

Auburn City Council
Regular Weekly Council Meeting
Thursday August 25th 5:00 P.M.
City Council Chambers, 24 South Street, Auburn, NY 13021
Minutes

The regular meeting of the Auburn City Council was called to order at 5:00PM in City Council Chambers, 24 South St. Auburn N.Y. by Mayor Michael Quill.

Roll Call

The Deputy Clerk Called the roll. Councilor McCormick, Giannettino, Cuddy, Carabajal and Mayor Quill, present. Councilor McCormick was excused from the meeting at 6:15PM.

City Staff Present:

Assistant City Manager	Jenny Haines
Corporation Counsel	John Rossi
Deputy City Clerk	Coleen LaMay
Supervisor of Public Works	Mike Talbot
Police Chief	Shawn Butler
Engineering	Bill Lupien
Senior Planner	Steve Selvek

Mayor Quill led the **Pledge of Allegiance** and asked for a **Moment of Silence**.

Public Announcements-NONE

Ceremonial Presentations and Proclamations- Women's Equality Day Proclamation. The mayor presented the proclamation to Laurel Ulyette.

Public to be Heard –

David Taralla owner of Beeline Wheel Alignment spoke against the parking meters on Seminary Ave.

Mike Speno owner of Speno Music spoke against the parking meters on Seminary Ave.

Mike Merkley 26 Maple St. spoke in support of the concession stand, bathrooms and buildings for storage for mechanical and grounds keeping equipment at Herman Ave.

Adam Miller 16 Aspen St. spoke regarding the Auburn Doubledays and the community becoming more involved with one another.

Meeting Minutes: NONE

City Manager's Report – Jenny Haines reported on the following:

-From Seth Jensen, Director of Municipal Utilities, as of 5:30 Tuesday afternoon the lower pump station was placed back online and functioning normally. Contractors and City staff are still tweaking and bringing back all functions associated with operations control and monitoring of the facility. The bypass system will remain tied into the network until later this week or early next week once we've verified complete restoration of all normal pumping functions. No major interruptions were encountered during the process. We will keep you posted if anything major happens while we navigate through this phase of work.

-from Mike Talbot, DPW Superintendent, informed the City Manager that a valve is leaking on Dill St. behind 9-15 State St., building where Choices for Change is located. The valve started leaking this afternoon and the water is flowing at a controlled fashion into the catch basin. In order to address this situation it will require 8 valves to be shut down. Because of all the restaurants in that area city staff is working to address the situation on Monday and hope not to interrupt the operations over the weekend. If the volume increases we will need to do that, but City staff is going to do everything they can to make sure that they don't have to interrupt their business this weekend.

Reports from Council

Councilor Giannettino reported Saturday afternoon BTW held a school supply give away that was a result of the school supplies collected at Stuff the Bus Campaign that happened a few weeks prior. He wanted to recognize a few people: the NAACP, BTW, Harriet Tubman Boosters, APD and AFD.

Councilor Giannettino reported how he took a tour of Currier Plastics and wanted to recognize the high tech manufacturing they are doing there.

SEQR Resolutions –

NEW YORK STATE ENVIRONMENTAL QUALITY REVIEW (SEQR) RESOLUTION #129 OF 2016. ISSUING A NEGATIVE DECLARATION FOR THE ADOPTION OF THE WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

By Councilor McCormick

August 25, 2016

WHEREAS, the City Council of the City of Auburn, New York is considering the adoption of a new Wireless Telecommunications Facilities Ordinance; and

WHEREAS, a review of the above Type I Action has been made in full compliance with Article 8 of the New York Conservation Law and the New York State Environmental Quality Review Act (SEQRA); and

WHEREAS, said review has resulted in a reasoned determination that the proposed action will NOT result in any large and important impact(s) and, therefore, is one which will not have a significant negative impact on the environment;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Auburn, that a **NEGATIVE DECLARATION** for the proposed action be prepared in full compliance with Article 8 of the New York State Environmental Conservation Law.

Seconded by Councilor Giannettino

	Ayes	Noes
Councilor McCormick	X	
Councilor Giannettino	X	
Councilor Cuddy	X	
Councilor Carabajal	X	
Mayor Quill	X	
Carried and Adopted	X	

I do hereby certify that the foregoing is a correct copy of the vote for Council Resolution #129 of 2016 of the City Council of the City of Auburn, N.Y., at a regular meeting thereof, held in the Council Chambers, Memorial City Hall, in said city, on the 25th day of August, 2016 and that the City Council approved such by the vote listed above.

Coleen LaMay, Deputy City Clerk Date: September 15, 2016

Ordinances -

The Deputy Clerk read a summary of Ordinance #11 of 2016 into the record.

ORDINANCE #11 OF 2016. ADOPTING A NEW CHAPTER TO THE AUBURN CITY CODE, CHAPTER 300 “WIRELESS TELECOMMUNICATIONS FACILITIES”

By Councilor Giannettino

August 25, 2016

WHEREAS, new language to the Auburn City Code to be known as Chapter 300 and entitled “Wireless Telecommunications Facilities” has been prepared for City Council consideration; and

WHEREAS, it is desired that this new chapter to the Auburn City Code be adopted; and

WHEREAS, Chapter 300 entitled “Wireless Telecommunication Facilities” of the Auburn City Code is attached hereto and made a permanent part of this ordinance.

NOW THEREFORE BE IT ORDAINED that the Auburn City Council does hereby adopt Chapter 300, “Wireless Telecommunication Facilities” to become a permanent chapter of the City of Auburn City Code; and

BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately.

Seconded by Councilor Carabajal

Councilor Giannettino made a motion to amend proposed language for Chapter 300 of the Auburn City Code contained in Ordinance 11 of 2016 with the following language:

Amendment 1:

Section 300-10(F)(1): Fee increased from \$2,500.00 to \$5,000.00.

Section 300-10(F)(2): Fee increased from \$1,500.00 to \$2,500.00.

Councilor McCormick seconded the motion. The motion to amend carried 5-0. Councilors McCormick, Giannettino, Cuddy, Carabajal and mayor Quill all voting Aye.

Councilor Giannettino made a motion to amend proposed language for Chapter 300 of the Auburn City Code contained in Ordinance 11 of 2016 with the following language:

Amendment 2:

Section 300-11(K): Set back increased from 250 feet to 500 feet and strike the words

“residentially zoned lot used for residential purposes.”

Councilor Carabajal seconded the motion. The motion to amend carried 5-0. Councilors McCormick, Giannettino, Cuddy, Carabajal and mayor Quill all voting Aye.

Councilor Giannettino made a motion to amend proposed language for Chapter 300 of the Auburn City Code contained in Ordinance 11 of 2016 with the following language:

Amendment 3:

Section 300-12(A)(3): Increase setback from 400 to 500 feet;

Section 300-12(A)(4): Increase setback from 400 to 500 feet;

Section 300-12(A)(5): Increase setback from 400 to 500 feet.

Councilor McCormick seconded the motion. The motion to amend carried 5-0. Councilors McCormick, Giannettino, Cuddy, Carabajal and mayor Quill all voting Aye.

Councilor Giannettino made a motion to amend proposed language for Chapter 300 of the Auburn City Code contained in Ordinance 11 of 2016 with the following language:

Amendment 4:

Addition of:

Article XI: BUILDING PERMIT:

Section 300-24 Building Permit Required

Building permit shall be required prior to the construction or modification of all Wireless Telecommunications Facilities. Fee to be in accordance with City Fee Schedule.

Councilor Cuddy seconded the motion. The motion to amend carried 5-0. Councilors McCormick, Giannettino, Cuddy, Carabajal and mayor Quill all voting Aye.

Councilor Giannettino made a motion to amend proposed language for Chapter 300 of the Auburn City Code contained in Ordinance 11 of 2016 with the following language:

Amendment 5:

Addition of:

Article XII: EFFECTIVE DATE

Section 300-25 Effective Date

This Chapter shall take effect immediately. This Chapter shall have no retroactive effect and no effect on Wireless Telecommunications Facilities that have received approval from the Board for construction prior to the effective date.

Councilor Cuddy seconded the motion. The motion to amend carried 4-0. Councilors Giannettino, Cuddy, Carabajal and mayor Quill all voting Aye. Councilor McCormick absent.

Following discussion and votes to amend the proposed new code language the Council voted for Ordinance # 11 of 2016 as amended. The new language for Chapter 300 of the Auburn City Code is attached to these minutes as amended by Council.

ORDINANCE #11 OF 2016. ADOPTING A NEW CHAPTER TO THE AUBURN CITY CODE, CHAPTER 300 “WIRELESS TELECOMMUNICATIONS FACILITIES”, AS AMENDED

By Councilor Giannettino

August 25, 2016

WHEREAS, new language to the Auburn City Code to be known as Chapter 300 and entitled “Wireless Telecommunications Facilities” has been prepared for City Council consideration; and

WHEREAS, it is desired that this new chapter to the Auburn City Code be adopted; and

WHEREAS, Chapter 300 entitled “Wireless Telecommunication Facilities” of the Auburn City Code is attached hereto and made a permanent part of this ordinance.

NOW THEREFORE BE IT ORDAINED that the Auburn City Council does hereby adopt Chapter 300, “Wireless Telecommunication Facilities” to become a permanent chapter of the City of Auburn City Code; and

BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately.

Seconded by Councilor Carabajal

	Ayes	Noes
Councilor McCormick	absent	
Councilor Giannettino	X	
Councilor Cuddy	X	
Councilor Carabajal	X	
Mayor Quill	X	
Carried and Adopted	X	

I do hereby certify that the foregoing is a correct copy of the vote for Ordinance #11 of 2016 of the City Council of the City of Auburn, N.Y., at a regular meeting thereof, held in the Council Chambers, Memorial City Hall, in said city, on the 25th day of August, 2016 and that the City Council approved such by the vote listed above.

Coleen LaMay, Deputy City Clerk Date: September 15, 2016

Ordinance #12 of 2016 Establishing a Parking Meter Zone. The Deputy Clerk read the ordinance for its First Reading. The ordinance will be scheduled for Council Consideration at the September 7, 2016 Council meeting.

Local Law- NONE

Resolutions –

FINANCIAL RESOLUTION #130 OF 2016. TRANSFERRING FUNDS FOR THE PURCHASE OF VEHICLE LIFTS AT THE PUBLIC WORKS GARAGE

By Councilor Giannettino

WHEREAS, the Public Works Garage houses the City’s vehicle maintenance staff and the associated equipment necessary to perform services in order to maintain equipment from each City department, including motor vehicles; and

WHEREAS, the vehicle lifts are critical components of the service garage. The Public Works Garage currently has three vehicle lifts which are required to be inspected annually for safety concerns; and

WHEREAS, the 2016 inspection failed two of the three lifts and they are currently out of service, are beyond their service life and cannot be repaired; and

WHEREAS, in order to maintain an efficient garage, it is necessary that three operable vehicle lifts are available; and

WHEREAS, there is currently sufficient funds to purchase two new vehicle lifts at the cost of approximately \$16,000 from the current State Contract listing and there is a General Fund Contingency Account #A1990.455 which will need to be transferred to Public Works Garage Other Equipment Account #A1640.250; and

WHEREAS, approval for the transfer of these funds by the City Council is required.

NOW THEREFORE BE IT RESOLVED by the Auburn City Council does hereby approve the transfer of the sum of approximately \$16,000 for the purchase of two vehicle lifts from the current State Contract by transferring from the General Fund Contingency Account #A1990.455 to Public Works Garage Other Equipment Account #A1640.250 in order to fund the purchase of the equipment.

Seconded by Councilor Carabajal

	Ayes	Noes
Councilor McCormick	absent	
Councilor Giannettino	X	
Councilor Cuddy	X	
Councilor Carabajal	X	
Mayor Quill	X	
Carried and Adopted	X	

I do hereby certify that the foregoing is a correct copy of the vote for Council Resolution #130 of 2016 of the City Council of the City of Auburn, N.Y., at a regular meeting thereof, held in the Council Chambers, Memorial City Hall, in said city, on the 25th day of August, 2016 and that the City Council approved such by the vote listed above.

Coleen LaMay, Deputy City Clerk Date: August 26, 2016

COUNCIL RESOLUTION #131 of 2016. APPROVING THE REPLACEMENT OF THE LANDFILL SCALE

By Councilor Cuddy

August 25, 2016

WHEREAS, Federal regulations require that all garbage and solid waste disposal be weighed before placement in the City landfill; and

WHEREAS, the current scale has been in use for many years and while undergoing its annual calibration and inspection by the Cayuga County Weights and Measures Department, several significant issues were noted including the foundation and the scale's steel beam

construction, all of which cannot be repaired and therefore the scale is at the end of its service life; and

WHEREAS, full replacement is required including the scale and foundation work and it is necessary that a new scale be purchased and installed in order to continue landfill operations; and

WHEREAS, it is estimated that the new scale, including installation, and rental of a temporary scale, will be approximately \$80,000 to \$87,500, the cost of which will be paid out of the Solid Waste Other Equipment Account #AL 8162.250; and

WHEREAS, it is necessary that the City Council approves the advertising for bids for the replacement of the landfill scale.

NOW, THEREFORE, BE IT RESOLVED that the Auburn City Council does hereby approve the replacement of the landfill scale and the related foundation work with a maximum cost of \$87,500 to be paid out of Solid Waste Other Equipment Account #AL 8162.250 and funded through use of fund balance; and

BE IT FURTHER RESOLVED that the City Council approves the advertising for bids for the replacement of the landfill scale.

Seconded by Councilor Giannettino

	Ayes	Noes
Councilor McCormick	absent	
Councilor Giannettino	X	
Councilor Cuddy	X	
Councilor Carabajal	X	
Mayor Quill	X	
Carried and Adopted	X	

I do hereby certify that the foregoing is a correct copy of the vote for Council Resolution #131 of 2016 of the City Council of the City of Auburn, N.Y., at a regular meeting thereof, held in the Council Chambers, Memorial City Hall, in said city, on the 25th day of August, 2016 and that the City Council approved such by the vote listed above.

Coleen LaMay, Deputy City Clerk Date: August 26, 2016

Local Law- NONE

Tabled Items- NONE

Staff/Vendor Presentations

Police Chief Shawn Butler presented to Council an update on the Police Departments budget, promotions/assignments, SRO/Crossing Guards Program, Traffic/Parking Enforcement, Statistics, Accomplishments and Manpower Issues.

William Lupien, Engineering updated Council on the following Capital Projects:

- 1) N. Division St. Hydroelectric Facility Upgrade
- 2) Water Filtration Plant / Lower Pump Station Improvements
- 3) North Hunter Brook Culvert Replacements
- 4) N. Division St. Bridge Replacement
- 5) West Genesee St. Pavement
- 6) 2016 Road Program
- 7) Micro-Surfacing and Crack Seal Programs
- 8) South Street Corridor Enhancement Project
- 9) CDBG Sidewalk Program
- 10) Revolving Loan Program

Other Business

Councilor Carabajal made a motion to enter into executive session seconded by Councilor Giannettino. At 8:00 p.m. Council voted to enter into an executive session regarding the following matters:

1. Discussion on one matter that is confidential by Federal or State law. (Section 4503 of the Civil Practice Law and Rules which establishes that a confidential communication between attorney and client shall be privileged. Pursuant to this section, Council will be receiving legal advice from its attorney which fulfills the requirement provided in Section 108(3) of the Public Officers Law allowing this exemption.)

Adjournment: By unanimous vote the Council adjourned the meeting. The meeting was adjourned at 9:05 p.m.

Minutes submitted to the City Council on September 15, 2016 by:

Coleen LaMay
Deputy City Clerk

On September 15, 2016 a motion to approve the minutes of the August 25, 2016 Auburn, NY City Council meeting was made by Councilor Giannettino, seconded by Councilor Carabajal.

	Ayes	Noes
Councilor McCormick	abstain	
Councilor Giannettino	X	
Councilor Cuddy	X	
Councilor Carabajal	X	
Mayor Quill	X	
Carried and Adopted	X	

I do hereby certify that the foregoing is a correct copy of the minutes of the proceedings of the City Council of the City of Auburn, N.Y., at a regular meeting thereof, held in the Council Chambers, Memorial City Hall, in said city, on the 25th day of August, 2016 and that the City Council approved such by the vote listed above.

A handwritten signature in black ink, appearing to read 'C. Mason', written over the printed name.

Charles Mason, City Clerk

Date: September 16, 2016

ORDINANCE #11 OF 2016

**ADOPTING A NEW CHAPTER TO THE AUBURN CITY CODE, CHAPTER 300
“WIRELESS TELECOMMUNICATIONS FACILITIES”, AS AMENDED**

By Councilor Giannettino

August 25, 2016

WHEREAS, new language to the Auburn City Code to be known as Chapter 300 and entitled “Wireless Telecommunications Facilities” has been prepared for City Council consideration; and

WHEREAS, it is desired that this new chapter to the Auburn City Code be adopted; and

WHEREAS, Chapter 300 entitled “Wireless Telecommunication Facilities” of the Auburn City Code is attached hereto and made a permanent part of this ordinance.

NOW THEREFORE BE IT ORDAINED that the Auburn City Council does hereby adopt Chapter 300, “Wireless Telecommunication Facilities” to become a permanent chapter of the City of Auburn City Code; and

BE IT FURTHER ORDAINED that this Ordinance shall become effective immediately.

Seconded by Councilor Carabajal

	Ayes	Noes
Councilor McCormick	absent	
Councilor Giannettino	X	
Councilor Cuddy	X	
Councilor Carabajal	X	
Mayor Quill	X	
Carried and Adopted	X	

I do hereby certify that the foregoing is a correct copy of the vote for Ordinance #11 of 2016 of the City Council of the City of Auburn, N.Y., at a regular meeting thereof, held in the Council Chambers, Memorial City Hall, in said city, on the 25th day of August, 2016 and that the City Council approved such by the vote listed above.

Coleen LaMay, Deputy City Clerk Date: September 15, 2016

CHAPTER 300: WIRELESS TELECOMMUNICATION FACILITIES

ARTICLE 1: GENERAL PROVISIONS

§ 300-1 Title

This Chapter shall be known as “Wireless Telecommunication Facilities”

§ 300-2 Intent and Purpose

- A. The intent of this Chapter is to regulate the placement, construction and modification of wireless telecommunication facilities pursuant to the authority given to the City of Auburn by the Telecommunications Act of 1996. By this Chapter, the City of Auburn intends to accommodate the increasing demand for wireless telecommunication facilities and the services provided by them, while simultaneously protecting the health, safety, public welfare, character and environment of the City and its residents.
- B. The City of Auburn hereby adopts a policy with respect to a special use permit for wireless telecommunications facilities for the express purpose of achieving the following goals:
1. Implementing an application process for the person(s) or entities seeking a special use permit for wireless telecommunications facilities;
 2. Establishing a policy for examining an application for and issuing a special use permit for wireless telecommunications facilities that is both fair and consistent;
 3. Promoting and encouraging, wherever possible, the sharing and/or collocation of wireless telecommunications facilities among service providers.
 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 the 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. To protect the appearance and property value of residential neighborhoods, minimize conflict with adjacent uses and the surrounding areas and to assure the health and safety of the public.
6. Minimize the total number and height of new towers throughout the City of Auburn.
7. Provide standards and requirements for the regulation, placement, design, appearance, construction, monitoring, modification, and removal of telecommunications facilities and towers.
8. Locate towers so that they do not have negative impacts, such as, but not limited to, attractive nuisance, noise, and falling objects.
9. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate, or modify telecommunications facilities.
10. This Chapter is not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall it be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

§ 300-3 Scope

This chapter shall apply to the placement, construction and modification of existing and new wireless telecommunications facilities and towers within the City of Auburn.

§300-4 Definitions

As used in this Chapter, unless the context or subject matter requires otherwise, the following terms shall have the meanings indicated:

ABANDONED

Any facility which has not been operational for six (6) consecutive months.

ANTENNA

Any device or exterior apparatus mounted on a tower, building, utility pole, light pole, or other structure designed for telephonic, radio, data, Internet or television communications to transmit or receive communications signals or electromagnetic waves for the purpose of providing cellular services, telecommunications services, personal communications services, personal wireless services, wireless cable, commercial paging, data or wireless services and its attendant base station.

APPLICANT

Any individual, corporation, organization, or entity submitting an application for a special use permit for wireless telecommunications facilities.

BOARD

The Planning Board of the City of Auburn

CITY

The City of Auburn, New York.

COLLOCATION

The use of a tower or structure to support antennas for the provision of wireless services without increasing the height of the tower or structure.

COMMERCIAL IMPRACTICABILITY or COMMERCIALY 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”.

COMMUNICATION TOWER or TOWER

A vertical structure erected to support antennas, or other transmitting or receiving devices. Communication towers may include, but not be limited to, monopole, lattice, and guided towers. Communications towers are generally a component of a Wireless Telecommunications Facility.

COMPLETED APPLICATION

An application that contains all information and/or data necessary to enable an informed decision to be made by the Board with respect to an Application.

FAA

The Federal Aviation Administration or its duly designated and authorized successor agency.

FALL ZONE

The area on the ground within a prescribed radius from the base of a wireless communication facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

FCC

The Federal Communications Commission or its duly designated and authorized successor agency.

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 or lightning protection device.

MODIFICATION or MODIFY

The addition, removal or change or any of the physically, visually, and auditory discernible components or aspects or a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a communications 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.

NIER

Nonionizing electromagnetic radiation.

PERSON

Any individual, corporation, limited liability company, estate, trust, partnership, joint-stock company, association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS FACILITY

See definition for “wireless telecommunications facilities.”

PERSONAL WIRELESS SERVICES OR PWS or PERSONAL TELECOMMUNICATIONS SERVICE or PCS

Shall have the same meaning as defined and used in the Telecommunications Act of 1996.

RFE

Radio frequency emissions.

SEQRA

The State Environmental Quality Review Act.

SPECIAL USE PERMIT or “SUP”

The official permit issued by the Board which allows an applicant to construct and use wireless telecommunications facilities.

STEALTH or STEALTH TECHNOLOGY

To minimize the 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.

TELECOMMUNICATIONS

The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light and other electromagnetic systems.

TELECOMMUNICATIONS SITE

See definition for “wireless telecommunications facilities.”

TEMPORARY

Temporary in relation to all aspects and components of this Chapter, something intended to, or that does, exist for fewer than 90 days.

WIRELESS TELECOMMUNICATIONS FACILITIES or “WTF” or TELECOMMUNICATIONS SITE or PERSONAL WIRELESS FACILITY or FACILITY

Includes a structure, facility or location designed or intended to be used as, or used to support, antennas or other transmitting or receiving devices. This includes, but is not limited to, towers or all types and kinds and structures that employ camouflage technology including, but not limited to, structures such as multistory building, church steeple, silo, water tower, sign or other structures that can be used to mitigate the visual impact of an antenna or the functional equivalent of such, including all related facilities such as cabling, equipment shelters, and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave services, and services not licensed by the FCC, but not expressly exempt from the City’s siting, building, and permitting authority, excluding those used exclusively for the City’s fire, police or exclusively for private, noncommercial radio and television reception and private citizen’s bands, amateur radio, and other similar noncommercial telecommunications where the height of the facility is below the height limits set forth in this chapter.

§300-5 Adherence to state and/or federal rules and regulations

- A. To the extent that the holder of a SUP for a WTF has not received relief or is otherwise exempt from appropriate state and/or federal agency rules or regulations, then the holder of such a SUP 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, regulations or standards regarding height, lighting, security, electrical and RF emission standards.

- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting and security, are changed and/or are modified during the duration of a special use permit for wireless telecommunication facilities, then the holder of such a 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 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.

§300-6 Conflict of Laws

Where this section differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, state or federal government, this Chapter shall control.

§300-7 Severability

If any section, subsection, clause, sentence, phrase, or portion of this Chapter or application thereof to any person or circumstance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

§300-8 Exclusivity, Transfers, and Assignments

Special Use Permits issued in accordance with this chapter shall not be exclusive, and shall not be assigned, transferred, or conveyed without the express written approval from the Board, which shall not be unreasonable withheld.

ARTICLE II: PROCEDURE

§300-9 Special Use Permit Required

- A. All newly constructed, relocated, rebuilt, or extended communication towers and facilities shall comply with the provisions of this Chapter. No person shall site, construct, maintain or use a communication tower, antenna, or related facilities without complying with the provisions of this article.

- B. The Board is the officially designated agency of the City to whom applications for a SUP for WTF shall be made and, as such, is authorized to review, analyze, evaluate and make decisions with respect to the granting or not granting, recertifying or not recertifying, or revoking SUP for WTF.
- C. In addition to the requirements and procedures set forth in this Chapter, the Board shall also review the SUP for WTF in accordance with the procedures set forth in the review of special permits in Chapter 305-13. The standards for said review shall be in accordance with this chapter.

§300-10 Application

- A. **Parties:** An application for a SUP for WTF shall be signed on behalf of the applicant by the person preparing the same 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, in terms of safety issues, with all applicable local, state and federal telecommunications codes prior to issuance of any SUP for a new facility.
- B. **Contents:**
All applications for the construction or installation of new WTF shall contain and include the following information:
 - 1. Documentation that demonstrates the need for the WTF to provide service primarily and essentially within the City, with service to adjacent municipalities to not exceed 50% of the total area to be covered by the proposed facility. Such documentation shall include propagation studies and maps of the proposed site and all other planned, proposed, in-service or existing sites in the City, and in all contiguous municipalities. If the applicant is addressing a capacity issue, documentation must be submitted to include, but not to be limited to the following: usage and forecasted or present blockage; call volume, drive-test data and results, including the date of the test, locations of the tests, and signal strength results; and any other technical pertinent information;
 - 2. The name, address, email, and phone number of the person preparing the report;
 - 3. The name, address, email, and phone number of the property owner, operator, and applicant, and to include the legal form of the applicant;
 - 4. The address and tax map parcel number of the proposed site;
 - 5. The Zoning District in which the site is situated;

6. Size of the property, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
7. The distance to the nearest residential property;
8. The location, size, and height of all structures on the proposed site;
9. The location and design of all site improvements and modifications including, but not limited to, access road(s), screening and landscaping, fencing, lighting, and signage;
10. The location, size, and height of all proposed and existing antennas and all appurtenant structures;
11. The type, locations, and dimensions of all proposed and existing landscaping and fencing for a new Tower;
12. The number, type, and design of the proposed new tower and antenna and the basis for the calculations of the tower's capacity to accommodate multiple users;
13. A description of the Tower and antenna(s) and all related structures, fixtures, appurtenances, and apparatus, including height above preexisting grade, materials, color, and lighting;
14. Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC.
15. Certification that the proposed antenna(s) will not cause interference with other telecommunications facilities;
16. Copy of the FCC license applicable for the intended use of the WTF;
17. Certification that the site is adequate to assure the stability of the Tower on the proposed site;
18. Statement in writing that the applicant's proposed WTF shall be maintained in a safe manner, and in compliance with all conditions of the SUP, without exception, unless specifically granted relief by the Board in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable City, state and federal laws, rules and regulations.

19. Written copy of an analysis, completed by a qualified individual or organization, indicating if the WTF requires lighting under the FAA rules and regulations.
 20. Analysis and certification detailing the Fall Zone of the proposed communication tower.
 21. Analysis and certification indicating that the WTF complies with the noise standard for WTF.
 22. Written report demonstrating the applicant's meaningful efforts to secure shared use of existing tower(s) or the use of alternative sites, buildings or other structures within the City. Copies of written requests and responses showing said efforts shall be provided to the Board in the application, along with any letters of rejection stating the reason for rejection.
 23. Any other documentation required by the Board and/or its expert necessary to review the application.
 24. Where a certification is required herein, such certification shall bear the signature and seal of a professional engineer licensed in the state.
 25. As appropriate, the information above shall be shown on a site plan and drawing prepared by a professional engineer licensed in the state.
- C. SEQRA:** An applicant shall be required to submit, together with its application, a long-form environmental assessment form in compliance with the State Environmental Quality Review Act.
- D. Visual Impact:** The application shall include a visual impact assessment setting forth:
1. A zone of visibility map, which shall be provided in order to determine locations from which the tower may be seen;
 2. Balloon study showing pictorial representations of before and after views from key viewpoints both inside and outside of the City, as may be appropriate, including, but not limited to state highways and other major roads; state and local parks; other public lands; and designated historic sites and districts.
 3. A demonstration that the WTF be sited so as to be the least visually intrusive as is reasonably possible and thereby have the least adverse visual effect on the environment and its character.

4. A showing of the use of materials, colors and textures to be affixed to the WTF and Tower so as to minimize its visual impact, which shall include utilization of stealth technology as may be required by the Board.
- E. False, Misleading or Incomplete Information:** The Board may, at their discretion, deny any application without further consideration upon a finding that the information provided in the application is false, misleading or incomplete.
- F. Fees:**
1. Upon an application for a SUP for a new WTF or to increase the height of a Tower or structure, a nonrefundable fee in the amount of \$5,000.00 shall be paid to the City.
 2. Upon an application for a SUP seeking collocation on an existing Tower or other suitable existing building, where no increase in height of the tower or structure is required, a nonrefundable fee in the amount \$2,500.00 shall be paid to the City.

ARTICLE III: STANDARD OF REVIEW

§300-11 Standards

The following standards of review apply to all WTF regulated by this Chapter:

- A.** Collocation. Communication towers shall be designed to provide for collocation by additional providers or designed so that they can be retrofitted to accommodate additional providers.
- B.** Height. The maximum height of a new tower shall be the minimum height necessary to provide service to locations within the City, as justified by submitted documentation, but in no case shall the height exceed 150 feet above average grade level.
- C.** Equipment. All equipment at ground level shall be enclosed within an appropriate equipment shelter.
- D.** Equipment shelter. The equipment shelter shall be designed, sited and screened to minimize its visibility from surrounding public streets or neighborhoods, using suitable materials, colors, textures, screening and landscaping and, to the fullest extent possible, shall be harmonious with the character of the district in which it is located.
- E.** Security. All communication towers and guy wires and anchors, if applicable shall be enclosed by a fence of not less than eight feet in height or otherwise sufficiently protected from trespassing or vandalism.

- F.** Visibility. Communication towers shall be designed and finished to reduce visual obtrusiveness, unless otherwise required by the Federal Aviation Administration (FAA). Communication towers shall employ stealth technology to the full extent possible as may be required by the Board.
- G.** Visibility, Historic resource. Where Communication Towers would be visible from a designated historic site or designated historic district, stealth technology shall be implemented.
- H.** Lighting. Communication Towers shall not be artificially lighted unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen shall, to the fullest extent possible, cause the least disturbance to the surrounding areas.
- I.** Noise. Noise produced from the WTF shall not exceed 60 dB(A) as measured at the property line.
- J.** Signage. For each service provider, the WTF shall contain a sign, no larger than 4 square feet, notifying persons of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be visible from the access point of the WTF. No other signage shall be permitted.
- K.** Setback, Communication Tower. The minimum setback for communication towers shall be equal to the fall zone of the tower, but in no case shall the minimum setback be less than 500 feet to any property line of any public park, playground, preschool, elementary school, secondary school, designated historic site, or designated historic district.
- L.** Setback, Equipment Shelter. The minimum setback for equipment shelters shall comply with all existing setback requirements within any zoning district.
- M.** Access road. An access road shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation.
- N.** Existing towers, buildings or structures. Communication Towers and antennas that are proposed to be mounted or attached on existing Communication Towers, buildings or structures shall be designed so as to make the equipment as visually unobtrusive as possible and, to the full extent possible, shall be harmonious with the architectural fabric of the supporting structure and the surrounding area.
- O.** Building-mounted antennas. Building-mounted antennas should be located and designed to be an integral part of the building and shall be secured or camouflaged, as necessary or as required by the Board, to minimize visual intrusion to surrounding properties.

ARTICLE IV: PREFERRED LOCATIONS

§300-12 Priority

- A. Applicants for WTF shall locate, site, and erect said WTF in accordance with the following priorities, provided that the setbacks set forth herein are met, Subsection (A)(1) being the highest priority, and Subsection (A)(5) being the lowest priority.
1. On existing towers and existing buildings in industrially and commercially zoned districts without increasing the height of the tower or building;
 2. On existing towers and existing buildings in mixed-use and residentially zoned districts in that order of sub-priority, without increasing the height of the tower or building;
 3. On new Towers in industrially and commercially zoned districts where the New Tower can be sited in such a way as to be set back at least 500 feet from the nearest property line of any public park, playground, preschool, elementary school, secondary school, designated historic site, designated historic district, or residentially zoned lot used for residential purposes where visual mitigation or stealth will be provided;
 4. On new Towers on country clubs, cemeteries, public utility sites, government-owned properties, or vacant property under single ownership where such sites are at least four (4) acres in area, where the new Tower can be sited in such a way as to be set back at least 500 feet from the nearest property line of any public park, playground, preschool, elementary school, secondary school, designated historic site, designated historic district, or residentially zoned lot used for residential purposes where visual mitigation or stealth will be provided;
 5. On new Towers in industrially and commercially zoned districts where the New Tower can be sited in such a way as to be set back at least 250 feet, but less than 500 feet, from the nearest property line of any public park, playground, preschool, elementary school, secondary school, designated historic site, designated historic district, or residentially zoned lot used for residential purposes where visual mitigation or stealth will be provided.
- B. If the proposed site is not proposed for the highest priority listed in subsection (A) herein, then a detailed explanation must be provided as to why a site of a higher priority was not selected. The applicant 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.

- C.** An applicant may not bypass sites of higher priority by stating that the site proposed is the only site leased or selected. An applicant shall address collocation as an option. If such option is not proposed, then applicant must explain to the reasonable satisfaction of the Board why collocation is commercially or otherwise impracticable. Agreements between providers limiting or prohibiting collocation shall not be a valid basis for any claim of commercial impracticability or hardship.
- D.** Notwithstanding the above, the Board may approve any site located within an area in the above-list of priorities, provided that the Board finds that the proposed site is in the best interest of the health, safety, and welfare of the City and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood.
- E.** The applicant, as part of the application, shall submit a written report demonstrating the applicant's review of the above locations in order of priority and demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included.
- F.** 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:

 - 1. Conflict with safety and safety-related codes and requirements;
 - 2. Conflict with the historic nature or character of a neighborhood or historical district;
 - 3. The use or construction of WTF which is contrary to an already stated purpose of a specific zoning or land use designation;
 - 4. The placement and location of WTF which would create an unacceptable risk, or the reasonable probability of such, to residents, the public, employees and agents of the City, or employees of the service provider or other service providers;
 - 5. Conflicts with the provisions of this Chapter.
- G.** If a site is proposed for other than one of the locations on the list provided in Subsection A herein, in their respective order, then the applicant must demonstrate by competent evidence to the satisfaction of the Board that the preferred locations on such list within the service range established by the Board were thoroughly investigated and that such locations are not feasible and cannot provide the applicant adequate coverage.

§ 300-13 Shared Use

- A. Locating on existing towers or other structures without increasing the height shall be preferred by the Board, as opposed to the construction of a new Tower. The applicant shall submit a comprehensive report inventorying existing towers and other suitable structures within 1800 feet of the location of any proposed new tower.
- B. An application showing the intent to locate a WTF on an existing tower or other suitable structure shall 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 within the City, to the extent practicable.

ARTICLE V: CONSULTANTS

§300-14 Expert Assistance and Reimbursement by Applicant

- A. The Board and City may hire any consultant and/or expert necessary to assist the Board and City in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B. An applicant shall deposit with the City funds sufficient to reimburse the Board and the City for all reasonable costs of consultant and expert evaluation and consultation to the Board and the City in connection with the review of any application and recertification, including the construction and modification of the site, once permitted. The initial deposit shall be determined by the City, but not to exceed \$5,000.00. If at any time during the process the balance of funds deposited with the City is less than \$1,000.00, the applicant shall immediately, upon notification by the City, replenish the account. Any remaining balance shall be promptly refunded to the applicant.
- C. The total deposit needed and required as set forth herein may vary with the scope and complexity of the proposed project, the completeness of the application or certification and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

ARTICLE VI: INSPECTIONS AND CERTIFICATIONS

§300-15 Inspections

- A. In order to verify that the holder of a SUP for WTF and any and all lessees, renters, and/or licensees of WTF place and construct such facilities, including towers and antennas, in accordance with all applicable, technical, safety, fire, building, and zoning codes, laws, ordinances, and regulations, and other applicable requirements, the City may inspect all facets of said permit holder's, renter's, lessee's, or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas, and buildings or other structures constructed or located on the permitted site.
- B. The City shall give the holder of SUP for WTF and any and all lessees, renters and/or licensees of WTF, reasonable notice of said inspection.

§300-16 Annual Certifications

- A. The holder of a SUP under this chapter shall annually submit certification of a professional engineer certifying to the City with identified protocol that NIER levels at the site are within the threshold levels adopted by the FCC.
- B. The holder of a SUP shall annually submit certification of a professional engineer certifying to the City with identified protocol that its WTF meets City, state, and federal standards, including, but not limited to all the requirements of this chapter and the SUP.

ARTICLE VII: INSURANCE and INDEMNIFICATION

§300-17 Liability Insurance

- A. A holder of a SUP for WTF 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 SUP in the amounts 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 per occurrence/\$2,000,000 aggregate; and
 - 3. Workers' compensation and disability; statutory amounts.

- B. The commercial general liability insurance policy shall specifically include the City and its officers, boards, employees, committee members, attorneys, agents, and consultants as additional named insureds.
- C. Before construction of a WTF is initiated, the holder of the SUP shall deliver to the City a copy of each of the policies or certificates representing the insurance in the required amounts.

§300-18 Defense and Indemnification

Any application for WTF that is proposed for City property, pursuant to this chapter, shall contain a provision with respect to defense and 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 City, 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 City, 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 City.

ARTICLE VIII: VIOLATIONS

§300-19 Notice of Violations

- A. If WTF are constructed, placed, modified, repaired, rebuilt, moved, relocated, or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or the SUP, then the City shall notify the holder of the SUP in writing of said violation. Such notice shall specify the nature of the violation, the fines and penalties associated with the violation, and that the violations must be corrected within seven (7) days of the postmark of the notice, or the date of personal service of the notice, whichever is earlier.
- B. In the event that a violation of the provisions of this chapter of the SUP causes, creates, or presents an imminent danger or threat to the health and safety of lives or property, then the City may, at its sole discretion, order the violation remedied within twenty-four (24) hours.

§300-20 Notice of Revocation and Termination

In the event that the holder of a SUP fails to comply with this Chapter or correct existing violations within the time periods stated in this Chapter, then the City may revoke, cancel or terminate the SUP and shall notify the holder of the SUP within forty-eight (48) hours of such action.

§300-21 Fines and Penalties

- A. In the event of a violation of this Chapter or any SUP, the City may impose and collect, and the holder of the SUP for the WTF shall pay to the City, the fines or penalties as set forth below:
1. A violation of this chapter shall be punishable by a fine not exceeding \$1,000.00 per day per occurrence. Each day's continued violation shall constitute a separate additional violation.
 2. The holder of a SUP may not use the payment of fines, liquidated damages or other penalties as a means of evading or avoiding compliance with this chapter. In the event that violations are charged against the holder of the SUP and remain uncorrected, then the City may terminate and revoke the SUP. The City may further seek injunctive relief to prevent continued violations, without limiting other remedies available to it.

ARTICLE IX: REMOVAL OF WIRELESS TELECOMMUNICATIONS FACILITIES

§300-22 Removal

The applicant, holder of SUP, and/or successors and assigns shall agree to remove the WTF if it becomes technically obsolete, ceases to be used for its intended purpose for six consecutive months, or the condition of such poses a safety issue as determined by the City. The Code Enforcement Officer shall require the applicant to provide a demolition bond, in a form approved by the Corporation Counsel, in an amount of at least the cost of removing the tower or antenna. The cost of the removal shall be certified by a New York State licensed professional engineer. In no event shall the amount of the bond be less than the cost of removal in the event that the applicant fails to remove the communications tower or antenna. The sufficiency of the bond shall be confirmed at least every five years by an analysis conducted by a New York State licensed professional engineer. If the bond amount in force is insufficient to cover the cost of demolition and removal, it shall be immediately increased to cover such amount.

ARTICLE X: RELIEF

§300-23 Relief, Waivers, Exemptions

Any applicant desiring relief, waiver, or exemption from any aspect or requirement of this Chapter may request such from the Board, provided that the relief or exemption is contained in the original application for either a SUP or in the case of an existing or previously granted permit, a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. 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 Board and the City 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, waiver, or exemption will have no significant effect on the health, safety, and welfare of the City, its residents, and other service providers.

ARTICLE XI: BUILDING PERMIT

§300-24 Building Permit Required

Building permit shall be required prior to the construction or modification of all Wireless Telecommunications Facilities. Fee to be in accordance with City Fee Schedule.

ARTICLE XII: EFFECTIVE DATE

§300-25 Effective Date

This Chapter shall take effect immediately. This Chapter shall have no retroactive effect and no effect on Wireless Telecommunications Facilities that have received approval from the Board for construction prior to the effective date.