

## LOCAL LAW “C” – 2023

### A Local Law replacing Chapter 235 of the Village Code entitled “Wireless Communication Facilities” as follows

**BE IT ENACTED**, by the Board of Trustees of the Inc. Village of Flower Hill as follows:

#### **Section 1. Replace existing Chapter 235**

##### **235-1. Purpose.**

In recognition of advancing technology and the increased demand and need for wireless communications towers and facilities, the Board of Trustees hereby determines that it is in the public interest to regulate the siting and installation of such facilities within the Village in order to protect public interests while balancing any demonstrated and genuine need to fill actual gaps in wireless coverage. The Village of Flower Hill is planted with abundant flowering foliage, with many of its streets lined with cherry trees and wild violets along the roadsides. Apple trees dating to the days when Flower Hill farms sold the produce from their apple, pear and peach orchards are still standing. Throughout nearly the entire Village, no or nearly no electrical utility poles or overhead electrical lines are in the street rights-of-way. Instead, overhead electrical utility poles are overwhelmingly located hidden off- street along the sides or rear of private properties. Additionally, to maintain its natural bucolic character, essentially the entire Village has no streetlights or roadside technological encroachments.

When deliberating over granting or denying a permit and the location of wireless facilities, due consideration shall be given to existing land uses and development, the character of the area, visual impacts and other aesthetics, impacts on property values, other impacts, the existence or absence of a gap in wireless coverage, actual need, availability and feasibility of less impactful alternatives, and other appropriate land use factors in approving sites for the location of towers and/or facilities.

These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services.

These regulations are an exercise in state zoning authority permitted under 47 U.S.C. § 332(c)(7) (§ 704 of the Telecommunications Act of 1996) and are intended to strike a balance between the need for new or upgraded wireless facilities and protection of aesthetics, open space and residential environments from redundant and unsightly antennas, structures, and other wireless equipment, and to avoid other legitimate adverse impacts. In so doing and absent any legal mandate to the contrary, the Village Board intends to apply the interpretation of the applicable legal standards specified by federal courts reviewing permitting decisions. In *ExteNet Sys., Inc. v. Vill. of Flower Hill*, No. 19-CV-5588-FB-VMS, 2022 WL 3019650 (E.D.N.Y. July 29, 2022),

the United States District Court ruled that the Village of Flower Hill is within its rights to rely on federal court, including the Second Circuit Court of Appeals, interpretation of whether a proposed wireless telecommunications facility is needed to fill a genuine gap in coverage insofar as a user’s ability to make a wireless telephone call to reach a landline telephone. The enactment of these regulations in compliance with federal and state law, and requirement of Village

approvals and wireless facilities permits, is not a finding by the Village Board that wireless telecommunication facilities are appropriate for the zoning district, are in harmony with the Village's general zoning plan, or will not adversely affect the neighborhoods. Such considerations are to be made on a case-by-case basis upon each application.

## **§ 235-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**ACCESSORY WIRELESS FACILITY** — Any equipment, shed, fencing or structure, or combination thereof, containing any electrical components necessary for the proper operation of primary antennas.

**ALTERNATIVE TOWER STRUCTURE** — Any man-made trees, clock towers, steeples, light poles, flagpoles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers, subject to the review and approval of the Village Board of Trustees or its designee.

**ANTENNAS** — Any exterior transmitting and receiving device mounted on a tower, building, structure or poles (including but not limited to monopoles, utility poles, and streetlights) and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communications signals.

**COMMERCIAL DISTRICTS** — All zoning districts except residential districts.

**FAA** — The Federal Aviation Administration.

**PRE-EXISTING TOWERS AND PRE-EXISTING ANTENNAS** — Any tower or antenna for which a building permit-special permit, special use permit, or wireless facilities permit has been properly issued prior to the effective date of this chapter, including permitted towers or antennas that have not yet been completed or constructed, provided that such approved permit(s) is current and has not expired; or any tower which is constructed and has a certificate of compliance.

**ROOF-MOUNTED COMMUNICATIONS FACILITY** — A wireless communication facility which is mounted and supported on the roof or any rooftop appurtenance of a legally existing building or structure.

**TOWER** — Any structure that is designed and constructed for the principal purpose of supporting one or more antennas for telephone, personal communications services, common carrier services, radio and television transmission, microwave transmission, and similar communications purposes, including self-supporting lattice towers, guyed towers or monopole towers. The term includes the structure and any support thereto.

**WALL-MOUNTED COMMUNICATIONS FACILITY** — A wireless communications facility

which is mounted and supported entirely on the wall of a legally existing building, including the walls of architectural features, such as parapets, chimneys and similar appurtenances.

**WIRELESS COMMUNICATIONS FACILITY** — A facility that transmits and/or receives electromagnetic signals, including any tower or antenna, accessory wireless facility, wall and roof-mounted facilities, as defined herein, and towers, buildings, structures or poles on which antennas are mounted.

**WIRELESS FACILITIES PERMIT** – A permit issued under this chapter to construct and maintain a wireless communications facility.

**§ 235-3. Applicability.**

No new wireless communications facility shall be erected, moved, reconstructed or altered to serve as a transmission, reception or relay facility except by approval of the Board of Trustees, in compliance with the regulations set forth in this section.

**§ 235-4. Provisions for location of use.**

This section identifies locational restrictions pertaining to residential zones, commercial zones, and parks. It is not intended to limit other application requirements or limit the Board of Trustees' review of the application based on aesthetics, other adverse impacts consistent with state and federal law, availability of less impactful alternatives, or a failure of the applicant to demonstrate sufficient need for the wireless telecommunications facility.

A. Residential. Wireless communications facilities located in residential zoning districts are subject to site plan approval and wireless facilities permit approval from the Board of Trustees following a public hearing and must further meet the following requirements:

- (1) Wireless communications facilities on buildings shall meet the following criteria:
  - (a) Any antenna or equipment accessory to a roof-mounted antenna shall be set back a minimum of four feet for every one foot in height of the accessory equipment, but in no instance shall protrude more than 15 feet above the average height of the building in order to minimize its visibility from adjacent properties or roadways. Installation of an antenna and associated equipment shall incorporate a design that is contextual with the structure on which the antenna is co-locating.
  - (b) Any wall-mounted antenna shall not protrude above the roof parapet or roofline and shall be painted to match the color of the existing structure. No portion of the antenna shall extend more than 18 inches from the facade of the building. These requirements are to be maintained to the extent feasible without impeding the functionality of the antenna.

- (c) Enclosures designed to conceal rooftop wireless communications facilities shall not be deemed to contribute towards building height, floor area ratio, gross floor area, or parking requirements, provided that said enclosure does not contain equipment or materials that are not accessory to the wireless communication facility and the enclosure is contextual with the architecture of the structure and is minimized to the furthest extent practical. All equipment within the enclosure shall still be subject to the dimensional requirements set forth in this chapter.
  - (2) A tower base shall be set back from the property line by a minimum distance equal to 110% of the height of the tower. Accessory wireless facilities shall comply with all other dimensional requirements of the underlying zoning district.
  - (3) Any new tower shall consist of an alternative tower structure as defined herein. Guyed (cable-supported), truss or lattice antenna support structures are expressly prohibited.
  - (4) No new tower shall be permitted unless it is demonstrated that adequate service in accord with FCC guidelines cannot be provided within a coverage gap area by exhausting all other available and reasonable locations for the proposed tower in a nonresidential district to the satisfaction of the Board of Trustees, except as provided herein.
- B. Commercial. Wireless communications facilities located in commercial zoning districts are subject to site plan approval and wireless facilities permit approval from the Board of Trustees following a public hearing, except as otherwise provided herein, and must meet the following requirements:
- (1) Wireless communication facilities on buildings shall protrude not more than 15 feet above the average height of the building, and meet the following criteria:
    - (a) Equipment accessory to a roof-mounted antenna shall be set back a minimum of four feet for every one foot in height of the accessory equipment, but in no instance shall protrude more than 15 feet above the average height of the building in order to minimize its visibility from adjacent properties or roadways. Installation of an antenna and associated equipment shall incorporate a design that is contextual with the structure on which the antenna is co-locating, and antennas shall not protrude more than 15 feet above the average height of the building.
    - (b) Any wall-mounted antenna shall not protrude above the roof parapet or roofline and shall be painted to match the color of the existing structure. No portion of the antenna shall extend more than 18 inches from the facade of the building.
    - (c) Enclosures designed to conceal rooftop wireless communications facilities shall not be deemed to contribute towards building height, floor area ratio, gross floor area, or parking requirements, provided that said

enclosure does not contain equipment or materials that are not accessory to the wireless communication facility and the enclosure is minimized to the furthest extent practical. All equipment within the enclosure shall still be subject to the dimensional requirements set forth in this article.

- (2) A tower base shall be set back from the property line by a minimum distance equal to 110% of the height of the tower. Accessory wireless facilities shall comply with all other dimensional requirements of the underlying zoning district.
- (3) Wireless communications facilities located on preexisting structures or buildings in commercial districts are not subject to wireless facilities permit approval, provided that they have all necessary Building Department permits and are not visible to any residential use or zone as determined by the Building Superintendent or his/her designee. New antennas co-locating on an existing tower approved by the Board of Trustees shall not be subject to this requirement.
- (4) No new tower shall be permitted within 500 feet of a residential zone unless it is demonstrated that adequate service in accord with FCC standards cannot be provided within a coverage gap area by exhausting all other available and reasonable locations for the proposed tower outside the five-hundred-foot area to the satisfaction of the Board of Trustees.

C. Parks. Wireless communications facilities are subject to site plan approval and facilities permit approval from the Board of Trustees following a public hearing, except as otherwise provided herein, and must meet the following requirements: Wireless communications facilities shall not be located at any designated park listed by any federal, state or Village agency, except as specified by the following:

- (1) No new tower shall be permitted unless it is demonstrated that adequate service in accord with federal standards cannot be provided within a coverage gap area by exhausting all other available and reasonable locations for the proposed tower outside of the park to the satisfaction of the Board of Trustees or their designee.
- (2) Any facility located in a park shall be located, designed and screened to minimize the visual and aesthetic impacts.
- (3) Any facility located within a park shall not be located in an area that would interfere with normal, day-to-day recreational activities or operations.
- (4) Any facility located in a park which is co-located on or which replaces an existing structure (e.g., ball-field light poles) shall not be subject to wireless facilities permit approval, provided that the height of the new structure does not exceed the height of the preexisting structure and is a minimum of 500 feet from the nearest residence.
- (5) Co-location. No new tower shall be permitted unless the applicant

demonstrates that no existing tower, structure or building can accommodate the applicant's proposed antenna and unless it is demonstrated that adequate service cannot be provided with co-location.

- (6) Any facility on Village owned property shall be subject to a separate agreement regarding revenue to the Village.

#### **§ 235-5. Design.**

- A. Wireless communications facilities shall be designed in such a manner as to minimize any visual impacts.
- B. If a wireless communications facility is located on a building, it shall be neutral in color, or similar in color to the building so that it continues to maintain the architectural integrity of the building, and every effort shall be made to conceal the facility.
- C. Accessory wireless facilities shall be screened, landscaped and shall maximize use of building materials, colors and textures designed to blend with the natural or existing surroundings to minimize any visual impacts.
- D. The base area shall be surrounded by a six-foot-high fence or located within a structure. The surrounding fence shall be screened as per a landscaping plan to be approved by the Board of Trustees with input from the Village Arborist.
- E. No signs are permitted on towers except safety instructions or similar material.
- F. A tower shall not be lighted unless required by the FAA or otherwise required by the Board of Trustees for safety reasons.

#### **§ 235-6. Removal.**

Any antenna or tower that is not operated for a continuous period of 12 months shall be deemed abandoned. The owner of such antenna/tower/site shall remove the same at the owner's expense within 90 days of notice. The Village reserves the right, after 90 days' written notice sent certified mail, return receipt requested, to the owner or owner's designee, to remove the antenna or tower, and shall bill the owner for any expense incurred. All costs associated with same shall be assessed to the owner's next tax bill.

#### **§ 235-7. Application requirements.**

Requests for approvals under this chapter shall be made by application. The application is reviewed only by Village staff and not by the Village Board to determine whether it is deficient or sufficiently complete on its surface to warrant a Village Board Review. The Village Board does not have opportunity to review the application until a later stage, and the Board has the ultimate responsibility for determining whether the application complies with the Village Code, state laws, and federal laws, and whether the application should be granted or denied.

Applications shall include the following:

- A. The location, type and height of the wireless communications facility and whether it is to be located on an existing structure, co-located or on a telecommunications tower.
- B. Adjacent roadways, rights-of-way, land uses, structures and zoning on land within 1/2 mile.
- C. Setbacks from property lines.
- D. Environmental assessment.
- E. Scaled drawing of the site, including elevation drawings of the structure, a visual study showing where, within one mile, the tower could be seen, the distance between all structures and proposed means of access.
- F. Landscape plan, including fencing and fence screening.
- G. Analysis of physical need for additional towers or antennas.
- H. Written site location alternative analysis describing the location of other sites considered, the availability of those sites, the extent to which other sites do or do not meet the provider's service or engineering needs and the reasons why the subject site was chosen. Written requests and responses for site location alternative analysis shall be provided, in addition to the names, addresses and telephone numbers of the current owner(s) of those sites. If the proposed plan is to locate in a residential area, the applicant must show a good faith effort to locate in a nonresidential area and that locating in a commercial or industrial zone is not feasible.
  - Evidence of a good faith effort to co-locate or locate on existing towers, structures or buildings and why it is not feasible. Written requests and responses for co-location efforts shall be provided, in addition to the names, addresses and telephone numbers of the current owner(s) of those structures.
  - The application must provide evidence that the proposed wireless communications facility can accommodate, at a minimum, three times the capacity to allow for future lease and co-location. Competing providers are required to negotiate fairly regarding co-location leases. A future co-location applicant cannot be denied except for mechanical, structural or regulatory reasons, and only with respect to Village property.
- I. Location and separation distance between all other existing and proposed facilities within the Village and/or within five miles.
- J. Coverage maps, certified radio frequency engineer report, data.
  - (1) Coverage maps depicting existing and proposed coverage in -dBm levels for each proposed carrier. Said maps shall be submitted in both paper and electronic form. Paper maps shall be at least 11 inches by 17 inches in size and shall contain coverage areas superimposed over current aerial photography.

Electronic formats shall be submitted in any industry-standard geographic information system (GIS) format.

- (2) Said maps shall be accompanied by a certified report by a radio frequency engineer and shall depict any existing and proposed dBm signal strength levels, as well as identify the minimum -dBm level each proposed carrier needs in order for a wireless telephone to be able to make a telephone call from the subject area.
  - (3) The radio frequency engineer's certified report shall identify the source of the coverage data contained in the coverage maps.
  - (4) In the report, the certifying engineer must demonstrate his or her first-hand knowledge of the underlying data for the reception levels shown in the coverage maps, or that they otherwise have sufficient knowledge of the underlying data and how it was secured that they personally can reliably certify the data's accuracy.
  - (5) The report must include the actual reception data, and identify whether it is drive-by, in-building, missed calls, reception-level canvassing, or some other identified generally accepted reception testing method.
  - (6) The report must identify who conducted the testing and when it was conducted.
  - (7) The report must certify that the testing was conducted using generally accepted reliable methods and indicate the basis of that certification.
- K. Other information as deemed necessary by the Board.
- L. Visual impact analysis.
- Said analysis shall include:
    - Identification of visually sensitive sites, including parks, and residential areas.
    - Visualization photographs from key viewpoints. Photographs shall be conducted when leaves are off trees if trees are in front of the view of a proposed tower.
    - In the event a crane or other equipment is utilized to simulate the proposed tower on the subject property for the visualization photographs, the owners of surrounding properties within 200 feet of the site and the Board of Trustees shall be notified no less than 10 days prior to the test by certified letter, return receipt requested. Said notification shall include two rain dates in the event inclement weather prevents the visualization study from taking place.



## **§ 235-8. Approval considerations**

When deliberating over granting or denying a permit and the location of wireless facilities, the Village Board shall consider existing land uses and development, the character of the area, visual impacts and other aesthetics, impacts on property values, other land use impacts, the existence or absence of a genuine gap in wireless coverage, actual need for the facility, the availability and feasibility of less impactful alternatives, and whether denial of the application would or would not constitute a prohibition of wireless services under the Telecommunications Act. The Village Board shall further apply the following priorities and considerations

### **A. Priorities.**

- (1) The Board may give priority to application for location on an existing structure or building.
- (2) The Board may give priority to applications for collocation.
- (3) The Board may give priority to a single application for multi-antenna proposals.
- (4) The Board may give priority when necessary for health and/or security.

### **B. Other considerations.**

- (1) The minimum height necessary to render adequate service.
- (2) Proximity to residential districts and other structures.
- (3) Nature of existing or proposed uses of adjacent property.
- (4) Site and/or surrounding topography.
- (5) Surrounding tree coverage and foliage.
- (6) Design of tower, in particular the characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- (7) Availability of suitable existing towers and structures.
- (8) Proposed ingress and egress.
- (9) No new tower shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Board of Trustees that no existing tower, structure or building can accommodate the applicant's proposed antenna.
- (10) Impact on wireless service.
- (11) Utility Poles.
  - (a) An antenna to be mounted on a new or existing pole which is not to be located hidden along the sides or rear of properties, shall demonstrate that

an antenna mounted on new or existing poles and other structures hidden along the sides or rear of properties (a) would not be sufficient to fill a genuine gap in coverage consistent with controlling federal law, (b) would not be a reasonably feasible alternative, or (c) would result in greater adverse aesthetic or other adverse impacts.

- (b) An antenna to be mounted on a new pole, including but not limited to a monopole, utility pole, or streetlight, shall demonstrate that an antenna mounted on existing poles and other structures (a) would not be sufficient to fill a genuine gap in coverage consistent with controlling federal law,
- (c) would not be a reasonably feasible alternative, or (c) would result in greater adverse aesthetic or other adverse impacts. A new pole includes one which replaces an existing pole.

- C. The Board may waive or reduce the burden on the applicant of one or more of these criteria if it concludes that the goals of this section are better served thereby.
- D. The Village Board authorizes the Board of Trustees to retain the services of such persons, expert or otherwise, including but not limited to competent radio frequency engineers, real estate experts and/or attorneys where reasonably necessary to review an application or proposal, including, but not limited to, reviewing expert testimony provided on behalf of the applicant and supplementing submissions. The consultant(s) may review coverage maps, alternative site locations, co-location opportunities or other criteria that may be associated with the application or proposal. The consultant shall review all submissions in accordance with all applicable federal, state and local codes, rules and regulations and make recommendations to the Board of Trustees. The cost of retaining such competent consultants shall be borne by the applicant. The costs of any consultant shall be reasonable and the work and associated billing shall be viewable by the applicant upon request.
- E. In the event a denial of an application would constitute an unlawful prohibition or effective prohibition of cellular service under applicable federal or state law (including the Telecommunications Act of 1996, see 47 U.S.C. § 609 et seq., the "TCA"), the Board of Trustees shall grant the wireless facilities permit and shall have the authority to impose conditions upon such granting consistent with this chapter and such federal or state law.
- F. If the Board of Trustees determines that the interests of this chapter would otherwise be satisfied, the Board of Trustees may, in its discretion, but shall not be required to, deem individual requirements and conditions satisfied by issuing a waiver or relaxation in relation thereto. Any waiver or relaxation may only be made in the event that the requirements and conditions for which a waiver or relaxation is made are found not to be requisite in the interest of public safety or general welfare and may only be exercised in the event that the Board of Trustees, in issuing a waiver or relaxation, makes specific findings that the interests of this chapter would otherwise be satisfied, the waiver or relaxation is reasonably necessary for the provision of wireless communications services consistent with the interests of both

this chapter and the TCA and the applicant has taken all reasonably available mitigation measures. Every wireless facilities permit shall also conform to all special findings that are specified herein.

**§ 235-9. Amateur radio antennas and towers.**

Facilities are subject to site plan approval and wireless facilities permit approval from the Board of Trustees, and must meet the following requirements:

- A. Any antenna or tower must be located in the rear yard.
- B. A tower base shall be separated from the property line by 110% of the height of the tower.

**§ 235-10. Satellite dishes.**

- A. Satellite dishes shall be permitted as an accessory structure within any use district, subject to the requirements contained herein and subject to the issuance of a building permit from the Building Department.
- B. Standards applying to all use districts.
  - (1) Satellite dishes shall be designed to withstand winds of up to 120 miles per hour.
  - (2) All satellite dishes shall be installed and operated in accordance with the manufacturer's specifications.
- C. Ground-mounted satellite dishes shall not exceed 10 feet in diameter or exceed a height of 15 feet above the average grade level.
- D. Ground-mounted satellite dishes shall be screened at the base with evergreen plants, shall be finished in a color that blends with the surrounding environment and shall not be visible from any street as long as adequate reception in accord with FCC requirements is maintained.
- E. Roof-mounted satellite dishes shall not exceed two feet in diameter or project above the ridgeline of any building on the property and visibility from the street shall be shielded to the extent adequate reception in accord with FCC requirements is maintained.
- F. Ground-mounted satellite dishes shall be placed only in the rear yard, excluding the rear yard setback areas.
- G. Roof-mounted satellite dishes shall be mounted on the rear half of the building roof and shall not exceed 10 feet in diameter.
- H. Satellite dishes shall not be visible from any street so long as adequate reception in accord with FCC requirements is maintained. An architectural screen consisting of material compatible with the building type and style or landscaping may be utilized, subject to the review and approval of the Building Department.

**§ 235-11. Application fee.**

At the time that a person submits an application for a wireless facilities permit for a new tower, facility or antenna, or for modifying or co-locating on an existing tower or other suitable structure, where no increase in height of the tower or structure is required, or for a temporary facility, there shall be submitted with said application a nonrefundable application fee per application and/or per location, in an amount to be determined by the Village Board of Trustees and set forth in the Village's Fee Schedule.

**§ 235-12. Performance security.**

The applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Village a bond, or other form of security acceptable to the Village as to type of security and the form and manner of execution, in an amount of at least \$75,000 for a tower facility and \$25,000 for a co-location on an existing tower or other structure and with such sureties as are deemed sufficient by the Village to assure the faithful performance of the terms and conditions of this chapter and conditions of any wireless facilities permit issued pursuant to this chapter. The full amount of the bond or security shall remain in full force and effect throughout the term of the wireless facilities permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original wireless facilities permit.

**§ 235-13. Reservation of authority to inspect wireless telecommunications facilities.**

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

**§ 235-14. Liability insurance.**

A. A holder of a wireless facilities permit for tower wireless telecommunications facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the wireless facilities permit in amounts as set forth below.

- (1) Commercial general liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- (2) Automobile coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
- (3) Worker's compensation and disability: Statutory amounts.

B. For a wireless telecommunications facility on Village property or right-of-way, liability insurance shall be in reasonable amounts fixed by the Village Board in the licensing

agreement, which shall in all events be less than or equal to those applicable to towers. The commercial general liability insurance policy shall specifically include the Village and its officers, board members, employees, committee members, attorneys, agents and consultants as additional insureds.

- C. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best's rating of at least A.
- D. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Village with at least 30 days' prior written notice in advance of the cancellation of the insurance.
- E. Renewal or replacement policies or certificates shall be delivered to the Village at least 15 days before the expiration of the insurance that such policies are to renew or replace.
- F. Before construction of a permitted wireless telecommunications facilities is initiated, but in no case later than 15 days after the granting of the wireless facilities permit, the holder of the wireless facilities permit shall deliver to the Village a copy of each of the policies or certificates representing the insurance in the required amounts.

**§ 235.15. Indemnification.**

- A. Any application for wireless telecommunication facilities that is proposed for Village property or right-of-way, pursuant to this chapter, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Village, and its officers, councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Village, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Village.
- B. Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the Village itself applies for and secures a wireless facilities permit for wireless telecommunications facilities.

**§ 235.16. Fines.**

- A. In the event of a violation of this chapter or any wireless facilities permit issued pursuant to this chapter, the Village may impose and collect, from the property owner, lessee, and/or holder of a wireless facilities permit the fines or penalties, and pursuant to the procedures,

as set forth in §§ 240-35 and 240-36 of this Village Code.

- B. The Village may also seek injunctive relief to prevent the continued violation of this chapter, without limiting other remedies available to the Village.

**§ 235.17. Default and/or revocation.**

If a wireless telecommunication facility is repaired, rebuilt, placed, moved, relocated, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this chapter or of the wireless facilities permit, then the Village shall notify the holder of the wireless facilities permit in writing of such violation. A holder of a wireless facilities permit in violation may be considered in default and subject to fines as in § 235.16 and if a violation is not corrected to the satisfaction of the Village in a reasonable period of time the wireless facilities permit is subject to revocation.

**Section 2. Authority.**

The Board of Trustees of the Village of Flower Hill is authorized to adopt this local law pursuant to Municipal Home Rule Law 10(1)(i), 10(1)(ii)(a)(11), and 10(2).

**Section 3. Determination for the purposes of the State Environmental Quality Review Act, (SEQRA)**

The Board of Trustees is designated as lead agency with respect to this action and the within action is deemed a Type II action as defined under SEQRA having no significant impact on the environment and requiring no further action for the purposes of SEQRA.

**Section 4. Severability.**

If any section, subsection, clause, phrase or other portion of this Local Law is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

**Section 5. Effective Date.**

This local law shall take effect immediately upon filing with the Secretary of State.