

Chapter 130

TELECOMMUNICATIONS

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| § 130-1. Purposes. | § 130-7. General requirements. |
| § 130-2. Definitions. | § 130-8. Evaluation by independent consultants. |
| § 130-3. Exempted wireless telecommunications uses. | § 130-9. Approval criteria. |
| § 130-4. Provision of independent consultants. | § 130-10. Monitoring and evaluation of compliance. |
| § 130-5. Teleports. | § 130-11. Removal requirements. |
| § 130-6. Application requirements. | § 130-12. Fees and insurance. |

[HISTORY: Adopted by the Town Board of the Town of Rochester 12-29-1997 by L.L. No. 3-1997. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 140.

§ 130-1. Purposes.

The purposes of this personal wireless service facilities and towers chapter are to:

- A. Preserve the character and appearance of the town while simultaneously allowing adequate personal wireless services to be developed and provide a sufficient number of locations to accommodate the needs of wireless communications providers. It is recommended that town property and commercial and industrial zones be given primary consideration and that residential zones be avoided if possible.
- B. Protect the scenic, historic, environmental and natural or man-made resources of the community.
- C. Provide standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of personal wireless service facilities.
- D. Establish a systematic review process that ensures action within a reasonable period of time for requests for authorization to place, construct, operate or modify personal wireless service facilities.
- E. Preserve property values.
- F. Minimize the total number and height of towers throughout the community while providing adequate coverage for the Town of Rochester.
- G. Locate towers so that they do not have negative impacts, such as, but not limited to, attractive nuisance, noise and falling objects, on the general safety, welfare and quality of life of the community.

- H. Require owners of towers and personal wireless service facilities to configure them so as to minimize and mitigate the adverse visual impact of the towers and facilities.
- I. Encourage tower sharing and the clustering of personal wireless service facilities where possible, while remaining consistent with state and federal law.

§ 130-2. Definitions.

As used in this personal wireless service facilities chapter, the following terms shall have the meanings indicated. The word “shall” or “will” indicate mandatory requirements; “may” is advisory and indicates recommendations which are not mandatory.

ACT — The Telecommunications Act of 1996.

ADEQUATE COVERAGE — Coverage is considered to be adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is greater than -95 dbm. It is acceptable for there to be holes within the area of adequate coverage where the signal is less than -95 dbm, as long as the signal regains its strength to greater than -95 dbm further away from the base station. For the limited purpose of determining whether the use of a repeater is necessary or desirable, there shall be deemed not to be adequate coverage within said holes. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain a strength of greater than -95 dbm.

ADEQUATE CAPACITY — Capacity is considered to be adequate if the grade of service (GOS) is p.05 or better for median traffic levels offered during the typical busy hour, as assessed by direct measurement of the personal wireless service facility in question. The GOS shall be determined by the use of standard Erlang B calculations. As call blocking may occur in either the land line or radio portions of a wireless network, adequate capacity for this chapter shall apply only to the capacity of the radio components.

ANTENNA — A device which is attached to a tower, or other structure for transmitting and receiving electromagnetic waves.

AVAILABLE SPACE — The space on a tower or structure to which antennas of a personal wireless service provider are both structurally able and electromagnetically able to be attached.

BASE STATION — The primary sending and receiving site in a wireless telecommunications network. More than one base station and/or more than one variety of personal wireless service provider can be located on a single tower or structure.

CHANNEL — The segment of the radiation spectrum from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

COMMUNICATION EQUIPMENT SHELTER — A structure located at a base station designed principally to enclose equipment used in connection with personal wireless service transmissions.

dbm — Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to one milliwatt.

DWELLING UNIT — A building or other shelter in which a person or persons live.

ELECTROMAGNETICALLY ABLE — The determination that the new signal from and to the proposed new antennas will not significantly interfere with the existing signals from and to other facilities located on the same tower or structure as determined by a qualified professional telecommunications engineer. The use of available technologies to alleviate such interference shall be considered when making this determination.

EMF — Electromagnetic frequency radiation.

FACILITY SITE — A property, or any part thereof, which is owned or leased by one or more personal wireless service providers and upon which one or more personal wireless service facility(ies) and required landscaping are located.

FCC — Federal Communications Commission, the government agency responsible for regulating telecommunications in the United States.

FCC 96-326 — A report and order which sets new national standards for emissions of radio frequency emissions from FCC-regulated transmitters.

GHz — Gigahertz: one billion hertz.

GRADE OF SERVICE — A measure of the percentage of calls which are able to connect to the base station, during the busiest hour of the day. Grade of service is expressed as a number, such as p.05, which means that 95% of callers will connect on their first try. A lower number (p.04) indicates a better grade of service.

HERTZ — One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

MODIFICATION OF AN EXISTING FACILITY — Any change or proposed change in power input or output, number of antennas, change in antenna type or model, repositioning of antenna(s), change in number of channels per antenna above the maximum number approved under an existing special permit.

MODIFICATION OF AN EXISTING TOWER — Any increase or proposed increase in dimensions of an existing and permitted tower or other structure designed to support personal wireless service transmission, receiving and/or relaying antennas and/or equipment.

MHZ — Megahertz: one million hertz.

MONITORING — The measurement, by the use of instruments in the field, of the radiation from a site as a whole, or from individual personal wireless service facilities, towers, antennas or repeaters.

MONITORING PROTOCOL — An approved testing protocol as defined in the most current FCC regulations. As of August 15, 1997, the most current practice is referenced in FCC Regulations, Title 47, Part 1, Section 1.1307, as IEEE C95.3 1991.

MONOPOLE — A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal, or a wooden pole with below-grade foundations.

PERSONAL WIRELESS SERVICES — Commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services. These services include cellular services, personal communications services (PCS), specialized mobile radio services and paging services.

PERSONAL WIRELESS SERVICE FACILITY — All equipment (including any repeaters) with which a personal wireless service provider broadcasts and receives the radio frequency waves which carry their services and all locations of said equipment or any part thereof. This facility may be sited on one or more towers or structure(s) owned and permitted by another owner or entity.

PERSONAL WIRELESS SERVICE PROVIDER — An entity, licensed by the FCC to provide personal wireless services to individuals or institutions.

PRESERVE PROPERTY VALUE — Maintain the recent value as defined by current realty assessment prior to a tower site proposal.

RADIATION PROPAGATION STUDIES or RADIAL PLOTS — Computer-generated estimates of the radiation emanating from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tool for determining whether a site will provide adequate coverage for the personal wireless telecommunications service facility proposed for that site.

REPEATER — A small receiver/relay transmitter of not more than 20 watts' output designed to provide service to areas which are not able to receive adequate coverage directly from a base station.

SEQRA — New York State Environmental Quality Review Act.

STRUCTURALLY ABLE — The determination that a tower or structure is capable of carrying the load imposed by the proposed new antennas under all reasonably predictable conditions as determined by professional structural engineering analysis.

TELEPORT — A facility utilizing satellite dishes of greater than 2.0 meters in diameter designed to uplink to communications satellites for transmitting in the C-Band and (4-6 GHz) spectrum and intended for use by multiple owners, lessees or rental customers.

TOWER — A monopole, or lattice structure or framework, that is designed to support personal wireless service transmission, receiving and/or relaying antennas and/or equipment.

§ 130-3. Exempted wireless telecommunications uses.

This chapter specifically exempts the following wireless telecommunications facilities: police, fire, ambulance and other emergency dispatch, amateur (ham) radio, citizens band radio, any existing commercial radio tower and radio dispatch services for local businesses. No personal wireless service facility shall be considered exempt from this chapter for any reason whether or not said facility is proposed to share a tower or other structure with such exempt uses.

§ 130-4. Provision of independent consultants.

- A. Upon submission of an application for a special use permit under this chapter, the Planning Board may hire independent consultants whose services shall be paid for by the applicant(s). These consultants shall each be qualified professionals with a record of service to municipalities in one of the following fields:
- (1) Telecommunications engineering.
 - (2) Structural engineering.
 - (3) The monitoring of electromagnetic fields.
 - (4) Others as determined necessary by the Planning Board.
- B. The Town Board shall select the independent consultant(s) after consultation with the Planning Board.

§ 130-5. Teleports.

Teleports are prohibited in the Town of Rochester.

§ 130-6. Application requirements.

- A. No tower or personal wireless service facility shall be erected, constructed or installed without a special use permit from the Planning Board.
- (1) A special use permit shall be required for each of the following:
 - (a) New tower construction or modification of an existing tower.
 - (b) Personal wireless service facility or modification of an existing facility to be mounted on an existing, or newly permitted, tower or structure.
 - (2) If the applicant is applying for two or more permits, they shall be submitted and examined concurrently.
 - (3) Applications shall be submitted using an application form provided by the Planning Board and shall also include additional information specified in this section.
- B. Adequate coverage, adequate capacity and justification of need.
- (1) The applicant shall provide written documentation of any facility sites in the Town of Rochester, in abutting townships and in Ulster County in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. From each such facility site, it shall demonstrate with written documentation that these facility sites are not already providing, or do not have the potential by adjusting the site, to provide adequate coverage and/or adequate capacity to the Town of Rochester. The documentation shall include, for each facility site listed, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of tower or structure, type of antennas, antenna gain, height of antennas on tower or structure, output frequency, number of channels, power input and maximum power

output per channel. Potential adjustments to these existing facility sites, including changes in antenna type, orientation, gain, height or power output shall be specified. Radial plots from each of these facility sites, as they exist, and with adjustments as above, shall be provided as part of the application.

- (2) The applicant shall demonstrate with written documentation that it has examined all facility sites located in Rochester, in abutting towns and in Ulster County, in which the applicant has no legal or equitable interest, whether by ownership, leasehold or otherwise to determine whether those existing facility sites can be used to provide adequate coverage and/or adequate capacity to the Town of Rochester. The documentation shall include, for each facility site examined, the exact location (in longitude and latitude, to degrees, minutes and seconds), ground elevation, height of tower or structure, type of antennas proposed, proposed antenna gain, height of proposed antennas on tower or structure, proposed output frequency, proposed number of channels, proposed power input and proposed maximum power output per channel. Radial plots from each of these facility sites, as proposed, shall be provided as part of the application.
- (3) The applicant shall demonstrate with written documentation that it has analyzed the feasibility of repeaters in conjunction with all facility sites listed in compliance with Subsection B(1) and (2) of this section to provide adequate coverage and/or adequate capacity to the Town of Rochester. Radial plots of all repeaters considered for use in conjunction with these facility sites shall be provided as part of the application.

C. Required documentation:

- (1) Copies of all submittals and showings pertaining to FCC licensing; all environmental assessment forms as required by SEQRA, including the visual environmental assessment form; Federal Aviation Administration (FAA); notice of construction or alteration; aeronautical studies; and all data, assumptions and calculations relating to service coverage and power levels regardless of whether categorical exemption from routine environmental evaluation under the FCC rules is claimed.
- (2) Copies of any and all information submitted in compliance with any requirements of New York State or Ulster County Health Departments.
- (3) The exact legal name, address or principal place of business and phone number of the applicant. If any applicant is not a natural person, it shall also give the state under which it was created or organized.
- (4) The name, title, address and phone number of the person to whom correspondence or communications in regard to the application are to be sent. Notice, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant.
- (5) Name, address, phone number, and written consent to apply for this permit of the owner of the property on which the proposed tower shall be located or of the owner(s) of the tower or structure on which the proposed facility shall be located.
- (6) Required plans and engineering plans, prepared, stamped and signed by a professional engineer licensed to practice in New York. (Note: survey plans should also be

stamped and signed by a professional land surveyor registered in New York.) Plans shall be on sheets 24 inches by 36 inches, on as many sheets as necessary and at scales which are no smaller (i.e., no less precise) than listed below and which show the following information: Each plan sheet shall have a title block indicating the project title, sheet title, sheet number, date, revision dates, scale(s) and original seal and signature of the professional engineer and other professionals who prepared the plan.

- D. For new tower construction, or modification of an existing tower, a tower construction special permit is required.
- (1) The applicant shall provide a written, irrevocable commitment valid for the duration of the existence of the tower, to rent or lease available space for collocation on the tower at fair-market prices and terms, without discrimination to other personal wireless service providers.
 - (2) If the applicant is not simultaneously applying for a personal wireless service facilities special permit, it shall provide a copy of its existing lease/contract with a personal wireless service provider. A tower construction special use permit shall not be granted for a tower to be built on speculation.
 - (3) The following plans and maps shall be provided:
 - (a) Location map: a copy of a portion of the most recent United States Geological Survey (U.S.G.S) Quadrangle Map, at a scale of 1:25,000, and showing the area within at least two miles from the proposed tower site. Indicate the tower location and the exact latitude and longitude (degrees, minutes and seconds).
 - (b) Vicinity map: at a scale of one inch equals 200 feet (1:2,400) with contour intervals no greater than 10 feet (three meters) showing the entire vicinity within a radius of 2,000 feet of the tower site and including the topography, public and private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites and habitats for endangered species. Indicate the property lines of the proposed tower-site parcel and of all abutters within 1,500 feet of the tower-site parcel (from assessors maps or available surveys). Include the names of all bounding landowners and all landowners within 1,500 feet of the tower site parcel. Indicate any access easement or right-of-way needed for access from a public way to the tower, and the names of all bounding landowners or property owners along the access easement or who have deeded rights to the easement.
 - (c) Existing conditions plan: A recent survey of the tower site at a scale no smaller than one inch equals 40 feet (1:480 or metric equivalent 1:500) with topography drawn with a minimum of two feet (0.6 meter) contour intervals, showing existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, individual trees with diameters greater than 12 inches within a radius of 200 feet from the base of the proposed tower (labelled with their current heights). Show the boundary of any wetlands or floodplains or watercourses and of any bodies of water included in the Watershed Protection District within 500 feet from the tower or any related facilities or accessways or

appurtenances. The survey plan must have been completed, on the ground, by a professional land surveyor within two years prior to the application date.

- (d) Proposed site plans: proposed facility site layout, grading and utilities at the same scale or larger than the existing conditions plan, indicating:
 - [1] The proposed tower location and any appurtenances, including supports and guy wires, if any, and any accessory building(s) (communication equipment shelter or other). Indicate property boundaries and setback distances to the base(s) of the tower and to the nearest corners of each of the appurtenant structures to those boundaries and dimensions of all proposed improvements.
 - [2] The proposed spot elevations at the base of the proposed tower and at the base of any guy wires, and the corners of all appurtenant structures.
 - [3] The proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines and whether underground or above ground.
 - [4] The limits of areas where vegetation is to be cleared or altered and the justification for any such clearing or alteration.
 - [5] Any direct or indirect wetlands alteration proposed.
 - [6] Detailed plans for drainage of surface and/or subsurface water; plans to control erosion and sedimentation both during construction and as a permanent measure.
 - [7] Plans indicating locations and specifics of proposed screening, landscaping, ground cover, fencing, etc., and any exterior lighting or signs.
 - [8] Plans of the proposed access driveway or roadway and parking area at the tower site. Include grading, drainage and travelled width. Include a cross-section of the access drive indicating the width, depth of gravel, paving or surface materials.
- (e) Proposed tower and appurtenances:
 - [1] Plans, elevations, sections and details at appropriate scales but no smaller than one inch equals 10 feet.
 - [2] Two cross-sections through the proposed tower drawn at right angles to each other and showing the ground profile to at least 100 feet beyond the limit of clearing and showing any guy wires or supports and the dimensions of the proposed height of the tower above average grade at tower base. Show all proposed antennas, including their location on the tower.
 - [3] Details of the proposed tower foundation, including cross-sections and details. Show all ground attachments, specifications for anchor bolts and other anchoring hardware.
 - [4] Details the proposed exterior finish of the tower.

- [5] Indicate the relative height of the tower to the tops of surrounding trees as they presently exist and the height to which they are expected to grow in 10 years.
 - [6] An illustration of the modular structure of the proposed tower, indicating the heights of sections which could be removed or added in the future to adapt to changing communications conditions or demands.
 - [7] A structural professional engineer's written description of the proposed tower structure and its capacity to support additional antennas or other communications facilities at different heights and the ability of the tower to be shortened if future communications facilities no longer require the original height, and that the tower is designed to withstand winds in accordance with the ANSI/EIA/TIA 222 standards (latest revision).
 - [8] A description of available space on the tower, providing illustrations and examples of the type and number of personal wireless service facilities which could be mounted on the structure.
- (f) Proposed communications equipment shelter:
- [1] Floor plans, elevations and cross-sections at a scale of no smaller than $\frac{1}{4}$ inch equals one foot (1:48) any proposed appurtenant structure.
 - [2] Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.
- (g) Sight lines:
- [1] A minimum of eight view lines in a radius of zero to two miles from the site, shown beginning at true North and continuing clockwise at intervals of 45°.
 - [2] A plan map of a circle within a two-mile radius of the facility site on which any visibility of the proposed tower from a public way shall be indicated.
 - [3] The applicant shall utilize the U.S.G.S. Quadrangle Map, at a scale of 1:25,000, and submit profile drawings on a horizontal scale of one inch equals 400 feet, with a vertical scale of one inch equals 40 feet. Trees shall be shown at existing heights and at projected heights in 10 years.
 - [4] Visual impact assessment. The applicant is required to undertake a visual impact assessment which may include:
 - [a] A "zone of visibility" map shall be provided in order to determine locations where the tower may be seen.
 - [b] Pictorial representations of "before" and "after" views from key viewpoints both inside and outside of the town (or village or city), including but not limited to adjacent properties and various properties within 1,500 feet of the proposed site, state highways and other major roads, state and local parks, other public lands, 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 or travelers. The Board shall determine the appropriate key sites at a presubmission conference with the applicant.

- [c] Assessment of alternative tower designs and color schemes, as described in § 130-7.
 - [d] Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
 - (h) Balloon test. Within 35 days of submitting an application, the applicant shall complete the following: fly, or raise upon a temporary mast, brightly colored balloons that approximate in diameter the potential build-out of all antennas, but not less than three feet in diameter at the maximum height of the proposed tower. The dates, times and location of this balloon test shall be advertised, by the applicant, seven days in advance of the test date in a newspaper with a general circulation in the Town of Rochester. The applicant shall inform the Planning Board and the Town Board, in writing, of the dates and times of the test, at least seven days in advance. The balloon(s) shall be flown for 10 consecutive days 24 hours a day and include two full weekends.
- E. For new personal wireless service facility, or modification of an existing facility, a personal wireless service facility special permit is required.
- (1) The following plans and maps shall be provided:
 - (a) Location map: a copy of a portion of the most recent U.S.G.S Quadrangle Map, at a scale of 1:25,000, and showing the area within at least two miles from the proposed facility site. Indicate the location of the proposed personal wireless service facility, or of the facility undergoing modification, and the exact latitude and longitude (degrees, minutes and seconds).
 - (b) Proposed facility plan: a recent survey of the facility site at a scale no smaller than one inch equals 40 feet (1:480 or metric equivalent 1:500) showing:
 - [1] Horizontal and radial distances of antenna(s) to the nearest point on the property line.
 - [2] Horizontal and radial distances of antenna(s) to the nearest dwelling unit.
 - [3] Proposed utilities, including distance from source of power, sizes of service available and required, locations of any proposed utility or communication lines and whether underground or above ground.
 - [4] Any changes to be made to the existing facility's landscaping, screening, fencing, lighting, drainage, wetlands, grading, driveways or roadways, parking or other infrastructure as a result of this proposed modification of the facility.
 - (c) Proposed communications equipment shelter:

- [1] Floor plans, elevations and cross-sections at a scale of no smaller than $\frac{1}{4}$ inch equals one foot (1:48) of any proposed appurtenant structure.
- [2] Representative elevation views, indicating the roof, facades, doors and other exterior appearance and materials.

(d) Proposed equipment plan:

- [1] Plans, elevations, sections and details at appropriate scales but no smaller than one inch equals 10 feet.
- [2] Number of antennas and repeaters, as well as the exact locations of antenna(s) and of all repeaters (if any) located on a map, as well as by degrees, minutes and seconds of latitude and longitude.
- [3] Mounting locations on the tower or structure, including height above ground.
- [4] Antenna type(s), manufacturer(s), and model number(s).
- [5] For each antenna, the antenna gain and antenna radiation pattern.
- [6] Number of channels per antenna, projected and maximum.
- [7] Power input to the antenna(s).
- [8] Power output, in normal use and at maximum output for each antenna and all antennas as an aggregate.
- [9] Output frequency of the transmitter(s).

§ 130-7. General requirements.

- A. New towers shall be set back at least two times the height of the tower, from all boundaries of the site on which the tower is located.
- B. If the facility or tower site is in a wooded area, a vegetated buffer strip of undisturbed trees shall be retained for at least 50 feet in width around the entire perimeter except where the access drive is located. The applicant shall obtain a financial surety to cover the cost of the remediation of any damage to the landscape which occurs during the clearing of the site. Use of defoliant chemicals/herbicides is strictly prohibited when clearing land. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to the approval of the special permit.
- C. Fencing and signs. The area around the tower and communication equipment shelter(s) shall be completely fenced for security to a height of eight feet and gated. Use of razor wire is not permitted. A sign no greater than two square feet indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs may be posted on the fence.

- D. Communication equipment shelters and accessory buildings shall be designed to be architecturally similar and compatible with each other and shall be no more than 12 feet high. The buildings shall be used only for the housing of equipment related to this particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.
- E. New towers shall not exceed 120 feet or the minimum height necessary to provide adequate coverage for the personal wireless service facilities proposed for use on the tower, whichever is less. In the R-1, R-2, A and Hamlet Districts a tower shall not exceed the average tree height by more than 20 feet unless it is camouflaged as a coniferous tree. A tower sited in open area is limited in height to 80 feet and shall be camouflaged as a coniferous tree.
- F. Tower(s) shall be monopole structures that made potential sharing.
- G. Tower finish. New tower(s) shall have a galvanized finish unless otherwise required. The Planning Board may require the tower(s) to be powder coated, painted or otherwise camouflaged to minimize the adverse visual impact, including but not limited to requiring towers to be made to look like trees.
- H. The use of repeaters to assure adequate coverage, or to fill holes within areas of otherwise adequate coverage, while minimizing the number of required towers is permitted and encouraged. An applicant who has received a personal wireless service facility special permit under this chapter may install one or more additional repeaters. Site plan review before the Planning Board shall be required. For the site plan review, the applicant(s) shall detail the number, location, power output and coverage of any proposed repeaters in its systems and provide engineering data to justify their use.
- I. If primary coverage (greater than 50%) from a proposed personal wireless service facility is outside Rochester, then a permit may be denied unless the applicant can show that it is unable to locate within the town which is primarily receiving service from the proposed facility.
- J. Commercial advertising shall not be allowed on any antenna, tower, accessory building, communication equipment shelter or fencing.
- K. No night lighting of towers, or of the personal wireless service facility, is permitted, except for manually operated emergency lights for use only when operating personnel are on site. If lighting is required by the Federal Aviation Administration, then the tower shall be brought down to a height that does not require lighting within a time frame designated reasonable by the FAA.
- L. No tower or personal wireless service facility that would be classified as a hazard to air navigation, as defined by the Federal Aviation regulations (Title 14 of the Code of the Federal Regulations) is permitted.
- M. Prohibited areas.
 - (1) Towers and personal wireless service facilities. No tower or personal wireless service facility, with the exception of repeaters, shall be located:

- (a) Closer than 1,500 feet, on a horizontal plane, to any structure existing at the time of application which is, or is able to be, occupied or habitable, on the property of any school (both public and private).
- (b) Closer than 750 feet, on a horizontal plane, in the R-1, R-2, A or Hamlet Districts, to an existing dwelling unit, day-care center, hospital, nursing home, church, synagogue or other place of worship.
- (c) Closer than twice the height of the tower, on a horizontal plane, in the business, commercial and industrial districts, to any structure occupied or habitable.
- (d) Within any of the following prohibited areas:
 - [1] A New York or federally regulated wetland.
 - [2] A New York certified vernal pool.
 - [3] The habitat of any state-listed rare or endangered wildlife or rare plant species.
 - [4] Within 100 feet horizontally from any New York regulated wetland.
 - [5] Within 200 feet horizontally of the Outer Riparian Zone, measured horizontally from any river or perennial stream.
 - [6] Within 500 feet horizontally from any historic district or property listed or eligible to be listed on the state or federal Register of Historic Places.
 - [7] Within 500 feet horizontally from any known archaeological site.
- (2) Repeaters. No repeater shall be located closer than 50 feet to an existing dwelling unit, nor less than 25 feet above ground.

N. Parameters of appropriate siting.

- (1) Towers and personal wireless service facilities shall be located so as to minimize the following potential impacts:
 - (a) Visual/aesthetic. Towers shall, when possible, be sited off ridge lines and where their visual impact is least detrimental to highly rated scenic areas. [Note: See New York SEQRA and application forms.]
 - (b) Diminution of residential property values. Siting shall be in as low population density areas as possible.
 - (c) Safety: in cases of structural failure and attractive nuisance.
 - (d) Safety from excessive electromagnetic radiation: in case the tower or personal wireless service facility is found to exceed the FCC guidelines.
- (2) The following locations are ranked in order of preference:
 - (a) The use of municipal lands which comply with other requirements of this chapter, and where visual impact can be minimized and mitigated, shall be encouraged.

- (b) The use of land distant from higher-density residential properties and where visual impact can be minimized shall be encouraged.
- (c) The use of repeaters to provide adequate coverage without requiring new tower(s) shall be encouraged.
- (d) Shared use of existing personal wireless service facilities shall be encouraged.
- (e) Clustering of towers. Applications for towers adjacent to existing towers shall be encouraged.
- (3) Towers and personal wireless service facilities shall be located so as to provide adequate coverage and adequate capacity with the least number of towers and antennas which is technically and economically feasible.
- (4) The Planning Board shall request input from the local emergency services regarding the adequacy for emergency access of the planned drive or roadway to the site.
- O. Notification of nearby landowners. The applicant shall be required to mail notice of the public hearing directly to all bounding landowners and landowners whose property is located within 1,500 feet of the property line of the parcel on which a new tower is proposed. Notice shall also be mailed to the administrator of any state or federal parklands from which the proposed tower would be visible if constructed. Notification, in all cases, shall be made by certified mail. Documentation of this notification shall be submitted to the Board prior to the public hearing.

§ 130-8. Evaluation by independent consultants.

- A. Upon submission of a complete application for a special permit under this chapter, the Planning Board may provide its independent consultant(s) with the full application for their analysis and review.
- B. Applicants for any special permit under this chapter shall obtain permission from the owner(s) of the proposed property(ies) or facilities site(s) for the town's independent consultant(s) to conduct any necessary site visit(s).

§ 130-9. Approval criteria.

- A. In acting on the special permit application, the Planning Board shall proceed in accordance with the procedures and time lines established by Chapter 140, Zoning, and any amendments thereto.
- B. The Planning Board shall comply with §§ 140-31 through 140-35 of Chapter 140, Zoning; and, in addition, the Planning Board shall make all of the following applicable findings before granting the special use permit:
 - (1) That the applicant is not already providing adequate coverage and/or adequate capacity to the Town of Rochester.

- (2) That the applicant is not able to use existing towers/facility sites either with or without the use of repeaters to provide adequate coverage and/or adequate capacity to the Town of Rochester.
 - (3) That the applicant has agreed to rent or lease available space on the tower, under the terms of a fair-market lease, without discrimination to other personal wireless service providers.
 - (4) That proposed personal wireless service facility or tower will not have an undue adverse impact on historic resources, scenic views, residential property values or natural or man-made resources.
 - (5) That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities.
 - (6) That the proposal shall comply with FCC Reg 96-326 regarding emissions of electromagnetic radiation, and that the required monitoring program is in place and shall be paid for by the applicant.
- C. Any decision by the Planning Board to deny an application for a special permit under this chapter shall be in conformance with Section 332 [47 U.S.C. 3321 (7)(B)(iii)] of the Act, in that it shall be in writing and supported by substantial evidence contained in a written record.

§ 130-10. Monitoring and evaluation of compliance.

- A. Pretesting. After the granting of a special permit and before the applicant's personal wireless service facilities begin transmission, the applicant shall pay for an independent consultant, hired by the town, to monitor the background levels of EMF radiation around the proposed facility site and/or any repeater locations to be utilized for applicant's personal wireless service facilities. The independent consultant shall use the monitoring protocol. A report of the monitoring results shall be prepared by the independent consultant and submitted to the Town Board, the Planning Board, the Building Inspector and the Town Clerk.
- B. Post-testing. After transmission begins, the owner(s) of any personal wireless service facility(ies) located on any facility site shall pay for an independent consultant, hired by the town, to conduct testing and monitoring of EMF radiation emitted from said site, and to report results of said monitoring as follows:
- (1) Annually, there shall be two random monitoring of emissions by the independent consultant using actual field measurement of radiation, utilizing the monitoring protocol. This monitoring shall measure levels of EMF radiation from the facility site's primary antennas as well as from repeaters (if any). A report of the monitoring results shall be prepared by the independent consultant and submitted to the Town Board, the Planning Board, the Building Inspector and the Town Clerk.
 - (2) Any modification of existing facility, or the activation of any additional permitted channels, shall require new monitoring.

- C. Excessive emissions. Should the monitoring of a facility site reveal that the site exceeds the FCC 96-326 standard, then the owner(s) of all facilities utilizing that site shall be so notified and immediately fined for noncompliance. [Note: Fines are cumulative and are listed separately.] The owner(s) shall submit to the Planning Board and the Building Inspector a plan for the reduction of emissions to a level that complies with the FCC 96-326 standard within 10 business days of notification of noncompliance. That plan shall reduce emissions to the standard within 15 days of initial notification of noncompliance. Failure to accomplish this reduction of emission within 15 business days of initial notification of noncompliance shall be a violation of the special use permit and subject to penalties and fines as specified in § 140-59 of Chapter 140, Zoning. Such fines shall be payable by the owner(s) of the facilities with antennas on the facility site, until compliance is achieved.
- D. Structural inspection. Tower owner(s) shall pay for an independent consultant (a licensed professional structural engineer), hired by the town, to conduct inspections of the tower's structural integrity and safety. Guyed towers shall be inspected every three years. Monopoles and nonguyed towers shall be inspected every three years. A report of the inspection results shall be prepared by the independent consultant and submitted to the Town Board, the Planning Board, the Building Inspector and the Town Clerk. Any modification of existing facility which includes changes to tower dimensions or antenna numbers or type shall require new structural inspection.
- E. Unsafe structure. Should the inspection of any tower reveal any structural defect(s) which, in the opinion of the independent consultant, render(s) that tower unsafe, the following actions must be taken. Within 10 business days of notification of an unsafe structure, the owner(s) of the tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within 10 days of the submission of the remediation plan and completed as soon as reasonably possible. Failure to accomplish this remediation of structural defect(s) within 10 business days of initial notification shall be a violation of the special permit and subject to penalties and fines as specified in § 140-59 of Chapter 140, Zoning. Such fines shall be payable by the owner(s) of the tower, until compliance is achieved.
- F. Review. The permit shall be subject to review by the Planning Board at three-year intervals, to determine whether the technology in the provision of PWS (personal wireless services) has changed such that the necessity for the permit at the time of its approval has been eliminated or modified, and whether the permit should be modified or terminated as a result of any such change.

§ 130-11. Removal requirements.

- A. Any personal wireless service facility which ceases to operate for a period of one year shall be removed. "Cease to operate" is defined as not performing the normal functions associated with the personal wireless service facility and its equipment on a continuous and ongoing basis for a period of one year.
- B. The applicant, upon obtaining a permit, shall obtain a financial surety to cover the cost of removal of the personal wireless service facility and the remediation of the landscape, should the facility cease to operate. The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/hers successors in interest, to notify

the Building Inspector within 30 days of the discontinuance of use of the tower. This letter shall be filed with the Building Inspector prior to issuance of a building permit (assuming the telecommunications tower is approved according to this section).

- C. Failure to notify and/or to remove the obsolete or unused tower in accordance with these regulations shall be a violation of this chapter and shall be punishable according to § 140-59 of Chapter 140, Zoning. At the time of removal, the facility site shall be remediated such that all personal wireless service facility improvements which have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed. Existing trees shall only be removed if necessary to complete the required removal.

§ 130-12. Fees and insurance.

- A. General public liability insurance. A policy of general public liability insurance shall be obtained by the applicant at the time that site plan review is approved. The policy shall be obtained from an insurance company licensed to do business in the State of New York. The policy shall be in the amount of at least \$1,000,000 per occurrence. A certificate of insurance shall be presented to the Planning Board at the time of final approval, showing the Town of Rochester named as an additional insured. Said insurance coverage shall be Maintained until such time as the telecommunications tower has been removed.
- B. A schedule of fees for towers and personal wireless service facilities permitting and renewal, any monitoring of emissions and inspection of structures and any other fees shall be established by the Town Board. This schedule may be amended from time to time.