

**TOWN OF ALDEN
WORK SESSION
JANUARY 23, 2023
7:00 P.M.**

A G E N D A

- 1. Renewal of Fire Hydrant Contract with Lancaster per TA/JS**
- 2. 5G Tower Local Law per TA/JS**
- 3. Design Standards Local Law per TA/JS**
- 4. Springbrook Software purchase per TA/JS**
- 5. Dog Control Officer per TA/JS**
- 6. State Ag. And Markets Law detailing a DCO & Town's Duties per TA/JS**
- 7. Postcard Mailings for WD5 per CW/GW**
- 8. CPR/AED Certifications for Youth Programs per CW/GW**



Town of Lancaster

OFFICE OF THE TOWN ATTORNEY

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Town Attorney
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Leza E. Braun
Legal Assistant

May 31, 2018

Jennifer L. Strong, Esq.
Town Attorney, Town of Alden
13166 Main Street, P.O. Box 395
Alden, New York 14004-0395

RE: Town of Alden 2018 Hydrant Rental Agreement

Dear Ms. Strong:

Please find enclosed a fully executed original of the above-referenced Agreement for your records that was approved at the Town of Lancaster's May 21, 2018 Town Board Meeting.

If you have any questions or concerns please call.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. Loftus'.

Kevin E. Loftus, Esq.
Town Attorney
KEL:lb
Enc.

AGREEMENT

WHEREAS, the Town Board of the Town of Alden is, pursuant to Notice duly given, published and posted, held a Public Hearing at the Town Hall of the Town of Alden, on May 7, 2018 at 7:05 o'clock P.M., local time, in accordance with the provisions of the Town Law, Section 184-a, to consider a proposed contract between the said Town Board of Alden on behalf of the Alden Fire Protection District and the Consolidated Water District of the Town of Lancaster, and

WHEREAS, notice was published and posted as to terms and conditions of said proposed contract, and said terms and conditions were discussed at the Public Hearing, there being no objection thereto made at said Hearing;

NOW, THEREFORE, it is hereby agreed by and between the Town Board of the Town of Alden on behalf of the Fire Protection District of the Town of Alden and the said consolidated Water District of the Town of Lancaster, as follows:

1. That the aforesaid Consolidated Water District of the town of Lancaster shall maintain a sufficient supply of water for fire purposes and for the furnishing, erection, maintenance, care and replacement of fire hydrants within the boundaries of the Town of Lancaster along the westerly line of Town Line Road between Schlemmer Road and the south boundary line of the Town of Alden, including the erection and maintenance of markers therefor for fire purposes, for a period of five (5) years; provided, however, that either party may terminate this Agreement upon thirty (30) days written notice each to the other.
2. The Fire Protection District of the Town of Alden shall pay to the Consolidated Water District of the Town of Lancaster, the sum of one-half of the annual charge billed by the Erie County Water Authority to the Town of Lancaster for the forty-eight (48) hydrants along the westerly line of Town Line Road between Schlemmer Road and the south boundary line of the Town of Alden. for a period of five (5) years; commencing April 1, 2018 and terminating March 31, 2023, provided, however, that said sum owed per hydrant shall be modified in accordance with any increase in hydrant charge made by the Erie County Water Authority to the Consolidated Water District of the Town of Lancaster, in which event the charge under this Agreement shall be accordingly increased.

3. The Fire Protection District of the Town of Alden further agrees to pay to the Consolidated Water District of the Town of Lancaster a sum equal to one-half of the cost of the repair or replacement of any or all of the beforementioned hydrants, within thirty (30) days of demand therefor.
4. It is the intention of the parties hereto that the use of said hydrants by the Town of Alden Fire Protection District shall be solely for fire protection and only by those fire companies with which the Fire Protection District of the Town of Alden contracts for firematic services; provided further that use of hydrants for fire drill purposes shall be limited only to those instances where prior notification of such use, at least one (1) day prior thereto, shall be communicated to the Town of Lancaster.
5. Payment shall be made annually on or before April 1st of each year, beginning in the year 2018 upon presentation of a proper voucher as set forth above at the regular annual rate, upon the basis of the number of hydrants as hereinabove provided.

IN WITNESS WHEREOF, the parties hereto on behalf of the Fire Protection District of the Town of Alden and on behalf of the Consolidated Water District of the Town of Lancaster, have hereunto set their hands and seals this 7th day of May 2018.

TOWN BOARD OF THE TOWN OF ALDEN
ON BEHALF OF THE FIRE PROTECTION
DISTRICT OF THE TOWN OF ALDEN


Richard Savage, Supervisor


Colleen Pautler, Councilwoman


Dean Adamski, Councilman

CONSOLIDATED WATER
DISTRICT OF THE TOWN
OF LANCASTER

BY: 
Johanna M. Coleman, Supervisor

(SEAL)

(SEAL)

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
TOWN OF LANCASTER)

On this 30th day of May, 2018 before me personally came Johanna M. Coleman, to me known to be the Supervisor of the Town of Lancaster, New York, and the person who executed the foregoing instrument on behalf of the Town of Lancaster, New York, who being by me duly sworn, did depose and say that he executed the said instrument by Order and resolution of the Town Board of the Town of Lancaster, New York, and that the Seal affixed is the Seal of such Town and that it was so affixed thereto by Order of the Town Board of said Town.

Lea E. Braun
Notary Public, State of New York
Qualified in Erie County
No. 01898214078
Commission Expires 11/23/2021


Notary Public

STATE OF NEW YORK)
COUNTY OF ERIE) ss:
TOWN OF ALDEN)

On this 7th day of May, 2018 before me personally came Richard Savage, Colleen Pautler and Dean Adamski, to me known to be the, who being by me duly sworn, did depose and say that they reside in the Town of Alden, New York; that he is the Corporation described in and which executed the foregoing instrument; that he knows the seal of said Corporation; that the Seal affixed to said instrument is such Corporate Seal of said corporation; and that he signed his name thereto by like Order.


Notary Public

JENNIFER L. STRONG
Notary Public, State Of New York
Qualified in Erie County
Commission Expires Aug. 24, 2018

Chapter 172A

Small Wireless Technology in the Public Right-Of-Way

§ 172A-1 Purpose and Intent.

- A. The Town has an interest in minimizing the number and height of small wireless facilities, wireless support structures, technology, and all of their related parts that are located within its borders given the fact that the Town is predominately a low-rise developed municipality with a largely rural character.
- B. Aesthetics are an important consideration in the quality of life in the Town, and the small wireless facilities, wireless support structures, technology, and all of their related parts are determined to be aesthetically detrimental to the Town and have a negative impact upon surrounding properties, especially residential properties and rural areas with significant open space. It is the Town's objective to minimize wireless support structures in and adjacent to residential districts and commercial districts.
- C. In many cases, small wireless facilities can be mounted on existing structures and can provide the same level of commercial mobile service with minimal or no aesthetic impacts upon neighboring uses.
- D. Where the construction of new wireless support structures is necessary in order to provide small wireless technology, often it is possible to house more than one such provider on a given structure, thus reducing the proliferation of new wireless support structure construction. Additionally, construction of wireless support structures in commercial or business districts is generally favored over construction in residential and rural districts, if appropriate coverage can be obtained. Therefore, the construction of more than one wireless support structure on a commercial or business site may be preferred over construction on a residential or rural site, where feasible and within the criteria of this chapter.

§ 172A-2 Definitions.

- A. General use of terms.
 - (1) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.
 - (2) Words not defined shall be given their common and ordinary meaning.
- B. Defined terms.

ABANDONED

Any small wireless facilities or wireless support structures that are unused for a period of 365 days without the operator otherwise notifying the Town and receiving the Town's approval.

ANTENNA

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

APPLICANT

Any person applying for a small wireless permit hereunder.

CO-LOCATION or CO-LOCATE

To install, mount, maintain, modify, operate, or replace wireless facilities on a wireless support structure.

DECORATIVE POLE

A pole, arch, or structure other than a streetlight pole placed in the right-of-way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following: a) electric lighting; b) specially designed informational or directional signage; or c) temporary holiday or special event attachments.

FACILITY or PERSONAL WIRELESS SERVICE FACILITY

An antenna facility or a structure that is used for the provision of personal wireless service, whether such service is provided on a stand-alone basis or commingled with other wireless communications services.

OPERATOR

A wireless service provider, cable operator, or a video service provider that operates a small wireless facility and/or provides wireless service. "Operator" includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the Telecommunications Act of 1996, 110 Stat. 59, 47 U.S.C. § 153(2), and services that are fixed in nature or use unlicensed spectrum.

ORNAMENTAL POLE

A pole or structure placed in the right-of-way to support traffic signals and/or streetlights which has been specifically designed and placed for aesthetic purposes. Ornamental poles often include appurtenances or attachments for flags, planters and/or other aesthetic features.

PERSON

Any natural person or any association, firm, partnership, joint venture, corporation, or other legally recognized entity, whether for-profit or not-for profit.

RIGHT-OF-WAY

The surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the Town of Alden.

SMALL WIRELESS FACILITY (SWF), ALSO KNOWN AS SMALL CELL FACILITY

Encompasses facilities that meet each of the following conditions:

- (1) The facilities:
 - (a) Are mounted on structures 50 feet or less in height, including their antennas; or
 - (b) Are mounted on structures no more than 10% taller than other adjacent structures; or
 - (c) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10%, whichever is greater. Such measurement to include the antennas of the installation.
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.
- (4) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards.

SMALL WIRELESS PERMIT

The nonexclusive grant of authority issued by the Town of Alden to install a small wireless facility and/or a wireless support structure in a portion of the right-of-way in accordance with this chapter and other applicable law.

STRUCTURE

A pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services).

UTILITY POLE

A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service.

WIRELESS SUPPORT STRUCTURE

A pole, such as a monopole, streetlight pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small wireless facilities.

§ 172A-3 General requirements.

- A. No person shall occupy or use the right-of-way except in accordance with law.
- B. The permitting procedures and authorizations set forth in this chapter shall apply only to small wireless facilities and wireless support structures in the right-of-way.
- C. Nothing in this chapter precludes the Town from applying its generally applicable health, safety, and welfare regulations when granting consent for a small wireless facility or wireless support structure in

the Town's right-of-way or the right-of-way of any Erie County or NYS highway subject to the regulations of those entities.

- D. All small wireless facilities and wireless support structures shall be designed, constructed, operated and maintained in compliance with all generally applicable federal, state, and local health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions. (See § 172A-7. Safety and liability requirements.)
- E. Notwithstanding anything to the contrary within this Code, this Chapter controls all activities that relate to small wireless facilities within the public right-of-way.
- F. The Town may deviate from any requirement within this chapter where strict application of this chapter would prohibit or have the effect of prohibiting the provision of wireless service to the area referenced within the small wireless application.

§ 172A-4 Application and approval process.

- A. Small wireless permit required. Prior to installation, modification, or relocation of a small wireless facility, or wireless support structure, installation of a new wireless support structure, or co-location on an existing wireless support structure in the right-of-way, the operator/applicant shall apply to the Town Building Department and receive approval from the Town Board as evidenced by the grant of a small wireless permit issued after Town Board approval.
- B. Removal of a small wireless facility or wireless support structure shall not require a small wireless permit, but will require prior written notice to the Building Department of the small wireless facility(ies) or wireless support structure(s) that are being removed.
- C. Application materials and supporting documents. The following information shall be submitted in support of an application for a small wireless permit. This information is required in addition to any other information or documents required under Chapter 365, Zoning.
 - (1) Full application on a form supplied by the Town and the truthfulness attested to by a professional engineer:
 - (a) Environmental assessment form (EAF).
 - (b) The name, address and contact information of the applicant, operator, owner, and/or lessee(s) to the application.
 - (c) New erection of SWF or co-location on existing poles and type of installation (e.g., 4G or 5G) and fiber network plans.
 - (d) Site plan (showing location of all proposed SWF and wireless support structures), including photo(s) of existing pole(s) or location(s) and closest address(es) to the SWF, and if installing on existing pole(s), existing attachments on poles(s)/structure(s).
 - (e) Detailed description of the project and of the facility and equipment, including elevations/renderings of the proposed infrastructure.

- (f) The applicant's/owner's maintenance and inspection schedule.
 - (g) A safety analysis and certification by a licensed professional engineer that the proposed facility will be in compliance with all applicable FAA and FCC laws and regulations, including RF emissions (RFE) letters for each small wireless facility proving that the SWF is in compliance with all RFE regulations.
 - (h) Pole numbers and proof of the site or pole owner's consent, if the applicant is not the owner of the site or pole on which the applicant seeks to locate a small wireless facility.
 - (i) Passing structural analysis of any wireless support structure by a licensed NY State professional engineer.
 - (j) For initial applications, inventory of existing towers, antennas and small wireless facilities sites within the Town and within 750 feet of the border of the Town, including specific information regarding the tower and/or antenna height and the location, street address, tax parcel, latitude and longitude and mean sea level height of the tower base.
 - (k) Proposed construction schedule.
 - (l) Removal bond for cost of removal. (See § 172A-7.)
 - (m) Details showing compliance with these regulations.
 - (n) As-built drawings, within 60 days after completion of the construction, if already submitted as part of application and no changes made, certification that the submitted plans are to be considered as-built drawings.
 - (o) A copy of the right-of-way permit granted by the Erie County Department of Public Works or the New York State Department of Transportation to ensure compliance with the indemnity requirements set forth within this chapter.
 - (p) Applicable fees. (As defined in the Town Fee Schedule.)
- (2) The operator/applicant must submit all required materials, fees and documentation to the Building Department. Upon receipt, the Building Department will review the submitted application for compliance with the requirements set forth in this chapter. If an application is deemed incomplete, the Building Department will notify the applicant of the absence of the required information necessary to render a final determination within 10 days of submission and will allow the applicant to cure the defects of an incomplete submission. Once the application is deemed complete, the Building Department will proceed with the necessary level of review for the requested action and will either issue or deny a small wireless permit to the operator/applicant.
- D. Administrative review. Co-location on existing or replacement of wireless support structures in all districts shall be subject to an administrative review process to be performed by the CEO. Upon conclusion of review, the CEO may grant or deny an application based on compliance or noncompliance with the objective criteria required by this chapter for a complete and satisfactory application. In the event that the application requires a deviation in any way from the specific guidelines and co-location

requirements of this chapter, the application for co-location must be submitted to the Town Planning Board for review, who will make a recommendation to the Town Board for final approval after this review. Additionally, the CEO may require an application to be sent to the Planning Board for further review in his or her sole discretion in instances where unique circumstances are present within the application that require further review in order to ensure compliance with the Town Code generally. Approval will be contingent upon the recommendation of the Planning Board and final approval by the Town Board for all applications that require a deviation from the co-location requirements and guidelines set forth in this chapter.

- E. **Planning Board review.** The erection of all new wireless support structures within the Town will be subject to review by the Planning Board and approval by the Town Board following a recommendation by the Planning Board. This heightened level of review is required due to the increased level of disruption to the public right-of-way necessary for the erection of a new wireless support structure and the need to avoid possible congestion of the public right-of-way. Additionally, the erection of a new wireless support structure is more likely to negatively alter the character of the surrounding areas than those applications for co-location. Approval of an application is contingent upon a satisfactory showing that the specific negative effects that the erection of a new wireless support structure will have on the surrounding area have been satisfactorily mitigated and that compliance with this chapter has been achieved.
- F. **Equipment maintenance, repairs and modifications.** The operator may maintain, repair, replace and make like-kind modifications to any small wireless facility that do not materially change the size, height and weight of the small wireless facility or exceed the structural capacity of the wireless support structure without requiring a new small wireless permit. The operator/applicant must give prior written notice to the Building Department prior to performing any maintenance repairs and/or modifications.

§ 172A-5 Fees.

All fees related to small wireless facilities are listed in the Town of Alden Fee Schedule.

§ 172A-6 Small wireless design guidelines.

- A. **Purpose.** The purpose of these guidelines is to establish general procedures and standards, consistent with all applicable federal and state laws, for the siting, construction, installation, co-location, modification, relocation, operation and removal of small wireless technology within the Town's right-of-way. The goals of these guidelines are to:
 - (1) Provide standards, technical criteria and details for small wireless facilities in the Town's right-of-way to be uniformly applied to all applicants and owners of small wireless facilities or support structures for such facilities.
 - (2) Enhance the ability of wireless communications carriers to deploy small wireless technology in the Town quickly, effectively and efficiently so that residents, businesses and visitors benefit from ubiquitous and robust wireless service availability.
 - (3) Preserve the character of the Town's neighborhoods, districts and corridors.
 - (4) Ensure that small wireless facilities and support structures are in conformance with all applicable health and safety regulations and will blend into their environment to the greatest extent possible.

- (5) Comply with, and not conflict with or preempt, all applicable state and federal laws.
- B. Requirement to comply. Placement, modification, operation, relocation and removal of a small wireless facility and/or wireless support structure shall comply with the specifications of this section: at the time the permit for installation, modification, relocation or removal is approved and as amended from time to time.
- C. Locations of small wireless facilities, related ground equipment, and wireless support structures.
 - (1) Most preferable zone locations: Industrial areas (if not adjacent to a municipal park or residential area); highway right-of-way areas (if not adjacent to a municipal park or residential area); and retail and commercial areas (if not adjacent to a municipal park or residential area).
 - (2) Least preferable zone locations. Residential or rural districts are the least preferred areas for new small wireless facilities.
 - (3) Duration of permit validity.
 - (4) Co-location preference. It is the Town's strong preference that whenever an applicant proposes to place a new wireless support structure with a small wireless facility within 250 feet from an existing wireless support structure, the applicant either co-locate with the existing facility or demonstrate that a co-location is either not technically feasible or space on the existing facility is not potentially available.
 - (5) Order of preference for wireless support structures. The following list indicates the order of preference for wireless support structures for small wireless facilities, from most preferential to least preferential locations:
 - (a) Existing utility poles.
 - (b) Light poles.
 - (c) Ornamental municipal service poles.
 - (d) New wireless support structures.
- D. Consideration of alternate locations.
 - (1) In instances where an applicant seeks to co-locate, the Town reserves the right to propose an alternate wireless support structure to the one proposed in the application, which the applicant shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose substantial technical limits or substantial additional costs.
 - (2) Where the applicant seeks to erect a new wireless support structure, the Town reserves the right to propose a different location than the location proposed within the application. The applicant shall use the Town's proposed location unless the new proposed location has the effect of or prohibits the provision of wireless service to the particular location sought by the applicant.

E. Guidelines on placement and location of support equipment.

- (1) Facility maintenance and placement. Generally, an applicant shall construct and maintain small wireless facilities and wireless support structures in a manner that does not:
 - (a) Obstruct, impede or hinder the usual travel or public safety on a right-of-way.
 - (b) Obstruct the legal use of a right-of-way by other utility providers.
 - (c) For new wireless support structures, create an unreasonable obstruction to property sight lines.
- (2) Preferred placement. Preferred placement for new small wireless facilities and wireless support structures is generally on an extension of the side-yard property line at the intersection with the line of streetlights, utility poles, or trees in the right-of-way, to avoid interference with building faces, views, business signage, pedestrian flow, etc. Small wireless facilities and wireless support structures shall not be installed between the perpendicular extension of the primary street-facing wall plane of any single- or two-family residence and the street. When located adjacent to a commercial establishment, small wireless facilities and wireless support structures shall not be located in front of store windows, primary walkways, primary entrances or exits, or in such a way that would impede a delivery to the building
- (3) Antennas on existing or replaced utility poles. The antenna(s) associated with co-location on existing or replaced utility poles must have concealed cable connections, antenna mounts and other hardware. The maximum dimensions for antennas shall not be more than three cubic feet in volume, including any enclosure for the antenna.
- (4) Height above ground.
 - (a) Small wireless facilities: Small wireless facilities shall be installed at least eight feet above the ground. If a small wireless facility attachment is projecting toward the street, for the safety and protection of the public and vehicular traffic, the Town may require the attachment to be installed no less than 16 feet above the ground.
 - (b) New wireless support structures in residential or rural districts: In areas where there are no wireless support structures or utility poles taller than 30 feet in height above ground level and the maximum allowable height for building construction in the underlying zoning district is 35 feet in height above ground level, the overall height of a new wireless support structure and any co-located antennas shall not be more than 35 feet in height above ground level.
 - [1] In all other areas, the overall height of a new wireless support structure and any co-located antennas shall not be more than 50 feet in height above ground level.
 - (c) Existing wireless support structures: For an existing wireless support structure, the antenna and any associated shroud or concealment material are permitted to be co-located at the top of the existing wireless support structure and shall not increase the height of the existing wireless support structure to a height of more than 50 feet or by more than 10%, whichever is greater.
- (5) Protrusion. No protrusions from the outer circumference of the existing structure or pole shall be more

than 30 inches. The Town, at its option, may waive the requirement to limit the protrusion to no more than 30 inches on a case-by-case basis.

- (6) Location of equipment - general. Small wireless facilities and related equipment shall not impede pedestrian or vehicular traffic in the right-of-way. If any small wireless facility or wireless support structure is installed in a location that is not in accordance with the plans approved by the Town, impedes pedestrian or vehicular traffic and/or does not comply or otherwise renders the right-of-way noncompliant with applicable laws, including the Americans with Disabilities Act, then the operator shall promptly remove the small wireless facilities and/or wireless support structure. If the operator does not complete removal in a reasonable time frame, the Town will remove it and bill the operator for the cost of the removal. The operator must remove it within 30 days from receipt of notice.
 - (a) Utility lines: Service lines must be underground whenever feasible to avoid additional overhead lines. For new metal poles, underground cables and wires must transition directly into the pole base without any external junction box. If pulling power from existing overhead utility lines, all wiring must be placed in a conduit colored to match or complement the pole. If compliance with this section is not technically feasible, this section may be deviated from with approval from the Town.
 - (b) Spools and coils: To reduce clutter and deter vandalism, excess fiber optic or coaxial cables for small wireless facilities shall not be spooled, coiled or otherwise stored on the pole except within the approved enclosure such as a cage or cabinet. If compliance with this section is not technically feasible, this section may be deviated from with approval from the Town.
 - (c) Aboveground conduit: On wood poles, all aboveground wires, cables and connections shall be encased in the smallest section or smallest diameter PVC channel, conduit, U-Guard™, or shroud feasible, with a maximum dimension of four-inch diameter. Such conduit shall be grey or brown PVC, colored to complement the wood poles.
 - (d) Noise suppression: The applicant is required to incorporate ambient noise suppression measures and/or required to place the equipment in locations less likely to impact adjacent residences or businesses to ensure compliance with all applicable noise regulations.
- (7) Ground-mounted equipment. Ground-mounted equipment shall not be permitted unless the applicant demonstrates that no other feasible options for containing the necessary equipment are available. When allowed, ground equipment should be as minimally intrusive as possible. The equipment shroud or cabinet must contain all the equipment associated with the facility other than the antenna. All cables and conduits associated with the equipment must be concealed from view, routed directly through the metal pole (with the exception of wood power poles) and undergrounded between the pole and the ground-mounted cabinet.
- (8) Pole-mounted equipment. All pole-mounted equipment and cabinets must be installed as flush to the pole as possible. Equipment attached to metal poles must be installed using stainless steel banding straps or other mounting methods that reduce the likelihood of creating negative visual effects on the surrounding area. Equipment attached to wood poles may be bolted to the pole or installed using stainless steel banding straps. When the straps are attached to a metal pole, they must match or complement the color of the pole. All pole-mounted equipment shall be located as close together as

technically possible and, if possible, on the same side of the pole, and in the smallest possible equipment box, cabinet, or other unit that may include ventilation openings.

- (a) Pole-mounted equipment: When pole-mounted equipment is either permitted or required, all equipment other than the antenna(s), electric meter and disconnect switch must be concealed within an equipment cabinet. Equipment cabinets, including cabinets for telephone and/or fiber optic utilities, may not extend more than 30 inches from the face of the pole. The Town's general preference is for the equipment cabinet to be nonreflective, colored to match the existing pole if attached to a metal pole, and in the color of grey or tan if attached to a wood pole. The Town retains discretion over such aesthetic requirements, including camouflaging, and shall determine whether to deviate from said general preference.
- (b) Electric meter: The Town strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. When a meter is necessary, site operators shall use the smallest and least intrusive electric meter available. Whenever permitted by the electric service provider, the Town's general preference is for the electric meter base to be painted to match the pole; however, the Town retains discretion over such aesthetic requirements, including camouflaging, and shall determine whether to deviate from said general preference on a case-by-case basis.
- (9) Undergrounded equipment vaults. Equipment in an environmentally controlled underground vault may be required in some areas where technologically feasible and appropriate for the location.
- (10) New wireless support structures.
 - (a) Spacing: The Town strongly discourages more than one new wireless support structure per block and will not approve more than one per 250 feet on each side of the street to minimize the hazard of poles adjacent to roadways and minimize visual clutter and distractions to vehicular traffic. Wireless support structures shall be spaced apart from utility poles or wireless support structures supporting small wireless facilities at the same spacing between utility poles in the immediate proximity. An exemption may be granted if the applicant can demonstrate that this spacing restriction prohibits or has the effect of prohibiting wireless service to the proposed location.
 - [1] If multiple requests are received to install two or more poles that would violate the spacing requirement or to co-locate two or more small wireless facilities on the same wireless support structure, priority will be given to the first request received that meets these guidelines.
 - (b) General restrictions on new wood poles: In all locations, the Town reserves the right to require a metal pole rather than a wood pole based on the build and/or natural environmental character of the proposed site location.
 - (c) Wood pole footings and foundations: In the event that the Town allows for the erection of new wood poles, all poles must be direct buried to a depth determined, stamped, sealed and signed by a professional engineer licensed and registered by the State of New York, and subject to the Town's review and approval.
 - (d) Metal pole footings and foundations: All new metal poles must be supported with a reinforced concrete

pier or other self-supporting means. The design, including the pier, footings and anchor bolts, shall be stamped, sealed and signed by a professional engineer licensed and registered by the State of New York, and subject to the Town's review and approval. All anchor bolts must be concealed from public view with an appropriate pole boot or cover, subject to the Town's prior approval.

[1] The use of guyed towers is prohibited. Towers must be self-supporting without the use of wires, cables, beams or other means. The design should utilize a monopole configuration.

- (e) Metal pole material: All metal poles must be constructed from hot-dip galvanized steel or other corrosion-resistant materials approved by the Town and finished in accordance with these guidelines to avoid rust stains on adjacent sidewalks, buildings or other improvements.
- (f) Lighting, planters, flags, banners: The Town may require the applicant to install functional streetlights and/or brackets to hold hanging flower planters, flags and/or banners when technically feasible and when the Town determines that such additions will enhance the overall appearance and usefulness of the proposed facility that are necessary to match the character of the immediate streetscape. The Town may install hanging flower planters, flags and/or banners utilizing the brackets.

(11) Town-owned wireless support structures.

- (a) Required load analysis: Installations on all Town-owned poles shall have an industry standard pole load analysis completed, sealed, and signed by a professional engineer licensed and registered by the State of New York and submitted to the Building Department, with each permit application indicating that the Town-owned pole to which the small wireless facility is to be attached will safely support the load.
- (b) Power source: A small wireless facility on a Town-owned wireless support structure may not use the same power source that provides power for the original purpose of the wireless support structure.
- (c) Installations on traffic signals and streetlights: Installations on all traffic signal structures or streetlights must not interfere with the integrity of the facility in any way that may compromise the safety of the public. The installation must not interfere with other existing uses on the pole such as traffic signals, streetlights, hanging flower planters, flags, and/or banners. Installation of small wireless facilities on any traffic signal structure or street light shall a) be encased in a separate conduit than the traffic light electronics; b) have a separate electric power connection than the traffic signal/streetlight structure; and c) have a separate access point than the traffic signal/streetlight structure.
- (d) Reservation of space for future public safety or transportation uses: An application which relates in any way to space on a Town-owned or -operated wireless support structure that conflicts with space reserved for future public safety or transportation uses documented in an approved plan in place at the time of the application will be denied unless the operator pays for the replacement of the pole or wireless support structure and the replaced pole or wireless support structure will accommodate the future use and the small wireless facility.

F. Undergrounding requirements. The Town may deny requests to install structures and facilities in the right-of-way in an area where the Town has required all structures and facilities, except those owned by the Town, to be placed underground or elsewhere in the right-of-way or in a utility easement. The Town

may deviate from this requirement where strict application would prohibit or have the effect of prohibiting the provision of wireless service to the area referenced within the Small Wireless application.

G. General aesthetic requirements.

- (1) Uniformity of appearance. The Town desires to promote cleanly organized and streamlined facilities using the smallest and least intrusive means available to provide wireless services to the community. Generally, a small wireless facility and/or wireless support structure shall match and be consistent with the materials of the adjacent utility poles of the surrounding area adjacent to their location.
- (2) Concealment.
 - (a) Generally: To the maximum extent possible, as determined by the Town in its sole discretion, on a case-by-case basis: wireless support structures and small wireless facilities shall be designed to blend in with the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where color is dictated by federal or state authorities such as the Federal Aviation Administration; and, every small wireless facility and wireless support structure shall be of neutral colors that blend in with the natural features, buildings, and structures surrounding such small wireless facility and wireless support structure.
 - (b) When underground vaults are proposed, they shall be located to minimize disruption to the placement of street trees. Adequate planting depth shall be provided between the top of the vault and the finished grade to allow plants to grow in a healthy condition. Access to vaults shall not require destruction of decorative plant growth.
- (3) Signage/lights/logos/decals/cooling fans.
 - (a) Signage: The operator shall only post signage required for safety purposes as required by the FCC. No other signage shall be permitted unless approved by the Town.
 - (b) Lights: New small wireless facilities and wireless support structures shall not be illuminated, except in accord with state or federal regulations, or unless illumination is integral to the camouflaging strategy such as design intended to look like a streetlight pole.
 - (c) Logos/decals: operators must remove or paint over unnecessary equipment manufacturer decals. New small wireless facilities and wireless support structures shall not include advertisements or logos and may only display information required by a federal, state or local agency. The operator shall utilize the smallest and lowest visibility radio-frequency (RF) warning sticker required by government or electric utility regulations, and said RF sticker shall be placed as close to the antenna as possible.
 - (d) Cooling fans: In residential areas, the operator shall use a passive cooling system. In the event that a fan is needed, the operator shall use a cooling fan with a low noise profile.

H. General provisions.

- (1) Tree maintenance. The operator, its contractors, and its agents shall obtain written permission from the

Town before trimming any trees in the right-of-way. When trimming such trees on private property, the operator, its contractors, and its agents shall notify the Town and obtain written permission from the property owner. When directed by the Town, the operator shall trim under the supervision and direction of the Town. The Town shall not be liable for any damages, injuries, or claims arising from the operator's actions under this section.

- (2) **Graffiti abatement.** As soon as practical, but not later than 14 calendar days from the date the operator receives notice thereof, the operator shall remove all graffiti on any of its small wireless facilities and/or wireless support structures located in the right-of-way and restore such facilities/structures to their pre-graffiti appearance. The Town, in its sole discretion, may agree to an extension of time for abatement when necessitated by the need to order replacement equipment when such equipment is ordered in a timely manner.
- (3) **Minor technical exceptions.** The Town recognizes that in some circumstances strict compliance with these guidelines may result in undesirable aesthetic outcomes and that minor deviations should be granted when the need for such deviation arises from circumstances outside the applicant's control.
- (4) **Waivers if requirements have the effect of prohibiting the provision of wireless service to a location.** In the event that any applicant asserts that strict compliance with any provision in this chapter, as applied to a specific proposed small wireless facility, would effectively prohibit the provision of personal wireless services, the Town may grant a limited, one-time exemption from strict compliance.

§ 172A-7 Safety and liability requirements.

- A. **Prevention of failures and accidents.** Any operator of a small wireless facility and/or wireless support structure located in the right-of-way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- B. **Compliance with fire safety and FCC regulations.** Small wireless facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electrical Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- C. **The operator shall provide RF emissions letters for each small wireless facility prior to and as a condition of each and every small wireless permit being issued proving that the site is in compliance with all RFE regulations.**
- D. **Changes in state or federal safety standards and regulations.** If state or federal safety standards and regulations are amended, the owner/operator of the small wireless facilities and/or wireless support structures governed by this chapter shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring small wireless facilities and/or wireless support structures into compliance with any revised standards and regulations shall constitute grounds for revocation of the small wireless permit and removal at the owner's expense.

E. Insurance. The owner or operator of a SWF shall maintain a current liability insurance policy which will cover the installation and operation of the SWF at all times. As a part of the site plan review process, the Alden Town Board may require proof that the owner or operator is carrying sufficient liability, workers' compensation, or other insurance as determined necessary by the Alden Town Board, during installation and operation of a proposed SWF. Limits for said insurance policies shall be set by the Alden Town Board based on the size and scope of each SWF project.

F. Removal bond or equivalent financial tool for cost of removal. All operators must procure and provide to the Town a removal bond, or a letter of credit acceptable to the Town, to ensure compliance with all provisions of this chapter. The bond or letter of credit must be maintained for as long as the owner/operator has small wireless facilities and/or wireless support structures located in the right-of-way. The bond or letter of credit must specifically cover the cost of removal of unused or abandoned small wireless facilities and/or wireless support structures or damage to Town property caused by an operator or its agent of each small wireless facility and/or wireless support structure in case the Town has to remove or pay for its removal. The amount of the bond or letter of credit shall be determined by the Town Board with input from the Town Engineer.

§ 172A-8 Installation requirements.

A. Completion within 365 days. The co-location or erection of a new wireless support structure for which a small wireless permit is granted shall be completed within 365 days after issuance of the small wireless permit unless the Town Board and the applicant agree to extend this period. The Town Board will agree to an extension if the operator has made a timely request within 300 days after the issuance of the small wireless permit. The additional time to complete installation may not exceed a total of 547 days after the issuance of the small wireless permit.

B. Procedure for request for extension of time. In situations where the applicant requests an extension of time, such request must be completed by a written submission to the Town, which includes the length of time being requested and the reason for the delay.

§ 172A-9 As-built maps and records.

A. As-built maps. The operator shall maintain accurate maps and other appropriate records, including an inventory, of its small wireless facilities and wireless support structures as they are actually constructed in the right-of-way or any other Town-owned property. The inventory shall include GIS coordinates, date of installation, type of wireless support structure used for installation, wireless support structure owner/operator and description/type of installation for each small wireless facility and wireless support structure.

(1) Inactive facilities: Upon the Town's written request, the operator shall provide a cumulative inventory within 30 days of the Town's request. Concerning small wireless facilities and wireless support structures that become inactive, the inventory shall include the same information as active installations, in addition to the date the small wireless facility and/or wireless support structure was deactivated and the date the small wireless facility and/or wireless support structure was removed from the Right-of- Way. The Town may compare the inventory to its records to identify any discrepancies.

§ 172A-10 Liability and signal interference.

- A. No liability. The Town shall not be liable to the operator by reason of inconvenience, annoyance or injury to the small wireless facilities, wireless support structures, and related ground- or pole-mounted equipment or activities conducted by the operator therefrom, arising from the necessity of repairing any portion of the right-of-way, or from the making of any necessary alteration or improvements in, or to, any portion of the right-of-way, or in, or to, the Town's fixtures, appurtenances or equipment.
- B. Signal interference prohibited. In the event that an operator's small wireless facility interferes with the public safety radio system, or the Town's or State of New York's traffic signal system, then the operator shall, at its cost, immediately cooperate with the Town to either rule out the operator as the interference source or eliminate the interference. Cooperation with the Town may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.

§ 172A-11 Requirements for removal, replacement, maintenance and repair.

- A. Replacement of municipal-owned wireless support structure. When necessary to accommodate small wireless facility, the Town may require, in response to an application to co-locate a small wireless facility on a Town-owned wireless support structure, the replacement or modification of the wireless support structure at the operator's cost if the Town determines that replacement or modification is necessary for compliance with construction and safety standards. Such replacement or modification shall conform to this chapter. The Town may retain ownership of the replacement or modified wireless support structure.
- B. Removal or relocation required for Town project. The operator shall remove and relocate the permitted small wireless facility and/or wireless support structure at the operator's sole expense to accommodate construction of a public improvement project by the Town. To the extent possible, the Town will work with the operator to provide an alternate location on either a temporary or permanent basis.
 - (1) Failure to remove upon request: If the operator fails to remove or relocate the small wireless facility and/or wireless support structure or portion thereof as requested by the Town within 120 days of the Town's notice, then the Town shall be entitled to remove the small wireless facility and/or wireless support structure, or portion thereof, at the operator's sole cost and expense, without further notice to the operator.
 - (2) Reimbursement for removal: The operator shall, within 30 days following issuance of invoice for the same, reimburse the Town for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the small wireless facilities and/or wireless support structure, or portion thereof.
- C. Removal required by Town for safety and imminent danger reasons. The operator shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable small wireless facility and/or wireless support structure within the time frame and in the manner required by the Town if the Town reasonably determines that the disconnection, removal, or relocation of any part of a small wireless facility and/or wireless support structure is necessary to protect the public health, safety, welfare, or Town property.
 - (1) Imminent danger. If the Town reasonably determines that there is imminent danger to

the public, then the Town may immediately disconnect, remove, or relocate the applicable small wireless facility and/or wireless support structure at the operator's sole cost and expense.

- D. **Removal/abandonment of facilities.** The operator shall remove small cell facilities and/or wireless support structures when such facilities are abandoned, regardless of whether it receives notice from the Town. Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 60 days of the small wireless facility and/or wireless support structure being abandoned, or within 60 days of receipt of written notice from the Town. When the operator abandons permanent structures in the right-of-way, the operator shall notify the Town in writing of such abandonment and shall file with the Town the location and description of each small wireless facility and/or wireless support structure abandoned. Prior to removal, the operator must make application to the Town and receive approval for such removal. The operator must obtain a right-of-way work permit for the removal. The Town may require the operator to complete additional remedial measures necessary for public safety and the integrity of the right-of-way.
- (1) **Transfer of ownership:** The Town may, at its option, allow a wireless support structure to remain in the right-of-way and coordinate with the owner to transfer ownership of such wireless support structure to the Town, instead of requiring the owner and/or operator to remove such wireless support structure.
- E. **Restoration.** The operator shall repair any damage to the right-of-way, any facilities located within the right-of-way, and/or the property of any third party resulting from operator's removal or relocation activities (or any other of the operator's activities hereunder) within 10 calendar days following the date of such removal or relocation, at the operator's sole cost and expense. Restoration of the right-of-way and such property must be to substantially the same condition as it was immediately before the date the operator was granted a small wireless permit for the applicable location or did the work at such location (even if the operator did not first obtain a small wireless permit). This includes restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Town.

§ 172A-12 Rulemaking authority.

The Town Board is hereby authorized to promulgate additional rules and regulations, including but not limited to the adoption of forms and application submittal requirements, to carry out the purpose and intent of this chapter in order to protect the public health, safety and welfare. Such rules, and amendments thereto, shall be consistent with this Town Code, and shall be subject to the approval of the Town Supervisor.

§ 172A-13 Effect of partial invalidity.

The provisions of this chapter are hereby declared to be severable, and if any section, subsection, or clause of this chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such a ruling shall not affect the other parts of this chapter that can be given effect.

§ 172A-14 Failure to comply.

In addition to any penalties under § 172A-15 below, if the operator fails to abide with all provisions of this chapter and obtain all applicable licenses, permits, and certifications, the operator's small wireless permit shall be revoked and the operator, at its sole cost and expense, shall promptly disconnect, remove, and/or relocate its small wireless facility(ies) and/or wireless support structure(s).

§ 172A-15 Penalties for offenses.

Violation of any of the provisions of this chapter shall be a violation punishable by a fine of a minimum of \$250 per day and a maximum of \$1,000 per day, or 15 days in jail, or both. Each day that a violation occurs or is permitted to exist by the operator constitutes a separate offense.

§ 229-67 Traditional Neighborhood Design Standards in Commercial Zones.

A. General.

- (1) All development and redevelopment requiring site plan approval must meet the requirements of any zoning overlay that exists in the area of development, should the Town adopt zoning overlays in the future.
- (2) The scale, proportions, massing and detailing of any proposed buildings or major renovation shall be in proportion to the scale, proportion, massing and detailing in the area.

B. Architecture.

- (1) The architectural style of all new structures must be reviewed and approved by the Town Board and may be referred to the Planning Board for its review and recommendation.
- (2) All proposed structures must conform to any overlay zoning requirements, should the Town adopt zoning overlays in the future.
- (3) For any project in a commercial zone, architectural compatibility is necessary in order to visually connect development and allow for proximity of varied uses.
- (4) Materials. Walls shall be clad in stone, brick, marble, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. Metal paneling up to 25% of any facade of a structure visible from a right-of-way. This calculation will exclude windows and doors.
- (5) Configurations. Two wall materials may be combined (horizontally) on one facade. The heavier material must be below. If possible considering HVAC installations and other roof uses
- (6) Techniques. All rooftop equipment shall be enclosed in the building material that matches the structure or is visually compatible with the structure.

§ 229-68 Lot coverage.

- A. All buildings and impervious surfaces, including but not limited to parking areas and public or private drives must suit or fit the site properly. The plan should provide adequate green space to maintain an attractive appearance

§ 229-81 M1 and M2 Zone Restricted Architectural standards.

- A. Due to the visibility of the district, architectural compatibility is necessary in order to maintain community character, visually connect development, and allow for proximity of varied uses.
- B. Materials. Walls shall be clad in a mix of the following: stone, brick, marble, metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building.
- C. Roof and top treatments. The use of sloped roofs, including gabled and hip roofs, is strongly encouraged in an effort to maintain a village-scale building style.

- (1) If possible consider HVAC installations on the roof.
- (2) Larger structures shall employ design standards to ensure that roof configuration matches the architectural appearance of the district. Buildings of this nature shall utilize a combination of roof elements and top treatments.
- (3) Rooftop mechanical units, dishes, and other miscellaneous equipment should be screened or be properly integrated as part of the building design. Screen material should be of the same or compatible material, texture, and color to the building architecture.

D. Exterior wall design.

- (1) Window and door treatments shall be compatible in style and design and should fit the overall appearance of the building.
- (2) The use of reflective glazing, with over sixty-percent reflectivity, is prohibited.

E. Supplementary standards.

- (1) Standard franchise design is not encouraged. Designs should be oriented toward matching the character of the community.

§ 229-82 Commercial Zones – Architectural Standards

All buildings and impervious surfaces, including but not limited to parking areas and public or private drives must suit or fit the site properly. The plan should provide adequate green space to maintain an attractive appearance

§ 229-97 Commercial Architectural Standards

- A. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building (see Subsection D, Materials, below).
- B. Approved metal paneling may not exceed 40% of any facade of a structure visible from a right-of-way.
- C. All walls not visible from a public right-of-way may be constructed of cinder blocks or approved metal paneling but shall be painted to match the overall color scheme of the rest of the building.
- D. Materials.
 - (1) Walls shall be clad in stone, brick, marble, approved metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling.
 - (2) Pitched roofs shall be clad in wood shingles, slate, sheet metal, corrugated metal, or diamond tab asphalt shingles.
- E. Configurations.
 - (1) Two wall materials may be combined horizontally on one facade. The heavier material must be below.

- F. Techniques. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.

§ 229-104 Industrial Architectural Standards.

- A. All walls visible from a public right-of-way shall be clad with the same material required for the front of the building (see Subsection C, Materials, below). Approved metal paneling may not exceed 40% of any facade of a structure visible from a right-of-way.
- B. All walls not visible from a public right-of-way may be constructed of cinder blocks or approved metal paneling but shall match the overall color scheme of the rest of the building.
- C. Materials.
 - (1) Walls shall be clad in stone, brick, marble, approved metal paneling, cast concrete, vinyl siding, drivit, and hardiboard or other cement paneling.
 - (2) Pitched roofs shall be clad in wood shingles, slate, sheet metal, corrugated metal, or asphalt shingles.
- D. Configurations.
 - (1) Two wall materials may be combined horizontally on one facade. The heavier material must be below.
- E. Techniques. All rooftop equipment shall be enclosed in building material that matches the structure or is visually compatible with the structure.

Agriculture and Markets

ARTICLE 7

LICENSING, IDENTIFICATION AND CONTROL OF DOGS

- Section 106. Purpose.
- 107. Application.
- 108. Definitions.
- 109. Licensing of dogs required; rabies vaccination required.
- 110. License fees.
- 111. Identification of dogs.
- 111-a. Microchipping standards.
- 112. Change of ownership; lost or stolen dog.
- 113. Dog control officers.
- 114. Pounds and shelters.
- 115. Funds expended by municipality for services.
- 116. Spaying and neutering facilities authorized.
- 117. Seizure of dogs; redemption periods; impoundment fees; adoption.
- 117-a. Animal population control program.
- 118. Violations.
- 119. Disposition of fines.
- 120. Protection of deer.
- 121. Night quarantine.
- 122. Local laws or ordinances.
- 123. Dangerous dogs.
- 123-a. Exemption from civil liability.
- 123-b. Offenses against service animals and handlers.
- 124. Powers of commissioner.

Agriculture and Markets

§ 108. Definitions. As used in this article, unless otherwise expressly stated or unless the context or subject matter requires otherwise:

1. "Adoption" means the delivery to any natural person eighteen years of age or older, for the limited purpose of harboring a pet, of any dog, seized or surrendered, or any cat.
3. "Clerk" means the clerk of any county, town, city or village where licenses are validated or issued pursuant to this article.
4. "Commissioner" means the state commissioner of agriculture and markets.
5. "Dog" means any member of the species *canis familiaris*.
6. "Dog control officer" means any individual appointed by a municipality to assist in the enforcement of this article or any authorized officer, agent or employee of an incorporated humane society or similar incorporated dog protective association under contract with a municipality to assist in the enforcement of this article.
7. "Domestic animal" means any domesticated sheep, horse, cattle, fallow deer, red deer, sika deer, whitetail deer which is raised under license from the department of environmental conservation, llama, goat, swine, fowl, duck, goose, swan, turkey, confined domestic hare or rabbit, pheasant or other bird which is raised in confinement under license from the state department of environmental conservation before release from captivity, except that the varieties of fowl commonly used for cock fights shall not be considered domestic animals for the purposes of this article.
8. "Euthanize" means to bring about death by a humane method.
9. "Guide dog" means any dog that is trained to aid a person who is blind and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose.
10. "Harbor" means to provide food or shelter to any dog.
11. "Identification tag" means a tag issued by the licensing municipality which sets forth an identification number, together with the name of the municipality, the state of New York, contact information, including telephone number, for the municipality and such other information as the licensing municipality deems appropriate.
12. "Identified dog" means any dog carrying an identification tag as provided in section one hundred eleven of this article.
13. "Municipality" means any county, town, city and village.
15. "Owner" means any person who harbors or keeps any dog.
16. "Owner of record" means the person in whose name any dog was last licensed pursuant to this article, except that if any license is issued on application of a person under eighteen years of age, the owner of record shall be deemed to be the parent or guardian of such person. If it cannot be determined in whose name any dog was last licensed or if the owner of record has filed a statement pursuant to the provisions of section one hundred twelve of this article, the owner shall be deemed to be the owner of record of such dog, except that if the owner is under eighteen years of age, the owner of record shall be deemed to be the parent or guardian of such person.
17. "Person" means any individual, corporation, partnership, association or other organized group of persons, municipality, or other legal entity.
18. "Police work dog" means any dog owned or harbored by any state or municipal police department or any state or federal law enforcement agency, which has been trained to aid law enforcement officers and is actually being used for police work purposes.

19. "Recognized registry association" means any registry association that operates on a nationwide basis and issues numbered registration certificates.

20. "War dog" means any dog which has been honorably discharged from the United States armed services.

21. "Hearing dog" means any dog that is trained to aid a person who is deaf or hard of hearing and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose.

22. "Service dog" means any dog that has been or is being individually trained to do work or perform tasks for the benefit of a person with a disability.

23. "Person with a disability" means any person with a disability as that term is defined in subdivision twenty-one of section two hundred ninety-two of the executive law.

24. (a) "Dangerous dog" means any dog which (i) without justification attacks a person, companion animal as defined in subdivision five of section three hundred fifty of this chapter, farm animal as defined in subdivision four of section three hundred fifty of this chapter or domestic animal as defined in subdivision seven of this section and causes physical injury or death, or (ii) behaves in a manner which a reasonable person would believe poses a serious and unjustified imminent threat of serious physical injury or death to one or more persons, companion animals, farm animals or domestic animals or (iii) without justification attacks a service dog, guide dog or hearing dog and causes physical injury or death.

(b) "Dangerous dog" does not include a police work dog, as defined in subdivision eighteen of this section, which acts in the manner described in this paragraph while such police work dog is being used to assist one or more law enforcement officers in the performance of their official duties.

25. "Working search dog" means any dog that is trained to aid in the search for missing persons and is actually used for such purpose.

26. "Therapy dog" means any dog that is trained to aid the emotional and physical health of patients in hospitals, nursing homes, retirement homes and other settings and is actually used for such purpose, or any dog during the period such dog is being trained or bred for such purpose, and does not qualify under federal or state law or regulations as a service dog.

27. "Detection dog" means any dog that is trained and is actually used for such purposes or is undergoing training to be used for the purpose of detecting controlled substances, explosives, ignitable liquids, firearms, cadavers, or school or correctional facility contraband.

28. "Physical injury" means impairment of physical condition or substantial pain.

29. "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes death or serious or protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

Agriculture and Markets

§ 113. Dog control officers. 1. Each town and city, and each village in which licenses are issued, shall appoint, and any other village and any county may appoint, one or more dog control officers for the purpose of assisting, within the appointing municipality, with the control of dogs and the enforcement of this article.

2. In lieu of or in addition to the appointment of a dog control officer or officers, any town or city, or any village in which licenses are issued shall, and any other village and any county may, contract for dog control officer services with any other municipality or with any incorporated humane society or similar incorporated dog protective association, or shall appoint, jointly with one or more other municipalities, one or more dog control officers having jurisdiction in each of the cooperating municipalities.

3. Every dog control officer shall have the power to issue an appearance ticket pursuant to section 150.20 of the criminal procedure law, to serve a summons and to serve and execute any other order or process in the execution of the provisions of this article. In addition, any dog control officer or any peace officer, when acting pursuant to his special duties, or police officer, who is authorized by a municipality to assist in the enforcement of this article may serve any process, including an appearance ticket, a uniform appearance ticket and a uniform appearance ticket and simplified information, related to any proceeding, whether criminal or civil in nature undertaken in accord with the provisions of this article or any local law or ordinance promulgated pursuant thereto.

4. Every dog control officer, peace officer, when acting pursuant to his special duties or police officer shall promptly make and maintain a complete record of any seizure and subsequent disposition of any dog. Such record shall include, but not be limited to, a description of the dog, the date and hour of seizure, the official identification number of such dog, if any, the location where seized, the reason for seizure, and the owner's name and address, if known.

5. Every dog control officer shall file and maintain such records for not less than three years following the creation of such record, and shall make such reports available to the commissioner upon request.

6. The governing body of any municipality in which licenses are issued, may, either individually or in cooperation with other municipal entities, require its dog control officer or animal control officer or any other authorized agent to ascertain and list the names of all persons in the municipality owning or harboring dogs, or in lieu thereof, such municipality may contract to have the same done.

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Agriculture and Markets

§ 114. Pounds and shelters. 1. Each town and city, and each village in which licenses are issued shall, and any other village and any county may, establish and maintain a pound or shelter for dogs.

2. In lieu of or in addition to establishing and maintaining such pound or shelter, any town or city, or any village in which licenses are issued shall, and any other village and any county may, contract for pound or shelter services with any other municipality or with any incorporated humane society or similar incorporated dog protective association, or with a public authority providing shelter services or its subsidiary that is wholly created for the sole purpose of providing such services, or shall establish and maintain, jointly or with one or more other municipalities, a pound or shelter.

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reg'd.*

Agriculture and Markets

§ 117. Seizure of dogs; redemption periods; impoundment fees;

adoption. 1. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to a municipality shall seize:

(a) any dog which is not identified and which is not on the owner's premises;

(b) any dog which is not licensed, whether on or off the owner's premises;

(c) any licensed dog which is not in the control of its owner or custodian or not on the premises of the dog's owner or custodian, if there is probable cause to believe the dog is dangerous; and

(d) any dog which poses an immediate threat to the public safety.

Promptly upon seizure the dog control officer shall commence a proceeding as provided for in subdivision two of section one hundred twenty-three of this article.

1-a. Notwithstanding the seizure requirements provided in subdivision one of this section, dog control officer or peace officer, acting pursuant to his or her special duties, or police officer in the employ of or under contract to a municipality may, if there is no probable cause to believe the dog is dangerous, return any dog with a current license directly to the dog's owner or custodian of record at the address provided on such dog's license.

2. Any dog control officer or peace officer, acting pursuant to his special duties, or police officer in the employ of or under contract to a municipality may seize any dog in violation of any local law or ordinance relating to the control of dogs, adopted by any municipality pursuant to the provisions of this article.

3. Each dog seized in accordance with the provisions of this article shall be properly sheltered, fed and watered for the redemption period as hereinafter provided.

4. Each dog which is not identified, whether or not licensed, shall be held for a period of five days from the day seized during which period the dog may be redeemed by its owner, provided that such owner produces proof that the dog has been licensed and has been identified pursuant to the provisions of this article and further provided that the owner pays the following impoundment fees:

(a) not less than ten dollars for the first impoundment of any dog owned by that person;

(b) not less than twenty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the second impoundment, within one year of the first impoundment, of any dog owned by that person; or

(c) not less than thirty dollars for the first twenty-four hours or part thereof and three dollars for each additional twenty-four hours or part thereof for the third and subsequent impoundments, within one year of the first impoundment, of any dog owned by that person.

The impoundment fees set forth in paragraphs (a), (b) and (c) of this subdivision notwithstanding, any municipality may set by local law or ordinance such fees in any amount.

5. All impoundment fees shall be the property of the municipality to which they are paid and shall be used only for controlling dogs and enforcing this article and any rule, regulation, or local law or ordinance adopted pursuant thereto, including subsidizing the spaying or neutering of dogs and any facility as authorized under section one hundred sixteen of this article used therefor, and subsidizing public humane education programs in responsible dog ownership.

6. Promptly upon seizure of any identified dog, the owner of record of such dog shall be notified personally or by certified mail, return

receipt requested, of the facts of seizure and the procedure for redemption. If notification is personally given, such dog shall be held for a period of seven days after day of notice, during which period the dog may be redeemed by the owner. If such notification is made by mail, such dog shall be held for a period of nine days from the date of mailing, during which period the dog may be redeemed by the owner. In either case, the owner may redeem such dog upon payment of the impoundment fees prescribed by subdivision four of this section and by producing proof that the dog has been licensed.

7. An owner shall forfeit title to any dog unredeemed at the expiration of the appropriate redemption period, and the dog shall then be made available for adoption or euthanized subject to subdivisions six, eight and nine of this section and subject to the provisions of section three hundred seventy-four of this chapter. Any municipality may by local law or ordinance establish additional conditions for adoption including the requirement that adopted dogs shall be spayed or neutered before or after release from custody upon such terms and conditions as the municipality may establish.

7-a. Any animal in the custody of a pound or shelter shall be made available for adoption or euthanized subject to subdivisions six, eight and nine of this section and subject to the provisions of section three hundred seventy-four of this chapter after the time for redemption has expired; provided, however, that such release may be made to another such pound, duly incorporated society for the prevention of cruelty to animals, duly incorporated humane society or duly incorporated animal protective association for the sole purpose of placing such animal in an adoptive home, when such action is reasonably believed to improve the opportunity for adoption.

8. The redemption periods set forth above in this section notwithstanding, any municipality may establish the duration of such periods by local law or ordinance, provided that no such period shall be less than three days, except that where notice to the owner is given by mail, no such period shall be less than seven days.

9. Any dog, owned by a resident of any city having a population of over two million or by a non-resident of this state, seized and impounded pursuant to the provisions of this article, and whose owner can be identified, shall be subject to subdivision six of this section. If the dog is licensed pursuant to the provisions of law of the area of the owner's residence, the licensing requirements of this article shall not apply provided such dog is not harbored within this state outside any city having a population of over two million for a period exceeding thirty days.

10. The seizure of any dog shall not relieve any person from any violation provided for by section one hundred eighteen of this article.

11. No liability in damages or otherwise shall be incurred on account of the seizure, euthanization or adoption of any dog pursuant to the provisions of this article.

Agriculture and Markets

§ 123. Dangerous dogs. 1. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may make a complaint of an attack or threatened attack upon a person, companion animal as defined in section three hundred fifty of this chapter, farm animal as defined in such section three hundred fifty, or a domestic animal as defined in subdivision seven of section one hundred eight of this article to a dog control officer or police officer of the appropriate municipality. Such officer shall immediately inform the complainant of his or her right to commence a proceeding as provided in subdivision two of this section and, if there is reason to believe the dog is a dangerous dog, the officer shall forthwith commence such proceeding himself or herself.

2. Any person who witnesses an attack or threatened attack, or in the case of a minor, an adult acting on behalf of such minor, may, and any dog control officer or police officer as provided in subdivision one of this section shall, make a complaint under oath or affirmation to any municipal judge or justice of such attack or threatened attack. Thereupon, the judge or justice shall immediately determine if there is probable cause to believe the dog is a dangerous dog and, if so, shall issue an order to any dog control officer, peace officer, acting pursuant to his or her special duties, or police officer directing such officer to immediately seize such dog and hold the same pending judicial determination as provided in this section. Whether or not the judge or justice finds there is probable cause for such seizure, he or she shall, within five days and upon written notice of not less than two days to the owner of the dog, hold a hearing on the complaint. The petitioner shall have the burden at such hearing to prove the dog is a "dangerous dog" by clear and convincing evidence. If satisfied that the dog is a dangerous dog, the judge or justice shall then order neutering or spaying of the dog, microchipping of the dog and one or more of the following as deemed appropriate under the circumstances and as deemed necessary for the protection of the public:

(a) evaluation of the dog by a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert in the field and completion of training or other treatment as deemed appropriate by such expert. The owner of the dog shall be responsible for all costs associated with evaluations and training ordered under this section;

(b) secure, humane confinement of the dog for a period of time and in a manner deemed appropriate by the court but in all instances in a manner designed to: (1) prevent escape of the dog, (2) protect the public from unauthorized contact with the dog, and (3) to protect the dog from the elements pursuant to section three hundred fifty-three-b of this chapter. Such confinement shall not include lengthy periods of tying or chaining;

(c) restraint of the dog on a leash by an adult of at least twenty-one years of age whenever the dog is on public premises;

(d) muzzling the dog whenever it is on public premises in a manner that will prevent it from biting any person or animal, but that shall not injure the dog or interfere with its vision or respiration; or

(e) maintenance of a liability insurance policy in an amount determined by the court, but in no event in excess of one hundred thousand dollars for personal injury or death resulting from an attack by such dangerous dog.

3. Upon a finding that a dog is dangerous, the judge or justice may order humane euthanasia or permanent confinement of the dog if one of the following aggravating circumstances is established at the judicial hearing held pursuant to subdivision two of this section:

(a) the dog, without justification, attacked a person causing serious physical injury or death; or

(b) the dog has a known vicious propensity as evidenced by a previous unjustified attack on a person, which caused serious physical injury or death; or

(c) the dog, without justification, caused serious physical injury or death to a companion animal, farm animal or domestic animal, and has, in the past two years, caused unjustified physical injury or death to a companion or farm animal as evidenced by a "dangerous dog" finding pursuant to the provisions of this section.

An order of humane euthanasia shall not be carried out until expiration of the thirty day period provided for in subdivision five of this section for filing a notice of appeal, unless the owner of the dog has indicated to the judge in writing, his or her intention to waive his or her right to appeal. Upon filing of a notice of appeal, the order shall be automatically stayed pending the outcome of the appeal.

4. A dog shall not be declared dangerous if the court determines the conduct of the dog (a) was justified because the threat, injury or damage was sustained by a person who at the time was committing a crime or offense upon the owner or custodian of the dog or upon the property of the owner or custodian of the dog; (b) was justified because the injured, threatened or killed person was tormenting, abusing, assaulting or physically threatening the dog or its offspring, or has in the past tormented, abused, assaulted or physically threatened the dog or its offspring; (c) was justified because the dog was responding to pain or injury, or was protecting itself, its owner, custodian, or a member of its household, its kennels or its offspring; or was justified because the injured, threatened or killed companion animal, farm animal or domestic animal was attacking or threatening to attack the dog or its offspring. Testimony of a certified applied behaviorist, a board certified veterinary behaviorist, or another recognized expert shall be relevant to the court's determination as to whether the dog's behavior was justified pursuant to the provisions of this subdivision.

5. (a) The owner of a dog found to be a "dangerous dog" pursuant to this section may appeal such determination, and/or the court's order concerning disposition of the dog to the court having jurisdiction to hear civil appeals in the county where the "dangerous dog" finding was made. The owner shall commence such appeal by filing a notice of appeal with the appropriate court within thirty days of the final order pursuant to this section. Court rules governing civil appeals in the appropriate jurisdiction shall govern the appeal of a determination under this section.

(b) Upon filing a notice of appeal from an order of humane euthanasia pursuant to this section, such order shall be automatically stayed pending final determination of any appeal. In all other circumstances, the owner of the dog may make application to the court to issue a stay of disposition pending determination of the appeal.

6. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person, service dog, guide dog or hearing dog causing physical injury shall be subject to a civil penalty not to exceed four hundred dollars in addition to any other applicable penalties.

7. The owner of a dog who, through any act or omission, negligently permits his or her dog to bite a person causing serious physical injury shall be subject to a civil penalty not to exceed one thousand five hundred dollars in addition to any other applicable penalties. Any such penalty may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical

injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

8. The owner of a dog who, through any act or omission, negligently permits his or her dog, which had previously been determined to be dangerous pursuant to this article, to bite a person causing serious physical injury, shall be guilty of a misdemeanor punishable by a fine of not more than three thousand dollars, or by a period of imprisonment not to exceed ninety days, or by both such fine and imprisonment in addition to any other applicable penalties. Any such fine may be reduced by any amount which is paid as restitution by the owner of the dog to the person or persons suffering serious physical injury as compensation for unreimbursed medical expenses, lost earnings and other damages resulting from such injury.

9. If any dog, which had previously been determined by a judge or justice to be a dangerous dog, as defined in section one hundred eight of this article, shall without justification kill or cause the death of any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, regardless of whether such dog escapes without fault of the owner, the owner shall be guilty of a class A misdemeanor in addition to any other penalties.

10. The owner or lawful custodian of a dangerous dog shall, except in the circumstances enumerated in subdivisions four and eleven of this section, be strictly liable for medical costs resulting from injury caused by such dog to a person, companion animal, farm animal or domestic animal.

11. The owner shall not be liable pursuant to subdivision six, seven, eight, nine or ten of this section if the dog was coming to the aid or defense of a person during the commission or attempted commission of a murder, robbery, burglary, arson, rape in the first degree as defined in subdivision one or two of section 130.35 of the penal law, criminal sexual act in the first degree as defined in subdivision one or two of section 130.50 of the penal law or kidnapping within the dwelling or upon the real property of the owner of the dog and the dog injured or killed the person committing such criminal activity.

12. Nothing contained in this section shall limit or abrogate any claim or cause of action any person who is injured by a dog with a vicious disposition or a vicious propensity may have under common law or by statute. The provisions of this section shall be in addition to such common law and statutory remedies.

13. Nothing contained in this section shall restrict the rights and powers derived from the provisions of title four of article twenty-one of the public health law relating to rabies and any rule and regulation adopted pursuant thereto.

14. Persons owning, possessing or harboring dangerous dogs shall report the presence of such dangerous dogs pursuant to section two hundred nine-cc of the general municipal law.

AGREEMENT

THIS AGREEMENT made and entered into this [date], by and between the [City/Village/Town] (the "City/Village/Town"), a municipal corporation organized and existing under and by virtue of the laws of the State of New York and with offices at [address], party of the first part, and [name of Dog Enumerator] (the "Enumerator"), residing at [address], party of the second part,

WITNESSETH, that the [City/Village/Town] and the Enumerator, in consideration of the promises and the mutual covenants and agreements contained herein, do hereby mutually agree as follows:

1. Enumerator agrees to ascertain and list by address the names of all persons in the [City/Village/Town] owning and harboring dogs, together with the number and sex of said dogs.

2. In connection with the performance of [his/her] work hereunder, the Enumerator shall consult as necessary with the [City/Village/Town] Clerk and the [City/Village/Town] Dog Control Officer.

3. For [his/her] services hereunder, the Enumerator shall receive payments from the [City/Village/Town] at the rate of [dollars] per dog so listed, plus mileage required in the course of said enumeration at [cents] per mile, payable monthly after the fact upon submission by the Enumerator of [City/Village/Town] vouchers, but not to exceed [dollars] in total.

4. The Enumerator is an independent contractor and shall not be considered an employee or agent of the [City/Village/Town].

5. The Enumerator agrees to commence [his/her] duties hereunder immediately and complete the same in the manner herein provided on or before [date], provided, however, that the [City/Village/Town] may, at its option, terminate this agreement upon ten (10) days' notice and upon the exercise of said option, this Agreement shall automatically cease and terminate at the expiration of said ten-day period.

6. The Enumerator is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this Agreement or [his/her] right, title or interest herein.

7. The Enumerator agrees that the Enumerator will defend, indemnify and save harmless the [City/Village/Town] from any and all suits, actions or causes of action of every name and description brought against the [City/Village/Town] for or on

account of any injuries or damage received or sustained by any party or parties by or from the negligence of the Enumerator.

IN WITNESS WHEREOF, and signatures attached hereto, the [City/Village/Town] of [name of City/Village/Town] has caused its corporate seal to be affixed hereto and these presents to be signed by [name of Mayor/Supervisor], its [title], duly authorized to do so, and to be attested to by [name of City/Village/Town Clerk], [title], and the Contractor has caused its corporate seal to be affixed hereto and these presents to be signed by its President, the day and year first above written.

SIGN HERE WITH ACKNOWLEDGEMENT