

# Chapter \_\_\_\_\_ Zoning

## Article \_\_\_\_\_. Other Regulations

### § \_\_\_\_\_. Regulation of Devices in Public Right-of-Ways and Easements

#### I. GENERAL PROVISIONS

##### A. Legislative purpose and intent.

- (1) The Town Board of the Town of Orangetown, New York (the “Town”) finds that uses in the public right-of-ways, easements, and other non-private property areas (collectively the “Areas”) impacting upon the traveling and residential public within the Town must be lawfully regulated to protect the public health, safety, and welfare of all residents as well as those traveling and otherwise using the Areas.
- (2) The Town also finds that there is a growing trend of unregulated and unmonitored non-temporary private non-utility third-party devices (“Non-Utility Devices”) being attached to utility poles owned by utility entities as defined by the New York State Transportation Corporation Law and located in such Areas (“Utility Poles” and “Utility Entities”).
- (3) The Town also finds that certain Utility Entities have permitted and/or continue to permit various Non-Utility Devices on Utility Poles in Areas throughout the Town in a manner that presents substantial public safety concerns as well as also detracts from the diverse community and neighborhood character of the Town.
- (4) The Town Board also finds that Utility Entities have permitted and/or continue to permit the placement of various Non-Utility Devices, inclusive of private security cameras, in Areas throughout the Town, and that such private security cameras present issues dealing with potential unlawful surveillance as well as the invasion of any right or expectation of privacy to individuals traveling in or about the Areas and that regulation of such security cameras and related Non-Utility Devices is essential to secure the public health, safety, comfort, and welfare of the Town’s inhabitants.
- (5) The Town Board also finds that Utility Entities have permitted and/or continue to permit various Non-Utility Devices, inclusive of those utilized as markers in a manner that may promote the perception of the endorsement of one religious group over another religious group, in Areas throughout the Town, and the Town Board finds that it is important to strike a balance between religious and other rights of individuals, as well as the rights of the Town to not have any excessive entanglement in religious uses or displays that would signal to anyone that any particular place

within the geographical confines of the Town is not open and welcoming to all individuals of any race, religion, creed, or nationality from using the Areas. The Town also finds that any use of Non-Utility Devices shall not exhibit the promotion or preference of any one religious, cultural, racial, national, or other similar group over another such group. The Town desires at all times to have the Town visibly open to accommodate all persons with any and all religious or non-religious beliefs. Therefore, strict adherence to the requirements of this regulation is required so that the Town is known to all residents and visitors as a municipality with places open to all at all times without regard to race, religion, creed, or nationality.

- (6) The Town also finds that the practice of religion is not dependent upon any such Non-Utility Devices, but only makes it easier for certain religious individuals to travel on certain days so that the placement and/or absence of any such Non-Utility Devices does not prevent the practice of religion. The Town nevertheless finds it is important to accommodate religious practices to the extent possible provided that such practices do not appear to promote one religious group over another within the Town. The Town also finds that said practice can be accommodated by having any Non-Utility Devices transparent so that the existence of such Non-Utility Devices can be ascertained periodically since any such individuals relying upon the Non-Utility Devices as markers are provided with a map or other document that indicates that Areas within which any markers have been placed.
- (7) The Town also finds that certain utility devices are attached to Utility Poles by Utility Entities are used to provide important and necessary public for the transmission of electrical or other currents services (collectively "Utility Devices"), which, if not protected by a covering, could present a public health, safety, or welfare concern to those who may come in contact with such wires or other devices and therefore the regulation of such wires or other devices used for Utility Devices must be distinguished from any wires or devices being utilized only for Non-Utility Devices purposes.
- (8) This Regulation is additionally intended to be certain that all uses of the public spaces owned or controlled by the Town are properly assessed and documented at all times under the Real Property Tax Law of the State of New York.
- (9) This Regulation is intended also to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, preserve the scenic and natural beauty of the community, make a more enjoyable and pleasing community, and promote consistency in the installation of any Devices as set forth herein.

B. Definitions. For the purpose of this Section, the following definition shall apply:

**ASSESSOR:**

This refers to the Town's Office of Assessor pursuant to Chapter 3 of the Town Code and who is in charge of determining the fair market value of all utility and other similar

easements, right-of-ways or other property interests in the Town that are subject to taxation pursuant to the Real Property Tax Law of New York State.

**CODE ENFORCEMENT OFFICER:**

This refers to the Town's Office of Building, Zoning and Planning Administration and Enforcement pursuant to Chapter 6A of the Town Code and any Code Enforcement Officer, Building Inspector or any Assistant Code Enforcement Officer or Assistant Building Inspector having jurisdiction over the enforcement of any Zoning Codes, Building Codes or other Codes in the Town.

**EASEMENT:**

An easement is a incorporeal interest in real property.

**INSTALLER:**

This refers to any individual, entity, company, corporation or others who are hired, volunteer or otherwise are involved with the installation and maintenance of any Non-Utility Devices as defined herein. Said installer shall be appropriately licensed by the County of Rockland Department of Consumer Affairs so that all appropriate insurance and other protections for the public are in place and duly filed with the Town Clerk before any installation, maintenance, and/or other work can be done herein. All such documents with regard to the installer shall be attached to any application for a prior Permit herein.

**NON-UTILITY DEVICES:**

A permanent non-utility device is any thing, object or other physical apparatus to affix to or between a pole or poles, structure or other places, by any nails, clips, fasteners, wire, string or other such object, including but not limited to, lechis, plastic strips, metal, wooden or other material that is used and/or intended to be used for more than 31 consecutive days. This definition excluded cameras.

**NON-UTILITY DEVICE - SECURITY CAMERA:**

Any equipment affixed in any manner to a Utility Pole or Utility Device that is used or intended to be used to observe, record, transmit or otherwise monitor the activities of anyone within public right-of-ways or public easement areas in which any member of the public can be recorded, photographed or otherwise have any image captured which equipment has not been authorized and approved by the Police Department for the Town of Orangetown for law enforcement security purposes.

**PERSON:**

"Person" means any individual, corporation, partnership, limited liability corporation, joint venture, profit or not-for-profit entity or other person, firm, owner, leasee, agent or employee whether corporate or otherwise.

**PERMIT HOLDER:**

Permit holder shall include the person or entity making the application, the person or entity to whom the permit is granted and also the owner of the right-of-way or easement

or other right or interest within to which any Non-Utility Devices as defined herein is or is proposed to be attached.

**RIGHT-OF-WAY:**

Any recorded or non-recorded instrument, document or other tangible compilation of data that purports to provide certain rights to utilize any public areas within the streets, highways, side-walks or other similar areas where the public or others may travel upon or utilize at any time, including but not limited to, public and private utility easements.

**STREET:**

The term "Street" as used herein also includes a highway, road, avenue, roadbeds, lane or alley which the public have a right to use in whole or in part.

The term "pavement" includes a macadam, asphalt, brick, concrete or other similarly improved roadbed, and is only applied to the portion of the street between the sidewalks or established curb lines.

**UTILITY COMPANY:**

This refers to any public or private utility company or other entity that has obtained any rights-of-way or easements to construct, erect or otherwise place utility and/or Utility Devices along any right-of-ways or easement areas within streets or roads of the Town. This shall also refer to any entity that has received a Permit or franchise pursuant to Town Law Section 4-406 and utility entities as defined by the New York State Transportation Corporation Law.

**UTILITY POLE:**

This refers to utility poles owned by Utility Companies as defined by the New York State Transportation Corporation Law and located in public streets, easements and/or right of ways.

**UTILITY DEVICES:**

Any material or compilation or flexible or rigid materials that is utilized to actually carry electrical current no matter what voltage and such definition of wire shall also include any protective outer covering that is utilized in connection with such activity. The word "wire" shall also include any devices used to attach the wire or otherwise convert to the existing wire or wires in the Area and as used and/or installed by a Utility Company.

**II. REGULATION OF NON-UTILITY DEVICES -- SECURITY CAMERAS**

This Section applies exclusively to Non-Utility Devices - Security Cameras as defined herein.

No Non-Utility Devices - Security Camera shall be erected, maintained, installed or otherwise placed or kept in place on any Utility Pole or in any public right-of-way and easement areas unless said placement and maintenance is at the written direction of the Town of Orangetown Police Department for public security purposes. Without such written direction from the Town of Orangetown Police Department, anyone who installed, places, maintains or

otherwise causes such security camera to be so placed shall be guilty of a misdemeanor subject to imprisonment or up to one year and a fine of not more than \$50,000.

### **III. REGULATION OF NON-UTILITY DEVICES AND UTILITY DEVICES**

This Section applies exclusively to Non-Utility Devices and Utility Devices as defined herein.

No Non-Utility Devices and Utility Devices as defined herein shall be installed, maintained, placed, or otherwise continue to exist except as set forth herein:

#### **A. Permit required for Non-Utility Devices.**

- (1) Except as provided herein, it shall be unlawful for any person to install, erect, move, alter, redesign, enlarge or reconstruct any Non-Utility Devices or cause to be erected, moved, altered, redesigned, enlarged, relocated or reconstructed any Non-Utility Devices without first having obtained a permit from the Building Department to do so. Any such Non-Utility Devices that are to be erected or placed on a pole, building, structure or other location by any person shall be required to have a permit approved by the Town Code Enforcement Officer before any such activity can be commenced. If proposed in connection with a Site Plan Application, such Non-Utility Devices shall also be reviewed and approved by the Planning Board under the applicable criteria.

#### **B. Permit application for Non-Utility Devices.**

- (1) An Application for a Non-Utility Device shall be made on a form provided by the Town which application shall include at least the following information:
  - (a) The name, physical and e-mail address and telephone number and all other contact information of applicant.
  - (b) The location of the pole, building, structure or other location to which or upon which such Non-Utility Devices are to be placed, erected or otherwise attached.
  - (c) A color photo of the areas where any such Non-Utility Devices are to be erected or attached.
  - (d) All dimensions of any such Non-Utility Devices, and details of its Devices and hanging or method of securing to any place.
  - (e) Method of illumination, if any.
  - (f) Any markings, including symbols, letters, materials and colors of such Non-Utility Devices.

(g) Any visual or other message, text, copy or content on or of such Non-Utility Devices.

(h) Written consent and/or a copy of any agreement made with the owner of the property or property interest upon which such Non-Utility Devices are to be erected.

(i) Any and all documents by which the owner of the property and property interest referenced herein claims a right to occupy space in areas owned or controlled by the Town.

(j) The names, address and other information of any Utility Company that allows, licenses, permits or otherwise consents to the placement of any such Non-Utility Devices in its claimed right-of-way prior to the filing of an application herein.

(k) The name, address and all contact information of the Installer as defined herein.

(l) Any other such information as the Building Department or reviewing Board may require to ensure compliance with this Regulation.

(2) The fees for such application are set forth in Chapter \_\_\_\_ of this Code.

C. Filing of Non-Utility Device Permit Application with Assessor.

Upon the filing of an application for Non-Utility Devices permit under this Section with the Town, contemporaneous with said application being filed, an applicant for such Non-Utility Devices permit must also simultaneously file copies of the application with the Town Assessor, the Town Clerk and the Supervisor for the Town. In addition to the contents of the application set forth previously herein, the application shall also contain all documents that confirm the right to have such Non-Utility Devices established or erected in over or under areas owned or controlled by the Town or such other Areas as claimed by the applicant. Said documentation shall also include the identification of any rights that are claimed by the applicant or any owner of the property or property interests upon which such Non-Utility Devices are to be erected to place such Non-Utility Devices in any street or other Areas. Said application shall also include a fair market value determination of the existing rights of the owner of the property or property interest upon which such Non-Utility Devices is to erect and the fair market value of the rights of the Non-Utility Devices permit application if granted. The application shall also include any prior challenges that the owner of the property or property interest upon which such Non-Utility Devices are to be erected previously filed against any Tax Assessor having jurisdiction to review the fair market value of the rights of the owner of the property or property interest upon which the Non-Utility Devices are to be erected.

D. Non-Utility Device Permit procedure.

(1) Upon the filing of a completed application, the Code Enforcement Officer shall examine the plans, specifications or other information submitted, as well as the Area or Areas where the Non-Utility Devices are to be erected or as the case may exist. If such Non-Utility Devices are in compliance with all the requirements contained in

this Regulation, the Code Enforcement Officer shall, within 15 days after completion or his or her review of the permit application, either (a) advise the applicant in writing of any incomplete parts of the application; (b) issue a permit for the erection of the Non-Utility Devices or; (c) deny the application. (The issuance of a permit shall not excuse the applicant from conforming to the other laws, rules and regulations of the municipality.) If the placement of said Non-Utility Devices so authorized pursuant to this regulation has not completed within three (3) months from the date of issuance, the permit shall become null and void.

- (2) Appeal from permit decision. In accordance with New York Town Law § 7-712-a(4), an appeal to the Town Zoning Board of Appeals may be taken by any person aggrieved by the Code Enforcement Officer's decision to approve or deny a permit within thirty (30) days from the date of any decision.

E. General Installation Regulations for Non-Utility Devices and Utility Devices.

- (1) Installation guidelines. The following guidelines are to be followed with regard to any installation of a Non-Utility Devices and Utility Devices pursuant to this Regulation:

- (a) Any Non-Utility Devices must be installed entirely within the right-of-way or other Area and outside of any such Town right-of-way or any other right-of-way unless a written consent for use by such applicant is on file with the Town Clerk.

- (b) Any such Non-Utility Devices must be located as close as permitted by law, rule or regulation to any other existing wire in the immediate location of such wire.

- (c) Any Non-Utility Devices must be of completely transparent material so that such Non-Utility Devices is not visible to the public.

- (d) Any Utility Devices shall be painted or otherwise made to be distinguishable in appearance from that of the Utility Pole or other structure upon which the Utility Devices are placed.

- (e) Prior to installation of any Non-Utility Devices, a Utility Company mark-out is required with the applicant in the permit application having documented to the Town the 811 call to have this done as well as the results of that call.

- (f) No such Non-Utility Device or extension thereof may be attached or fastened to any tree, bush or plant or other vegetation.

- (g) No such Non-Utility Device can cross over or under or on a Town roadway or Town right-of-way.

- (h) All Non-Utility Devices attached to any Utility Pole must receive written permission from Utility Company or other entity or person from which permission is given and said permission must be attached to any permit application and thereafter

submit written proof of continuing permission to Code Enforcement Officer annually by January 15 of each year after which permit is issued.

- (2) Installer guidelines. The installer shall follow all guidelines set forth above and shall also follow any such other directions or requirements of the Code Enforcement Officer for the Town.

F. Maintenance for Non-Utility Devices.

- (1) The permit holder is responsible at all times to maintain their Devices in a neat and orderly condition, in good working order at all times, and in such manner to prevent any deterioration in the physical appearance or safety of such Devices that could impact on of persons or places nearby such Devices.
- (2) Any such unsafe, unsightly, damaged, or deteriorated Non-Utility Devices, that in danger of falling, shall be put in order or removed with fifteen (15) days as required in any written notice by the Code Enforcement Officer to the permit holder. If safety conditions so require in special circumstances, then and in that event upon notice to the permit holder immediate compliance is required for the repair or removal of same. If compliance is not achieved within the time period specified in such notice, such Devices shall be repaired or removed by the Town and the costs shall be levied and collected against the permit holder in the same manner and under the same penalties as enforcement of any Town Law, rule or regulation.
- (3) All Non-Utility Devices shall maintain all clearances from electrical conductors in accordance with the New York State Public Service Commission's Orders and Regulations as well as the National Electrical Code and from all communications equipment or lines located within the Town. Any such Non-Utility Devices and any supporting structures shall maintain appropriate clearance and must not interfere with any surface or underground facilities and conduits for water, sewage, gas, electricity or communications equipment or lines.

G. Abandoned Non-Utility Devices.

- (1) Except as provided in this Regulation, any such Non-Utility Devices that does not meet the standards herein for a period of 30 days or more shall be deemed to have been abandoned. Such abandoned Non-Utility Devices are prohibited and shall be removed immediately by the permit holder and/or Utility Company.
- (2) Upon notification by the Town to the permit holder and/or Utility Company of any such abandoned Non-Utility Devices, said permit holder and/or Utility Company shall have 30 days to remove such abandoned Devices. Upon failure to remove the Non-Utility Devices within this time period, the Town may remove the Non-Utility Devices upon the expense of the permit holder and Utility Company. The cost of such removal paid by the Town shall be levied and collected in the same manner and



under the same penalties as any other Town Law, rule or regulation assessment of a public improvement.

H. Existing Non-Utility Devices and Nonconforming Non-Utility Devices and/or Utility Devices

- (1) Any such Non-Utility Devices not in compliance with any provision of this Regulation upon its effective date shall be deemed nonconforming.
- (2) Any such nonconforming Non-Utility Devices shall be removed or brought into conformity with the requirements of this Regulation within ninety (90) days of the date of enactment of this Regulation. If not in compliance within ninety (90) days from the enactment of this regulation, the Non-Utility Devices shall be removed forthwith by the Town and the expense of the same shall be paid by the permit holder and Utility Company.
- (3) Additionally, any such nonconforming Non-Utility Devices related to any existing use shall be removed or made conforming prior to the issuance of a subsequent permit for such use.

I. Other Requirements.

- (1) Any Permit Holder or Utility Company shall restore and repair any and all damage that may occur in connection with the installation, maintenance or removal of any Non-Utility Devices and/or Utility Devices.
- (2) The Permit Holder or Utility Company shall indemnify and hold harmless the Town, its Officials, employees, agents, and others from any claims for personal injury or property damage arising from (or allegedly arising from) or in connection with such installation, use, maintenance, or removal of any Non-Utility Devices and/or Utility Devices.
- (3) The Permit Holder and the Utility Company shall provide a Certificate of Insurance evidencing liability insurance in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregated listing the Town, its Officials, employees and agents as additional insureds prior to the issuance of a permit for any Non-Utility Device. Such insurance shall be maintained and each and every Certificate of Insurance shall be on file with the Town Clerk at all times that a Non-Utility Device remains in place.
- (4) In the event any Permit Holder becomes liable to the Town for any fees, expenses, and/or penalties under this Regulation and fails to remit full and complete payment of said fees, expenses, and/or penalties within 30 days, the owner of the Utility Pole shall be held liable to the Town for any and all amounts remaining due plus 9% interest annum on said amount. By permitting, facilitating, and/or licensing Non-Utility Devices to be installed within the Areas, the owner of the Utility Pole waives all appeals and agrees to be strictly liable for any amounts due to the Town pursuant to this Provision and Regulation.

J. Code Enforcement Officer.

- (1) The provisions of this Regulation shall be administered and enforced by the Code Enforcement Officer who shall have the power to undertake any Non-Utility Devices and/or Utility Devices inspections.
- (2) No Non-Utility Devices permit shall be approved by the Code Enforcement Officer except in full compliance with the provisions of this Regulation.

K. Appeals.

- (1) In accordance with New York State Town Law § 7-712-a, any order, requirement, decision, interpretation, or determination of the Code Enforcement Officer may be appealed within thirty (30) days of the date of the determination by filing an appeal with the Zoning Board of Appeals by any person aggrieved, or by an Officer, Department, Board or Bureau of the Town.
- (2) Upon filing an appeal, the Zoning Board of Appeals may grant a variance from the terms of this Regulation, following the procedure set forth in Town Law.
- (3) Any person aggrieved by a decision of the Zoning Board of Appeals may have that decision reviewed by the Supreme Court of the State of New York in the manner and within the time provided by law.

L. Penalties for Offenses.

- (1) In the event of a breach of any of the provisions of this Regulation, the Code Enforcement Officer shall notify the permit holder and Utility Company in writing to remove, repair, or otherwise bring the Non-Utility Devices and/or Utility Devices into conformance within 30 days of the date of such notice. Upon failure to comply with any such notice within the prescribed time, the Code Enforcement Officer shall remove or cause the removal, repair, or conformance of Non-Utility Devices and/or Utility Devices at the expense of the permit holder and Utility Company. All costs and expenses shall become a lien upon the premises upon which the wire is or was located and shall be levied and collected in the same manner and under the same penalties as any other Town Law, rule or regulation.
- (2) Any person who violates any of the provisions of this Regulation or who fails to comply with any order or regulation made herein, or who erects, moves, or alters any Non-Utility Devices and/or Utility Devices in violation of any statement or plans submitted by the applicant and approved under provisions of this Regulation, shall be guilty of a violation as the same is defined in the Penal Law and shall be fined \$1,500 for each and every violation and also be subject to imprisonment of a term of not more than ten (10) days. Each day that such violation is permitted to exist shall constitute a separate violation. If any Non-Utility Devices and/or Utility Devices is erected, altered, or moved in violation of the provisions of this Regulation, any Town

Official may, in addition to other remedies, take appropriate other actions to prevent such unlawful condition from continuing to exist.

- (3) All costs and expenses incurred by the Town in causing the removal or repair of any Non-Utility Devices and/or Utility Devices as specified in this section and the enforcement of this Regulation, including but not limited to reasonable attorneys' fees, shall be collected from the permit holder and Utility Company. Payment shall be made in not less than five days after transmittal to the permit holder and the Utility Company of a written demand for payment. Upon failure to make such payment, such costs and expenses shall be assessed against said permit holder and the Utility Company and shall be paid and collected as part of the Town tax next due and payable. In addition, the Town may commence any other action or proceeding to collect such costs and expenses. With all said reasonable attorney's fees incurred by the Town being paid by the Permit Holder and the Utility Company.

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**II. REGULATION OF NON-UTILITY DEVICES -- SECURITY CAMERAS**

This Section applies exclusively to Non-Utility Devices - Security Cameras as defined herein.

No Non-Utility Devices - Security Camera shall be erected, maintained, installed or otherwise placed or kept in place on any Utility Pole or in any public right-of-way and easement areas unless said placement and maintenance is at the written direction of the Town of Orangetown Police Department for public security purposes. Without such written direction from the Town of Orangetown Police Department, anyone who installed, places, maintains or

otherwise causes such security camera to be so placed shall be guilty of a misdemeanor subject to imprisonment or up to one year and a fine of not more than \$50,000.

### **III. REGULATION OF NON-UTILITY DEVICES AND UTILITY DEVICES**

This Section applies exclusively to Non-Utility Devices and Utility Devices as defined herein.

No Non-Utility Devices and Utility Devices as defined herein shall be installed, maintained, placed, or otherwise continue to exist except as set forth herein:

#### **A. Permit required for Non-Utility Devices.**

- (1) Except as provided herein, it shall be unlawful for any person to install, erect, move, alter, redesign, enlarge or reconstruct any Non-Utility Devices or cause to be erected, moved, altered, redesigned, enlarged, relocated or reconstructed any Non-Utility Devices without first having obtained a permit from the Building Department to do so. Any such Non-Utility Devices that are to be erected or placed on a pole, building, structure or other location by any person shall be required to have a permit approved by the Town Code Enforcement Officer before any such activity can be commenced. If proposed in connection with a Site Plan Application, such Non-Utility Devices shall also be reviewed and approved by the Planning Board under the applicable criteria.

#### **B. Permit application for Non-Utility Devices.**

- (1) An Application for a Non-Utility Device shall be made on a form provided by the Town which application shall include at least the following information:
  - (a) The name, physical and e-mail address and telephone number and all other contact information of applicant.
  - (b) The location of the pole, building, structure or other location to which or upon which such Non-Utility Devices are to be placed, erected or otherwise attached.
  - (c) A color photo of the areas where any such Non-Utility Devices are to be erected or attached.
  - (d) All dimensions of any such Non-Utility Devices, and details of its Devices and hanging or method of securing to any place.
  - (e) Method of illumination, if any.
  - (f) Any markings, including symbols, letters, materials and colors of such Non-Utility Devices.



(g) Any visual or other message, text, copy or content on or of such Non-Utility Devices.

(h) Written consent and/or a copy of any agreement made with the owner of the property or property interest upon which such Non-Utility Devices are to be erected.

(i) Any and all documents by which the owner of the property and property interest referenced herein claims a right to occupy space in areas owned or controlled by the Town.

(j) The names, address and other information of any Utility Company that allows, licenses, permits or otherwise consents to the placement of any such Non-Utility Devices in its claimed right-of-way prior to the filing of an application herein.

(k) The name, address and all contact information of the Installer as defined herein.

(l) Any other such information as the Building Department or reviewing Board may require to ensure compliance with this Regulation.

(2) The fees for such application are set forth in Chapter \_\_\_\_ of this Code.

C. Filing of Non-Utility Device Permit Application with Assessor.

Upon the filing of an application for Non-Utility Devices permit under this Section with the Town, contemporaneous with said application being filed, an applicant for such Non-Utility Devices permit must also simultaneously file copies of the application with the Town Assessor, the Town Clerk and the Supervisor for the Town. In addition to the contents of the application set forth previously herein, the application shall also contain all documents that confirm the right to have such Non-Utility Devices established or erected in over or under areas owned or controlled by the Town or such other Areas as claimed by the applicant. Said documentation shall also include the identification of any rights that are claimed by the applicant or any owner of the property or property interests upon which such Non-Utility Devices are to be erected to place such Non-Utility Devices in any street or other Areas. Said application shall also include a fair market value determination of the existing rights of the owner of the property or property interest upon which such Non-Utility Devices is to erect and the fair market value of the rights of the Non-Utility Devices permit application if granted. The application shall also include any prior challenges that the owner of the property or property interest upon which such Non-Utility Devices are to be erected previously filed against any Tax Assessor having jurisdiction to review the fair market value of the rights of the owner of the property or property interest upon which the Non-Utility Devices are to be erected.

D. Non-Utility Device Permit procedure.

(1) Upon the filing of a completed application, the Code Enforcement Officer shall examine the plans, specifications or other information submitted, as well as the Area or Areas where the Non-Utility Devices are to be erected or as the case may exist. If such Non-Utility Devices are in compliance with all the requirements contained in

this Regulation, the Code Enforcement Officer shall, within 15 days after completion or his or her review of the permit application, either (a) advise the applicant in writing of any incomplete parts of the application; (b) issue a permit for the erection of the Non-Utility Devices or; (c) deny the application. (The issuance of a permit shall not excuse the applicant from conforming to the other laws, rules and regulations of the municipality.) If the placement of said Non-Utility Devices so authorized pursuant to this regulation has not completed within three (3) months from the date of issuance, the permit shall become null and void.

- (2) Appeal from permit decision. In accordance with New York Town Law § 7-712-a(4), an appeal to the Town Zoning Board of Appeals may be taken by any person aggrieved by the Code Enforcement Officer's decision to approve or deny a permit within thirty (30) days from the date of any decision.

E. General Installation Regulations for Non-Utility Devices and Utility Devices.

- (1) Installation guidelines. The following guidelines are to be followed with regard to any installation of a Non-Utility Devices and Utility Devices pursuant to this Regulation:

- (a) Any Non-Utility Devices must be installed entirely within the right-of-way or other Area and outside of any such Town right-of-way or any other right-of-way unless a written consent for use by such applicant is on file with the Town Clerk.

- (b) Any such Non-Utility Devices must be located as close as permitted by law, rule or regulation to any other existing wire in the immediate location of such wire.

- (c) Any Non-Utility Devices must be of completely transparent material so that such Non-Utility Devices is not visible to the public.

- (d) Any Utility Devices shall be painted or otherwise made to be distinguishable in appearance from that of the Utility Pole or other structure upon which the Utility Devices are placed.

- (e) Prior to installation of any Non-Utility Devices, a Utility Company mark-out is required with the applicant in the permit application having documented to the Town the 811 call to have this done as well as the results of that call.

- (f) No such Non-Utility Device or extension thereof may be attached or fastened to any tree, bush or plant or other vegetation.

- (g) No such Non-Utility Device can cross over or under or on a Town roadway or Town right-of-way.

- (h) All Non-Utility Devices attached to any Utility Pole must receive written permission from Utility Company or other entity or person from which permission is given and said permission must be attached to any permit application and thereafter

submit written proof of continuing permission to Code Enforcement Officer annually by January 15 of each year after which permit is issued.

- (2) Installer guidelines. The installer shall follow all guidelines set forth above and shall also follow any such other directions or requirements of the Code Enforcement Officer for the Town.

F. Maintenance for Non-Utility Devices.

- (1) The permit holder is responsible at all times to maintain their Devices in a neat and orderly condition, in good working order at all times, and in such manner to prevent any deterioration in the physical appearance or safety of such Devices that could impact on of persons or places nearby such Devices.
- (2) Any such unsafe, unsightly, damaged, or deteriorated Non-Utility Devices, that in danger of falling, shall be put in order or removed with fifteen (15) days as required in any written notice by the Code Enforcement Officer to the permit holder. If safety conditions so require in special circumstances, then and in that event upon notice to the permit holder immediate compliance is required for the repair or removal of same. If compliance is not achieved within the time period specified in such notice, such Devices shall be repaired or removed by the Town and the costs shall be levied and collected against the permit holder in the same manner and under the same penalties as enforcement of any Town Law, rule or regulation.
- (3) All Non-Utility Devices shall maintain all clearances from electrical conductors in accordance with the New York State Public Service Commission's Orders and Regulations as well as the National Electrical Code and from all communications equipment or lines located within the Town. Any such Non-Utility Devices and any supporting structures shall maintain appropriate clearance and must not interfere with any surface or underground facilities and conduits for water, sewage, gas, electricity or communications equipment or lines.

G. Abandoned Non-Utility Devices.

- (1) Except as provided in this Regulation, any such Non-Utility Devices that does not meet the standards herein for a period of 30 days or more shall be deemed to have been abandoned. Such abandoned Non-Utility Devices are prohibited and shall be removed immediately by the permit holder and/or Utility Company.
- (2) Upon notification by the Town to the permit holder and/or Utility Company of any such abandoned Non-Utility Devices, said permit holder and/or Utility Company shall have 30 days to remove such abandoned Devices. Upon failure to remove the Non-Utility Devices within this time period, the Town may remove the Non-Utility Devices upon the expense of the permit holder and Utility Company. The cost of such removal paid by the Town shall be levied and collected in the same manner and

under the same penalties as any other Town Law, rule or regulation assessment of a public improvement.

H. Existing Non-Utility Devices and Nonconforming Non-Utility Devices and/or Utility Devices

- (1) Any such Non-Utility Devices not in compliance with any provision of this Regulation upon its effective date shall be deemed nonconforming.
- (2) Any such nonconforming Non-Utility Devices shall be removed or brought into conformity with the requirements of this Regulation within ninety (90) days of the date of enactment of this Regulation. If not in compliance within ninety (90) days from the enactment of this regulation, the Non-Utility Devices shall be removed forthwith by the Town and the expense of the same shall be paid by the permit holder and Utility Company.
- (3) Additionally, any such nonconforming Non-Utility Devices related to any existing use shall be removed or made conforming prior to the issuance of a subsequent permit for such use.

I. Other Requirements.

- (1) Any Permit Holder or Utility Company shall restore and repair any and all damage that may occur in connection with the installation, maintenance or removal of any Non-Utility Devices and/or Utility Devices.
- (2) The Permit Holder or Utility Company shall indemnify and hold harmless the Town, its Officials, employees, agents, and others from any claims for personal injury or property damage arising from (or allegedly arising from) or in connection with such installation, use, maintenance, or removal of any Non-Utility Devices and/or Utility Devices.
- (3) The Permit Holder and the Utility Company shall provide a Certificate of Insurance evidencing liability insurance in the amount of at least \$1,000,000 per occurrence and \$2,000,000 aggregated listing the Town, its Officials, employees and agents as additional insureds prior to the issuance of a permit for any Non-Utility Device. Such insurance shall be maintained and each and every Certificate of Insurance shall be on file with the Town Clerk at all times that a Non-Utility Device remains in place.
- (4) In the event any Permit Holder becomes liable to the Town for any fees, expenses, and/or penalties under this Regulation and fails to remit full and complete payment of said fees, expenses, and/or penalties within 30 days, the owner of the Utility Pole shall be held liable to the Town for any and all amounts remaining due plus 9% interest annum on said amount. By permitting, facilitating, and/or licensing Non-Utility Devices to be installed within the Areas, the owner of the Utility Pole waives all appeals and agrees to be strictly liable for any amounts due to the Town pursuant to this Provision and Regulation.

J. Code Enforcement Officer.

- (1) The provisions of this Regulation shall be administered and enforced by the Code Enforcement Officer who shall have the power to undertake any Non-Utility Devices and/or Utility Devices inspections.
- (2) No Non-Utility Devices permit shall be approved by the Code Enforcement Officer except in full compliance with the provisions of this Regulation.

K. Appeals.

- (1) In accordance with New York State Town Law § 7-712-a, any order, requirement, decision, interpretation, or determination of the Code Enforcement Officer may be appealed within thirty (30) days of the date of the determination by filing an appeal with the Zoning Board of Appeals by any person aggrieved, or by an Officer, Department, Board or Bureau of the Town.
- (2) Upon filing an appeal, the Zoning Board of Appeals may grant a variance from the terms of this Regulation, following the procedure set forth in Town Law.
- (3) Any person aggrieved by a decision of the Zoning Board of Appeals may have that decision reviewed by the Supreme Court of the State of New York in the manner and within the time provided by law.

L. Penalties for Offenses.

- (1) In the event of a breach of any of the provisions of this Regulation, the Code Enforcement Officer shall notify the permit holder and Utility Company in writing to remove, repair, or otherwise bring the Non-Utility Devices and/or Utility Devices into conformance within 30 days of the date of such notice. Upon failure to comply with any such notice within the prescribed time, the Code Enforcement Officer shall remove or cause the removal, repair, or conformance of Non-Utility Devices and/or Utility Devices at the expense of the permit holder and Utility Company. All costs and expenses shall become a lien upon the premises upon which the wire is or was located and shall be levied and collected in the same manner and under the same penalties as any other Town Law, rule or regulation.
- (2) Any person who violates any of the provisions of this Regulation or who fails to comply with any order or regulation made herein, or who erects, moves, or alters any Non-Utility Devices and/or Utility Devices in violation of any statement or plans submitted by the applicant and approved under provisions of this Regulation, shall be guilty of a violation as the same is defined in the Penal Law and shall be fined \$1,500 for each and every violation and also be subject to imprisonment of a term of not more than ten (10) days. Each day that such violation is permitted to exist shall constitute a separate violation. If any Non-Utility Devices and/or Utility Devices is erected, altered, or moved in violation of the provisions of this Regulation, any Town

Official may, in addition to other remedies, take appropriate other actions to prevent such unlawful condition from continuing to exist.

- (3) All costs and expenses incurred by the Town in causing the removal or repair of any Non-Utility Devices and/or Utility Devices as specified in this section and the enforcement of this Regulation, including but not limited to reasonable attorneys' fees, shall be collected from the permit holder and Utility Company. Payment shall be made in not less than five days after transmittal to the permit holder and the Utility Company of a written demand for payment. Upon failure to make such payment, such costs and expenses shall be assessed against said permit holder and the Utility Company and shall be paid and collected as part of the Town tax next due and payable. In addition, the Town may commence any other action or proceeding to collect such costs and expenses. With all said reasonable attorney's fees incurred by the Town being paid by the Permit Holder and the Utility Company.