

Town of New Scotland

Local Law B of the year of 2019

A Local Law amending Local Law No. 6 of the year of 2004 of the Town of New Scotland to establish special regulations regarding small scale cell technology.

Be it enacted by the Town Board of the Town of New Scotland the following:

SECTION I. Purpose, Intent and Findings

While the existing wireless infrastructure in the U.S. was erected primarily using macro cells with relatively large antennas and towers, wireless networks increasingly have required the deployment of small cell systems to support increased usage and capacity. In response to this demand, the Federal Communications Commission (FCC) has issued a Declaratory Ruling and Third Report and Order addressing the extent to which state and local municipalities can regulate the deployment of small cell systems in public right-of-ways. The Order permits local municipalities to adopt aesthetic guidelines to ensure that the design, appearance, and other features of buildings and structures are (1) compatible with nearby land uses; (2) manage right-of-ways so as to ensure traffic safety and coordinate various uses; and (3) protect the integrity of their historic, cultural, and scenic resources and their citizens' quality of life. In its adoption of this law, Town of New Scotland desires to encourage wireless infrastructure investment only through a fair and predictable process for the deployment of small wireless facilities, while enabling the Town to promote the management of its rights-of-way in the interests of the public health, safety and welfare.

SECTION II. Effective Date

This Local Law shall be effective immediately upon passage and filing with the NYS Secretary of State.

SECTION III. Amendment to the Wireless Telecommunications Facilities Siting Law for the Town of New Scotland

Local Law No. 6 for the year of 2004 is hereby amended by adding the following:

Section 4. Definitions

1. "Accessory Structure" means any accessory facility or structure serving or being used in conjunction with the Wireless Telecommunications Facilities or Small Cell Wireless Facilities not erected in a municipal right-of-way, including but not limited to, utility or transmission equipment storage sheds or cabinets, tanks, and generators.

2. "Applicant" means any Wireless service provider submitting an application for a Special Use Permit for Wireless Telecommunications Facilities or Site Plan Approval for Small Cell Wireless Facilities.

3. "Application" means all necessary and appropriate documentation that an Applicant submits in order to receive a Special Use Permit for Wireless Telecommunications Facilities pursuant to Section 8 of this law or Site Plan Approval for Small Cell Wireless Facilities

pursuant to Section 23-A of this law.

23. “Stealth” or “Stealth Technology” means minimizing adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities or Small Cell Wireless Facilities by using the least visually and physically intrusive facility.

26. “Telecommunications Structure” means a structure used in the provision of services described in the definition of ‘Wireless Telecommunications Facilities’ or ‘Small Cell Wireless Facilities’.

32. “Small Cell Wireless Facilities” or “Microcell Wireless Facilities” shall be used interchangeably and both shall mean and include facilities that meet the following conditions:

- a. The facilities—
 - i. are mounted on structures 50 feet or less in height including their antennas as defined in 47 CFR 1.1320(d), or
 - ii. are mounted on structures no more than 10 percent taller than other adjacent structures, or
 - iii. do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- b. Each antenna associated with the deployment, excluding associated antenna equipment is no more than three cubic feet in volume;
- c. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- d. The facilities do not require antenna structure registration under 47 CFR Part 17; and
- e. The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in section 47 CFR 1.1307(b).

33. “Site Plan Approval” means the official document or permit by which an Applicant is allowed to construct and use Small Cell Wireless Facilities as granted or issued by the Town.

34. “Right of Way (ROW) access fees” are recurring charges that are assessed, in some instances, to compensate a state or locality for a Small Cell Wireless Facility’s access to the ROW, which includes the area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property (including when such property is government-owned).

35. A “pole extender” as used herein is an object affixed between the pole and the antenna for the purpose of increasing the height of the antenna above the pole.

Section 23-A: Site Plan Applications and Requirements for Small Cell Wireless Facilities.

I. Location of Small Cell Wireless Facilities and Zones of Permitted Use.

Small Cell Wireless Facilities are only permitted with site plan review in accordance with the regulations set forth in Section II below in zones where it is determined that there is a coverage need in accordance with this Section.

II. Site Plan Application and Other Requirements

No Person shall be permitted to site, place, build, construct, modify or prepare any site for placement or use of any Small Cell Wireless Facility as of the effective date of this Local Law without having first obtained Site Plan Approval from the Town of New Scotland Planning Board.

A. All Applicants for Site Plan Approval for Small Cell Wireless Facilities or any modification of such facility shall comply with the requirements set forth in this section. The Planning Board is the officially designated agency or body of the Town to whom applications for Site Plan Approval of Small Cell Wireless Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, re-certifying or not re-certifying, or revoking Site Plan Approval. The Planning Board may at its discretion designate other official agencies of the Town or engage consultants to review, analyze, evaluate and make recommendations to the Planning Board with respect to the granting or not granting, re-certifying or not re-certifying or revoking Site Plan Approval.

B. Pre-Submittal Conference. Prior to submitting an application for a Small Cell Wireless Facility, Applicants are encouraged (but not required) to schedule and attend a pre-submittal conference with the Town of New Scotland Building Inspector and one or more members of the Planning Board to receive informal feedback on the proposed facility and application materials. The pre-submittal conference is intended to identify potential concerns and streamline the formal application review process after submittal.

C. Application Requirements. All applications for Site Plan Approval shall be signed by Applicant, and, if the proposed site is not in a public right-of-way, the landowners. An authorized representative of the landowner with knowledge of the contents and representations made therein and signing and attesting to the truth and completeness of the information may present the application on behalf of the owner. At the discretion of the Planning Board, any false or misleading statement in the application may subject the Applicant to denial of the application without further consideration or opportunity for correction. The Applicant, if not the landowner, shall state his/her interest in the application. All applications for Site Plan Approval under this law shall include the following:

1. A statement in writing that:

a. The proposed Small Cell Wireless Facility shall be maintained in a safe manner, and in compliance with conditions of the Site Plan Approval, without

14. A description of the proposed antenna(s) and any new structures along with all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color, and lighting;
15. The frequency, modulation, and class of service of radio or other transmitting equipment;
16. The actual intended transmission and the maximum effective radiated power of the Antenna(s);
17. Certification of a licensed professional engineer that any supporting poles and foundation are appropriately sized and have sufficient strength to accommodate the additional small cell equipment structural loads, including, but not limited to: plan, elevation, and section views of facilities, structural design in accordance with the New York State Building Code including foundation, wind, and seismic, electrical power design plans as well as back-up generator plans/requirements. The small cell equipment structural shall be provided by the network provider as per the current Telecommunications Industry Association (TIA) Rev-G standard;
18. A non-ionizing radiation electromagnetic radiation report (NIER) submitted to the pole owner and retained on file for equipment type and model. The NIER report shall be endorsed by an RF PE licensed in the State of New York. The report shall specify minimum approach distances to the general public as well as electrical communication works that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket;
19. Certification that the proposed antenna(a) will not cause interference with other telecommunication devices;
20. Copy of the FCC license applicable for the intended use of the Small Cell Wireless Facility;
21. If the application proposes to install the Small Cell Wireless Facility on a utility pole or structure, certification must be provided that said pole or structure and foundation is designed and will be constructed to meet all local, Town, State and Federal structure requirements for loads, including wind and ice;
22. Certification that the Small Cell Wireless Facilities will be effectively grounded and bonded so as to protect persons and property and that appropriate surge protectors will be installed;
23. Submission of an Environment Assessment Form;
24. Any and all representation made by the Applicant to the Town on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Town;
25. Payment of application fees, access fees, and consulting fees as required by the Planning Board and/or as set by the Town Board.

D. In addition to the above application requirements the following the following Aesthetic, Concealment and Design Standards for Small Cell Wireless shall apply to all applications for Site Plan Approval. Deployments shall conform to the following

design standards:

1. If the Applicant is able to meet the range of the Small Cell Wireless Facilities by the addition of a macro-antennae to an existing cell tower, then the Applicant must establish that the addition of a macro-antennae is not commercially practicable before a Site Plan Approval for a Small Cell Wireless Facility may be granted.

2. General requirements.
 - a. Ground mounted equipment enclosures should be located in the right-of-way, including equipment installed underground. The Applicant shall submit a concealment element plan.

 - b. Generators located in the rights of way are prohibited.

 - c. No equipment shall be operated so as to produce noise that is considered a nuisance.

 - d. Small Cell Wireless Facilities are not permitted on traffic signal poles unless denial of the siting could be a prohibition or effective prohibition of the Applicant's ability to provide telecommunications service in violation of 47 USC §§ 253 and 332.

 - e. Replacement pole and new pole locations shall comply with the Americans with Disabilities Act (ADA) and the authority having jurisdiction over construction and sidewalk clearance standards, local laws, and state and federal laws and regulations in order to provide a clear and safe passage within the right-of-way. Further, the location of any replacement or new pole must: be physically possible, comply with applicable traffic warrants, not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and not adversely affect the public welfare, health or safety.

 - f. Replacement poles shall be located as near as possible to the existing pole with the requirement to remove the abandoned pole.

 - g. No signage, message or identification other than the manufacturer's identification or identification required by governing law is allowed to be portrayed on any antenna, equipment enclosure, or other related equipment. Any permitted signage shall be located where required and be of the minimum amount possible to achieve the intended purpose (no larger than 4x6 inches), provided that, signs are permitted as concealment element techniques where appropriate.

 - h. Antennas and related equipment shall not be illuminated except for security reasons, required by a federal or state authority, or unless approved as part of a concealment element plan.

 - i. The preferred location of any antenna is on an existing tower facility. A Small Cell Wireless Facility would only be allowed in areas not covered by existing telecommunication facilities or where it is determined that there is a need due to a concentrated area.

- j. Small Cell Wireless Facilities' preferred locations are on a pole located with the least visible impact.
 - k. Antennas, ancillary equipment, conduit, and cable shall not dominate the structure or pole upon which they are attached.
 - l. Except for locations in the right-of-way, Small Cell Wireless Facilities are not permitted on any property containing a residential use in any zoning district.
 - m. The Town may consider the cumulative visual effects of Small Cell Wireless Facilities mounted on poles within the right-of-way when assessing proposed siting locations so as to not adversely affect the visual character of the Town. In doing so the Planning Board may require a visual assessment, use of photo-simulations, or other visual analysis tools to aid in its consideration. This provision shall not be applied to limit the number of permits issued when no alternative sites are reasonably available or to impose a technological requirement on the Applicant.
 - n. In the event that installation of the proposed Small Cell Wireless Facilities require disturbance to surrounding land, the Applicant shall be responsible for restoring the site to its original condition.
 - o. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the Applicant, alternative forms of concealment or deployment may be permitted which provide similar or greater protections from negative visual impacts to the streetscape.
3. All Small Cell Wireless Facilities shall be placed on existing structures unless the Applicant meets the requirements of Section (D)(7)(a) below.
- a. Locations of Small Cell Wireless Facilities. Applicants for Small Cell Wireless Facilities shall locate, site and erect said facilities in accordance with the following priorities, one (i) being the highest priority and four (iv) being the lowest priority:
 - i. Existing Town-owned structures or facilities. Small Cell Wireless Facilities shall be prohibited on residential buildings and commercial buildings which are not Town-owned structures or facilities.
 - ii. On, in, or adjacent to, existing electrical power line transmission towers or power poles in the municipal right-of-way. If public utilities are currently located along rear property lines, then Small Cell Wireless Facilities shall be located within the same rear right-of-way as those utilities as opposed to the front yard right-of-way.
 - iii. On or adjacent to existing structures or facilities within the Town such as existing water towers, church steeples, silos etc.
 - iiii. On or in a proposed new structure if the requirements of Section (D) (7)(a) below have been met by the Applicant.

- b. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The Applicant must satisfactorily demonstrate the reason(s) why such Approval should be granted for the proposed site, and the hardship that would be incurred by the Applicant, if the permit was not granted for the proposed site.

- C. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Planning Board may, if otherwise permitted by law, disapprove an application for any of the following reasons:
 - i. conflicts with safety and safety-related codes and requirements;

 - ii. interferes with line of sight for pedestrian and vehicular traffic;

 - iii. conflicts with the historic nature or character of a neighborhood or historical district;

 - iiii. the placement and location of said facilities would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers;

 - V. conflicts with the provisions of this Local Law;

 - vi. conflicts with the nature and character of the neighborhood.

- 4. Small Cell Wireless Facilities attached to existing or replacement non-wooden light poles and other non-wooden poles in the right-of-way or non-wooden poles outside of the right-of-way shall conform to the following design criteria:
 - a. Antennas and the associated equipment enclosures (including disconnect switches and other appurtenant devices) shall be fully concealed within the pole, unless such concealment is technically infeasible, or is incompatible with the pole design, in which case the antennas and associated equipment enclosures must be camouflaged to appear as an integral part of the pole or flush mounted to the pole, meaning no more than six (6) inches off of the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of Small Cell Wireless Facilities. If the equipment cannot be concealed within the pole and requires an enclosure, the enclosure should be detached and located behind the pole or underground, provided that such location does not interfere with roads and sidewalks, underground infrastructure, or traffic line of sight or is otherwise determined by the Planning Board to negatively affect the aesthetics of the premises or adjacent properties.

 - b. The furthest point of any antenna may not extend more than twelve (12) inches from the face of the pole.

- c. All conduit, cables, wires and fiber must be routed internally in the pole. Full concealment of all conduit, cables, wires and fiber is required within mounting brackets, shrouds, canisters or sleeves if attaching to exterior antennas or equipment.
 - d. An antenna on top of an existing pole may not extend more than six (6) feet above the height of the existing pole and the diameter may not exceed sixteen (16) inches, measured at the top of the pole, unless the Applicant can demonstrate that more space is needed. The antennas shall be integrated into the pole design so that it appears as a continuation of the original pole, including colored or painted to match the pole, and shall be shrouded or screened to blend with the pole except for canister antennas which shall not require screening. All cabling and mounting hardware/brackets from the bottom of the antenna to the top of the pole shall be fully concealed and integrated with the pole.
 - e. Any replacement pole shall substantially conform to the design of the pole it is replacing or the neighboring pole design standards utilized within the contiguous right-of-way.
 - f. Additional height of any replacement pole shall be the minimum additional height necessary but shall not exceed 10 feet above the pole it replaces; provided that the height of the replacement pole cannot be extended further by additional antenna height.
 - g. The diameter of a replacement pole shall comply with all standards required by the authority having jurisdiction for sidewalk clearance requirements and shall, to the extent technically feasible, not be more than a 25% increase of the existing non-wooden pole measured at the base of the pole, unless additional diameter is needed in order to conceal equipment within the base of the pole, and shall comply with the requirements in subsection Section 23-A(II)(D)(7).
5. Wooden pole design standards. Small Cell Wireless Facilities located on wooden poles shall conform to the following design criteria:
- a. The wooden pole at the proposed location may be replaced with a taller pole for the purpose of accommodating a Small Cell Wireless Facility; provided, that the replacement pole shall not exceed a height that is a maximum of ten (10) feet taller than the existing pole, unless a further height increase is required and confirmed in writing by the pole owner and that such height extension is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities.
 - b. A pole extender may be used instead of replacing an existing pole but the overall height of the extender and all equipment may not increase the height of the existing pole by more than 10 feet, unless a further height increase is required and confirmed in writing by the pole owner and that such height increase is the minimum extension possible to provide sufficient separation and/or clearance from electrical and wireline facilities. The pole extender shall be painted to approximately match the color of the pole and shall substantially match the diameter of the pole measured at the top of the pole.
 - c. Replacement wooden poles must either match the approximate color and materials of the replaced pole or shall be the standard new wooden

pole used by the primary pole owner in the Town.

- d. All ancillary equipment, boxes, and conduit, shall be colored or painted to match the approximate color of the surface of the wooden pole on which they are attached and appear as an integral part of the pole or flush mounted to the pole, and must be the minimum size necessary for the intended purpose, not to exceed the volumetric dimensions of Small Cell Wireless Facilities. All ancillary equipment and boxes that cannot be mounted to the pole and require an enclosure must be located in an enclosure that is detached and located behind the pole or underground, provided that such location does not interfere with roads and sidewalks, underground infrastructure, or traffic line of sight or is otherwise determined by the Planning Board to negatively affect the aesthetics of the premises or adjacent properties.
- e. All Small Cell Wireless Facility antennas on wooden poles should be of a top mount canister or omnidirectional type when feasible to appear as an integral part of the pole. The antenna shall not exceed sixteen (16) inches wide, measured at the top of the pole, and shall be colored or painted to match the pole. The canister antenna must be placed to look as if it is an extension of the pole.
- f. Antennas should be placed in an effort to minimize visual clutter and obtrusiveness. Multiple antennas are not permitted on a single wooden pole and shall not be more than three (3) cubic feet in volume and shall not exceed the height requirement in Section 23-A(II)(D)(4)(b).
- g. All cables shall be concealed either within the canister antenna or within a sleeve between the antenna and the wooden pole.
- h. The furthest point of any ancillary equipment, brackets, boxes, and conduit may not extend more than six (6) inches beyond the face of the pole. All equipment that would exceed the allowed distance should be detached and installed next to the pole or located underground within the vicinity of the pole.
- i. An omni-directional antenna may be mounted on the top of an existing wooden pole, provided such antenna is no more than four (4) feet in height and is mounted directly on the top of a pole or attached to an extender made to look like the exterior of the pole at the top of the pole. All cables shall be concealed within the sleeve between the bottom of the antenna and the mounting bracket.
- j. All related equipment, including but not limited to, ancillary equipment, radios, cables, associated shrouding, microwaves, and conduit which are mounted on wooden poles shall not be mounted more than six (6) inches from the surface of the pole, unless a further distance is technically required, and is confirmed in writing by the pole owner.
- k. The equipment must be placed in the smallest enclosure possible for the intended purpose. The equipment enclosure and all other wireless equipment associated with the utility pole, including wireless equipment associated with the antenna and any pre-existing associated equipment on the pole may not exceed 28 cubic feet. Multiple equipment enclosures may be acceptable if designed to more closely

iii. No new poles shall be located in a Protected Watercourse Area.

b. The concealment element design shall include the design of the screening, fencing or other concealment technology for a tower, pole, or equipment structure, and all related transmission equipment or facilities associated with the proposed Small Cell Wireless Facility, including but not limited to fiber and power connections.

c. The concealment element design should seek to minimize the visual obtrusiveness of the Small Cell Wireless Facility. The proposed pole or structure should have similar designs to existing neighboring poles in the right-of-way, including similar height to the extent technically feasible.

d. If the proposed Small Cell Wireless Facility is placed on a replacement pole in a Residential District, then the replacement pole shall be of the same general design as the pole it is replacing, unless the Planning Board or designee otherwise approves a variation due to aesthetic or safety concerns. Any concealment element design for a Small Cell Wireless Facility on a decorative pole should attempt to mimic the design of such pole and integrate the Small Cell Wireless Facility into the design of the decorative pole. Other concealment methods include, but are not limited to, utilization of coverings or concealment devices of similar material, color, and texture - or the appearance thereof - as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all conduit and wirelines are installed internally in the structure. Further, Applicant designs should, to the extent technically possible, comply with the generally applicable design standards adopted pursuant to this section.

e. If the Planning Board or designee has already approved a concealment element design either for the Applicant or another Small Cell Wireless Facility along the same public right-of-way or for the same pole type, then the Applicant shall utilize a substantially similar concealment element design, unless it can show that such concealment element design is not physically or technologically feasible, or that such deployment would undermine the generally applicable design standards.

f. These design standards are intended to be used solely for the purpose of concealment and siting. Nothing herein shall be interpreted or applied in a manner which dictates the use of a particular technology. When strict application of these requirements would unreasonably impair the function of the technology chosen by the Applicant, alternative forms of concealment or deployment may be permitted that provide similar or greater protections of the street scape.

E. Height and Setback Requirements. Small Cell Wireless Facilities proposed in a municipal right-of-way shall adhere to the height requirement set forth in Section 23-A herein and be excepted from the height and setback regulations set forth in Section 190-29 of the Town of New Scotland Zoning Code. In the instance that the Small Cell Wireless is proposed on an existing building or structure the Small Cell Wireless cannot increase the height of the existing building by more than five (5) feet.

F. Small Cell Wireless Facility Modification Permit. A Small Cell modification permit is required prior to (1) replacing transmission equipment at a permitted Small Cell Wireless Facility that increases the overall volume or height of the facility or (2) adding new transmission equipment to a permitted facility. Modifications of original

Small Cell Wireless Facilities shall require Site Plan Approval in accordance with the procedure set forth in Section 23-A(II)(D)-(G) above.

G. Application. The Building Inspector shall specify, in writing, the application submittal requirements to the Applicant. If the application for a modification permit is made within two (2) years or less after the original application for permit and the Building Inspector determines that certain application materials as required in Section (C) above for the modification are duplicative of those provided with the original application for Permit then the Building Inspector after consultation with the Planning Board Chair may waive specific submittal requirements as unnecessary for review of any particular application. The Building Inspector may require additional material when the Building Inspector determines such material is needed to adequately assess the proposed modification.

1. Application fees. All applications for modifications of permits shall be accompanied by a reasonable application fee and a map in an amount to be determined by the Town Board by periodic resolution to cover the Town's costs in processing the application, including application review, permit issuance and facility inspection. The Planning Board may also assess necessary reasonable consultant fees as permitted by Local Law.

2. Public Hearing. A public hearing shall be mandatory for all Small Cell Wireless Facility applications, including modification applications, submitted hereunder. Said public hearing shall be held by the Planning Board, notice of which shall be published in the official newspaper of the Town no less than five (5) calendar days prior to the scheduled date of the public hearing. Said public hearing shall be scheduled for the first Planning Board meeting following the submission of a complete application to the Building Inspector which complies with all requirements herein.

H. Timeframe for Action by Building Inspector. If the Building Inspector determines that an application is incomplete, the Building Inspector shall notify the Applicant in writing within 10 days of receipt of the application with a statement listing the additional information needed to make the application complete and the basis for requiring the submission of such information. The Building Inspector may issue additional notices that an application is incomplete if any supplemental submittal does not contain all of the information requested by the Building Inspector in the original notice of incompleteness. The Building Inspector shall issue any such additional notices within 10 business days of receipt of the supplemental submittal. If the Applicant does not supply a complete response within 120 days of the Building Inspector's initial request, the Building Inspector may deem the application expired in which case a new application may be resubmitted with new application fees.

I. Timeframe for Planning Board Action.

1. All determinations to approve, deny, or modify an application for Site Plan Approval for Small Cell Wireless Facilities to be sited on existing structures must be made by the Planning Board within 45 days from the date the complete application is submitted to the Building Inspector.

2. All determinations to approve, deny, or modify an application for Site Plan Approval for Small Cell Wireless Facilities requiring placement on a new structure must be made by the Planning Board within 60 days from the date the complete application is submitted to the Building Inspector.

3. In the case of an incomplete application, the timeframe for approval resets upon the Building Inspector's receipt of supplemental information from the Applicant satisfying the application requirements of this Section 23-A(II) (C).

Section 28. ANNUAL NIER CERTIFICATION shall be amended to read:

The holder of the Special Use Permit or Site Plan Approval granted pursuant to this law shall, annually, certify to the Town of New Scotland Building Inspector that the NIER levels at the site are within the threshold levels adopted by the FCC.

Section 29. LIABILITY INSURANCE shall be amended to read:

- A. A holder of a Special Use Permit for Wireless Telecommunications Facilities or Site Plan Approval for Small Cell Wireless Facilities shall secure and at all times maintain public liability insurance for personal injuries, death, and property damage, and umbrella insurance coverage for the duration of the Special Use Permit or Site Plan Approval in amounts as set forth below:
 - 1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 - 2. Automobile Coverage: \$1,000,000.00 per occurrence/ \$2,000,000 aggregate;
 - 3. Workers Compensation and Disability: Statutory amounts.
- B. The commercial general liability insurance policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents and consultants as additional named insureds.
- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with a Best's rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Building Inspector with at least 30 days prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Building Inspector at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted Wireless Telecommunications Facility or Small Cell Wireless Facility is initiated, but in no case later than 15 days after the grant of the Special Use Permit or Site Plan hereunder, the holder of the Special Use Permit or Site Plan Approval shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

Section 30. INDEMNIFICATION shall be amended to read:

- A. Any application for Wireless Telecommunication Facilities or Small Cell Wireless Facilities that is proposed on Town-owned property, pursuant to this Local Law, shall contain a provision with respect to indemnification. Such provision shall require the Applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or

expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.

- B. Notwithstanding the requirements noted in subsection (A) of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Special Use Permit for Wireless Telecommunications Facilities or Site Plan Approval for Small Cell Wireless Facilities.

Section 31. FINES shall be amended to read:

- A. In the event of a violation of this Local Law or any Special Use Permit issued or Site Plan Approval granted pursuant to this Local Law, the Town Board may impose and collect, and the holder of said Special Use Permit or Approval shall pay to the Town, fines or penalties as set forth below.
- B. A violation of this Local Law is hereby declared to be an offense, punishable by a fine not exceeding (\$350.00) three hundred fifty dollars per day per occurrence or imprisonment for a period not to exceed 15 days, or both for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than (\$350.00) three hundred fifty dollars per day nor more than (\$700.00) seven hundred dollars per day or imprisonment for a period not to exceed 15 days, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than (\$700.00) seven hundred dollars per day nor more than (\$1,000.00) one thousand dollars per day or imprisonment for a period not to exceed 15 days, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this article or of this Local Law or regulation shall be deemed misdemeanors and for such purpose only all provisions of Law relating to misdemeanors shall apply to such violations. Each day's continued violation shall constitute a separate additional violation.
- C. Notwithstanding anything in this Local Law, the holder of the Special Use Permit or Site Plan Approval may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Local Law or any section of this Local Law. An attempt to do so shall subject holder of the Special Use Permit or Approval to termination and revocation of said Permit/Approval. The Town may also seek injunctive relief to prevent the continued violation of this Local Law, without limiting other remedies available to the Town.

Section 32. DEFAULT AND/OR REVOCATION shall be amended to read

- A. If Wireless Telecommunications Facilities or Small Cell Wireless Facilities are repaired, rebuilt, replaced, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Local Law or the permits or approvals granted hereunder, then the Building Inspector shall notify the holder of the Permit or Approval in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within 10 days of the date of the postmark of the Notice, or of the date of the personal service of the Notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other section of this Local Law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or

property, the Building Inspector may, at its sole discretion, order the violation remedied within 24 hours.

- B.** If within the period set forth in (A) above the Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities are not brought into compliance with the provisions of this Local Law, or Permit or Approvals granted hereunder, or substantial steps are not taken in order to bring the affected Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities into compliance, then the Building Inspector may revoke such Permits and/or Approvals granted hereunder, and shall notify the holder of the Permits and/or Approvals within 48 hours of such action.

Section 33. REMOVAL OF WIRELESS TELECOMMUNICATIONS FACILITIES shall be amended to read:

REMOVAL OF WIRELESS TELECOMMUNICATIONS
AND SMALL CELL WIRELESS FACILITIES

- A.** Under the following circumstances, the Planning Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities:
- 1.** Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities have been abandoned (i.e. not used as Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities) for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by Acts of God, in which case, repair or removal shall commence within 90 days of notification by the Building Inspector;
 - 2.** Permitted Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities fall into such a state of disrepair that it creates a health or safety hazard;
 - 3.** Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or approval, or any other necessary authorization.
- B.** If the Building Inspector makes a determination as noted in subsection (A) of this section, then the Building Inspector shall notify the holder of the Special Use Permit for the Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities within 48 hours that said Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities are to be removed. The Building Inspector may approve an interim temporary use agreement/permit, such as, for example, to enable the sale of the Wireless Telecommunications Facilities or Small Cell Wireless Facilities.
- C.** The holder of the Permit or Approval granted hereunder, or its successors or assigns, shall dismantle and remove such Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Building Inspector. However, if the owner of the property upon which the Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities are located wishes to retain any access roadway to the Wireless Telecommunications Facilities, the owner may do so with the approval of the Building Inspector.

- D. If Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities are not removed or substantial progress has not been made to remove the Facilities within 90 days after the Permit/Approval holder has received notice, then the Building Inspector may order officials or representatives of the Town to remove the Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities at the sole expense of the owner or holder of the Permits/Approvals granted hereunder.
- E. If, pursuant to this section, the Town removes, or causes to be removed, Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities, and the owner of the same does not claim and remove it from the site to a lawful location within 10 days, then the Building Inspector may take steps to declare the Wireless Telecommunications or Small Cell Wireless Facilities abandoned, and sell them and their components and keep the proceeds from such Facilities sale.
- F. Notwithstanding anything in this Section to the contrary, the Building Inspector may approve a temporary use permit/agreement for the Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities, for no more than 90 days, during which time a suitable plan for removal, conversion, or re-location of the affected Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities shall be developed by the holder of the Special Use Permit or Site Plan Approval, subject to the approval of the Planning Board, and an agreement to such plan shall be executed by the holder of the Special Use Permit or Site Plan Approval and the Planning Board. If such a plan is not developed, approved and executed within the 90 day time period, then the Town may take possession of and dispose of the affected Wireless Telecommunications Facilities and/or Small Cell Wireless Facilities in the manner provided in this Section.

Section 34. RELIEF shall be amended to read:

Any Applicant desiring relief, waiver or exemption of procedures required by this Local Law may request such, provided that the relief or exemption is contained in the original application for either a Special Use Permit or Site Plan Approval, or in the case of an existing or previously granted Special Use Permit or Site Plan Approval a request for modification of its Tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the Applicant to prove. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted the relief, the requested waiver or exemption will have no significant effect on the health and safety, including but not limited to the nature and character of the community, and welfare of the Town, its residents and other service providers.

Section 35. ADHERENCE TO STATE AND/OR FEDERAL RULES AND REGULATIONS shall be amended to read:

- A. To the extent that the holder of a Special Use Permit for Wireless Telecommunications Facilities or Approval for Small Cell Wireless Facility has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit or Approval shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, included, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and radio frequency (RF) emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are

changed and/or are modified during the duration of a Special Use Permit for Wireless Telecommunications Facilities or Approval for Small Cell Wireless/Microcell Wireless Facility, then the holder of such a Special Use Permit or Approval shall conform the permitted Facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.