the property where the non-small cell wireless ~~wireless telecommunications services~~ facility is to be located, if different, shall provide the Planning Board with proof of insurance in a sufficient dollar amount in the reasonable, judgment of the Planning Board to cover potential personal and property damage associated with construction and operation of such facility.

(x) Post-installation inspection and report. A field report identifying the non-small cell wireless ~~wireless telecommunications services~~ facility coverage area, maximum capacity, committed capacity and unused capacity, if any, and the identity of any collocated users of such facility shall be submitted to the Planning Board prior to commencing operation of such facility, and a copy shall be filed with the Town

Building Department. The Planning Board may hire a qualified professional of its choosing to review and confirm such field report, the cost of which shall be reimbursed by the applicant in accordance with the professional review fee reimbursement procedures set forth in § 60-560 of this chapter.

~~(z)~~(y) Annual inspection and report. A monopole or tower over 100 feet in height shall be inspected by a licensed professional engineer retained by the applicant on an annual basis, and at any other time upon a determination by the Town Building Department that the monopole or tower may have sustained structural damage. A copy of the inspection report shall be submitted to the Planning Board, and a copy shall be filed with the Town Building Department. The Planning Board may hire a qualified professional of its choosing to review and certify such inspection report, the cost of which shall be reimbursed by the applicant in accordance with the professional review fee reimbursement procedures set forth in § 60-560 of this chapter.

(z) Revocation of non-small cell wireless facilities permit.

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

[2] If the non-small cell wireless facilities are not brought into compliance with the provisions of this subsection, or of the permit, or substantial steps are not taken in order to bring the affected non-small cell wireless facilities into compliance, then the Planning Board or the Building Inspector may revoke such non-small cell wireless facility permit and require removal of such non-small cell wireless facility.

(aa) Removal

[1] Under the following circumstances, the Town may determine that the safety, public welfare, character and environment of the Town warrant and require the removal of non-small cell wireless facilities, under the following circumstances:

[a] The non-small cell wireless facility has been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365-day period, except for periods caused by force majeure or acts of God, in which case repair or removal shall commence within 90 days;

[b] A permitted non-small cell wireless facility falls into such a state of disrepair that it creates a safety hazard;

[c] The non-small cell wireless facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization; or

[d] Any non-small cell wireless facility is determined to be in violation pursuant to § 60-410.M(11) above and fails to cure such violation within the time set forth in that section.

[2] If the Planning Board makes a determination pursuant to § 60-410.M(12)(a), then it shall notify the holder of the large facilities permit and the owner of the property in writing that said non-small cell wireless facilities are to be removed.

[3] The holder of the non-small cell wireless facilities permit or the owner of the property shall be required to dismantle and remove such non-small cell wireless facilities, and all accessory equipment and associated structures, from the site and return the site to its original condition and certify through soils or other testing that no contamination has been created by the facility, such restoration being completed, limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town to remove such non-small cell wireless facilities. However, if the owner of the property upon which the non-small cell wireless facilities are located wishes to retain any access roadway to the non-small cell wireless facilities, the owner may do so with the approval of the Town.

[4] If the non-small cell wireless facilities are not removed or substantial progress has not been made to remove the non-small cell wireless facilities within 90 days after the small facility permit holder has received such written notice of removal, then the Planning Board may order officials or representatives of the Town to remove the non-small cell wireless facilities at the sole expense of the property owner and/ non-small cell wireless facility permit holder.

~~[2][5]~~ If the Town removes or causes to be removed the non-small cell wireless facilities, and the owner of the wireless telecommunications facilities does not claim and remove them to a lawful location within 10 days, then the Town may take steps to declare the non-small cell wireless facilities abandoned and dispose of or sell them and their components and retain the proceeds therefrom. The Town may also cause the costs associated with the removal and disposal of the non-small cell wireless facilities to be assessed on the property in the same manner as a tax or assessment.

~~(aa) Removal. A wireless telecommunications services facility shall be dismantled and removed from the property on which it is located when it has been inoperative or abandoned for a period of six months from the date on which it ceased operation. Such removal shall be completed to the satisfaction of the Town Building Department within 60 days after the commencement of said six-month period.~~

~~(bb) Application procedure:~~

~~[1]—An application for approval of a wireless telecommunications services facility shall be submitted on the pertinent forms provided for that purpose by the Town and shall be jointly filed by the operator of the wireless telecommunications services facility and the owner of the property on which such facility is proposed to be located. The application and documents accompanying the application shall also be submitted in an electronic file format.~~

~~[2]—The operator of the wireless telecommunications services facility shall submit a certificate of public utility, unless it can be demonstrated to the satisfaction of the Planning Board that the operator of such facility is exempt from such requirement pursuant to New York State law. The operator of such facility shall also demonstrate to the satisfaction of the Planning Board that there is a compelling public need for such facility at the proposed location. Such demonstration shall include the preparation of existing and master effective service area plans which:~~

~~[a]—Minimize the number of such facilities within the service area(s).~~

~~[b]—Maximize collocation of wireless telecommunications service facilities.~~

~~[c]—Identify all existing and proposed wireless telecommunications services facilities which impact upon the service area covering the Town of New Castle and shall identify all proposed and other functionally acceptable~~

~~locations for such facility.~~

~~{d}—Analyze feasible alternatives to reasonably minimize the visual impacts and exposure levels.~~

~~{3}—Where the owner of the property on which a wireless telecommunications services facility is proposed contemplates that such property may be used for the installation of two or more such facilities, the property owner shall submit a conceptual master plan identifying the total number and location of such facilities.~~

~~{4}—Any application for a wireless telecommunications services facility shall include a statement and appropriate documentation demonstrating that the Town's Eligible Collocation Sites inventory has been reviewed and, to the extent relevant to provide wireless telecommunications services in the area which is the subject of such application, that all reasonable efforts have been made to collocate such facility on all sites identified in such Eligible Collocation Sites Inventory within the service area.~~

~~{5}—As a condition of special permit approval, the applicant shall be required to provide a written agreement, in recordable form suitable for filing and prepared to the satisfaction of Town Counsel, acknowledging that it shall be required to allow the collocation of other future wireless telecommunications service facilities on its own facility unless otherwise unreasonably limited by technological, structural or other engineering considerations.~~

~~{6}—Where collocation of a wireless telecommunications services facility is proposed, the added wireless telecommunications services facility shall be permitted as an amendment to the existing site plan or special use permit for the site containing such facility by submission of an application for a building permit and without the need for an application for an amended site plan or special permit approval, provided that such facility meets all of the otherwise applicable requirements of this chapter and no physical modification other than the attachment of the antennas and the installation of associated equipment to be located on the ground is required. An amended written narrative and certification report indicating conformance with all of the pertinent requirements of this chapter shall be provided in addition to all required information in support of the required building permit. An as-built drawing of the modified facilities shall be filed with the Town Building Department as a condition of the continued validity of such building permit. The Town Building Department shall provide written notification to the Planning Board of the submission of the application for building permit upon its receipt.~~

Section 3. Chapter 60 Attachment 2 of the Code of the Town of New Castle, entitled “Schedule of regulations for residence districts” as set forth at the end of the chapter is amended as follows:

SEE ATTACHED CHART

Section 4. Chapter 60 Attachment 4 of the Code of the Town of New Castle, entitled “Schedule of regulations for business and industrial districts” as set forth at the end of the chapter is amended as follows:

SEE ATTACHED CHART

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Section 4. Ratification, Readoption and Confirmation

Except as specifically modified by the amendments contained herein, Chapter 60 of the Town Code of the Town of New Castle is otherwise to remain in full force and effect and is otherwise ratified, readopted and confirmed.

Section 5. Numbering for Codification

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

Section 6. Severability

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

Section 7. This local law shall take effect immediately upon filing with the Office of the Secretary of State.