

**ZONING LOCAL LAW  
TOWN OF KIRKWOOD**

**ARTICLE IX – SITING OF WIRELESS  
TELECOMMUNICATIONS FACILITIES**

**Local Law #6-2000  
Adopted October 3, 2000**

Section 901. Purpose and Legislative Intent  
(Amended 10-2-12 by LL #4-2012)

The Telecommunications Act of 1996 (herein after referred to as the Act), in effect, affirmed the authority of a local government, such as the Town, over decisions regarding the placement, construction and modification of wireless telecommunications facilities.

The Middle Class Tax Relief and Job Creation Act of 2012 (hereinafter referred to as the “Tax Relief Act”) in effect mandates that notwithstanding Section 704 of the Telecommunications Act of 1996 or any provision of law, a State or local government may not deny, and shall approve, any request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station. A request relating to an eligible facility, in accordance with the Tax Relief Act, means any request for modification of an existing wireless tower or base station that involves:

1. collocation of new transmission equipment;
2. removal of transmission equipment; or
3. replacement of transmission equipment.

A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require a special use permit, but rather shall only be the subject of an administrative review by the Code Enforcement Officer. Such administrative review shall not require a public hearing, but the applicant shall be subject to all provisions and application fees of this chapter, except where otherwise indicated. All of the following sections of this article shall remain in full force and effect when the request is being handled by administrative review by the Code Enforcement Officer.

Additionally, the Federal Communications Commission’s (FCC) Declaratory Ruling (FCC Ruling) issued on November 18, 2009 and upheld in City of Arlington v. Federal Communications Commission (Case No. 10-60039) by the Fifth Circuit Court of Appeals, established time frames for State and local governments to take action on wireless facility siting applications which would be applicable to administrative review by the Code Enforcement Officer as well as by the Board.

The Town Board of the Town finds and determines that wireless telecommunications facilities and related facilities may pose a unique hazard to the safety, public welfare and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to insure that the placement, construction and modification of wireless telecommunications facilities is consistent with the Town’s land use policies, the Town is adopting a single, comprehensive, wireless telecommunications facilities application and permit process.

The intent of this Local Law is to (1) minimize the negative impact of wireless telecommunications facilities, (2) establish a fair and efficient process for review and approval of applications, (3) assure an integrated, comprehensive review of the environmental impacts of such facilities, (4) protect the health (consistent with the Act), safety and welfare of Town and its residents, (5) protect residential areas and land uses from potential adverse impacts of towers and antennas; (6) encourage the location of towers in non-residential areas; (7) minimize the total number of towers throughout the community; (8) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers, (9) encourage users of towers and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal, (10) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening, and innovative camouflaging techniques, (11) enhance the ability of the providers of telecommunications services to provide such services to the community quickly,

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effectively, and efficiently, and (12) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, the Town shall give due consideration to its master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

**SECTION 902. Title**

This local Law may be known, cited, and referred to as the Wireless Telecommunications Facilities Siting Law of the Town of Kirkwood. For purposes of Article IX of the Zoning Local Law, this Local Law may be known, cited, and referred to as the Law.

**SECTION 903. Severability**

- A. If any word, phrase, sentence, part, section, subsection, or other portion of this Law or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this Law, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The invalidity of any provision of this Law shall not affect the validity of any other provision of this Law which can be given effect without such invalid provision.
- B. Any Tower Special Use Permit issued under this Law shall be comprehensive and not severable. If any part of a Tower Special Use Permit issued hereunder is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon election by the Town Board.

**SECTION 904. Definitions**

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

- A. **ACCESSORY FACILITY or STRUCTURE:** An accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to, utility or transmission equipment storage sheds or cabinets.
- B. **ACT:** The Telecommunications Act of 1996
- C. **APPLICANT:** Any wireless service provider submitting an Application for a Tower Special Use Permit for Wireless Telecommunications Facilities.
- D. **APPLICATION:** The form approved by the Town Board, together with all necessary and appropriate documentation that an Applicant submits in order to receive a Tower Special Use Permit for Wireless Telecommunications Facilities.
- E. **ANTENNA:** A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency signals mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves. This Local Law shall not govern any tower, or the installation of any antenna, that is under seventy (70) feet in height and is owned and operated by a federally-licensed amateur radio station operation or is used exclusively for receive only antennas. Such waves shall include, but not be limited to, radio, television, cellular, paging, Personal Telecommunications Services (PCS), microwave

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telecommunications, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

- F. **BOARD:** The Zoning Board of Appeals of the Town of Kirkwood, which is the officially designated Board of the Town of Kirkwood to which Applications for a Tower Special Use Permit for Wireless Telecommunications Facilities must be made, and which is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Tower Special Use Permits for Wireless Telecommunications Facilities. Pursuant to the provisions of section 274 of the Town Law of the State of New York, any such matter shall be referred by the Board to the Town of Kirkwood Planning Board for a report and recommendation within 60 days of receipt of such referral. In the event the Planning Board fails to issue such report and recommendation within 60 days, the Board may proceed to take action thereon. The Board may, at its discretion, request that other official agencies of the Town accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking Tower Special Use Permits for Wireless Telecommunications Facilities.
- G. **CAMOUFLAGED TOWER:** Any Tower or supporting structure that, due to design, location, or appearance, partially or completely hides, obscures, conceals, or otherwise disguises the presence of the Tower and one or more Antennas or Antenna arrays affixed thereto.
- H. **CO-LOCATION:** The use of a Tower or structure to support Antennae for the provision of wireless services without increasing the height of the Tower or structure.
- I. **COMMERCIAL IMPRACTICABILITY or COMMERCIALLY IMPRACTICABLE:**  
The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
- J. **COMPLETED APPLICATION:** An Application that contains all information and/or data necessary to enable the Board to evaluate the merits of the Applications, and to make an informed decision with respect to the effect and impact of the Wireless Telecommunications Facilities on the town in the context of the permitted land use for the particular location requested.
- K. **COUNTY:** Broome County.
- L. **DIRECT-TO HOME SATELLITE SERVICES or DIRECT BROADCAST SERVICE or DBS:**  
Only programming transmitted or broadcast by satellite directly to subscribers’ premises without the use of ground receiving equipment, other than such equipment at the subscribers’ premises or in the uplink process to the satellite.
- M. **EPA:** The United States Environmental Protection Agency, or its duly designated and authorized successor agency.
- N. **FAA:** The Federal Aviation Administration, or its duly designated and authorized successor agency.
- O. **FCC:** The Federal Communications Commission, or its duly designated and authorized successor agency.
- P. **FREE STANDING TOWER:** A Tower that is not supported by guy wires and ground anchors or other means of attached or external support.

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- Q. FULL EAF: The Full Environmental Assessment Form approved by the New York Department of Environmental Conservation.
- R. HEIGHT: When referring to a Tower or structure, the distance measured from the preexisting grade level to the highest point on the Tower or structure, even if said highest point is an Antenna.
- S. MODIFICATION or MODIFY: The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a Telecommunications Tower or Telecommunications Site is a modification. A Modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.
- T. NIER: Non-Ionizing Electromagnetic Radiation.
- U. PERSON: Any individual, corporation, estate, trust, partnership, joint venture, association of two (2) or more persons having a joint common interest, limited liability company, or any other entity.
- V. PERSONAL WIRELESS FACILITY: See definition for ‘ Wireless Telecommunications Facilities’.
- W. PERSONAL WIRELESS SERVICES or PWS or PERSONAL TELECOMMUNICATIONS SERVICE or PCS: These terms shall have the same meaning given to those terms or used in the Telecommunications Act of 1996.
- X. PLANNING BOARD: The Planning Board of the Town of Kirkwood.
- Y. SITE: See definition for Wireless Telecommunications Facilities.
- Z. SPECIAL USE PERMIT: The official document or permit by which an Applicant is allowed to construct and use Wireless Telecommunications Facilities as granted or issued by the Town.
- AA. STATE: The State of New York.
- AB. STEALTH or STEALTH TECHNOLOGY: Means minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
- AC. TELECOMMUNICATIONS: The transmission and reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
- AD. TELECOMMUNICATION SITE: See definition for Wireless Telecommunications Facilities.
- AE. TELECOMMUNICATIONS STRUCTURE or TELECOMMUNICATIONS TOWER:  
A structure, tower or location designed, intended to be used, or used in the provision of services described in the definition of Wireless Telecommunications Facilities.
- AF. TEMPORARY: In relation to all aspects and components of this Law, something intended to, or that does, exist for fewer than ninety (90) days.

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AG. TOWER SPECIAL USE PERMIT: The authorization by which an Applicant is permitted to place, construct, use, or modify Wireless Telecommunications Facilities, subject to the requirements imposed by the Law and the conditions attached to the issuance of the Tower Special Use Permit by the Town Board.

AH. TOWN: The Town of Kirkwood, New York.

AI. TOWN BOARD: The Town Board of the Town of Kirkwood.

AJ. VISUAL EAF: A Visual Environmental Assessment Form.

AK. WIRELESS TELECOMMUNICATIONS FACILITIES or TOWER or SITE or PERSONAL WIRELESS FACILITY: A structure or location designed, or intended to be used to support antennas. It includes without limit, free standing towers, guyed towers, monopoles, and similar structures that employ camouflage technology, including, but not limited to structures such as a church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It is a structure intended for transmitting and/or receiving radio, television, cellular, paging, personal telecommunications services, or microwave telecommunications, but excluding those used exclusively for fire, police, municipal ambulance or other telecommunications, or exclusively for private radio or television reception or exclusively for private citizen's bands, amateur radio or other similar telecommunications.

SECTION 905. Overall Policy and Desired Goals for Tower Special Use Permits for Wireless Telecommunications Facilities:

A. In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the Town's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Local Law, the Town Board (acting pursuant to Section 267-a of the Town Law and other applicable provisions) hereby authorizes the Board to grant a Tower Special Use Permit pursuant to this Local Law. The Town Board hereby adopts an overall policy with respect to a Tower Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. Implementing an Application process for person(s) seeking a Tower Special Use Permit for Wireless Telecommunications Facilities;
2. Establishing a policy for examining an application for, and issuing a Tower Special Use Permit for, Wireless Telecommunications Facilities that is both fair and consistent.
3. Establishing reasonable time frames for granting or not granting a Tower Special Use Permit for Wireless Telecommunications Facilities, or recertifying or not recertifying, or revoking the Tower Special Use Permit granted under this Law.
4. Promoting and encouraging, wherever possible the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.
5. (Deleted October 7, 2003 by LL 12-2003)

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B. Non-conforming Uses

1. Not An Expansion of Nonconforming Use. Towers that are constructed, and antennas that are installed in accordance with the provisions of this Local Law shall not be deemed to constitute the expansion of a non-conforming use or structure.

2. Preexisting Towers. Preexisting towers shall be allowed to continue their usage as they presently exist so long as they are inspected periodically in accordance with applicable federal and state laws. Routine maintenance (including replacement with a new tower of like construction and height) shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this Local law.

3. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding Section 306.3, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit. The type, height, and location of the tower onsite shall be of the same type and intensity as the original approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in Section 928 of this Article IX Zoning Local Law.

SECTION 906. Tower Special Use Permit Application and Other Requirements:  
(Amended 10-2-12 by LL #4-2012)

A. All Applicants for a Special Use Permit for Wireless Telecommunications Facilities or any modification of such facility shall comply with the requirements set forth in this Section. The Board is the officially designated agency or body of the community to whom applications for a Special Use Permit for Wireless Telecommunications Facilities must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking Special Use Permits for Wireless Telecommunications Facilities. The Board may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the Board with respect to the granting or not granting, recertifying or not recertifying or revoking Special Use Permits for Wireless Telecommunications Facilities. A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require another special use permit, but rather shall only be the subject of an administrative review by the Code Enforcement Officer pursuant to City of Arlington v. Federal Communications Commission (Case No. 10-60039).

B. An Application for a Tower Special Use Permit for Wireless Telecommunications Facilities shall be signed on behalf of the Applicant by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the Applicant, shall also sign the Application and shall agree to remove any existing violations and make all existing telecommunications facilities compliant with this Local Law and all applicable local, state and telecommunications codes prior to the issuance of any Certificate of Occupancy or Compliance or the functional equivalent for a new or modified wireless facility. At the discretion of the Town, any false or misleading statement in the Application may subject the Applicant to denial of the Application without further consideration or opportunity for correction. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected the Town.

C. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Board.

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- D. The Applicant shall include a statement in writing:
1. that the applicant's proposed Wireless Telecommunications Facilities will be maintained in a safe manner, and in compliance with all conditions of the Special Use Permit, without exception, unless specifically granted relief by the Town in writing, as well as all applicable and permissible local codes, Local Laws, and regulations, including any and all applicable Town, State and Federal Laws, rules and regulations;
  2. that the construction of the Wireless Telecommunications Facilities is legally permissible, including, but not limited to the fact that the Applicant is authorized to do business in New York State.
- E. No Wireless Telecommunications Facilities shall be placed, constructed, used or modified in the Town unless and until a Tower Special Use Permit therefore has been granted by the Town Board pursuant to this Law. No construction or modification of Wireless Telecommunications Facilities, for which a Tower Special Use Permit has been issued, shall take place unless and until a building permit therefore has been issued by the Town Building and Code Inspector.
- F. All applications for the construction or installation of new Wireless Telecommunications Facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the Applicant. Where a certification is called for, such certification shall bear the signature and seal of a Professional Engineer licensed in the State. The Application shall include the following information:
1. Documentation that demonstrates the need for the Wireless Telecommunications Facility to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
  2. Name, address, and phone number of the property owner, operator, and applicant, including information about the legal status of the applicant;
  3. 911 address and tax map parcel number of the property;
  4. Zoning District or designation in which the property is situated;
  5. Size of the property stated both in square feet and lot line dimensions, and a diagram showing the location of all lot lines;
  6. Location of nearest residential structure;
  7. Location of nearest habitable structure;
  8. Location and dimensions of all structures currently on the property and those proposed for the property which is the subject of the application;
  9. Location, and dimensions of all proposed and existing antennae and all appurtenant structures;
  10. Type, locations, and dimensions of all proposed and existing landscaping and fencing;

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11. The number, type and design of the wireless telecommunications facilities(s) antenna(s) proposed and the basis for the calculations of the telecommunications tower's capacity to accommodate multiple users;
12. The make, model and manufacturer of the tower and antenna(s);
13. A description of the proposed tower and antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
14. The frequency, modulation and class of service of radio or other transmitting equipment;
15. Transmission and maximum effective radiated power of the antenna(s);
16. Direction of maximum lobes and associated radiation of the antenna(s);
17. Applicant's proposed tower maintenance and inspection procedures and related system of records;
18. Certification that NIER levels at the proposed site are within the threshold levels adopted by the FCC;
19. Certification that the proposed antenna(s) will not cause interference with existing telecommunication devices, though the certifying engineer need not be approved by the Town Board.
20. A copy of the FCC license applicable for the use of the wireless telecommunications facilities;
21. Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facilities on the proposed site, though the certifying engineer need not be approved by the Town Board;
22. Propagation studies of the proposed site and all adjoining proposed or in-service or existing sites;
23. Location, layout, and dimensions of off-street parking and loading facilities; vehicular entry, exit, and circulation on the site and neighboring roads;
24. Grading and drainage plan for the site;
25. Type, size and location of all proposed screening, signs, and physical features meant to protect adjacent land uses;
26. Identification of other cellular sites owned or operated by the applicant in the municipality;
27. The fees, costs, or contractual provisions required by the owner in order to share an existing tower or structure or to adapt an existing tower or structure for sharing are unreasonable. Costs exceeding new tower development are presumed to be unreasonable. Attached must be a certificate of the owner of existing tower or structure that such cost was not made to induce the applicant not to enter into a sharing agreement for such tower.
28. Applicant shall disclose in writing any agreement in existence prior to submission of the



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application that would limit or preclude the ability of the applicant to share any new wireless telecommunications facilities that it constructs.

29. Grading drainage plan, pertinent soil characteristics and watercourses, or, if applicable, a Stormwater Pollution Prevention Plan consistent with the requirement of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law No. 7 of 2007). The approved site plan shall be consistent with the requirements of Articles 1 and 2 of the Town of Kirkwood Stormwater Management and Erosion & Sediment Control Local Law (Local Law no. 7 of 2007).

- G. In the case of a new Tower, the Applicant shall be required to submit a written report demonstrating its meaningful efforts to secure shared use of existing Tower(s) or the use of alternative buildings or other structures within the Town. Copies of written requests and responses for shared use shall be provided to the Town in the Application, along with any letters of rejection stating the reason for rejection.
- H. The applicant shall certify that the Telecommunication Facility, foundation and attachments are designed and will be constructed to meet all local, Town, State and Federal structural requirements for loads, including wind and ice loads.
- I. The Applicant shall certify that the Wireless Telecommunications Facilities will be effectively grounded and bonded so as to protect persons and property and with appropriate surge protectors installed.
- J. An Applicant may be required to submit an Environmental Assessment Analysis and a Visual addendum. Based on the results of the Analysis, including the Visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required Environmental and visual assessment will be reviewed at the pre-application meeting.
- K. The Applicant shall furnish a Visual Impact Assessment which shall include:
  - 1. A “Zone of Visibility Map” which shall be provided in order to determine locations where the tower may be seen.
  - 2. Pictorial representations of “before and after” views from key viewpoints both inside and outside of the Town, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers, or residents. If requested by the applicant, the Board, acting in consultation with its consultants or experts, will provide guidance concerning the appropriate key sites at a pre-application meeting.
  - 3. An assessment of the visual impact of the Tower base, guy wires and accessory buildings from abutting and adjacent properties and streets.
- L. Any and all representations made by Applicant to the Board, 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 Board.
- M. The Applicant shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed Wireless Telecommunications Facilities.

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- N. All utilities at a Wireless Telecommunications Facilities site shall be installed underground and in compliance with all laws, Local Laws, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
- O. All Wireless Telecommunications Facilities shall contain a demonstration that the Facility be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on residences in the area of the Wireless Telecommunications Facility.
- P. Both the wireless telecommunications facilities and accessory facilities shall maximize use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings, this shall include the utilization of stealth or concealment technology as required by the Town.
- Q. At a telecommunications site, an access road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and vegetation-cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- R. A person who holds a Tower Special Use Permit for wireless telecommunications facilities shall construct, operate, maintain, repair, modify or restore the permitted Wireless Telecommunications Facilities in strict compliance with all current technical, safety and safety-related codes adopted by the Town, County, State, or United States, including but not limited to the most recent editions of the New York State Uniform Fire Prevention and Building Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsibly workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding, the more stringent shall apply.
- S. A person holding a Tower Special Use Permit granted under this law shall obtain, at his own expense, all permits and licenses required by applicable law, rule, regulation or law, including, among others, those required pursuant to Local Law 10-1995 entitled, “A Local Law of the Town of Kirkwood Providing for Reimbursement of Professional Consultation Fees”, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- T. Subject to, and in accordance with, the State Environmental Quality Review Act (SEQRA), the Board shall be the lead agency for the purpose of conducting the environmental review of the Application for Tower Special Use Permits. The Board shall conduct an integrated, comprehensive environmental review of the proposed project in combination with its review of the application under this law.
- U. An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. Written notification of the Application shall be provided to the legislative body of all adjacent municipalities and to the Town Planning Board.
- V. The Applicant shall examine the feasibility of designing a proposed Tower to accommodate future demand for at least five (5) additional commercial applications, for example, future co-locations. The Tower shall be structurally designed to accommodate at least five (5) additional Antenna Arrays equal to those of the Applicant, and located as close to the Applicant’s Antenna as possible without causing interference. This requirement may be waived, provided that the Applicant, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is Commercially Impracticable or creates an unnecessary and unreasonable burden, based upon:

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1. The foreseeable number of FCC licenses available for the area,
  2. The kind of Wireless Telecommunications Facilities site and structure proposed;
  3. The number of existing and potential licenses without Wireless Telecommunications Facilities spaces/sites;
  4. Available space on existing and approved Towers.
- W. The owner of the proposed new Tower, and his/her successors in interest, shall negotiate in good faith for the shared use of the proposed Tower by other Wireless service providers in the future, and shall:
1. Respond within 60 days to a request for information from a potential shared-use applicant.
  2. Negotiate in good faith concerning future requests for shared use of the new Tower by other telecommunications providers.
  3. Allow shared use of the new Tower if another Telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the Tower or equipment to accommodate a shared user without causing electromagnetic interference.
- Failure to abide by the conditions outlined above may be grounds for revocation of the Special Use Permit for the Tower.
- X. There shall be a pre-application meeting. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting shall also include a site visit if there has not been a prior site visit for the requested site. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant.
- Y. The holder of a Special Use Permit shall notify the Town of any intended modification of a wireless telecommunication facility and shall apply to the Town to modify, relocate or rebuild a wireless telecommunications facility.
- Z. In order to better inform the public, in the case of a new telecommunication tower, the applicant shall, prior to the public hearing on the application, hold a "balloon test" as follows: Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three (3) foot diameter brightly colored balloon at the maximum height of the proposed new Tower. The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised, by the Applicant, at seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in Town and agreed to by the Board. The applicant shall inform the Board, in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least eight consecutive hours sometime between 7:00 a.m. and 4:00 p.m. of the dates chosen. The primary date shall be on a weekend, but the second date, in case of poor visibility on the initial date, may be on a week day.
- AA. The applicant will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the Telecommunications Tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Regulation Part 77. This requirement shall be for any new tower, or for an existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

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SECTION 907. Location of Wireless Telecommunications Facilities:

Wireless telecommunication facilities may be sited in any of the following locations according to the regulations and siting priorities defined below:

- A. Applicants for Wireless Telecommunications Facilities shall locate, site and erect said Wireless Telecommunication Facilities in accordance with the following priorities, one (1) being the highest priority and seven (7) being the lowest priority.
1. On existing Towers or other structures without increasing the height of the tower or structure;
  2. Co-location on a site with existing wireless telecommunications facilities or structures;
  3. On any property used for a Town purpose, other than a municipal park, including municipal highway garage or a Town hall;
  4. Within a rural residence district within the Town;
  5. Within an industrial development district within the Town;
  6. Within a Business 1 or Business 2 district within the Town;
  7. Within any other zoning district within the Town.

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

An applicant may not by-pass sites of higher priority by stating the site presented is the only site leased or selected. An application shall address co-location as an option and if such option is not proposed, the applicant must explain why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.

Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

- B. The Applicant shall submit a written report demonstrating the Applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If the site selected is not the highest priority, then a detailed written explanation, as to why sites of a higher priority were not selected, shall be included with the application.
- C. The Applicant shall, in writing, identify and disclose the number and locations of any additional sites that the Applicant has, is, or will be considering, reviewing or planning for wireless telecommunications facilities in the Town, and all municipalities adjoining the Town, for a two year period following the date of the Application.
- D. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Board may disapprove an application for any of the following reasons:

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1. Conflict with safety and safety-related codes and requirements;
  2. Conflict with traffic needs or traffic laws, or definitive plans for changes in traffic flow or traffic laws;
  3. Conflict with the historic nature of a neighborhood or historical district;
  4. The use or construction of wireless telecommunications facilities which is contrary to an already stated purpose of a specific zoning or land use designation;
  5. The placement and location of Wireless Telecommunications Facilities which would create an unacceptable risk, or the probability of such, to residents, the public, employees and agents of the Town, or employees of the service provider or other service providers; or
  6. Conflicts with the provisions of the Act or this Law.
- E. Notwithstanding the above, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.

**SECTION 908. Shared use of Wireless Telecommunications Facilities:**  
(Amended 6/4/13 by LL#3-2013 by adding paragraph “D”)

- A. Locating on existing Towers or other structures without increasing the height, shall be preferred by the Town, as opposed to the construction of a new Tower. The Applicant shall submit a comprehensive report inventorying existing Towers and other suitable structures within four (4) miles of the location of any proposed new Tower, unless the applicant can show that some other distance is more reasonable and demonstrate conclusively why an existing Tower or other suitable structure can not be used.
- B. An Applicant intending to locate on an existing Tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the Applicant.
- C. Such shared use shall consist only of the minimum Antenna Array technologically required to provide service primarily and essentially with the Town, to the extent practicable, unless good cause is shown.
- D. Any application for a Special Use Permit to allow shared use of a wireless telecommunications facility must include two (2) copies of a Structural Analysis completed by a New York State Licensed Engineer.

**SECTION 909. Height of Wireless Telecommunications Facilities:**

- A. The Applicant must submit documentation justifying to the Board the total height of any wireless telecommunications facilities and/or antenna and the basis therefor. Such justification shall be to provide appropriate service within the Town, to the extent practicable, unless good cause is shown.
- B. Building mounted antennae should be located and designed to be an integral part of the building and shall be secured or camouflaged, as necessary or as reasonably required by the Board to minimize the visual impact on surrounding properties and minimize any change in or impact on the nature and character of the community.
- C. No Tower constructed after the effective date of this Local Law, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with municipal, Town, State, and/or any Federal statute, law, local law, Town Local Law, code, rule or regulation.

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SECTION 910. Visibility of Wireless Telecommunications Facilities:

- A. Wireless Telecommunications Facilities shall not be artificially lighted or marked, except as required by FAA or other applicable provisions of law.
- B. Towers shall be galvanized and painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Local Law.
- C. If lighting is required, Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations.

SECTION 911. Security of Wireless Telecommunications Facilities:

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A. All Antennas, Towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B. Transmitters and Telecommunications control points must be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

Section 912. Signage:

Wireless Telecommunications Facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities and shall contain the names(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

SECTION 913. Lot Size and Setbacks:

- A. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including, but not limited to setback requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.
- B. All proposed Towers and any other proposed Wireless Telecommunications Facility structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed Tower or Wireless Telecommunications Facility structure plus ten percent (10%) of the height of the Tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

SECTION 914. Retention of Expert Assistance and Reimbursement by Applicant:  
(Amended 10-2-12 by LL #4-2012)

- A. The Board may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application and any requests for recertification.

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- B. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Board in connection with the review of any application pursuant to Local Law 10-1995 entitled, “A Local Law of the Town of Kirkwood Providing for Reimbursement of Professional Consultation Fees”. The initial deposit shall be \$10,000.00 except where the applicant is seeking to add antennae on an existing tower in which case the initial deposit shall be \$3,000.00. These funds shall accompany the filing of an application and the Town shall maintain a separate escrow account for all such funds. The Town’s consultants/experts shall, in accordance with an agreement between the Town and its consultants or experts, bill or invoice the Town no less frequently than monthly for its services in reviewing the application and performing its duties.

If at any time during the review process:

1. Where the applicant is seeking to add antennae and/or changing antennae on an existing tower, the escrow account has a balance less than \$500.00, Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$3,000.00.
2. Where the applicant is seeking other than to add antennae and/or changing antennae on an existing tower, the escrow account has a balance of less than \$2,500.00, Applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$7,500.00.

Such additional escrow funds must be deposited with the Town before any further action or consideration is taken on the application. If, at the conclusion of the review process, the cost of such consultant/expert services is more than the amount escrowed pursuant hereto, the applicant shall pay the difference to the Town prior to the issuance of any Tower Special Use Permit. In the event that the amount held in escrow by the Town is more than the amount of the actual billing or invoicing by the Town’s consultants or experts, the difference shall be promptly refunded to the applicant upon receipt of a written request for the same which shall be forwarded to the Town Clerk, Town Attorney, Town Engineer, and any other professional consultant retained by the Town regarding said application.

- C. The total amount of the funds set forth in Subsection b. of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed by the Board or its consultant/expert to complete the necessary review and analysis. Additional escrow funds, as required and requested by the Town, shall be paid by the applicant. Notice of the hiring of a consultant/expert shall be given to the applicant at or before this meeting.
- D. During the Code Enforcement Officer’s administrative review as well as review by the Board, the Code Enforcement Officer or Board may retain an expert to help determine questions that arise including but not limited to whether a facility is eligible or whether there is substantial change. No initial deposit for a consultant or expert is necessary, until and after such time that the Code Enforcement Officer or Board determines that consultants and/or experts are necessary. At such time, the Code Enforcement Officer or Board will set the initial deposit at an amount not to exceed \$7,500. The initial deposit will be maintained as a separate escrow amount. Bills and invoices shall be handled as indicated herein. Depleted escrow accounts shall be replenished as indicated herein, when necessary. As indicated herein, applicant shall pay the difference to the Town of any cost of the consultant/expert services not covered by the escrow monies. Any additional monies in the escrow account shall be refunded to the applicant.

**SECTION 915. Requirements for a Tower Special Use Permit: (Amended 10-2-12 by LL #4-2012)**

- A. No Person shall site, place, build, construct, modify, prepare, use or repair, any site for the placement or use of, Wireless Telecommunications Facilities in the Town as of the effective date of this Local Law without having first obtained a Special Use Permit for Wireless Telecommunications Facilities. Notwithstanding anything to the contrary in this section, no Special Use Permit shall be required for those non-commercial exceptions noted in the definition of Wireless Telecommunications Facilities.

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- B. New construction, including modification on an existing wireless telecommunications facilities, shall comply with the requirements of this Law:
- C. All wireless telecommunications facilities existing on or before the effective date of this Law shall be allowed to continue as they presently exist, provided however, that any modification, enlargement or extension of existing wireless telecommunications facilities must comply with this Law.
- D. A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require a special use permit, but rather shall only be the subject of an administrative review by the Code Enforcement Officer.

SECTION 916.           Public Hearing Required: (Amended 10-2-12 by LL #4-2012)

- A. Prior to the approval of any application for a Tower Special Use Permit for wireless telecommunications facilities, a public hearing shall be held by the Board, notice of which shall be published in the official newspaper of the Town no less than ten (10) days prior to the scheduled date of the public hearing. In order that the Town may notify nearby landowners, the applicant, at least three (3) weeks prior to the date of said public hearing, shall provide to the Board the names and address of all landowners whose property is located within fifteen hundred (1500) feet of any property line of the lot on which the new wireless telecommunications facilities are proposed to be located.
- B. The Board shall schedule the public hearing referred to in Subsection a. of this Section once it finds the application is complete. The Board, at any stage prior to issuing a Tower Special Use Permit, may require such additional information as it deems necessary.
- C. There shall be no public hearing required for an application to co-locate on an existing Tower or other structure, as long as there is no proposed increase in the height of the Tower or structure, including attachments thereto.
- D. A request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall not require a special use permit, but rather shall only be the subject of an administrative review by the Code Enforcement Officer. Such administrative review shall not require a public hearing.

SECTION 917.           Action on an Application for a Tower Special Use Permit for Wireless  
Telecommunications Facilities: (Amended 10-2-12 by LL#4-2012)

- A. The Board shall, in accordance with the act, the Tax Relief Act, the FCC Ruling, and City of Arlington v. Federal Communications Commission (Case No. 10-60039), undertake review of an application pursuant to these laws and ruling in a timely fashion, consistent with its responsibilities, and shall act within 90 days to approve a complete application for a collocation facility and within 120 days for a new facility application.
- B. The Board may refer any incomplete application for a collocation, or any application or part thereof for a new facility, to any Town advisory committee or other Town committee for a non-binding recommendation.
- C. Except for necessary building permits, and subsequent Certificates of Occupancy, once a Tower Special Use Permit has been granted hereunder, no additional permits or approvals from the Town, such as site plan, land use management or zoning approvals, shall be required by the Town for the wireless telecommunications facilities covered by the Tower Special Use Permit.



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- D. After the public hearing and after formally considering the Application, the Board may approve and issue, or deny a Tower Special Use Permit. Its decision shall be in writing and shall be supported by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the applicant.
- E. If the Board approves the Tower Special Use Permit for wireless telecommunications facilities, then the applicant shall be notified of such approval in writing within ten (10) calendar days of the Board's action, and the Tower Special Use Permit shall be issued within thirty (30) calendar days after such approval.
- F. If the Board denies the Tower Special Use Permit for wireless telecommunications facilities, then the applicant shall be notified of such denial in writing within ten (10) calendar days of the Board's action.
- G. The Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed Tower Special Use Permit. Upon its granting of such Tower Special Use Permit for wireless telecommunications facilities, any such conditions and restrictions must be met in connection with the issuance of a building permit and any other required permits by applicable enforcement officials of the Town.

**SECTION 918. Recertification of a Tower Special Use Permit for Wireless Telecommunications Facilities:**

- A. At any time between twelve (12) months and six (6) months prior to the five (5) year anniversary date after the effect date of the Tower Special Use Permit and all subsequent fifth anniversaries of the effective date of the original Tower Special Use Permit for wireless telecommunications facilities, the holder of a Tower Special Use Permit for such wireless telecommunications facilities shall submit a signed written request to the Board for recertification. In the written request for recertification, the holder of such Tower Special Use Permit shall include the following information:
  - 1. the name of the holder of the Tower Special Use Permit for the wireless telecommunications facilities;
  - 2. if applicable, the number or title of the Tower Special Use Permit;
  - 3. the date of the original granting of the Tower Special Use Permit;
  - 4. whether the wireless telecommunications facilities has been moved, re-located, rebuilt, repaired, or otherwise modified since the issuance of the Tower Special Use Permit;
  - 5. if the wireless telecommunications facilities has been moved, re-located, rebuilt, repaired, or otherwise modified, then whether the Town Board approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
  - 6. any requests for waivers or relief of any kind whatsoever from the requirements of this Law and any requirements for a Tower Special Use Permit; and
  - 7. a statement that the wireless telecommunications facilities are in compliance with the Tower Special Use Permit and are in compliance with all applicable statutes, laws, local laws, Local Laws, codes, rules and regulations.
  - 8. Recertification that the Tower and attachments both are designed and constructed and continue to meet all local, State and Federal structural requirements for loads, including wind and ice loads.

Such recertification shall be by a qualified New York State licensed professional engineer acceptable to the Town, and the costs thereof shall be borne by the applicant.

- B. If, after such review, the Board determines that the permitted wireless telecommunications facilities are in compliance with the Tower Special Use Permit and all applicable statutes, laws, local laws, Local Laws, codes, rules and regulations, then the Board shall issue a recertification Tower Special Use Permit for the wireless telecommunications facilities, which may include any new provisions or conditions that are mutually agreed upon, or required by applicable statutes, laws, local laws, Local Laws, codes, rules and regulations. If, after such review, the Board determines that the permitted wireless telecommunications

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facilities are not in compliance with the Tower Special Use Permit and all applicable statutes, local laws, Local Laws, codes, rules and regulations, then the Board may refuse to issue a recertification Tower Special Use Permit for the wireless telecommunications facilities, and in such event, such wireless telecommunications facilities shall not be used after the date that the applicant receives written notice of such decision by the Board. Any such decision shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the Facility.

- C. If the Board does not complete its review, as noted in Subsection b. of this Section, prior to the five (5) year anniversary date of the Tower Special Use Permit, or subsequent fifth anniversaries, then the applicant for the permitted wireless telecommunications facilities shall receive an extension of the Tower Special Use Permit for up to six (6) months, in order for the Board to complete its review.
- D. If the holder of a Tower Special Use Permit for Wireless Telecommunications Facilities does not submit a request for recertification of such Tower Special Use Permit within the time frame noted in Subsection a. of this section, then such Tower Special Use Permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the Tower Special Use Permit, or subsequent fifth anniversaries, unless the holder of the Tower Special Use Permit adequately demonstrates to the Board that extenuating circumstances prevented a timely recertification request. If the Board agrees that there were legitimately extenuating circumstances, then the holder of the Tower Special Use Permit may submit a late recertification request under terms agreeable to the Board.
- E. If the Applicant has submitted all of the information requested and required by this Local Law, and if the review is not completed, as noted in subsection (b) of this section, prior to the five (5) year anniversary date of the Special Use Permit, or subsequent five year anniversaries, then the Applicant for the permitted Wireless Telecommunications Facilities shall receive an extension of the Special Use Permit for up to six (6) months, in order for the completion of the review.

**SECTION 919.            Extent and Parameters of Tower Special Use Permit for Wireless Telecommunications Facilities:**

- A. The extent and parameters of a Tower Special Use Permit for wireless telecommunications facilities shall be as follows:
  - 1. Such Tower Special Use Permit shall be non-exclusive;
  - 2. Such Tower Special Use Permit shall not be assigned, transferred or conveyed without the express prior written consent of the Board, and such consent shall not be unreasonably withheld or delayed;
  - 3. Such Tower Special Use Permit may, following a hearing upon due prior notice to the Applicant, be revoked, canceled, or terminated for a violation of the conditions and provisions of the Tower Special Use Permit for wireless telecommunications facilities, or for a material violation of this Law after prior written notice to the applicant and the holder of the Tower Special Use Permit.

**SECTION 920.            Application Fee:  
(Amended 10-2-12 by LL #4-2012)**

- A. At the time that a person submits an Application for a Tower Special Use Permit for new Wireless Telecommunications Facilities in addition to the deposit required under Section 914, such person shall pay to the Town an application fee in the amount of \$ 1,000.00.
- B. No application fee is required in order to recertify a Tower Special Use Permit for wireless telecommunications facilities, unless there has been a modification of the wireless Telecommunications

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facilities since the date of the issuance of the existing Tower Special Use Permit. In the case of any modification, the fees provided in Subsection a. shall apply.

- C. If the Application is for a Special Use Permit for co-locating on an existing Tower or other suitable structure, where no increase in height of the Tower or structure is required, in addition to the deposit required under section 914, such person shall pay to the Town an application fee of \$1,000.00.
- D. The administrative review by the Code Enforcement Officer of a request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station shall require an application fee of \$500.00. Such fee shall be submitted with an application for the administrative review.

**SECTION 921. Performance Security:**

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in the amount of \$150,000.00 and with such sureties as are deemed sufficient by the Board to assure the faithful performance of the terms and conditions of this Law and conditions of any Tower Special Use Permit issued pursuant to this Law. The full amount of the bond or security shall remain in full force and effect throughout the term of the Tower Special Use Permit and/or until the removal of the wireless telecommunications facilities, and any necessary site restoration is completed and for one year thereafter. Such bond or security shall contain a provision obligating the bonding company or other security to furnish the Town with at least six (6) months written notice in advance of the cancellation of such bond or security. The failure by applicant to pay any annual premium for the renewal of any such security shall be a violation of the provisions of the Tower Special Use Permit and shall entitle the Board to revoke the Tower Special Use Permit after prior written notice to the applicant and holder of the Tower Special Use Permit, and after a hearing upon due prior notice to the applicant and holder of the Tower Special Use Permit.

**SECTION 922. Reservation of Authority to Inspect Wireless Telecommunications Facilities:**

- A. In order to verify that the holder of a Tower Special Use Permit for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities place, maintain, construct, modify and use such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, Local Laws and regulations and other applicable requirements, the Town, and its consultants or experts may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification, maintenance and use of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site. If requested by the Town, the holder of the Tower Special Use Permit shall assist the Town and its consultants and experts in obtaining access to the site.
- B. The Town shall pay for costs associated with such an inspection, except for those circumstances occasioned by said holder's, lessee's or licensee's refusal to provide necessary information, or necessary access to such facilities, including towers, antennas, and appurtenant or associated facilities, or refusal to otherwise cooperate with the Town with respect to an inspection, or if violations of this Law are found to exist, in which case the holder, lessee or licensee shall reimburse the Town for the cost of the inspection.
- C. Payment of such costs shall be made to the Town within thirty (30) days from the date of the invoice or other demand for reimbursement. In the event that the finding(s) of violation is/are appealed in accordance with the procedures set forth in this Law, said reimbursement payment must still be paid to the Town and the reimbursement shall be placed in an escrow account established by the Town specifically for this purpose, pending the final decision on appeal.

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SECTION 923. Annual NIER Certification:

The holder of the Tower Special Use Permit shall, annually, certify in writing to the Town that NIER levels at the site are within the threshold levels adopted by the FCC. (The certifying engineer need not be approved by the Town.)

SECTION 924. Liability Insurance:

- A. A holder of a Tower Special Use Permit for wireless telecommunications 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 Tower Special Use Permit in the minimum amounts set forth below
1. Commercial General Liability covering personal injuries, death and property damage: \$2,000,000 per occurrence/ \$6,000,000 aggregate;
  2. Automobile Coverage: \$2,000,000 per occurrence/\$6,000,000 aggregate;
  3. Excess Liability: \$1,000,000;
  4. Workers Compensation and Disability Insurance in accordance with applicable statutory amounts.
- B. The Commercial General liability insurance policy and excess liability 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 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 Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
- F. Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than fifteen (15) days after the grant of the Tower Special Use Permit, the holder of the Tower Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

SECTION 925. Indemnification:

(Amended 10-2-12 by LL #4-2012)

- A. Any Tower Special Use Permit issued pursuant to this Law shall contain a provision with respect to indemnification. Such provision shall require the holder of the Tower Special Use Permit, 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 a Wireless Telecommunications Facilities within the Town. 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. The holder of the Tower Special Use Permit shall not be obligated to provide such indemnification in the case of any claims, suits, demands, cause of

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action or award of damages which arise solely as a result of the negligence or intentional acts or actions of the Town or its officials, boards, employees, committee members, attorneys, agents or consultants.

- 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 Tower Special Use Permit for wireless telecommunications facilities.
- C. By applying for an administrative review by the Code Enforcement Officer of a request relating to an eligible facility for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station, the applicant agrees to the following:

Applicants agree, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, officials of the Town, its officer, agents, servants, and employees, from any and all penalties, damage, 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 construction, erection, modification, location, products performance, operation, maintenance, repair, installation, replacement, removal, or restoration of a Telecommunications Tower within the Town of Kirkwood. 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.

**SECTION 926. Fines:**

- A. For a violation of this Law or any provision, term or condition of a Tower Special Use Permit issued pursuant to this Law, the provisions of Section 1406 of the Zoning Local Law shall be applicable.
- B. Notwithstanding anything in this Law, the holder of the Tower Special Use Permit for wireless telecommunications facilities may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Law or any section of this Law. An attempt to do so shall subject the holder of the Tower Special Use Permit to termination and revocation of the Tower Special Use Permit, after prior written notice to the applicant and holder of the Tower Special Use Permit and after a hearing upon due prior notice to the applicant and holder. The Town may also seek injunctive relief to prevent the continued violation of this Law.

**SECTION 927. Default and/or Revocation:**

- A. If wireless telecommunications facilities are used, operated, repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Law or of the Tower Special Use Permit, then the Board shall notify the holder of the Tower Special Use Permit 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 seven (7) days of the date of the postmark of the Notice, or of the date of personal service of the Notice, whichever is earlier. Notwithstanding anything to the contrary in this Subsection or any other section of this Law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Board may, at its sole discretion, order the violation remedied within twenty-four (24) hours.
- B. If, within the period set forth in Subsection A. above, the wireless telecommunications facilities are not brought into compliance with the provisions of this Law, or of the Tower Special Use Permit, or substantial steps are not taken in order to bring the affected wireless telecommunications facilities into compliance, then the Board may revoke such Tower Special Use Permit for the wireless telecommunications facilities, and shall notify the holder of the Tower Special Use Permit in writing within forty-eight (48) hours of such action, and the reasons for such action. The holder of the Tower Special Use Permit shall not thereafter use

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or operate the wireless telecommunications facilities until such time as the Tower Special Use Permit has been restored.

- C. Nothing herein shall prevent the Town from pursuing remedies pursuant to the Zoning Local Law or other applicable provisions of law.

**SECTION 928. Removal of Wireless Telecommunications Facilities:**

- A. Under the following circumstances, the Board may determine that the health, safety, and welfare interests of the Town warrant and require the removal of wireless telecommunications facilities:
1. Wireless telecommunications facilities with a permit shall be considered abandoned (if not used as wireless telecommunications facilities) for a period exceeding ninety (90) consecutive days or a total of one hundred-eighty (180) days in any three hundred-sixty five (365) day period, except for periods caused by a superior or irresistible force or acts of God, in which case, repair or removal shall commence within 90 days after notification from the Town;
  2. Permitted wireless telecommunications facilities fall into such a state of disrepair that it creates a health or safety hazard;
  3. Wireless telecommunications facilities have been placed, located, constructed, or modified without the prior granting of the required Tower Special Use Permit, or any other necessary authorization.
- B. If the Board makes such a determination as noted in Subsection a. of this section, then the Board shall notify the holder of the Tower Special Use Permit for the wireless telecommunications facilities in writing within forty-eight (48) hours that said wireless telecommunications facilities are to be removed at the cost and expense of the holder of said permit. The Board may approve an Interim Temporary Tower Special Use Permit, so as to enable the sale of the wireless telecommunications facilities.
- C. The holder of the Tower Special use Permit, at its cost and expense, shall dismantle and remove such wireless telecommunications 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 ninety (90) days of receipt of written notice from the Board. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Board.
- D. If the wireless telecommunications facilities are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within ninety (90) days after the permit holder has received such notice, then the Board may order officials or representatives of the Town to remove the wireless telecommunications facilities at the sole cost and expense of the owner or permit holder.
- E. If the Town removes, or causes to be removed, wireless telecommunications facilities, and the owner of the wireless telecommunications facilities does not claim and remove them from the site to a lawful location within ten (10) days following receipt of written notice from the Board, then the Town may take steps to declare the wireless telecommunications facilities abandoned, and cause them to be removed at the expense of the owner or special permit holder, and sell them and their components.
- F. Notwithstanding anything in this Section to the contrary, the Board may approve a Temporary Special Use Permit for the wireless telecommunications facilities, for no more ninety (90) days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the permit, subject to the approval of the Board, and an agreement to

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comply with such plan shall be executed by the holder of the permit and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected wireless telecommunications facilities in the manner provided in Subsection e. hereof.

**SECTION 929. Relief:**

Any applicant desiring relief or exemption from any aspect or requirement of this Law may request such from the Board at a pre-application meeting, provided that the relief or exemption is contained in the original application for either a Tower Special Use Permit, or in the case of an existing or previously granted Tower Special Use Permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete, at the sole discretion of the Board. However, the burden of proving the need for the requested relief or exemption, is solely on the applicant to prove to the satisfaction of the Board. The applicant shall bear all costs of the Board or the Town in considering the request and the relief shall not be transferable to a new or different holder of the permit or owner of the Tower or facilities without the express prior written permission of the Board, and such permission shall not be unreasonably withheld or delayed. No such relief or exemption shall be approved unless the applicant demonstrates by clear and convincing evidence that, if granted, the relief or exemption will have no significant adverse effect on the health, safety and welfare of the Town, its residents and other service providers.

**SECTION 930. Periodic Regulatory Review by the Town Board:**

- A. The Town Board may at any time conduct a review and examination of this entire Law.
- B. If, after such a periodic review and examination of this Law, the Town Board determines that one or more provisions of this Law should be amended, repealed, revised, clarified, or deleted, then the Town Board may take whatever measures are necessary in accordance with applicable law in order to accomplish the same. It is noted that where warranted, and in the best interests of the Town, the Town Board may, consistent with applicable provisions of law, amend, revise, clarify or delete any part of this Law or repeal the entire Law.
- C. Notwithstanding the provisions of Subsections A. and B. of this Section, the Town Board may at any time, and in any manner (to the extent permitted by Federal, State, or local law), amend, add, revise, repeal, and/or delete one or more provisions of this Law.

**SECTION 931. Adherence to State and/or Federal Rules and Regulations:**

- A. To the extent that the holder of a Tower Special Use Permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Tower Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Tower Special Use Permit for wireless telecommunications facilities, then the holder of such a Tower Special Use Permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

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SECTION 932. Conflict with Other Laws:

Where this Law differs or conflicts with other statutes, local laws, Local Laws, codes, rules or regulations, unless the right to do so is preempted or prohibited by the County, State or Federal government, the more restrictive or protective of the Town and the public shall apply.