

PUBLIC HEARING
November 17, 2021

At 9:50 p.m. Supervisor Schiliro stated that a Public Hearing, which was opened on April 28, 2021, reconvened and adjourned on May 26, 2021, June 9, 2021, June 23, 2021, July 14, 2021, August 11, 2021, September 22, 2021, and November 10, 2021 would be reconvened in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on April 28, 2021, at 7:30 PM, or as soon thereafter as practical, at Town Hall, 15 Bedford Road, Armonk, NY 10504, to consider a Local Law to repeal Chapter 292 of the Town of North Castle Town Code entitled “Telecommunications Facilities” and create a new Chapter 292 entitled “Wireless Communication Facilities” to repeal certain existing provisions and enact new provisions relating to wireless telecommunications in the Town of North Castle.

The proposed local law is available in the Town Clerk’s office during regular business hours and on the Town website. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board
Alison Simon, Town Clerk

Dated: April 17, 2021
Armonk, NY

The Town Clerk noted there was no additional correspondence since the public hearing was reconvened on November 10, 2021.

A discussion regarding the language to be included in the local law ensued among the Board, Director of Planning Adam Kaufman, Town Attorney Roland Baroni, and Joel Winston, Esq., Cohen Law Group.

After all persons were heard who desired to be heard, Councilman DiGiacinto moved, seconded by Councilman Reiter, that the Public Hearing be at closed 10:21 p.m.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro
Noes: None

Councilman DiGiacinto moved, seconded by Councilman Reiter, that based upon review of the Environmental Assessment Form and all other materials, it has been determined that there will be no significant adverse environmental impacts and the Town Board hereby adopts a Negative Declaration.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro
Noes: None

Councilman DiGiacinto moved, seconded by Councilman Reiter, the adoption of Local Law 9 of 2021, to repeal Chapter 292 of the Town of North Castle Town Code entitled “Telecommunications Facilities” and create a new Chapter 292 entitled “Wireless Communication Facilities” to repeal certain existing provisions and enact new provisions relating to wireless telecommunications in the Town of North Castle, and the adoption of the Small Wireless Communications Facilities Manual. The Local Law follows at the end of these minutes.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro
Noes: None

Town Board Minutes
November 17, 2021

Councilman DiGiacinto moved, seconded by Councilman Reiter, the adoption of the Revised Master Fee Schedule.

The roll call vote was as follows:

Ayes: Councilmen DiGiacinto, Reiter, Berra, Hussain, Supervisor Schiliro

Noes: None

Alison Simon, Town Clerk

Dated: December 1, 2021

TOWN OF NORTH CASTLE

**Local Law No. 9 For the Year 2021
Adopted November 17, 2021**

A local law to repeal certain existing provisions and enact new provisions relating to wireless telecommunications in the Town of North Castle.

Section 1. Amend Section 355-4 of the Town Code to include the following definitions in proper alphabetical order:

ADJACENT STRUCTURES

For Small Wireless Communications Facilities, any similarly-situated Support Structure within a 250 (two hundred and fifty) foot radius that is of the same design, construction, or use as the proposed structure. Adjacent Structures may include, but are not limited to, utility poles and street light poles. The height of an Adjacent Structure is the vertical distance measured from the ground level to the highest point on a structure, not including antennae mounted on the tower and any other appurtenances.

ANTENNA or ANTENNAE

Any system of wires, rods, discs, panels, flat panels, dishes, whips, or other similar devices used for the transmission or reception of wireless signals. An Antenna may include an omnidirectional antenna (rod), directional antenna (panel), parabolic antenna (disc) or any other wireless antenna. An Antenna shall not include Tower-Based Wireless Communications Facilities defined herein. An Antenna shall not include private residence-mounted satellite dishes or television antennae or amateur radio equipment including, without limitation, ham or citizen band radio antennae.

COLLOCATION

The mounting of one or more Wireless Communication Facilities on a pre-existing Support Structure, or modifying a Support Structure for the purpose of mounting or installing a Wireless Communication Facility on that Support Structure.

COMMERCIALLY REASONABLE

Means terms and pricing that are reasonably consistent with similar wireless communication facility leases and agreements within a fifteen (15) mile radius of the Municipality.

DISTRIBUTED ANTENNA SYSTEM (DAS)

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

DECORATIVE POLE

A Municipal-owned pole that is specially designed and placed for aesthetic purpose and on which no appurtenances or attachments, other than a Small Wireless Communications Facility, lighting, or other municipal attachments have been placed or are permitted to be placed.

ELIGIBLE FACILITIES REQUEST

An application for modification of an existing Wireless Communications Facility or base station that involves—(A) collocation of new transmission equipment; (B) removal of transmission equipment; or (C) replacement of transmission equipment.

EMERGENCY

A condition that (1) constitutes a clear and immediate danger to the health, welfare, or safety of the public, or (2) has caused or is likely to cause facilities in the Public Rights-of-Way to be unusable and result in loss of the services provided.

FCC

The Federal Communications Commission.

FRONT FAÇADE AREA

The area of the public right-of-way directly in front of a Structure, identified by drawing a perpendicular line from each corner of the Structure to the Public Rights-of-Way.

HEIGHT OF A TOWER-BASED WIRELESS COMMUNICATIONS FACILITY

The vertical distance measured from the ground level, including any base pad, to the highest point on a Tower-Based Wireless Communications Facility, including antennae mounted on the tower and any other appurtenances.

HEIGHT OF A WIRELESS SUPPORT STRUCTURE

The vertical distance measured from the ground level, including any base pad, to the highest point on a communications tower, including communications antennas mounted on the tower and any other appurtenances.

MUNICIPAL or MUNICIPALITY

Town of North Castle, Westchester County, State of New York.

NON-TOWER WIRELESS COMMUNICATIONS FACILITY (NON-TOWER WCF)

All non-tower wireless communications facilities, including but not limited to, Antennae and related equipment. Non-Tower WCF shall not include Support Structures for Antennae and related equipment.

PRIOR APPROVED DESIGN

A design for a Small Wireless Communications Facility that has been reviewed and deemed to be in accordance with the design requirements herein and approved for construction by the Municipality.

PROFESSIONAL ENGINEER (P.E.)

An active, registered Professional Engineer (P.E.), licensed as such by the State of New York.

PUBLIC RIGHTS-OF-WAY (ROW)

The surface of and space above and below any real property in the Municipality in which the Municipality has a regulatory interest, or interest as a trustee for the public, as such interests now or hereafter exist, including, but not limited to: the total extent of land reserved or dedicated as a Street way/alley/lane for public or private purpose; all Streets, highways, avenues, roads, alleys, sidewalks, tunnels, viaducts, bridges, skyways, or any other public place, area or property under the control of the Municipality; any unrestricted public or utility easements established, dedicated, platted, improved or devoted for utility purposes, but excluding lands other than Streets that are owned by the Municipality. The phrase “in the Right(s)-of-Way” means in, on, over, along, above and/or under the Right(s)-of-Way.

RELATED EQUIPMENT

Any piece of equipment related to, incidental to, or necessary for, the operation of a wireless communications facility. By way of illustration, not limitation, Related Equipment includes generators and base stations.

SMALL WIRELESS COMMUNICATIONS FACILITY (SMALL WCF)

A Wireless Communications Facility that meets the following criteria:

- (1) The Structure on which antenna facilities are mounted—
 - (i) is 60 feet or less in height, or
 - (ii) is no more than 10 percent taller than other adjacent Structures, or
 - (iii) is not extended to a height of more than 60 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and
- (2) Each Antenna associated with the deployment (excluding the associated equipment) is no more than three cubic feet in volume; and
- (3) All antenna equipment associated with the facility (excluding Antennas) are cumulatively no more than 28 cubic feet in volume;
- (4) The facilities do not require antenna structure registration under 47 CFR Part 17;
- (5) The facilities are not located on Tribal lands, as defined under 36 CFR 800.16(x); and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

STEALTH TECHNOLOGY

Camouflaging methods applied to wireless communications facilities and accessory equipment which render them more visually appealing or 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 antennae, building-mounted antennae painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.

SUBSTANTIAL CHANGE or SUBSTANTIALLY CHANGE

A modification to an existing Wireless Communications Facility substantially changes the physical dimensions of a Tower or Wireless Support Structure if it meets any of the following criteria:

- (1) For Wireless Communications Facilities outside the Public Rights-of-Way, it increases the height of the facility 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 wireless communications facilities in the Public Rights-of-Way, it increases the height of the facility by more than 10% or 10 feet, whichever is greater;

- (2) For communications Towers outside the Public Rights-of-Way, it protrudes from the edge of the Tower by more than 20 feet, or more than the width of the Tower at the level of the appurtenance, whichever is greater; for those Wireless Communications Facilities in the Public Rights-of-Way, it protrudes from the edge of the Support Structure by more than six feet;
- (3) It involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets;
- (4) It entails any excavation of deployment outside the current site of the communications Tower; or
- (5) It does not comply with conditions associated with prior approval of construction or modification of the Wireless Communications Facility unless the noncompliance is due to an increase in height, increase in width, or addition of cabinets.

SUPPORT STRUCTURE or WIRELESS SUPPORT STRUCTURE

For the purposes of wireless communications, any man-made object having an ascertainable stationary location on or in land or water, whether or not affixed to the land, upon or to which wireless communications facilities may be attached, approved by the Municipality.

TOWER

A self-supporting lattice tower, guy tower, monopole, or any other pole, that is constructed primarily to support an antenna for receiving and/or transmitting Wireless service.

TOWER-BASED WIRELESS COMMUNICATIONS FACILITY (TOWER-BASED WCF)

A Tower and its supporting Antennae, including, but not limited to, self-supporting lattice towers, guy towers and monopoles. Distributed antennae system hub facilities are considered to be Tower-Based WCFs.

UNDERGROUND DISTRICT

A zoning district, or sub-area thereof, in which all utility installations are required to be installed underground on a non-discriminatory basis.

WIRELESS

Transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, PCS, microwave, satellite, or radio signals

WIRELESS ACCESSORY EQUIPMENT

Any equipment serving or being used in conjunction with a Wireless Communications Facility or Wireless Support Structure. The term “Wireless Accessory Equipment” includes but is not limited to utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

WIRELESS ANTENNA

An apparatus designed for the purpose of emitting radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the provision of wireless service and any commingled information services.

WIRELESS COMMUNICATIONS FACILITY (WCF)

The antennas, nodes, control boxes, towers, poles, conduits, ducts, pedestals, electronics and other equipment used for the purpose of transmitting, receiving, distributing, providing, or accommodating wireless communications services.

WIRELESS COMMUNICATIONS FACILITY APPLICANT (WCF APPLICANT)

Any Person that applies for a wireless communication facility building permit, zoning approval and/or permission to use the Public Rights-of-Way or other Municipal-owned land or private property.

WIRELESS COMMUNICATIONS FACILITY OPERATOR (WCF OPERATOR)

Any Person that owns or operates a wireless communication facility in the Public Rights-of-Way or other Municipal-owned land or private property.

Section 2. Repeal and replace Chapter 292 of the North Castle Town Code, “telecommunication facilities,” as follows:

§ 292 Wireless Communications Facilities.

292-1 Short Title.

This Law shall be known as the “Town of North Castle Wireless Communications Facilities Law.”

292-2 Purposes and Findings of Fact.

292-2.1 The purpose of this Law is to establish uniform standards for the siting, design, permitting, maintenance, and use of Wireless Communications Facilities in the Town of North Castle. While the Municipality recognizes the importance of Wireless Communications Facilities in providing high quality communications service to its residents and businesses, the Municipality also recognizes that it has an obligation to protect public safety and to minimize the adverse visual effects of such facilities through the standards set forth in the following provisions.

292-2.2 By enacting this Law, the Municipality intends to:

292-2.2.1 Regulate the placement, construction and modification of Wireless Communication Facilities to protect the safety and welfare of the public;

292-2.2.2 Provide for the managed development of Wireless Communications Facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of the public and wireless telecommunications operators in accordance with federal and state laws and regulations;

292-2.2.3 Establish procedures for the design, siting, construction, installation, maintenance and removal of Tower-Based, Non-Tower Based, and Small Wireless Communications Facilities in the Municipality, including facilities both inside and outside the Public Rights-of-Way;

292-2.2.4 Address new wireless technologies, including, but not limited to, distributed antenna systems, data collection units, and other Wireless Communications Facilities;

292-2.2.5 Encourage the co-location of Wireless Communications Facilities on existing Wireless Support Structures rather than the construction of new Wireless Support Structures;

292-2.2.6 Protect the public from potential adverse impacts of Wireless Communications Facilities and preserve, to the extent permitted under law, the visual character of established communities and the natural beauty of the landscape;

292-2.2.7 Ensure that Wireless Communications Facilities will be removed in the event that such Wireless Communications Facilities are abandoned or become obsolete and are no longer necessary; and

292-2.2.8 Update the Municipality's Wireless Communications Facilities law to incorporate changes in federal and state laws and regulations.

292-3 Definitions.

292-3.1 Certain terms used herein are defined at Part II, Chapter 355, Article II, § 355-4 "Definitions".

292-3.2 All language used herein shall be interpreted in accordance with Part II, Chapter 355, Article II, § 355-3 "Word Usage".

292-3.3 Any terms not specifically defined shall be construed in their customary meanings.

292-4 Laws Applicable to all Tower-Based Wireless Communications Facilities.

292-4.1 The following laws shall apply to all Tower-Based Wireless Communications Facilities:

292-4.1.1 Procedures.

292-4.1.1.1 Any applicant proposing construction of a new Tower-Based WCF shall submit plans to the North Castle Town Clerk for review by the North Castle Planning Director and for approval by the Town Board in accordance with the requirements of Part II, Chapter 355, Article VII, § 355-33 – § 355-40 "Special Permit Uses".

292-4.1.1.2 The applicant shall prove that it is licensed by the FCC to operate a Tower-Based WCF and that the proposed Tower-Based WCF complies with all applicable standards established by the FCC governing human exposure to electromagnetic radiation.

292-4.1.2 Development Requirements. Tower-Based Wireless Communications Facilities shall be developed in accordance with the following requirements:

292-4.1.2.1 Permitted Subject to Conditions. Any Tower-Based WCF that is either not mounted on any existing Support Structure or is more than twenty-five (25) feet higher than the Support Structure on which it is mounted is permitted in certain zoning districts as a special permit use, subject to the restrictions and conditions prescribed herein and subject to the prior written approval of the Municipality. The Town Board may grant special permit use in accordance with the procedures and requirements of Part II, Chapter 355, Article VII, § 355-33 – § 355-40 "Special Permit Uses".

292-4.1.2.1.1 Siting. Tower-Based WCF shall only be permitted in the following districts by special permit use, subject to the requirements and prohibitions of Section 292:

292-4.1.2.1.1.1 PLI Planned Light Industry District;

292-4.1.2.1.1.2 OB Office Business District;

292-4.1.2.1.1.3 RELIP Research, Electronic and Light Industrial District;

292-4.1.2.1.1.4 PBO Professional Business Office District;

292-4.1.2.1.1.5 IND A Industrial A District;

292-4.1.2.1.1.6 IND AA Industrial AA District;

292-4.1.2.1.1.7 GB General Business District;

292-4.1.2.1.1.8 DOB-20A Designed Office Business 20A District;

292-4.1.2.1.1.9 OBH (Office Business Hotel District)

292-4.1.2.1.1.10 R-4A One-Family Residence District (4 acres);

292-4.1.2.1.1.11 R-2A One-Family Residence District (2 acres);

292-4.1.2.1.1.12 R-1.5A One-Family Residence District (1 1/2 acres);

292-4.1.2.1.1.13 R-1A One-Family Residence District (1 acre);

292-4.1.2.1.1.14 R-3/4A One-Family Residence District (3/4 acre);

292-4.1.2.1.1.15 R-1/2A One-Family Residence District (1/2 acre);

292-4.1.2.1.1.16 R-10 One-Family Residence District (10,000 square feet);

292-4.1.2.1.1.17 R-5 One-Family Residence District (5,000 square feet);

292-4.1.2.1.1.18 R-2F Two-Family Residence District; and

292-4.1.2.1.1.19 R-MF Multifamily Residence District.

292-4.1.2.1.2 Coverage or Capacity. An applicant for a Tower-Based WCF must demonstrate that a gap in wireless coverage or capacity exists and that the type of

WCF and siting being proposed is the least intrusive means by which to fill the gap in wireless coverage or capacity. The existence or non-existence of a gap in wireless coverage or capacity shall be a factor in the Municipality's decision on an application for approval of Tower-Based WCFs.

292-4.1.2.1.3 Collocation. In accordance with § 292-4.1.5, an applicant for a Tower-Based WCF must demonstrate there is not suitable space on existing wireless service facilities or other wireless service facility sites or on other sufficiently tall structures where the intended Wireless Communications Facility can be accommodated and function as required by its construction permit or license without unreasonable modification.

292-4.1.2.1.4 Site Plan. An applicant for a Tower-Based WCF must submit a full site plan to the North Castle Town Clerk which shall include, but shall not be limited to, the following documentation and materials:

292-4.1.2.1.4.1 Written authorization from the property owner of the proposed Tower-Based WCF site that such facility may be sited on the property; written authorization from the property owner consenting to the making of the application to the Town for special permit use; written acknowledgment from the property owner of being bound by Section 292, the conditions of any site plan approval authorized by the Town, and all other requirements of the Code of the Town of North Castle.

292-4.1.2.1.4.2 A site plan that is drawn to scale and shows the following features: property boundaries; any tower guy wire anchors and other apparatus; existing and proposed Support Structures; scaled elevation view; access road(s) location and surface material; parking area; fences; power source(s); location and content of (any or warning) signs; exterior lighting specifications; landscaping plan; land elevation contours; existing land uses surrounding the site; proposed transmission building and/or other accessory uses with details; elevations; and proposed use(s).

292-4.1.2.1.4.3 A written report that includes, but is not limited to, the following documentation and materials: information describing the Tower height and design; a cross-section of the Tower; engineering specifications detailing construction of the Tower, base and guy wire anchorage; information describing the proposed painting and lighting schemes; information describing

the Tower's capacity, including, but not limited to, the number and type of antennas that it can accommodate; radio frequency coverage including, but not limited to, scatter plot analysis and the input parameters for the scatter plot analysis. All Tower structure information shall be certified by a registered Professional Engineer (P.E.) licensed by the State of New York; and all wireless telecommunications data shall be certified by an appropriate wireless telecommunications professional.

292-4.1.2.1.4.4 A written report, titled "Cost of Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the State of New York, detailing the total cost of removing and disposing of the Tower, Antenna, and all related facilities.

292-4.1.2.1.4.5 All other uses ancillary to the Tower-Based WCF and associated equipment (including, but not limited to, a business office, maintenance depot, or vehicle storage) are prohibited from the Tower-Based WCF site unless otherwise permitted in the zoning district in which the Tower-Based WCF site is located. An applicant's site plan shall include in detail all other current and proposed uses ancillary to the Tower-Based WCF and demonstrate that such uses are permitted in the underlying zoning district.

292-4.1.2.1.4.6 Where the Tower-Based WCF is located on a property with another principal use, the applicant shall prove that the owner of the property has granted an easement for the proposed facility and that vehicular access is provided to the facility.

292-4.1.2.1.4.7 An inventory of its existing Wireless Communications Facilities, including, but not limited to, all Tower-Based, Non-Tower, and Small WCF, that are either sited within the Town of North Castle or within one-quarter (1/4) mile of the border thereof. Such inventory shall include specific information about the location, height, design, and use of each Wireless Communications Facility. The Municipality may share such information with other applicants applying for site plan approvals or special permit uses under Section 292 or other organizations seeking to locate Wireless Communication Facilities within the Municipality; provided,

however, that the Municipality is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- 292-4.1.2.1.4.8 An evaluation of the need for additional buffer yard treatments.
- 292-4.1.2.1.4.9 Other information deemed to be necessary by the Municipality to assess compliance with Section 292.
- 292-4.1.2.2 Underground District. A Tower-Based WCF shall not be located in, or within three hundred (300) feet of, an area in which utilities are required to be located underground.
- 292-4.1.2.3 Prohibited in Open Space and Conserved Lands. Tower-Based WCFs shall not be located within an Open Space or Conserved Land.
- 292-4.1.2.4 Prohibited in Environmentally-Sensitive Areas. No Tower-Based WCF shall be located in, or within five hundred (500) feet of, the habitat of a threatened or endangered animal species.
- 292-4.1.2.5 Sole Use on a Lot. A Tower-Based WCF may be permitted as a sole use on a lot subject to the minimum lot area and yards complying with the requirements for the applicable zoning district.
- 292-4.1.2.6 Combined with Another Use. A Tower-Based WCF may be permitted on a property with an existing use, or on a vacant parcel in combination with another residential, industrial, commercial, institutional or municipal use, subject to the following conditions:
 - 292-4.1.2.6.1 Existing Use. The existing use on the property may be any permitted use in the applicable district, and need not be affiliated with the Wireless Communications Facility.
 - 292-4.1.2.6.2 Minimum Lot Area. The minimum lot shall comply with the requirements for the applicable district and shall be the area needed to accommodate the Tower-Based WCF and guy wires, the equipment building, security fence, and buffer planting.
- 292-4.1.2.7 Minimum Setbacks for Towers. If a new Tower is constructed (as opposed to mounting the Antenna on an existing Tower or Wireless Support Structure), the minimum distance between the Tower and any property line or Public Right-of-Way line shall be equal to the height of the Tower plus the distance of the corresponding minimum yard setback (front, side and rear) for the zoning district in which the lot is located and any other additional requirements for that zoning district. Guy wires and accessory facilities must also satisfy the minimum zoning district setback requirements.

292-4.1.2.8 Minimum Setbacks for Accessory Structures. All Tower-Based WCF installations shall comply with the accessory structure setback requirements in Chapter 355, Zoning, § 355-21, Schedule of Resident District Regulations; 355-22, Schedule of Business District Regulations; and 355-23, Schedule of Office and Industrial District Regulations, and shall be mounted in the rear yard or on the roof unless reception is inhibited or visibility increased.

292-4.1.2.9 Separation. A Tower-Based WCF with a height greater than ninety (90) feet shall not be located within one-quarter (1/4) of a mile from any existing Tower-Based WCF with a height greater than ninety (90) feet.

292-4.1.3 Timing of Determination. All applications for Tower-Based WCFs shall be acted upon within one hundred-fifty (150) days following the receipt of both, (1) a fully completed application for the approval of such Tower-Based WCF and (2) a fully paid, non-refundable application fee in an amount specified by the Master Fee Schedule. If the Municipality receives an application for a Tower-Based WCF and such application is not fully completed, then the Municipality shall promptly notify the applicant that the application is not complete and the time for the determination of such application shall not commence until a fully completed application is received by the Municipality. Unpaid applications are incomplete and not duly filed with the Town.

292-4.1.4 Notice. No later than thirty (30) days following the submission of a fully completed application for a Tower-Based WCF and the scheduling of the public hearing (if required), the Applicant shall mail notice to all owners of every property within a five hundred (500) foot radius of the proposed wireless communications facility. The Applicant shall provide proof of mailing of the notification to the Municipality within fifteen (15) days of completion of notification. If a public hearing is required, notice of any hearing before the Town Board shall be published in a newspaper circulating within the Town of North Castle at least ten (10) days prior to the date of said hearing; any mailing of notices that may be required by the Town Board shall be completed at least ten (10) days before such hearing and the proof of mailing shall be provided to the Municipality at least (5) five days before such hearing. The preparation and cost of publication and mailing of any notice required for such hearing shall be at the cost and expense of the applicant. Notice of the hearing shall be mailed by the applicant in official envelopes provided by the Town of North Castle. Proof of mailing to all required property owners shall be demonstrated by providing the Town with a certificate of mailing (PS Form 3817 or 3877).

292-4.1.5 Collocation.

292-4.1.5.1 An application for a new Tower-Based WCF shall not be approved unless the Municipality finds that the wireless communications equipment planned for the proposed Tower-Based WCF cannot be accommodated on an existing or approved Structure or Wireless Support Structure.

292-4.1.5.2 Any applicant proposing construction of a new Tower-Based WCF outside the Public Rights-of-Way shall demonstrate to the satisfaction of the Municipality, by written submission, that a good faith effort has been made to obtain permission to mount the Tower-Based WCF Antenna on an existing Structure or Wireless Support Structure. The Town may deny any application to construct a new Tower if the applicant has not made a good faith effort to collocate the antenna on an existing Tower, Structure, or other Wireless Support Structure. A good faith effort shall require that all owners of potentially suitable Towers, Structures, or Wireless Support Structures within a one-quarter (1/4) mile radius of the proposed Tower-Based WCF site be contacted and that the applicant certifies in writing to the North Castle Director of Planning that one (1) or more of the following reasons for not selecting such structure apply:

292-4.1.5.2.1 The proposed WCF and related equipment would exceed the structural capacity of the existing structure and its reinforcement cannot be accomplished at reasonable cost;

292-4.1.5.2.2 The proposed WCF and related equipment would cause radio frequency interference with other existing equipment for that existing structure and the interference cannot be prevented at reasonable cost;

292-4.1.5.2.3 Such existing structure does not have adequate location, space, access or height to accommodate the proposed equipment or to allow it to perform its intended function; and/or

292-4.1.5.2.4 A commercially reasonable agreement cannot be reached with the owner(s) of such structure.

292-4.1.6 Standard of Care. Any Tower-Based WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as well as the accepted and responsible workmanlike industry practices of the Communications Infrastructure Contractors Association (formerly, National Association of Tower Erectors). Any Tower-Based WCF 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 or safety of any person or damage any property in the Municipality.

292-4.1.7 Wind and Ice. All Tower-Based WCF structures shall be designed to withstand the effects of wind and ice according to the standards promulgated by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended). All Tower-Based WCF structures

shall also be designed and constructed to withstand the wind and ice loads for the place of installation in accordance with the New York State Uniform Fire Prevention and Building Code.

292-4.1.8 Height. Any Tower-Based WCF shall be designed and constructed at the minimum functional height. All Tower-Based WCF applicants must submit documentation to the Municipality justifying the total height of the structure. In no case shall a Tower-Based WCF exceed a maximum height of one-hundred fifty (150) feet.

292-4.1.9 Public Safety Communications. No Tower-Based WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.

292-4.1.10 Maintenance. The following maintenance requirements shall apply:

292-4.1.10.1 Any Tower-Based WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.

292-4.1.10.2 Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the public.

292-4.1.10.3 All maintenance activities shall utilize nothing less than the best available technology and practices for preventing failures and accidents.

292-4.1.10.4 The Municipality reserves the authority to require the cleaning, repainting, or repair, of a Tower-Based WCF, including, but not limited to, the Tower, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is not regularly or properly maintained, cleaned, repainted, or repaired.

292-4.1.10.5 Tower-Based WCF operators bear sole financial responsibility for all maintenance or emergency repair costs.

292-4.1.11 Radio Frequency Emissions. No Tower-Based WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended. The owner or operator of such Tower-Based WCF shall submit proof of compliance with any applicable radio frequency emissions standards to the Municipal Town Clerk on an annual basis, or within thirty (30) days following a written request by the Town. A Tower-Based WCF generating radio frequency emissions in excess of the standards and regulations of the FCC shall be considered an Emergency. The Municipality reserves the authority to revoke the permit of any Tower-Based WCF that (1) fails to timely submit proof of compliance or (2) that is generating radio frequency emissions in excess of the standards and regulations of the FCC.

- 292-4.1.12 Historic Buildings and Districts. No Tower-Based WCF may be located in or within one hundred (100) feet of any historic or preservation district, property, building or Structure that is listed on either the National or New York State Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures list maintained by the Municipality, or so designated as a Landmark pursuant to Chapter 195 of the Code.
- 292-4.1.13 Signs. All Tower-Based WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. No other signage or display is permitted.
- 292-4.1.14 Lighting. Tower-Based WCF shall not be artificially lighted, except as required by law. Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings. If lighting is required, the applicant shall provide to the Town a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
- 292-4.1.15 Emergency Power Supplies. Any Tower-Based WCF shall be constructed with both primary and secondary sources of electric power. The secondary source of electric power shall be an electric generator, located on-site and equipped with sufficient power reserves to supply continuous electric power to operate the Tower-Based WCF and its antennae for a period of ten (10) days. The secondary source of electric power shall not be used, except in Emergency situations involving the loss of the primary power source. The WCF operator may activate the electric generator on weekdays, between 9:00 AM and 5:00 PM, excluding federal holidays, to test the secondary power source or to perform routine maintenance on the electric generator, provided that the WCF operator deliver written notice to the Town Clerk at least five (5) business days prior to such electric generator testing or electric generator maintenance.
- 292-4.1.16 Noise. Tower-Based WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the Code of the Town of North Castle, except as provided with respect to the use of an electrical generator in § 292-4.1.15, where such noise standards may be exceeded on a temporary basis only.
- 292-4.1.17 Aviation Safety. Tower-Based WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
- 292-4.1.18 Inspection Report Requirements. No later than the first day of December of each odd-numbered year, or within thirty (30) days following a written request by the Municipality, the owner of the Tower-Based WCF shall have said Tower-Based WCF structure inspected by a New York-licensed and registered Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or erection of Tower-Based WCFs. At a minimum, this inspection shall be conducted in accordance with the Tower Inspection Class checklist provided in the Electronics Industries Association (EIA) Standard 222, Structural Standards for Steel Antenna Towers and Antenna Support Structures. A copy of said inspection report and certification of continued use shall be provided to the Town Clerk following the inspection. Any repairs advised by the report shall be effected by the owner no later than sixty (60)

calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Tower-Based WCF structure shall again be inspected in accordance with the parameters and requirements described herein.

- 292-4.1.19 Retention of Consultants or Experts. The Town may hire any consultant(s) and/or expert(s) necessary to assist the Town in reviewing and evaluating the application for approval of the Tower-Based WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Law. The applicant and/or owner of the WCF shall reimburse the Town for all costs of the Town's consultant(s) and/or expert(s) in providing expert evaluation and consultation in connection with these activities.
- 292-4.1.20 Non-Conforming Uses. Non-conforming Tower-Based WCFs, which are hereafter damaged or destroyed due to any reason or cause, may be repaired and restored at their former location, but must otherwise comply with the terms and conditions of this Law.
- 292-4.1.21 Removal. In the event that use of a Tower-Based WCF is planned to be discontinued, the owner shall provide written notice to the Municipality, at least ninety (90) days in advance of the discontinuance date, of its intent to discontinue use and the date when the use shall be discontinued.
 - 292-4.1.21.1 All unused or abandoned Tower-Based WCFs and accessory facilities shall be removed within six (6) months of the cessation of operations at the site unless a time extension is approved by the Municipality.
 - 292-4.1.21.2 If the WCF and/or accessory facility is not removed within six (6) months of the cessation of operations at a site, or within any longer period approved by the Municipality, the WCF and accessory facilities and equipment may be removed by the Municipality and the cost of removal assessed against the owner of the WCF. Any cost to the Municipality for such removal which is not paid under the owner's bond shall constitute a lien on the tax lot on which the Tower-Based WCF is situated and shall be collected in the same manner as a Municipal tax on real property.
 - 292-4.1.21.3 Any unused portions of Tower-Based WCFs, including, but not limited to, Antennas, shall be removed within six (6) months of the time of cessation of operations. The Municipality must approve all replacements of portions of a Tower-Based WCF previously removed.
- 292-4.1.22 Public Rights-of-Way. No Tower-Based wireless communications facility shall be located, in whole or in part, within the Public Rights-of-Way.
- 292-4.1.23 Eligible Facilities Request.
 - 292-4.1.23.1 Applicants proposing a modification to an existing Tower-Based WCF that does not Substantially Change the dimensions of the underlying Wireless Support Structure shall be required only to obtain a building permit from the Municipality.

292-4.1.23.2 In order to be considered for such permit, the Tower-Based WCF Applicant must submit a building permit application to the Municipality in accordance with Part II, Chapter 355, Article XII, § 355-74 “Building permits”.

292-4.1.24 Design Regulations:

292-4.1.24.1 Any height extensions to an existing Tower-Based WCF shall require prior approval of the Municipality. The Municipality reserves the right to deny such requests based upon aesthetic and land use impact, or any other lawful considerations related to the character of the Municipality.

292-4.1.24.2 The Tower-Based WCF shall employ the most current and effective Stealth Technology available in an effort to appropriately blend into the surrounding environment and minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF applicant shall be subject to the approval of the Municipality.

292-4.1.24.3 Any proposed Tower-Based WCF shall be designed and constructed in all respects, including, but not limited to, structurally and electronically, to accommodate both the Tower-Based WCF applicant’s Antennae and comparable Antennae for future users.

292-4.1.24.4 All utilities that are extended to the site of the Tower-Based WCF shall be placed underground.

292-4.1.25 Surrounding Environs:

292-4.1.25.1 The Tower-Based WCF operator shall ensure that the existing vegetation, trees and shrubs located within proximity to the Tower-Based WCF structure shall be preserved to the maximum extent possible.

292-4.1.25.2 The Tower-Based WCF applicant shall include in its site plan submission pursuant to § 292-4.1.2.1.4 a soil report to the Municipality complying with the standards of Appendix I: Geotechnical Investigations, ANSI/EIA/TIA-222, as amended, to document and verify the design specifications of the foundation of the Tower-Based WCF, and anchors for guy wires, if used.

292-4.1.26 Fence/ Screen:

292-4.1.26.1 A security fence having a height of six (6) feet shall completely surround any Tower-Based WCF, guy wires, or any building housing WCF equipment.

292-4.1.26.2 An evergreen screen shall be required to surround the site. The screen can be either a hedge (planted three feet on center maximum) or a row of evergreen trees (planted ten (10) feet on center maximum). The evergreen screen shall be a minimum height of six (6) feet at planting and shall grow to a minimum of fifteen (15) feet at maturity.

- 292-4.1.26.3 Existing mature tree growth, vegetation, and natural land forms on and around the site shall be preserved to the maximum extent possible. In some cases, such as Tower-Based WCF sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.
- 292-4.1.27 Accessory Equipment:
- 292-4.1.27.1 Ground-mounted equipment associated to, or connected with, a Tower-Based WCF shall be underground or screened from public view using Stealth Technologies, as described above.
- 292-4.1.27.2 All utility buildings and accessory structures shall be architecturally designed and constructed to blend into the environment in which they are situated and shall meet the minimum setback requirements of the underlying zoning district.
- 292-4.1.28 Additional Antennae. As a condition of approval for all Tower-Based WCFs, the Applicant shall provide the Municipality with a written commitment that it will allow other service providers to collocate Antennae on Tower-Based WCFs where technically and Commercially Reasonable. The owner of a Tower-Based WCF shall not install any additional Antennae without obtaining the prior written approval of the Municipality.
- 292-4.1.29 Access Road. An access road, turnaround space and parking shall be provided to ensure adequate emergency and service access to Tower-Based WCF. 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 minimize soil erosion. Where applicable, the WCF owner shall present documentation to the Municipality that the property owner has granted an easement for the proposed facility. The easement shall be a minimum of twenty (20) feet in width and the access shall be improved to a width of at least ten (10) feet with a dust-free, all-weather surface throughout its entire length.
- 292-4.1.30 Bond. Prior to the issuance of a special use permit, a Tower-Based WCF applicant shall, at its own cost and expense, obtain from a surety licensed to do business in New York and maintain a bond or other form of security acceptable to the Town Attorney. The bond shall provide that the Municipality may recover from the principal and surety any and all compensatory damages incurred by the Municipality for violations of this Law, including, but not limited to, legal fees and expenses in enforcing the law, after reasonable notice and opportunity to cure. The owner shall file the bond with the Municipality and maintain the bond for the life of the respective facility. The owner of the Tower-Based WCF shall maintain a bond in the following amounts:
- 292-4.1.30.1 An amount of \$75,000 (seventy-five thousand) dollars to assure the faithful performance of the terms and conditions of this Law.
- 292-4.1.30.2 An amount determined by the Town Board based on engineering estimates, to cover the cost of removing and disposing of the Antenna, Tower, and related

facilities. The Town Board may consider, but shall not be required to rely upon, applicant's written report, titled "Cost of Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the State of New York.

- 292-4.1.30.3 From time to time, but no more frequently than once during any five year period, the Town Board, at its sole discretion, may adjust the amount of the bond and require the submission of a new or modified bond based on engineering estimates of the cost of the removal and disposal of the Tower, Antenna, and associated facilities. The Wireless Communications Facility operator may submit a written report, titled "Adjusted Cost of Tower-Based Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the State of New York and containing engineering estimates of the cost of the removal and disposal of the Tower, Antenna, and associated facilities to the Town Board. The Town Board may consider, but shall not be required to rely upon, operator's written report in determining the adjusted bond amounts.
- 292-4.1.31 Visual or Land Use Impact. The Municipality reserves the right to deny an application for the construction or placement of any Tower-Based WCF based upon visual and/or land use impact.
- 292-4.1.32 Graffiti. Any graffiti on the Tower-Based WCF, including, but not limited to, the Wireless Support Structure or on any accessory equipment, shall be removed at the sole expense of the owner within ten (10) days of notification by the Municipality.
- 292-4.1.33 Inspection by Municipality. The Municipality reserves the right to inspect any Tower-Based WCF to ensure compliance with the provisions of this Law and any other provisions of the Code of the Town of North Castle or state or federal law. The Municipality and/or its agents shall have the authority to enter the property upon which a Tower-Based WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

292-5 Laws Applicable to all Non-Tower Wireless Facilities.

- 292-5.1 The following laws shall apply to all Non-Tower Wireless Communications Facilities:

292-5.1.1 Procedures.

- 292-5.1.1.1 Any applicant proposing a Non-Tower WCF to be mounted on a building or any other Structure shall submit detailed construction and elevation drawings to the North Castle Planning Department indicating how the Non-Tower WCF will be mounted on the Structure, for review by the North Castle Planning Board and for approval by the Town Board, as a special permit use, subject to the restrictions and conditions prescribed

herein and subject to the prior written approval of the Municipality.

- 292-5.1.1.2 The applicant shall prove that it is licensed by the FCC to operate a Non-Tower WCF and that the proposed Non-Tower WCF complies with all applicable standards established by the FCC governing human exposure to electromagnetic radiation.

292-5.1.2 Development Requirements. Non-Tower Wireless Communications Facilities shall be collocated on existing structures, such as existing buildings or wireless support structures, subject to the following conditions:

- 292-5.1.2.1 Permitted Subject to Conditions. Subject to the restrictions and conditions prescribed herein, Non-Tower WCFs are permitted in certain zoning districts as a special permit use upon review by the Town of North Castle Planning Board and approval by the Town Board, in accordance with the procedures and requirements of Part II, Chapter 355, Article VII, § 355-33 – § 355-40 “Special Permit Uses”.

292-5.1.2.1.1 Siting. Non-Tower WCF are permitted in the following zoning districts by special permit use, subject to the requirements and prohibitions of Section 292:

- 292-5.1.2.1.1.1 PLI Planned Light Industry District;
- 292-5.1.2.1.1.2 OB Office Business District;
- 292-5.1.2.1.1.3 RELIP Research, Electronic and Light Industrial District;
- 292-5.1.2.1.1.4 PBO Professional Business Office District;
- 292-5.1.2.1.1.5 IND A Industrial A District;
- 292-5.1.2.1.1.6 IND AA Industrial AA District;
- 292-5.1.2.1.1.7 GB General Business District;
- 292-5.1.2.1.1.8 DOB-20A Designed Office Business 20A District;
- 292-5.1.2.1.1.9 OBH (Office Business Hotel District);
- 292-5.1.2.1.1.10 R-4A One-Family Residence District (4 acres);
- 292-5.1.2.1.1.11 R-2A One-Family Residence District (2 acres);
- 292-5.1.2.1.1.12 R-1.5A One-Family Residence District (1 1/2 acres);

292-5.1.2.1.1.13 R-1A One-Family Residence District (1 acre);

292-5.1.2.1.1.14 R-3/4A One-Family Residence District (3/4 acre);

292-5.1.2.1.1.15 R-1/2A One-Family Residence District (1/2 acre);

292-5.1.2.1.1.16 R-10 One-Family Residence District (10,000 square feet);

292-5.1.2.1.1.17 R-5 One-Family Residence District (5,000 square feet);

292-5.1.2.1.1.18 R-2F Two-Family Residence District; and

292-5.1.2.1.1.19 R-MF Multifamily Residence District.

292-5.1.2.1.2 Height. Any Non-Tower WCF shall not exceed the maximum height permitted in the applicable zoning district.

292-5.1.2.1.3 Equipment Building. If the Non-Tower WCF applicant proposes to locate the communications equipment in a separate building, the building shall comply with the minimum requirements for the applicable zoning district.

292-5.1.2.1.4 Fencing. A security fence having a height of six (6) feet, shall surround any separate communications equipment building. Vehicular access to the communications equipment building shall not interfere with the parking or vehicular circulations on the site for the principal use.

292-5.1.2.1.5 Residential Attachment Prohibited. Non-Tower WCFs shall not be located on single-family detached residences, single-family attached residences, or any accessory residential structure.

292-5.1.3 Site Plan. An applicant for a Non-Tower WCF must submit a full site plan to the North Castle Planning Department which shall include:

292-5.1.3.1 Written authorization from the Wireless Support Structure owner of the proposed Non-Tower WCF site that such facility may be sited on the Wireless Support Structure. Written authorization from the Wireless Support Structure owner consenting to the making of the application to the Municipality for special permit use. Written acknowledgment from the Wireless

Support Structure owner of being bound by Section 292, the conditions of any site plan approval authorized by the Municipality, and all other requirements of the Code of the Town of North Castle.

- 292-5.1.3.2 A site plan that is drawn to scale and shows the following features: property boundaries; existing and proposed structures; existing and proposed use(s); existing and proposed antennae; existing or proposed electrical power source; and scaled elevation view.
- 292-5.1.3.3 A written report including, but not limited to: information describing the Antenna height and design; a cross-section of the Wireless Support Structure; engineering specifications detailing attachment of the Antenna to the Wireless Support Structure; information describing the proposed painting and lighting schemes; radio frequency coverage including, but not limited to, scatter plot analysis and the input parameters for the scatter plot analysis; all Wireless Support Structure information to be certified by a registered Professional Engineer (P.E.) licensed by the State of New York; and wireless telecommunications data to be certified by an appropriate wireless telecommunications professional.
- 292-5.1.3.4 A written report, titled “Cost of Non-Tower Wireless Facilities Removal” certified by a registered Professional Engineer (P.E.) licensed by the State of New York, detailing the total cost of removing and disposing of antenna and related facilities.
- 292-5.1.3.5 An inventory of its existing wireless communications facilities, including, but not limited to, all Tower-Based, Non-Tower, and Small WCF, that are either sited within the Town of North Castle or within one-quarter (1/4) mile of the border thereof. Such inventory shall include specific information about the location, height, design, and use of each wireless communications facility. The Town Planning Department may share such information with other applicants applying for site plan approvals or special permit use under Section 292 or other organizations seeking to locate antennas within the Municipality; provided, however, that the Municipality is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- 292-5.1.3.6 Other information deemed to be necessary by the Municipality to assess compliance with Section 292.

292-5.1.4 Eligible Facilities Request.

- 292-5.1.4.1 Applicants proposing a modification to an existing Non-Tower WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be required only to obtain a building permit from the Municipality.

- 292-5.1.4.2 In order to be considered for such permit, the Non-Tower WCF Applicant must submit a building permit application to the Municipality in accordance with Part II, Chapter 355, Article XII, § 355-74 “Building permits”.
- 292-5.1.5 Visual or Land Use Impact. The Municipality reserves the right to deny an application for the construction or placement of any Non-Tower WCF based upon visual and/or land use impact.
- 292-5.1.6 Historic Buildings and Districts. No Non-Tower WCF may be located on, or within one hundred (100) feet of, any historic or preservation district, property, or on a building or structure that is listed on either the National or New York State Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures list maintained by the Municipality, or so designated as a Landmark pursuant to Chapter 195 of the Code.
- 292-5.1.7 Prohibited in Open Space and Conserved Lands. Non-Tower WCFs shall not be located within an Open Space or Conserved Land.
- 292-5.1.8 Timing of Determination. All applications for Non-Tower WCFs shall be acted upon by the Municipality within ninety (90) days following the receipt of both (1) a fully completed application for the approval of such WCF and (2) a fully paid, non-refundable application fee in an amount specified by the Master Fee Schedule. If the Municipality receives an application for a Non-Tower WCF and such application is not fully completed, then the Municipality shall notify the applicant in writing within thirty (30) days that the application is not complete and the time for the determination of such application shall not commence until a fully completed application is received by the Municipality. Unpaid applications are incomplete and not duly filed with the Town.
- 292-5.1.9 Retention of Consultants or Experts. The Municipality may hire any consultant(s) and/or expert(s) necessary to assist the Municipality in reviewing and evaluating the application for approval of the Non-Tower WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Law. The applicant and/or owner of the Non-Tower WCF shall reimburse the Municipality for all reasonable costs of the Municipality’s consultant(s) and/or expert(s) in providing expert evaluation and consultation in connection with these activities.
- 292-5.1.10 Bond. Prior to the issuance of special permit use, the owner of a Non-Tower WCF shall, at its own cost and expense, obtain from a surety licensed to do business in New York and maintain a bond or other form of security acceptable to the Town Attorney. The bond shall provide that the Municipality may recover from the principal and surety any and all compensatory damages incurred by the Municipality for violations of this Law, after reasonable notice and opportunity to cure. The owner shall file the bond with the Municipality and maintain the bond for the life of the respective facility. The owner of the Non-Tower WCF shall maintain a bond in the following amounts:

- 292-5.1.10.1 An amount of \$75,000 (seventy-five thousand) dollars to assure the faithful performance of the terms and conditions of this Law.
- 292-5.1.10.2 An amount determined by the Town Board based on engineering estimates, to cover the cost of removing and disposing of the Antenna and related facilities. The Town Board may consider, but shall not be required to rely upon, applicant's written report, titled "Cost of Non-Tower Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the State of New York.
- 292-5.1.10.3 From time to time, but no more frequently than once during any five year period, the Town Board, at its sole discretion, may adjust the amount of the bond and require the submission of a new or modified bond based on engineering estimates of the cost of the removal and disposal of the Antenna and associated facilities. The Wireless Communications Facility operator may submit a written report, titled "Adjusted Cost of Non-Tower Wireless Facilities Removal" certified by a registered Professional Engineer (P.E.) licensed by the State of New York and containing engineering estimates of the cost of the removal and disposal of the Antenna and associated facilities to the Town Board. The Town Board may consider, but shall not be required to rely upon, operator's written report in determining the adjusted bond amounts.

292-5.1.11 Design Regulations.

- 292-5.1.11.1 Non-Tower WCFs shall employ Stealth Technology and be treated to match the supporting Structure or Wireless Support Structure in order to minimize aesthetic impact. The application of the Stealth Technology chosen by the WCF applicant shall be subject to the approval of the Municipality.
- 292-5.1.11.2 Non-Tower WCFs, which are mounted to a building or similar structure, may not exceed a height of fifteen (15) feet above the roof or parapet, whichever is higher, unless the Non-Tower WCF applicant obtains a variance.
- 292-5.1.11.3 All Non-Tower WCF applicants must submit documentation to the Municipality justifying the total height of the Non-Tower support Structure or Wireless Support Structure. Such documentation shall be analyzed in the context of such justification on an individual basis.
- 292-5.1.11.4 Antennae, and their respective accompanying support structures, shall be no greater in diameter than any cross-sectional dimension than is reasonably necessary for their proper functioning.

- 292-5.1.12 Standard of Care. Any Non-Tower WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. Any WCF 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 or safety of any person or damage any property in the Municipality.
- 292-5.1.13 Wind and Ice. All Non-Tower WCF structures shall be designed and constructed to withstand the effects of wind and ice according to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended). All Non-Tower WCF structures shall also be designed and constructed to withstand the wind and ice loads for the place of installation in accordance with the New York State Uniform Fire Prevention and Building Code.
- 292-5.1.14 Public Safety Communications. No Non-Tower WCF shall interfere with public safety communications or the reception of broadband, television, radio or other communication services enjoyed by occupants of nearby properties.
- 292-5.1.15 Radio Frequency Emissions. No Non-Tower WCF may, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled “Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields”, as amended. The owner or operator of such Non-Tower WCF shall submit proof of compliance with any applicable radio frequency emissions standards to the Municipal Secretary on an annual basis, or within thirty (30) days following a written request by the Town. A Non-Tower WCF generating radio frequency emissions in excess of the standards and regulations of the FCC shall be considered an Emergency. The Municipality reserves the authority to revoke the permit of any Non-Tower WCF that (1) fails to timely submit proof of compliance or (2) that is generating radio frequency emissions in excess of the standards and regulations of the FCC.
- 292-5.1.16 Aviation Safety. Non-Tower WCFs shall comply with all federal and state laws and regulations concerning aviation safety.
- 292-5.1.17 Inspection Report Requirements. No later than the first day of December of each odd-numbered year, or within thirty (30) days following a written request by the Municipality, the owner of the Non-Tower WCF shall have said Non-Tower WCF inspected by a New York-licensed and registered Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or modification of Non-Tower WCFs. A copy of said inspection report and certification of continued use shall be provided to the North Castle Building Inspector following the inspection. Any repairs advised by the report shall be effected by the owner no later than sixty (60) calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Non-Tower WCF shall again be inspected in accordance with the parameters and requirements described herein.

292-5.1.18 Maintenance. The following maintenance requirements shall apply:

- 292-5.1.18.1 The Non-Tower WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
- 292-5.1.18.2 Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the Municipality's residents.
- 292-5.1.18.3 All maintenance activities shall utilize nothing less than the best available technology for preventing failures and accidents.
- 292-5.1.18.4 The Municipality reserves the authority to require the cleaning, repainting, or repair, of a Non-Tower WCF, including, but not limited to, the Antennae, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is not regularly or properly maintained, cleaned, repainted, or repaired.
- 292-5.1.18.5 Non-Tower WCF operators bear sole financial responsibility for all maintenance or emergency repair costs.

292-5.1.19 Upgrade, Replacement, Modification.

- 292-5.1.19.1 The removal and replacement of Non-Tower WCFs and/or accessory equipment for the purpose of upgrading, replacing, modifying, or repairing the Non-Tower WCF is permitted, so long as such upgrade, replacement, modification, or repair does not increase the overall size of the Non-Tower WCF or the number of Antennae.
- 292-5.1.19.2 Any material modification to a Non-Tower WCF shall require a prior amendment to the original permit or authorization.

292-5.1.20 Removal. In the event that use of a Non-Tower WCF is discontinued, the owner shall provide written notice to the Municipality of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned WCFs or portions of WCFs shall be removed as follows:

- 292-5.1.20.1 All abandoned or unused Non-Tower WCFs and accessory facilities shall be removed within three (3) months of the cessation of operations at the site unless a time extension is approved by the Municipality.
- 292-5.1.20.2 If the Non-Tower WCF or accessory facility is not removed within three (3) months of the cessation of operations at a site, or within any longer period approved by the Municipality, the WCF and/or related facilities and equipment may be removed by the Municipality and the cost of removal assessed against the owner of the WCF. Any cost to the Municipality for such removal which is not paid under the owner's bond

shall constitute a lien on the tax lot on which the Non-Tower WCF is situated and shall be collected in the same manner as a Municipal tax on real property.

- 292-5.1.21 Graffiti. Any graffiti on the Non-Tower WCF, including, but not limited to, the Antennae, the Wireless Support Structure, or on any communications equipment or accessory equipment, shall be removed at the sole expense of the owner within ten (10) days of notification by the Municipality.
- 292-5.1.22 Public Rights-of-Way. No Non-Tower WCF shall be located, in whole or in part, within the Public Rights-of-Way.
- 292-5.1.23 Signs. All Non-Tower WCFs shall post a sign in a readily visible location identifying the name and phone number of a party to contact in the event of an emergency. No other signage or display is permitted.
- 292-5.1.24 Lighting. Non-Tower WCF shall not be artificially lighted, except as required by law. If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.
- 292-5.1.25 Emergency Power Supplies. Where practicable, Non-Tower WCF shall be constructed with both primary and secondary sources of electric power. If included, the secondary source of electric power shall be an electric generator, located on-site and equipped with sufficient fuel reserves to supply continuous electric power to operate the Non-Tower WCF and its antennae for a period of ten (10) days. The secondary source of electric power shall not be used, except in emergency situations involving the loss of the primary power source. The WCF operator may activate the electric generator to test the secondary power source or to perform routine maintenance on the electric generator, provided that the WCF operator deliver written notice to the Town Clerk at least five (5) business days prior to such electric generator testing or electric generator maintenance.
- 292-5.1.26 Noise. Non-Tower WCFs shall be operated and maintained so as not to produce noise in excess of applicable noise standards under state law and the Code of the Town of North Castle, except in emergency situations requiring the use of an electrical generator, where such noise standards may be exceeded on a temporary basis only.
- 292-5.1.27 Inspection by Municipality. The Municipality reserves the right to inspect any Non-Tower WCF to ensure compliance with the provisions of this Law and any other provisions found within the Code of the Town of North Castle or state or federal law. The Municipality and/or its agents shall have the authority to enter the property upon which a Non-Tower WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

292-6 Laws Applicable to all Small Wireless Communications Facilities.

- 292-6.1 The following laws shall apply to Small Wireless Communications Facilities:

292-6.1.1 Development Requirements.

- 292-6.1.1.1 Small WCF are permitted by approval from the North Castle Planning Board in all zoning districts, subject to the requirements of this section and generally applicable permitting as required by the Code of the Town of North Castle.
- 292-6.1.1.2 Small WCF located within districts that require utilities to be located underground shall be collocated on existing or replacement Wireless Support Structures. No new Wireless Support Structure may be installed for the purpose of supporting a Small WCF within districts, or sub-portions thereof, that require utilities to be located underground.
- 292-6.1.1.3 Small WCF in the public ROW requiring the installation of a new Wireless Support Structure shall not be located directly in front of any building entrance or exit.
- 292-6.1.1.4 All Small WCF shall comply with the applicable requirements of the Americans with Disabilities Act and all applicable streets and sidewalks requirements in the Code of the Town of North Castle.

292-6.1.2 Procedures.

- 292-6.1.2.1 Any applicant proposing a Small WCF shall submit an application to the North Castle Planning Department for site plan review by the North Castle Planning Board.
- 292-6.1.2.2 The applicant shall prove that it is licensed by the FCC to operate a Small WCF and that the proposed Small WCF complies with all applicable standards established by the FCC governing human exposure to electromagnetic radiation.

292-6.1.3 Timing of Determination. All applications for Small WCFs shall be acted upon by the Municipality within a specific number of days following the receipt of both, (1) a fully completed application for the approval of such Small WCF and (2) a fully paid application fee in an amount specified by the Master Fee Schedule. Unpaid applications are incomplete and not duly filed with the Town. The timing of determination for Small WCF applicants shall be as follows:

- 292-6.1.3.1 Within ten (10) calendar days of the date that an application for a Small WCF is filed with the North Castle Planning Department, the Municipality shall notify the WCF Applicant in writing if an application is incomplete and shall advise the WCF Applicant of any information that may be required to complete such application.
- 292-6.1.3.2 Within sixty (60) days of receipt of a completed application for Collocation of a Small WCF on a preexisting Wireless Support Structure, the North Castle Planning Board shall make a final decision on

whether to approve or deny the application and shall notify the WCF Applicant in writing of such decision.

- 292-6.1.3.3 Within ninety (90) days of receipt of a completed application for a Small WCF requiring the installation of a new Wireless Support Structure, the North Castle Planning Board shall make a final decision on whether to approve the application and shall notify the WCF Applicant in writing of such decision.

292-6.1.4 Eligible Facilities Request.

- 292-6.1.4.1 Small WCF Operators proposing a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be required only to obtain a building permit from the Municipality.

- 292-6.1.4.2 In order to be considered for such permit, the Small WCF Operator must submit a building permit application to the Municipality in accordance with Part II, Chapter 355, Article XII, § 355-74 “Building permits”.

- 292-6.1.4.3 The timing of determination for Small WCF Operators proposing a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be as follows:

- 292-6.1.4.3.1 Within thirty (30) days of the date that an application for a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure is filed with the North Castle Building Inspector, the Municipality shall notify the applicant in writing if the application is incomplete and shall advise of any information that may be required to complete such application.

- 292-6.1.4.3.2 An application for a modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure shall be deemed complete when all documents, information and fees required by the Municipality’s regulations, laws and forms pertaining to the location, modification or operation of Wireless Communications Facilities are submitted by the Applicant to the Municipality. In case of incompleteness of the application, the Municipality shall notify the Applicant within 30 (thirty) days of duly filing, that the application is not complete and the time for the approval of such application

shall not commence until a fully completed application is received by the Municipality.

292-6.1.4.3.3 Within sixty (60) days of receipt of a completed application for modification to an existing Small WCF that does not Substantially Change the dimensions of the underlying Structure or Wireless Support Structure, the North Castle Building Inspector shall make a final decision on whether to approve or deny the application and shall notify the WCF Applicant in writing of such decision.

292-6.1.5 Non-Conforming Wireless Support Structures. Small WCF may be permitted to collocate upon non-conforming Tower-Based WCF and other non-conforming structures. Collocation of Small WCF upon existing Tower-Based WCF is encouraged even if the Tower-Based WCF is non-conforming as to use within a zoning district.

292-6.1.6 Application Fees. The Municipality may assess appropriate and reasonable application fees directly related to the Municipality's actual costs in reviewing and processing the application for approval of a Small WCF, as well as related inspection, monitoring, and related costs, subject to the limitations in this section, in amounts specified by the Master Fee Schedule.

292-6.1.7 Standard of Care. Any Small WCF shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including, but not limited to, the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, the New York State Uniform Fire Prevention and Building Code, or to the industry standard applicable to the structure. Any WCF 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 Municipality.

292-6.1.8 Historic Buildings and Districts. No Small WCF may be located on, or within one hundred (100) feet of, any historic or preservation district, property, building or structure that is listed on either the National or New York State Registers of Historic Places, or eligible to be so listed, or is included in the official historic structures list maintained by the Municipality, or so designated as a Landmark pursuant to Chapter 195 of the Code.

292-6.1.9 Wind and Ice. All Small WCF shall be designed and constructed to withstand the effects of wind and ice to the standard promulgated by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association, and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended), or to the industry standard applicable to the structure. All Small WCF structures shall also be designed and constructed to withstand the wind and ice loads for the place of installation in accordance with the New York State Uniform Fire Prevention and Building Code.

- 292-6.1.10 Radio Frequency Emissions. A Small WCF shall not, by itself or in conjunction with other WCFs, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65 entitled “Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields,” as amended. The owner or operator of such Small WCF shall submit proof of compliance with any applicable radio frequency emissions standards to the Municipal Secretary on an annual basis, or within thirty (30) days following a written request by the Town. A Small WCF generating radio frequency emissions in excess of the standards and regulations of the FCC shall be considered an Emergency. The Municipality reserves the authority to revoke the permit of any Small WCF that (1) fails to timely submit proof of compliance or (2) that is generating radio frequency emissions in excess of the standards and regulations of the FCC.
- 292-6.1.11 Time, Place and Manner. The Municipality shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small WCF in the ROW based on public safety, traffic management, physical burden on the ROW, and related considerations.
- 292-6.1.12 Accessory Equipment. Small WCF and accessory equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the Municipality.
- 292-6.1.13 Graffiti. Any graffiti on the Small WCF, including, but not limited to, the Antennae, the Structure, the Wireless Support Structure, or any Accessory Equipment, shall be removed at the sole expense of the owner within ten (10) days of notification by the Municipality.
- 292-6.1.14 Maintenance. The following maintenance requirements shall apply:
- 292-6.1.14.1 Any Small WCF shall be fully automated and unattended on a daily basis and shall be visited only for maintenance or emergency repair.
- 292-6.1.14.2 Such maintenance shall be performed to ensure the upkeep of the facility in order to promote the safety and security of the public.
- 292-6.1.14.3 All maintenance activities shall utilize nothing less than the best available technology and practices for preventing failures and accidents.
- 292-6.1.14.4 The Municipality reserves the authority to require the cleaning, repainting, or repair, of a Small WCF, including, but not limited to, the Antennae, Wireless Support Structure, Accessory Equipment, and any other area where the exterior surface or appearance of such facility is not regularly or properly maintained, cleaned, repainted, or repaired.
- 292-6.1.14.5 Small WCF operators bear sole financial responsibility for all maintenance or emergency repair costs. The financial responsibility of Small WCF operators for maintenance or emergency repair costs is exclusive and

independent from the Municipality's costs in managing and maintaining the Public Rights-of-Way.

- 292-6.1.15 Design Standards. All Small WCF in the Municipality shall comply with the requirements of the Town of North Castle Small Wireless Communications Facility Design Manual, a copy of which is on file with the Municipality.
- 292-6.1.16 Collocation. An application for a Small WCF with a new Wireless Support Structure in the Public Rights-of-Way shall not be approved unless the Municipality finds that the proposed Small WCF cannot be accommodated on an existing Structure or Wireless Support Structure, such as a utility pole. Any application for approval of a Small WCF shall include a comprehensive inventory of all existing Towers and other suitable Structures or Wireless Support Structures within a one-quarter (1/4) mile radius from the point of the proposed Small WCF, unless the applicant can show to the satisfaction of the Municipality that a different distance is more reasonable, and shall demonstrate conclusively why an existing Tower, Structure, or other suitable Wireless Support Structure cannot be utilized.
- 292-6.1.17 Relocation or Removal of Facilities. Within ninety (90) days following written notice from the Municipality, or such longer period as the Municipality determines is reasonably necessary or such shorter period in the case of an Emergency, an owner of a Small WCF in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any WCF when the Municipality, consistent with its police powers and applicable Public Service Commission regulations, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- 292-6.1.16.1 The construction, repair, maintenance or installation of any Municipality or other public improvement in the Public Rights-of-Way;
 - 292-6.1.16.2 The operations of the Municipality or other governmental entity in the Right-of-Way;
 - 292-6.1.16.3 Vacation of a Street or road or the release of a utility easement; or
 - 292-6.1.16.4 An Emergency as determined by the Municipality.
- 292-6.1.18 Inspection Report Requirements. No later than the first day of December of each odd-numbered year, or within thirty (30) days following a written request by the Municipality, the owner of the Small WCF shall have said Small WCF inspected by a New York-licensed and registered Professional Engineer (P.E.) who is regularly involved in the maintenance, inspection, and/or modification of Small WCFs. A copy of said inspection report and certification of continued use shall be provided to the North Castle Building Inspector following the inspection. Any repairs advised by the report shall be effected by the owner no later than sixty (60) calendar days after the report is filed with the Municipality. No later than thirty (30) calendar days upon completion of aforesaid repairs, the Small WCF shall again be inspected in accordance with the parameters and requirements described herein.

- 292-6.1.19 Retention of Consultants or Experts. The Municipality may hire any consultant(s) and/or expert(s) necessary to assist the Municipality in reviewing and evaluating the application for approval of the Small WCF and, once approved, in reviewing and evaluating any potential violations of the terms and conditions of this Law. The applicant and/or owner of the Small WCF shall reimburse the Municipality for all reasonable costs of the Municipality's consultant(s) and/or expert(s) in providing expert evaluation and consultation in connection with these activities, provided that such costs are a reasonable approximation of costs incurred, the costs are reasonable, and the costs are non-discriminatory.
- 292-6.1.20 Reimbursement for ROW Use. In addition to permit fees as described in this section, every Small WCF in the ROW is subject to the Municipality's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the ROW. Such compensation for ROW use shall be directly related to the Municipality's actual ROW management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other ROW management activities by the Municipality. The owner of each Small WCF shall pay an annual fee to the Municipality, in an amount specified by the Master Fee Schedule, to compensate the Municipality for the Municipality's costs incurred in connection with the activities described above. Such fees shall comply with the applicable requirements of the Federal Communications Commission. The Municipality reserves the authority to revoke the permit of any Small WCF that fails to timely remit annual payment of the Small WCF ROW use and occupancy fee to the Municipality.
- 292-6.1.21 Inspection by Municipality. The Municipality reserves the right to inspect any Small WCF to ensure compliance with the provisions of this Ordinance and any other provisions of the Town Code or state or federal law or regulation. The Municipality and/or its agents shall have the authority to enter the property or public rights-of-way upon which a Small WCF is located at any time, upon reasonable notice to the operator, to ensure such compliance.

292-7 Laws Applicable to All Wireless Facilities.

- 292-7.1 Town Property. Nothing in Section 292 shall be deemed to create any offer, right, or entitlement to use Municipal property for the construction or operation of Tower-Based WCF, Non-Tower WCF, Small WCF, Wireless Support Structures, or related facilities. Any such Tower-Based WCF, Non-Tower WCF, Small WCF, Wireless Support Structure, or related facility proposed to be sited on property owned, leased, or otherwise controlled by the Town of North Castle may be exempt from the requirements of Section 292. The Town Board retains the right to require applicants to obtain site plan approval from the Planning Board in accordance with the requirements of Section 292. No Tower-Based WCF, Non-Tower WCF, Small WCF, Wireless Support Structures, or related facilities may be constructed or installed on Municipal property until a license or lease agreement authorizing such Wireless Facility has been approved by the Town Board.
- 292-7.2 Penalties. Any Person violating any provision of this Law shall be subject, upon finding by a magisterial district judge, to a penalty not exceeding \$500 (five hundred) dollars, for each and every offense, together with attorneys' fees and costs. A separate and distinct violation shall be deemed to be committed each day on which a violation occurs or continues to occur. In addition to an action to enforce any penalty imposed by this Law and any other remedy at law or in equity, the Municipality may apply to a Court for an injunction or other appropriate relief at law

or in equity to enforce compliance with or restrain violation of any provision of this Law.

292-7.3 Determination of Violation. In the event the Municipality determines that a Person has violated any provision of this Law, such Person shall be provided written notice of the determination and the reasons therefore. Except in the case of an Emergency, the Person shall have thirty (30) days to cure the violation. If the nature of the violation is such that it cannot be fully cured within such time period, the Municipality may, in its sole discretion, extend the time period to cure, provided the Person has commenced to cure and is diligently pursuing its efforts to cure. If the violation has not been cured within the time allowed, the Municipality may take any and all actions authorized by this Law and/or federal and/or New York law and regulations.

292-7.4 Revocation of Special Permit Uses. Any special permit uses granted under this chapter may be revoked by the Town Board after a hearing, conducted on at least fifteen (15) days' written notice to the owner of the Wireless Communications Facility and any related facilities, and an opportunity to be heard. If at such hearing the Town Board determines that substantial evidence exists that the Wireless Communications Facility and related facilities constitute a threat to public safety, health, or welfare, or that the conditions of the special permit use have been materially violated, the Town Board may revoke the special use permit.

292-8 Insurance and Indemnification of Wireless Facilities

292-8.1 Insurance.

292-8.1.1 Requirement of Insurance. Each Person that owns, operates, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall purchase and maintain, at its sole expense, certain insurance coverages of specified minimum rating, as listed herein, and shall provide documentation to the North Castle Town Clerk, upon request, and as provided herein.

292-8.1.2 No Payment or Reimbursement. Each Person that owns, operates, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall be solely responsible for bearing the costs of furnishing and maintaining all required insurance coverages of specified minimum rating, as listed herein. The Municipality shall not provide direct payment or reimbursement to Persons for the costs of maintaining, or the costs of furnishing, the required insurance coverages.

292-8.1.3 Specified Minimum Insurance Ratings, Registration, and Additional Endorsement. All insurance carriers listed in the Certificate(s) of Insurance for the required insurance coverages shall have, at minimum, a credit rating of "Rated A VII or Better" from the A.M. Best Company and shall be licensed in the State of New York. Each Person that owns, operates, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall name the Town of North Castle as an Additional Insured by endorsement on the Certificate(s) of Insurance.

292-8.1.4 Furnishment of Certificates Prior to Commencement. Prior to the commencement of any construction, operation, or removal, each Person that owns, operates, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall furnish Certificates of Insurance to the North Castle Town Clerk evidencing coverage in compliance with the regulations herein. The failure of the Town of North Castle to object to the contents of the Certificate(s) of

Insurance or absence of same shall not be deemed a waiver of any legal rights held by the Town of North Castle.

292-8.1.5 Revocation of Permit. The failure of any Person to construct, operate, or remove a Wireless Communications Facility without complying with the insurance coverage and administrative requirements herein shall constitute an Emergency. Upon such Emergency, the Municipality reserves the authority to revoke the permit of any Wireless Communications Facility for failure to comply with the insurance coverage and administrative requirements herein.

292-8.1.6 Minimum Insurance Requirements. Each Person that owns or operates a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall maintain the following minimum insurance coverages:

292-8.1.6.1 Worker's Compensation and Employers Liability Policy, covering operations in New York State. Where applicable, U.S. Longshore and Harbor Workers Compensation Act Endorsement and Maritime Coverage Endorsement shall be attached to the policy. Evidence must be provided to the North Castle Town Clerk on Form C-105.2, Certificate of New York State (NYS) Workers' Compensation Insurance. Waiver of Subrogation to be included with documentation provided to the North Castle Town Clerk.

292-8.1.6.2 Commercial General Liability Policy, with limits of no less than \$1,000,000 (one million) dollars each occurrence, per WCF location and \$2,000,000 (two million) dollars General Aggregate, per WCF location, with limits for Bodily Injury and Property Damage, and shall contain the following coverages and endorsements:

292-8.1.6.2.1 Premises and Operations;

292-8.1.6.2.2 Products/Completed Operations;

292-8.1.6.2.3 Independent Contractors;

292-8.1.6.2.4 Personal and Advertising Injury;

292-8.1.6.2.5 Blanket Contractual Liability;

292-8.1.6.2.6 Explosion, Collapse, Underground Liability (XCU);

292-8.1.6.2.7 Town of North Castle and their assigns, officers, employees, volunteers, representatives and agents should be named as an "Additional Insured" on the policy using ISO Additional Insured Endorsement CG 20 10 11/85 or an endorsement providing equivalent or broader coverage and shall apply on a primary and noncontributory basis, including, but not limited to, any self-insured retentions.

292-8.1.6.2.8 The Certificate of Insurance should show this applies to the General Liability coverage on the certificate, and Additional Insured Endorsement shall be attached.

292-8.1.6.2.9 To the extent permitted by New York law, each Person that owns, operates, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility waives all rights of subrogation or similar rights against the Town of North Castle, assigns, officers, employees, volunteers, representatives and agents.

292-8.1.6.2.10 Cross Liability coverage (Commercial General Liability and Business Automobile Liability policies only.)

292-8.1.6.2.11 Coverage must be written on an Occurrence Policy Form.

292-8.1.6.2.12 No deductible or Self Insured Retention should exceed \$50,000 (fifty-thousand) dollars.

292-8.1.6.3 Comprehensive Automobile Policy, with limits of no less than \$1,000,000 (one million) dollars. Bodily Injury and Property Damage liability including, but not limited to, coverage for owned, any auto non-owned, and hired private passenger and commercial vehicles. The Town of North Castle and their assigns, officers, employees, representatives and agents should be named as an "Additional Insured" on the policy. The Certificate of Insurance should show this applies to the Automobile Liability coverage on the certificate, and Additional Insured Endorsement shall be attached. To the extent permitted by New York law, each Person that owns, operates, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility waives all rights of subrogation or similar rights against Town of North Castle, assigns, officers, employees, representatives and agents. Coverage must apply on a primary and noncontributory basis.

292-8.1.6.4 Umbrella Liability, with limits of no less than \$5,000,000 (five million) dollars each occurrence per WCF location and \$5,000,000 (five million) dollars General Aggregate per WCF location, including, but not limited to, coverage for General Liability, Automobile, Workers Compensation. Coverage must be written as an Occurrence Policy.

292-8.1.6.5 Professional Liability (if applicable), with limits no less than \$1,000,000 (one million) dollars per Claim. Coverage must be written as an Occurrence Policy.

292-8.1.7 Increasing the Minimum Insurance Requirements. The Minimum Insurance Requirements specified herein may be increased at any

time upon the review and determination of the Town's Risk Management Committee.

- 292-8.1.8 Notice Prior to Cancellation or Expiration of Insurance. The Certificate(s) of Insurance shall provide that thirty (30) days written notice prior to cancellation or expiration be given to the North Castle Town Clerk via U.S. Postal Mail. Insurance policies that lapse and/or expire during term of work shall be recertified and received by the North Castle Town Clerk no less than thirty (30) days prior to expiration or cancellation of the respective policy.

292-8.2 Indemnification.

- 292-8.2.1 Requirement to Indemnify and Hold Harmless. Each Person that owns or operates a Tower-Based WCF, a Non-Tower WCF, or a Small WCF shall, at its sole cost and expense, indemnify, defend and hold harmless the Municipality, its elected and appointed officials, employees and agents, at all times against any and all claims for personal injury, including, but not limited to, death, and property damage arising in whole or in part from, caused by or connected with any act or omission of the Person, its officers, agents, employees or contractors arising out of, but not limited to, the construction, installation, operation, maintenance or removal of each of its WCF.
- 292-8.2.2 Requirement to Defend. Each Person that owns or operates a Tower-Based WCF, a Non-Tower WCF, or a Small WCF shall defend any actions or proceedings against the Municipality in which it is claimed that personal injury, including, but not limited to, death, or property damage was caused by the construction, installation, operation, maintenance or removal of each of its WCF. The obligation to indemnify, hold harmless and defend shall include, but not be limited to, the obligation to pay judgments, injuries, liabilities, damages, reasonable attorneys' fees, reasonable expert fees, court costs, and all other costs of indemnification.
- 292-8.2.3 Indemnification and Hold Harmless Agreement Requirement. Prior to the initial commencement of any construction, operation, or removal, each Person that owns, operates, or removes a Tower-Based, Non-Tower, or Small Wireless Communications Facility shall furnish an "Indemnification and Hold Harmless Agreement" to the North Castle Town Clerk.

292-9 Miscellaneous

- 292-9.1 Police Powers. The Municipality, by granting any permit or taking any other action pursuant to this Section, does not waive, reduce, lessen or impair the lawful police powers vested in the Municipality under applicable federal, state and local laws and regulations.
- 292-9.2 Severability. If any section, subsection, sentence, clause, phrase or word of this Section is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Section invalid.
- 292-9.3 Effective Date. This Law shall become effective upon enactment by the North Castle Town Board.

Section 3. Amend Section 355-40 of the Town Code to add the following:

- Y. Wireless Communications Facilities. Pursuant to Part II, Chapter 292, § 292-1 et seq., “Town of North Castle Wireless Facilities Law”, certain Wireless Communications Facilities (WCF) shall be allowed by special permit use, subject to Town Board approval, under the following conditions:
- (1) Special permit use from the Town Board shall be required for the construction, siting, or operation of a Tower-Based WCF, Non-Tower WCF, or a related Wireless Support Structure in any zoning district, where the property is not under Town ownership.
 - (2) The Town shall grant special permit use for the construction, siting, or operation of a Tower-Based WCF pursuant to the procedures and requirements of Part II, Chapter 292, § 292-4.
 - (3) The Town shall grant special permit use for the construction, siting, or operation of a Non-Tower WCF or related Wireless Support Structures pursuant to the procedures and requirements of Part II, Chapter 292, § 292-5.
 - (4) To the extent the Town Board concludes such conditions are necessary to minimize any adverse effect of the proposed Tower-Based WCF, Non-Tower WCF, or related Wireless Support Structure on adjoining properties, the Town may impose conditions in granting special permit use, provided that such exercise of zoning authority shall not be used to prohibit, or have the effect of prohibiting, wireless services in the Town of North Castle.
 - (5) Any information of an engineering nature that the applicant submits, whether civil, mechanical or electrical, shall be certified by an active, registered Professional Engineer (P.E.), licensed as such by the State of New York.
 - (6) The Town Board may obtain professional planning, legal, technical, engineering or environmental advice at the applicant’s expense under Chapter 355, Zoning, § 355-79B, concerning any application made.
 - (7) A modification to an existing Wireless Communications Facility that does not Substantially Change the physical dimensions of a Tower or Wireless Support Structure is an Eligible Facilities Request that shall require a building permit, issued pursuant to Part II, Chapter 355, Article XII, § 355-74 “Building permits”.

Section 4. Where the requirements of this local law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York, or of other applicable rules or regulations, the requirements of this local law shall prevail.

Section 5. The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

Section 46 This local law shall take effect immediately upon its adoption and filing with the Secretary of State.