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~~County~~

~~City~~ of MILAN

Town

~~Village~~

Local Law No. 3 of the year 2000

*Raymond F. D'Amico*  
Secretary of State

A local law AMENDING CHAPTER 200 OF THE CODE OF THE TOWN OF MILAN.  
*(Insert Title)*

ENTITLED ZONING.

Be it enacted by the TOWN BOARD of the  
*(Name of Legislative Body)*

~~County~~

~~City~~ of MILAN

Town

~~Village~~

as follows:

SEE ANNEXED

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

Town of Milan

Local Law No. 3 of the year 2000

A local law amending Chapter 200 of the Code of the Town of Milan entitled ZONING

Be it enacted by the Town Board of the Town of Milan as follows:

SECTION 1. LEGISLATIVE INTENT

The Town of Milan has received several requests to locate wireless communications facilities within the Town. Prior to the adoption of this local law, no specific procedures existed to address recurrent issues related to siting wireless communications facilities. The Town of Milan wishes to maximize services and benefits to the community by accommodating the need for these facilities while at the same time minimizing their adverse impacts by regulating their location and number; protecting residential areas and land uses from potential physical damage; minimizing aesthetic and visual impacts through careful siting, design, landscaping, screening and innovative camouflaging techniques; and encouraging shared use/co-location of existing and new communications facilities as a primary option rather than the construction of additional single-use towers.

The Telecommunications Act of 1996 preserves the authority of local governments over reasonable nondiscriminatory decisions regarding the placement, construction, and modification of wireless communications facilities. These regulations are designed to be in compliance with The Telecommunications Act of 1996. The Town Board of the Town of Milan, therefore, intends to amend Chapter 200, "Zoning Law of the Town of Milan, Dutchess County, New York" by the following requirements applicable for all wireless communications facilities.

## SECTION 2. SEQR DETERMINATION

The Town Board of the Town of Milan determined, as lead agency pursuant to the State Environmental Quality Review Act (SEQR), that passage of this Local law will not have a significant effect on the environment and thereby issued a negative declaration on December 11, 2000.

## SECTION 3. APPLICATION

This Local Law shall apply to all zoning districts in the Town of Milan where wireless communications facilities are allowed.

## SECTION 4. SEVERABILITY

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law which can be given effect within such part or parts.

## SECTION 5. AMENDMENTS TO THE ZONING LAW

***The existing Section 200-5 is hereby amended by adding the following new definitions:***

**ABOVE GROUND LEVEL (AGL)** — A measurement of height from the natural grade of a site to the highest point of a structure.

**ADEQUATE COVERAGE** — Coverage for wireless communications facilities is considered to be “adequate” within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is greater than -90 dbm for at least 80 percent of the intended coverage area. It is acceptable for there to be holes within the area of adequate coverage where the signal strength declines further away from the base station (e.g. -95 dbm rather than -90 dbm). For the limited purpose of determining whether the use of a repeater is necessary, there shall be deemed to be inadequate coverage within said holes. The outer boundary of the area of adequate coverage is that location past which the signal does not regain a strength equal to or greater than -90 dbm.

**AVERAGE TREE CANOPY** — The average height of a stand of trees. For the purpose of determining the maximum height of a wireless communications facility to be installed on a wooded lot having at least 20 trees within 100 feet of the proposed site, the average height of the trees located within 200 feet of the proposed site shall be used to determine the average tree canopy.

**CAMOUFLAGED** — A wireless communications facility that is disguised, hidden, part of an existing or proposed structure, placed within an existing or proposed structure, or completely hidden by surrounding vegetation is considered "camouflaged." When facilities include a new tower or other tall structure, camouflage will conceal both the tall structure and the accompanying antennas and other equipment through the use of technology which gives these facilities the appearance of structures which are compatible with the surrounding area.

**CARRIER** — A company, licensed by the FCC, that provides wireless services to customers.

**CO-LOCATION** — The use of a single wireless communications facility, either on the ground or on an existing building or structure, by more than one wireless communications carrier.

**DBM** — Unit of measure of the power level of an electromagnetic signal expressed in decibels referenced to 1 milliwatt.

**EQUIPMENT SHELTER** — An enclosed structure, cabinet, shed or box at the base of the mount within which are housed the electronic receiving and relay equipment for a wireless communications facility. Associated equipment may include air conditioning and emergency generators. This term does not include offices, long-term storage of vehicles or other equipment storage, or broadcast studios.

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

**FUNCTIONALLY EQUIVALENT SERVICES** — Services include but are not limited to Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, Specialized Mobile Radio, and Paging.

**GUYED TOWER** — A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

**LATTICE TOWER** — A self-supporting mount constructed of vertical metal struts and cross braces forming a triangular or square structure which often tapers from the foundation to the top.

**LICENSED CARRIER** — A company authorized by the FCC to construct and operate a commercial mobile radio services system.

**MONOPOLE** — A self-supporting mount constructed of a single shaft of wood, steel or concrete with below grade foundations and a platform (or racks) for panel antennas arrayed at the top.

**MOUNT** — The structure or surface upon which antennas are mounted, including the following four types of mounts:

1. Roof-mounted. Mounted on the roof of a building.

2. Side-mounted. Mounted on the side of a building.
3. Structure-mounted. Mounted on a structure other than a building.
4. Ground-mounted. Mounted on the ground.

**PROFESSIONAL ENGINEER** — A certified or licensed Radio frequency Engineer specializing in electrical or microwave engineering, especially the study of radio frequencies.

**RADIO FREQUENCY RADIATION** — The emissions from wireless communications facilities.

**REPEATER** — A small receiver/relay transmitter of not more than 20 watts output designed to provide service to areas which are not able to receive adequate coverage directly from a primary sending and receiving site in a wireless communications network.

**SECURITY BARRIER** — A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

**SEPARATION** — The distance between one carrier's array of antennas and another carrier's array.

**WIRELESS COMMUNICATIONS ANTENNA** — An antenna designed to transmit or receive communications as authorized by the Federal Communications Commission, including but not limited to whip, panel and dish communications antenna.

**WIRELESS COMMUNICATIONS FACILITY** — A facility for the provision of wireless communications services, as defined by The Telecommunications Act of 1996, and usually consisting of an equipment shelter, a mount, and/or antenna(s). Radio or television transmission towers and repeaters shall be included in the definition of wireless communications facilities.

**WIRELESS COMMUNICATIONS SERVICES** — Three types of services are regulated by this law include commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services for Cellular, Personal Communication Services (PCS), Enhanced Specialized Mobile Radio, and Specialized Mobile Radio and Paging Services. Excluded from this definition are services used for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar private, residential communications.

***The existing height exception in Subsection 200-10.1(3) is hereby deleted and replaced as follows:***

Wireless communications facilities, with their customary appurtenances, not to exceed one hundred fifty (150) feet in height.

*The following new Subsection 21 (Reserved) to Chapter 200, Article V of the Code of the Town of Milan is hereby added:*

**§ 200-21. Purpose**

The purpose of this section is to regulate the location, design, and use of wireless communications facilities in order to:

1. Protect the health, safety, and general welfare of residents of the Town of Milan.
2. Establish predictable and balanced regulations for the siting and screening of wireless communications facilities in order to accommodate the growth of communications services within the Town.
3. Maximize the use of existing towers, tall buildings and other high structures to reduce the number of new towers needed to serve the community.
4. Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements.
5. Ensure harmony and compatibility with surrounding land use patterns.
6. Protect the historic rural character, natural features and irreplaceable scenic qualities of the Town with special attention to open space, mountain ridges, recreation areas, scenic roads, view sheds and historic sites, through careful design, siting, landscaping, screening and innovative camouflaging techniques.

These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall they be used to discriminate among providers of functionally equivalent services, consistent with federal regulations.

**A. District Regulations**

- (1) **Use Regulations.** These regulations govern the installation and/or use of all wireless communications facilities as defined herein. Any proposed user of wireless communications facilities shall be an FCC licensed provider of wireless communications facilities and must obtain site plan approval and/or a special use permit whether or not they will install and own the facilities. The construction of a wireless communications facility shall require a building permit in all cases.
  - (a) **Permitted Uses, Existing Structures.** A wireless communications facility may be permitted to locate on any existing radio or television transmission tower, guyed tower, lattice tower, monopole, fire tower, water tower, clock tower, bell tower, cross tower, flagpole, road sign, steeple, chimney, silo or other innovative use of appropriate existing structures (as determined by the Planning Board) provided that there is no increase in the height of the existing structure as a result of the installation of the facility. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board in accordance with § 200-66 of this Chapter.

- (b) **Permitted Uses, Existing Buildings.** A wireless communications facility may be permitted to locate on any existing building, with the exception of a designated historic structure, provided that the installation of the new facility does not increase the height of the existing building by more than ten feet. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board in accordance with § 200-66 of this Chapter.
- (c) **Permitted Uses, Existing Utility Structures.** A wireless communications facility may be permitted to locate on any existing electric utility transmission and distribution tower, telephone pole and similar existing utility structure provided that the installation of the new facility does not increase the height of the existing structure by more than twenty feet (20'). These facilities may locate in all areas of the Town where they are permitted or specially permitted by Table A, Schedule of Use Regulations of this Chapter, except within 500 feet of a designated historic structure or within 250 feet of the right-of-way of any scenic road as identified in the Town of Milan Comprehensive Plan. Such facilities may locate within 250 feet of the right-of-way of any scenic road, as identified in the Town of Milan Comprehensive Plan, provided the new facility does not increase the height of the existing structure. Such installations shall not require a Special Use Permit but will require Site Plan approval by the Planning Board in accordance with § 200-66.
- (d) **Special Use Permit.** A wireless communications facility involving construction of one or more ground-mounts shall require a Special Use Permit. A Special Use Permit may be granted provided that the proposed use complies with the height, setback, and other requirements of this Chapter, the Special Use Permit Regulations set forth in Article VIII, is placed to minimize visual and aesthetic impacts, and is placed on the side slope of terrain so that, as much as possible, the top of the tower does not protrude over the ridgeline. The Town of Milan defines the placement, construction, and modification of a wireless communications facility requiring a Special Use Permit as a Type I action under the New York State Environmental Quality Review Act (SEQR).
- [1] If an applicant for a special use permit proposes a wireless communications facility which does not meet all dimensional requirements of the Town of Milan Zoning Law, including height, area and bulk regulations, the applicant may, at any point in the review process, apply for an area variance from the Zoning Board of Appeals.
- [2] New wireless communications facilities requiring a special use permit shall be prohibited from locating:
- (i) Inside or within 500 feet of a hamlet zoning district.
  - (ii) Inside or within 500 feet of a special overlay district unless such overlay district specifically provides for regulations governing the siting of wireless communications facilities.
  - (iii) Inside or within 500 feet of a Critical Environmental Area, as designated under the State Environmental Quality Review Act (SEQR).

[3] It shall be the responsibility of the holder of the special permit to inform the Town of Milan of any change in or termination of contractual agreements which affect the special use permit within 30 days of such change. Any material change in the conditions under which a special use permit was granted shall result in the immediate termination of the special use permit unless agreement has been obtained from the Planning Board prior to the change. These material changes include but are not limited to:

- (i) Changes in supporting structures (such as towers), accessory buildings or access roads.
- (ii) A change in ownership of the facility or the property on which the facility is installed shall require notification to the Zoning Enforcement Officer by the holder of the special use permit but will not terminate such permit.
- (iii) Cessation of use by the FCC licensed carrier which has a special use permit for use of the facility.
- (iv) A change in the FCC licensed user of the specially permitted facility. Nothing herein shall prohibit another FCC licensed carrier from using the facility so long as that carrier provides evidence of need to use that facility and acquires a special use permit under this Chapter.
- (v) Loss of the user's FCC license to provide commercial communications services within the Town of Milan.
- (vi) Violation of the Town of Milan Zoning Law, on or with regard to the facility by the holder(s) of the special use permit or the owner of the land on which the facility is installed.

(2) Location. Wireless communications facilities shall only be located, upon the grant of site plan approval and, as applicable, a special use permit, on property which allows wireless communications facilities as set forth in Table A, Schedule of Use Regulations of this Chapter. Applicants seeking approval for wireless communications facilities shall comply with the following:

- (a) If feasible, new wireless communications facilities shall be located on existing structures, including but not limited to buildings, water towers, existing communications facilities, silos, utility poles and towers, and related facilities, provided that such installation preserves the character and integrity of those structures. In particular, applicants are urged to consider use of existing telephone and electric utility structures as sites for one or more wireless communications facilities. The applicant shall have the burden of proving that there are no feasible existing structures on which to locate.
- (b) If the applicant demonstrates that it is not feasible to locate on an existing structure, wireless communications facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to:

the use of compatible building materials and colors, screening, landscaping, placement within trees, and the use of stealth technology to disguise the facility as specified in § 200-21.C(1)(a)[2] and as determined by the Planning Board.

- (c) The applicant must submit documentation of the legal right to install and use the proposed facility mount at the time of application for Site Plan approval and/or Special Use Permit.

- (3) Dimensional Requirements. Wireless communications facilities shall comply with the following requirements:

- (a) Height. The total height of any mount or accessory elements attached to any structure shall be measured from the ground level to the top of the mount or the top of the uppermost accessory affixed to the mount, whichever is higher. Maximum height of a wireless communications facility is limited to eighty feet (80') above ground level (AGL) in cleared areas where there are less than 20 trees within 100 feet surrounding the proposed location. If there are at least 20 trees within 100 feet surrounding the proposed location, the total height of the proposed facility shall be limited to 25 feet above the average tree canopy, or 100 feet, whichever is lower.

- (b) Height Variance. The Zoning Board of Appeals may allow wireless communications facilities up to one hundred fifty feet (150') if an independent radio frequency consultant determines that adequate coverage would not be provided by a tower of lesser height and if the applicant can demonstrate that, based upon topography of the site and surrounding area, siting of the antenna, antenna design, surrounding tree cover and structures and/or through the use of screening, that off-site views of the facility will be *de minimis*. The height limitation is waived when the antenna is mounted on an existing structure or building and is completely camouflaged, or is located on an existing utility structure. Applicants may be required to achieve coverage objectives by using multiple existing or new structures rather than taller structures, which shall not exceed the height limitations in § 200-21.A(3)(a).

- (c) Setbacks. All wireless communications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the following setbacks shall be observed:

- [1] To ensure public safety, the minimum distance from the base of any ground-mounted wireless communications facility to any property line, road, habitable dwelling, business or institutional use, accessory structure, or public recreation area shall be the height of the facility/mount, including any antennas or other appurtenances. This setback is considered the "fall zone." Additional setbacks may be required by the Planning Board to provide for the public safety.

- [2] In the event that an existing structure or building is proposed as a mount for a wireless communications facility, a fall zone shall not be required unless the Planning Board finds that a substantially better design will result from an increased setback. In making such a finding, the Planning Board shall consider both the visual and safety impacts of the proposed use.

**B. Performance Standards.** All wireless communications facilities shall comply with the Performance Standards set forth in this section.

- (1) **Camouflage.** Wireless communications facilities shall be the least obtrusive and the most appropriate to the proposed site, as determined by the Planning Board.
  - (a) All wireless communications facilities shall be designed to blend into the surrounding environment through the use of design and color except in such instances where color is dictated by federal or state authorities such as the Federal Aviation Administration.
  - (b) A wireless communications facility which is roof-mounted on a building shall be concealed within or behind existing architectural features to limit its visibility from public ways, and shall be stepped back from the front facade in order to limit its impact on the building's silhouette.
  - (c) A wireless communications facility which is side-mounted on a building shall be painted or constructed of materials to match the color of the building material directly behind it.
  - (d) The Planning Board may require the use of stealth technology to camouflage ground-mounts, as specified in § 200-21.C(1)(a)[2], where appropriate.
- (2) **Lighting**

Wireless communications facilities shall not be artificially lighted or display strobe lights unless required by the Federal Aviation Administration (FAA) or other applicable authority.
- (3) **Noise**

Roof-mounted or side-mounted equipment for wireless communications facilities shall not generate noise in excess of 50 dB at ground level at the base of the building closest to the antenna.
- (4) **Radio frequency Radiation (RFR) Standards**

All equipment proposed for a wireless communications facility shall be authorized per the FCC *Guidelines for Evaluating the Environmental Effects of Radio-frequency Radiation* (FCC Guidelines). The owner of the facility shall submit evidence of compliance with the FCC standards on a yearly basis to the Planning Board. If new, more restrictive standards are adopted by any appropriate federal or state agency, the facility shall be made to comply or continued operations may be restricted by the Planning Board. The cost of verification of compliance shall be borne by the owner and/or operator of the facility.

**C. Special Use Permit Regulations.** All wireless communications facilities requiring a Special Use Permit shall comply with the regulations set forth in this section, in addition to those found in § 200-61.

(1) Design Standards

- (a) Camouflage. Wireless communication facilities shall be camouflaged by vegetation and/or design as follows:

[1] Camouflage by Vegetation:

If wireless communications facilities are not camouflaged from public viewing by existing buildings or structures, they shall be surrounded by buffers of dense tree growth and understory vegetation in all directions to create an effective year-round visual buffer. Ground-mounted wireless communications facilities shall provide a vegetative buffer of sufficient height and depth to effectively screen the facility. Trees and vegetation may be existing on the subject property or installed as part of the proposed facility or a combination of both. The Planning Board shall determine the types of trees and plant materials and depth of the needed buffer based on site conditions. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

[2] Camouflage by Design

To the extent that any wireless communications facility extends above the height of the vegetation immediately surrounding it, the facility shall be camouflaged by design to minimize the adverse visual and aesthetic impact unless otherwise required by the Planning Board. Wireless communications facilities shall be camouflaged to resemble or mimic a native coniferous species of tree or by other means such as new construction of a silo, flagpole, clock tower, bell tower, cross tower, steeple or other innovative replication of a structure that would be consistent with the character of the community as determined by the Planning Board.

(b) Lighting

Wireless communications facilities shall not be artificially lighted or display strobe lights unless required by the Federal Aviation Administration (FAA) or other applicable authority. Security lighting of equipment structures and other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all such light at the property lines of the parcel to be developed, and foot-candle measurements at the property line shall be 0.0 initial foot-candles when measured at grade.

(c) Signs

[1] Signs shall be limited to those needed to identify the property and the owner and warn of any danger. No advertising is permitted anywhere on the facility, with the exception of the identification signage. All signs shall comply with the requirements of the Town's sign regulations.

[2] All ground mounted wireless communication facilities shall be surrounded by a security barrier which shall be posted with no trespassing signs. A 24 hour emergency telephone number shall be posted adjacent to the entry gate. If high voltage is necessary for the operation of equipment within the facility, signs shall be posted stating "Danger-High Voltage."

(d) Equipment Shelters

Equipment shelters for wireless communications facilities shall be designed consistent with one of the following standards:

- [1] Equipment shelters shall be located in underground vaults, or
- [2] Equipment shelters shall be designed to be architecturally compatible, both in style and materials, with principal structures on the site, as determined by the Planning Board, or
- [3] Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building. The Planning Board shall determine the types of plant materials and depth of the needed buffer based on site conditions. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.

(e) Accessory Structures

Accessory structures for wireless communications facilities shall be permitted if the structures are constructed for the sole and exclusive use and operation of the communications facility, are the minimum size necessary to meet the needs of the specific site, and meet the following requirements:

- [1] Accessory structures may not include office, long-term vehicle storage, other outdoor storage or other uses that are not needed to send or receive wireless communications transmissions.
- [2] Accessory structures must be less than 500 square feet and 15 feet in height.
- [3] Accessory structures must be camouflaged behind an effective year-round landscape buffer equal in height of the proposed structure. Such buffer shall be maintained in a healthy state or replaced as necessary to provide continuing camouflaging.
- [4] In residential zones, the use of compatible building materials such as wood, brick or stucco is required for all accessory structures, which shall be designed to match architecturally the exterior of residential structures in the neighborhood, as determined by the Planning Board. In no case will metal siding be allowed for accessory structures.

(f) Scenic Landscapes and Vistas

Wireless communications facilities shall not be located within open areas that are visible from public roads, recreational areas or residential development. As required in § 200-21.C(1)(a)[2], all ground-mounted wireless communications facilities shall be surrounded by a buffer of dense tree growth or shall be camouflaged by design to minimize adverse visual and aesthetic impacts.

(g) Utility service lines.

All electric power supply and telephone service lines to new towers and accompanying facilities shall be installed underground from the existing power source.

(h) Access and parking.

[1] A road and parking plan shall be provided to ensure adequate emergency and service access and shall meet the requirements of the Planning Board. Any driveway shall meet the requirements of the Planning Board and the highway authority for the road on which driveway fronts.

[2] Maximum use of existing public and private roads shall be made, consistent with safety and aesthetic considerations.

[3] Road construction shall minimize ground and vegetation disturbance. Road grades shall follow natural contours to reduce soil erosion potential and to ensure that roads are aesthetically compatible with the character of the surrounding area.

[4] The Planning Board may require an erosion and sedimentation control plan and may refer the site plan to the Dutchess County Soil and Water Conservation District, Town Engineer, and/or Town Planner for review.

[5] Unpaved roads shall be considered unless conditions require paving, as determined by the Planning Board, in consultation with the appropriate authorities or consultants.

(i) Maintenance, testing and inspection

[1] The original appearance of the exteriors of all towers, accessory buildings and any other structures must be retained through regular maintenance by the applicant.

[2] Before commercial transmission begins, the applicant shall acquire certification by a licensed professional engineer that the facility will not exceed the maximum permissible exposure limits for the level of electromagnetic radiation using standards in accordance with the FCC *Guidelines*.

(j) Removal of facilities

[1] Towers and antennas shall be removed if the owner's or user's special use permit for these facilities has expired or been terminated or if the facilities are no longer being used by the FCC licensee. Towers and antennas shall be removed if there is not at least one operator with a valid special permit using the tower. Potential or planned future use of any facility for commercial communication service is **not** sufficient to avoid the requirement for removal.

[2] If the removal of towers and antennas is required, accessory buildings and other structures shall also be removed unless:

- (i) the landowner wishes to retain these structures and communicates this in writing to the Planning Board and
- (ii) the retention of these structures will comply with the Zoning Law and
- (iii) the Planning Board agrees that removal of these structures is not required.

[3] Each applicant seeking a special use permit for a wireless communications facility shall provide a written contract with the Town of Milan agreeing to be fully responsible for removal, and indemnifying the Town for the costs of removal, of antennas, accessory buildings and supporting structures such as towers when removal is required by the Town of Milan Zoning Law.

[4] If a proposed wireless communications facility will be owned by an entity other than an FCC licensed carrier which will use that facility, the carrier shall provide to the Planning Board a copy of a contract between the facility owner and the FCC licensed carrier in which the owner agrees to remove the facility including any tower, antennas and accessory structures, and indemnify the Town for the costs of such removal, when these facilities are no longer being used by an FCC licensed operator with a valid Town of Milan Special Use Permit.

[5] A decision to require removal shall be the responsibility of the Planning Board after consulting with the Zoning Enforcement Officer and the Town Attorney. Removal shall occur within 90 days of the Planning Board's decision to require removal unless the Planning Board has agreed to an extension of that time. If not removed within the designated period, the Town shall have the right to compel removal, with all costs to be borne by the Special Permit holder who owns and/or previously used the facilities. Removal costs may also be recovered from the owner of the tax parcel on which the facilities are located.

[6] When towers are removed, site reclamation shall be completed to the satisfaction of the Planning Board within 180 days of structure removal. Reclamation shall include landscaping, removal of structures, utility lines and accessory structures, and shall encompass the building site and buffer area controlled by the facility owner.

(k) **Bonding.** Before obtaining or renewing a special use permit, the applicant shall provide financial surety in an amount acceptable to the Town Board (in consultation with the Planning Board and the Attorney for the Town) to ensure full and complete performance of all conditions imposed by the Planning Board as a requirement of the special use permit.

## (2) Environmental Standards

- (a) Wireless communications facilities shall not be located in wetlands or in regulated wetland buffer areas, in endangered or threatened species habitats, water bodies, historic or archaeological sites.
- (b) No hazardous waste shall be discharged on the site of any wireless communications facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
- (c) If applicable, additional stormwater run-off generated by the use shall be contained on-site.
- (d) Ground-mounted equipment for wireless communications facilities shall not generate noise in excess of 50 dB at the property line.

## (3) Safety Standards

### (a) Radio frequency Radiation (RFR) Standards

All equipment proposed for a wireless communications facility shall be authorized per the FCC *Guidelines*. The owner of the facility shall submit evidence of compliance with the FCC *Guidelines* on a yearly basis to the Planning Board. If new, more restrictive standards are adopted by any appropriate federal or state agency, the facility shall be made to comply or continued operations may be restricted by the Planning Board. The cost of verification of compliance shall be borne by the owner and operator of the facility.

### (b) Security Barrier

All wireless communications facilities shall be provided with security measures such as fencing, anti-climbing devices, electronic monitoring, or other methods sufficient to prevent unauthorized entry and vandalism. Fencing shall include a locking security gate. Electrified fence, barbed or razor wire shall be prohibited.

### (c) Structural Soundness and Fall Zone

Wireless communications facilities shall be designed by a licensed professional engineer to withstand overturning and failure. In the event of failure, facilities shall be designed so that they will fall within the setback area of the site and/or away from adjacent residential properties. The Planning Board shall require a foundation design and certificate of safety from the carrier to document structural soundness.

## D. Application Procedures

- (1) The Planning Board is authorized to review and approve, approve with modifications, or disapprove Site Plans and Special Use Permits pursuant to Articles VIII and IX of the Zoning Law. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly

related to and incidental to the proposed antenna, mount, or equipment structure(s). Any decision by the Planning Board to deny or approve a request to place, construct, or modify wireless communications facilities shall be in writing and supported by substantial evidence.

- (2) **Application Filing Requirements, Site Plan Approval.** All applicants for a wireless communications facility shall fulfill the Site Plan requirements of § 200-66 of the Zoning Law and shall, in addition, provide the following:
  - (a) Proof that the applicant or co-applicant is an FCC licensed carrier.
  - (b) A statement, certified by a professional engineer and approved by the Planning Board, that the installation of the proposed antenna, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and nonresidential properties or with public safety communications.
  - (c) A statement, certified by a professional engineer and approved by the Planning Board, documenting the structural soundness of the wireless communications facility.
  - (d) Proof that the wireless communications facility shall be fully automated and requiring only occasional maintenance of the facility and site.
- (3) **Application Filing Requirements, Special Use Permit.** Applicants for a Special Use Permit for a wireless communications facility shall fulfill the requirements of a Type 1 action under SEQR, and shall, in addition, provide the following:
  - (a) A survey of all existing structures, buildings and utility structures within the Town outlining the opportunities for the use of these existing structures and buildings as an alternative to the proposed site. The applicant must demonstrate that the proposed wireless communications facility cannot be accommodated on an existing structure, building or utility structure. In the event that location on an existing structure, building or utility structure is not feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of radio frequency engineering, to verify if location on an existing structure, building or utility structure is not feasible and to evaluate the need for the proposed facility. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an applicant to demonstrate a good faith effort to co-locate may be grounds for denial of the special use permit.
  - (b) A town-wide map showing the locations of all existing and future wireless communications facilities in the Town for this carrier. The applicant must demonstrate the need for the proposed facility showing the impracticality of upgrading or expanding an existing site, and must project long-range facility expansion needs within the Town based on market demand. The Planning Board may hire an independent technical expert in the field of RF engineering, to evaluate the impracticability of upgrading or expanding an existing site. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities. The failure of an

applicant to demonstrate a good faith effort to demonstrate the impracticality of upgrading or expanding an independent site may be grounds for denial of a special use permit.

- (c) Proposed location of antenna, mount and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
- (d) Proposed security barrier, indicating type and extent as well as point of controlled entry.
- (e) Drawings, dimensioned and to scale, which show the ultimate appearance and operation of the wireless communications facility at full buildout, including representations of the proposed mount, antennas, equipment shelters, cable runs, driveways, parking areas and any other construction or development attendant to the wireless communications facility. If the security barrier will block views of the wireless communications facility, the barrier drawing shall be cut away to show the view behind the barrier.
- (f) Materials of the proposed facility specified by generic type and specific treatment. These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier.
- (g) Colors of the proposed facility represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well and cable runs, and security barrier.
- (h) Landscape plan including existing trees and shrubs, by dominant species and current height and those proposed to be added, identified by size of specimen at installation and species.
- (i) The following material shall be provided to allow the Planning Board to determine the level of visual impact and the appropriateness of the facility:
  - [1] Existing (before condition) color photographs of views of the site from key viewpoints both inside and outside of the Town including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, scenic roads and scenic viewsheds identified in the Town of Milan Comprehensive Plan and from any other location where the site is visible to a large number of residents or visitors. The Planning Board shall determine the appropriate key viewpoints from which the site shall be photographed.
  - [2] Proposed (after condition) simulations. Each of the existing condition photographs shall have the proposed wireless communications facility superimposed on to it to show what would be seen from the key viewpoints if the proposed facility is built.
- (j) Within 21 days of filing an application for a Special Use Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the Town at least 14 days, but not more that 21 days prior to the test.
- (k) A photometric plan of all lighting on the site, including tower lighting if required.

- (4) The Planning Board may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed wireless communications facility, based upon a specific request by the applicant.
- (5) Application fee. In addition to other relevant fees outlined in the Town of Milan Fee Schedule, the applicant shall pay an application fee of \$250 for wireless communications facilities requiring Site Plan approval and \$1,500 for wireless communications facilities requiring a Special Use Permit, or other amount for application fees as indicated in the Town of Milan Fee Schedule, due upon submission of the application to the Planning Board, to defray the costs of review of the application by the Town.
- (6) Consultant fees. The Planning Board and/or Zoning Board of Appeals may retain consultants to assist in reviewing the application, its renewal, or an application for a variance related to a pending application, with consultant fees to be paid by the applicant. These consultants may include the Town Engineer, Town Planner, the Town's Attorney, one or more commercial communication facility consultants, or other consultants as determined by the Planning Board and/or Zoning Board of Appeals. At the beginning of the review process the applicable board may require the applicant to fund a separate escrow account from which the Town may draw to ensure reimbursement of consultant fees. During review of the application, the applicable board may require the applicant to add funds to the escrow account, as the applicable board deems necessary. If the required funds are not added to the escrow account, review of the application by the applicable board shall be suspended until such time, if any, as payment of said funds is made. Any remaining funds in the escrow account after payment of all consultant fees will be returned to the applicant.

#### **E. Co-location Requirements**

All wireless communications facilities requiring a Special Use Permit shall comply with the following requirements:

- (1) Location of Other Facilities. Applicants shall provide a Town-wide map showing the location of other existing, approved, and proposed wireless communications facilities within the Town of Milan and all bordering municipalities outlining opportunities for co-location use as an alternative to the proposed site. The applicant must demonstrate that the proposed wireless communications facility cannot be accommodated on an existing, approved, or proposed communications tower, structure or facility due to one or more of the following reasons:
  - (a) The antenna would exceed the structural capacity of the existing, approved, or proposed wireless communications facility, as documented by a qualified professional engineer, and the existing, approved, or proposed facility cannot be reinforced, modified, or replaced to accommodate the planned or equivalent antenna at a reasonable cost.
  - (b) The antenna would cause interference materially impacting the usability of other existing, approved or proposed antenna at the facility as documented by a

qualified professional engineer and the interference cannot be prevented at a reasonable cost.

- (c) Existing, approved, or proposed wireless communications facilities cannot accommodate the antenna at a height necessary to function as documented by a qualified professional engineer.
- (d) Other foreseen reasons that make it not feasible to locate the antenna upon an existing, approved, or proposed wireless communications facility.

In the event that co-location is not feasible, a written statement of the reasons for the unfeasibility shall be submitted to the Planning Board. The Planning Board may hire an independent technical expert in the field of RF engineering, to verify if co-location is not feasible and to evaluate the need for the proposed facility. The cost for such a technical expert shall be at the expense of the applicant and shall be fair and in line with similar costs in other communities.

- (2) Provision for New Facilities. Any proposed ground-mounted wireless communications facility shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the mount is over 100 feet in height or for at least one additional user if the mount is over 60 feet in height. Mounts must be designed to allow for future rearrangement of antennas upon the mount and to accept antennas mounted at varying height.

The applicant shall submit to the Planning Board a letter of intent committing the applicant, and his/her successors in interest, to negotiate in good faith for shared use of the proposed facility by any wireless service providers in the future. The issuance of a permit (assuming the facility is approved according to this section), shall commit the new facility owner and his/her successors in interest to:

- (a) Respond in a timely comprehensive manner to a request for information from a potential shared-use applicant.
  - (b) Negotiate in good faith concerning future requests for shared use of the new facility by other wireless service providers.
  - (c) Allow shared use of the new facility if another wireless service provider agrees in writing to pay charges.
  - (d) Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include but is not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the facility to accommodate a shared user without causing electromagnetic interference.
- (3) Intermunicipal Cooperation. In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing wireless communications facility in a neighboring municipality be considered for shared use, the Planning Board shall require that:
    - (a) An applicant who proposes a new wireless communications facility shall notify in writing the legislative body of each municipality that borders the Town and

the County Planning Board. Notification shall include the exact location of the proposed facility, and the general description of the project including, but not limited to the height of the facility and its capacity for future shared use.

- (b) Documentation of this notification shall be submitted to the Planning Board at the time of application.

#### **F. Modifications**

- (1) Modifications. A modification of a wireless communications facility may be considered equivalent to an application for a new facility and will require a Special Use Permit when the following events apply:
  - (a) The applicant intends to alter the terms of the Special Use Permit by changing the number of facilities permitted on site or by changing the technology used for the facility.
  - (b) The applicant intends to add any equipment or additional height not specified in the original special use permit.

#### **G. Monitoring and Maintenance**

The applicant shall maintain the wireless communications facility in good condition, including, but not limited to: structural integrity of the mount and security barrier, painting, maintenance of stealth technology camouflaging, and maintenance of the buffer areas and landscaping. Communications facilities over one hundred feet (100') in height shall be inspected annually by a professional engineer approved by the Planning Board, and a copy of the inspection report submitted to the Town of Milan Building Inspector.

#### **H. Abandonment or Discontinuation of Use**

- (1) Any wireless communications facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of the facility shall physically remove it within 90 days of a receipt of notice. "Physically remove" shall include, but not be limited to:
  - (a) Removal of antennas, mount, equipment shelters and security barriers from the subject property.
  - (b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
  - (c) Restoring the location of the facility to its natural condition, with the exception of landscaping and grading.
- (2) If the carrier fails to remove the facility in accordance with this section of the Zoning Law, the Town will have the authority to enter the property and remove the facility with the costs of removal assessed against the property.

#### **I. Term of Special Use Permit.**

A special use permit issued for any wireless communications facility shall be valid for 5 years. At the end of that time period, the wireless communications facility shall be removed by the carrier or a new special use permit shall be required. In reviewing the new

application for a special use permit, the Planning Board shall determine whether the technology in the provision of the facility has changed such that the necessity for the permit at the time of its approval has been eliminated or modified, and whether the permit should be modified or terminated as a result of any such change.

**J. Insurance.**

Facilities shall be insured by the owner(s) of the towers and/or the antennas thereon against damage to persons or property. The owner(s) of the towers and/or antennas thereon shall provide annually to the Town Clerk a Certificate of Insurance in the minimum amount of \$1,000,000, or a higher amount if required by the Planning Board in consultation with the Town Board, in which the Town of Milan shall be an additional named insured. This insurance shall insure against damage or loss arriving from all structures, towers or antennas on the property.

*The existing entry to Table A, Schedule of Use Regulations, "Radio or television transmission tower, with appurtenances" is hereby replaced by the following entry:*

Land Use	Supplementary Regulations Reference	R5A	A3A	R2A	HA	HB	LC	(Floating Zone) LI
<b>Commercial Uses</b>								
Wireless Communications Facility <sup>4</sup> *	§ 200-21	B	B	--	--	--	B	B

**SECTION 5. EFFECTIVE DATE**

This local law shall take effect ten days after it is filed, as provided in section twenty-seven of the Municipal Home Rule Law.

<sup>4</sup> See § 200-21A(1)(a) through (d) for uses requiring Site Plan approval and those requiring Site Plan approval and a Special Use Permit.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

**1. (Final adoption by local legislative body only.)**

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 2000 of the ~~(County)(City)(Town)(Village)~~ of MILAN was duly passed by the TOWN BOARD on DEC. 11, 2000, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

**2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer\*.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ and was deemed duly adopted on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

**3. (Final adoption by referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

**4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)**

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19\_\_\_\_ of the (County)(City)(Town)(Village) of \_\_\_\_\_ was duly passed by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, and was (approved)(not approved)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of \_\_\_\_\_ 19\_\_\_\_, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

\* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19..... of the City of \_\_\_\_\_ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on \_\_\_\_\_ 19...., became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 19..... of the County of \_\_\_\_\_ State of New York, having been submitted to the electors at the General Election of November \_\_\_\_\_ 19...., pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph "1", above.

*Catherine Gill*

Clerk of the County legislative body, City, Town or Village Clerk or officer designated by local legislative body

CATHERINE GILL, Town Clerk

Date: DECEMBER 18, 2000

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK  
COUNTY OF DLITCHESS

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

*Robert F. Winne*

Signature

ROBERT F. WINNE, Town Attorney

Title

~~County~~  
~~City~~  
Town  
~~Village~~

of MILAN

Date: DECEMBER 19, 2000