

THE MEETING TONIGHT IS FOR THE CONDUCT OF TOWN BUSINESS BY THE TOWN BOARD. THE PUBLIC IS INVITED TO PARTICIPATE AT THE ITEMS MARKED ON THE AGENDA "PUBLIC COMMENT." DURING THAT SEGMENT OF THE MEETING, IF YOU HAVE A QUESTION OR COMMENT FOR THE SUPERVISOR, PLEASE RAISE YOUR HAND AND WAIT TO BE ACKNOWLEDGED. PLEASE STATE YOUR FULL NAME AND LIMIT YOUR REMARKS TO THREE MINUTES. THANK YOU FOR YOUR ANTICIPATED COOPERATION.

PUBLIC HEARING  
LOCAL LAW OF THE YEAR 2017 CHAPTER 153 TELECOMMUNICATIONS  
LOCAL LAW OF THE YEAR 2017 CHAPTER 140 TOW TRUCKS  
JANUARY 9, 2017 7:00 P.M.

FIRST MEETING OF THE MONTH  
TOWN BOARD TOWN OF MARLBOROUGH  
21 MILTON TURNPIKE, MILTON NY  
JANUARY 9, 2017

ITEM #1 Motion to approve agenda

ITEM #2 Motion to approve minutes from the December 12, 2016

ITEM #3 Authorize payment of bills

ITEM #4 Comments on the agenda

ITEM #5 Presentations

ITEM #6 Report of Departments and Boards

- A) SUPERVISOR - ALPHONSO LANZETTA
- B) BUILDING INSPECTOR - THOMAS CORCORAN
- C) POLICE CHIEF - GERALD COCOZZA
- D) HIGHWAY SUPERINTENDENT - GAEL APPLER, SR.
- E) WATER SUPERINTENDENT - CHARLIE MUGGEO
- F) TOWN CLERK - COLLEEN CORCORAN
- G) WASTEWATER TREATMENT FACILITY- ANTHONY FALCO
- H) DOG CONTROL OFFICER - ANDREW MCKEE
- I) ASSESSOR - CINDY HILBERT
- J) PLANNING - CHRIS BRAND

ITEM #7 Report of Committees

- A) RECREATION COMMITTEE
- B) EMERGENCY MANAGEMENT PREPAREDNESS COMMITTEE
- C) CONSERVATION ADVISORY COMMITTEE
- D) IT COMMITTEE
- E) MILTON TRAIN STATION FOUNDATION
- F) MILTON LANDING CITIZENS COMMITTEE
- G) MARLBORO HAMLET ECONOMIC DEVELOPMENT COMMITTEE
- H) MEET ME IN MARLBOROUGH
- I) HAMLET OF MILTON ASSOCIATION COMMITTEE
- J) WATER COMMITTEE
- K) TRANSFER STATION REVIEW COMMITTEE

ITEM #8 Old Business

- A). Sale of TOMVAC Building
- B). Municipal Parking in Hamlets of Marlboro and Milton
- C). Milton Sewer Expansion 9W/Milton Turnpike Intersection
- D). Bayside Project
- E). Design Standards for RT 9W Corridor Overlay District
- F). Sign Law-Zoning Changes
- G). Verizon Cell Tower on Milton Water Tank
- H). Milton Train Station Grant Exterior Rehabilitation
- I). Tow Truck Law

ITEM #9 New Business

ITEM #10 Correspondence

ITEM #11 Public Comment

ITEM #12 Resolution

- A). Resolution # 27 To hold a public hearing on the agreement with Cellco Partnership
- B). Resolution #28 To authorize the filing this Negative Declaration and notice thereof pursuant to the requirements of SEQRA and 6 NYCRR § 617.12 of its implementing Regulations
- C). Resolution #29 To adopt Local Law #1 of the year 2017
- D). Resolution # 30 To adopt Local Law #2 of the year 2017
- E). Resolution #31 To reappoint part time police officer

January 9, 2017

A). Resolution # 27 To hold a public hearing on the agreement with Cellco Partnership

Supervisor Lanzetta proposes the following:

WHEREAS, the Town Board acts by law as Commissioners of an existing special water improvement district known as the Marlborough – Milton Water District (“District”); and

WHEREAS, the Town Board has negotiated an agreement with Cellco Partnership d/b/a Verizon Wireless for lease of space on an existing water tank of the District, located at 60 Walnut Lane, Town of Marlborough, County of Ulster, State of New York, a copy of which is on file with the Town Clerk; and

WHEREAS, the proposed lease requires a Public Hearing.

NOW, IT IS HEREBY RESOLVED THAT:

1. The Town Board will consider the aforesaid proposed lease agreement at a public hearing to be held on January 23, 2017.
3. The aforesaid public hearing shall be held in accordance with the annexed public hearing notice.
4. The Town Clerk is hereby authorized and directed to cause the notice of said public hearing to be published once in an official newspaper of said Town, and posted in the manner prescribed by law, which notice shall be given not less than 10 days, and not more than 20 days before the date of public hearing, in the following form:

NOTICE OF PUBLIC HEARING

TAKE NOTICE, that the Town Board of the Town of Marlborough, Ulster County, New York, will meet for the purpose of conducting a public hearing on January 23, 2017 at Marlborough Town Hall, 21 Milton Turnpike, Milton, New York, at 7:00 p.m., prevailing time relating to a proposed lease to Verizon Wireless of space on a water tank of the Marlborough-Milton Water District located 60 Walnut Lane, Marlborough, New York, for purposes of a wireless communication facility.

TAKE FURTHER NOTICE, that a copy of the proposed lease agreement is on file with the Town Clerk.

TAKE FURTHER NOTICE, that all persons interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

DATED:       Milton, New York  
              January 9, 2017

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COLLEEN CORCORAN,  
TOWN CLERK

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Lanzetta \_\_\_\_\_

Councilman Molinelli \_\_\_\_\_

Councilman Corcoran \_\_\_\_\_

Councilman Baker \_\_\_\_\_

Councilman Koenig \_\_\_\_\_

The resolution was thereupon declared duly adopted.

DATED: Milton, New York  
January 9, 2017

\_\_\_\_\_  
Colleen Corcoran, Town Clerk

January 9, 2017

B). Resolution #28 To authorize the filing this Negative Declaration and notice thereof pursuant to the requirements of SEQRA and 6 NYCRR § 617.12 of its implementing Regulations

Supervisor Lanzetta proposes the following:

LOCAL LAW NO 1 of 2017, A LOCAL LAW OF THE TOWN OF MARLBOROUGH, ULSTER COUNTY, NEW YORK, ADDING A NEW CHAPTER 153 ENTITLED “TELECOMMUNICATIONS AND PUBLIC RIGHTS-OF-WAY MANAGEMENT LAW”

SEQRA NEGATIVE DECLARATION AND  
NOTICE OF DETERMINATION OF NON-SIGNIFICANCE

**WHEREAS**, the Town of Marlborough Town Board proposes to adopt Local Law No. 1 of 2017, a local Law of the Town of Marlborough, Ulster County, New York, adding a New Chapter 153 Entitled “Telecommunications And Public Rights-of-Way Management Law”; and

**WHEREAS**, this determination of non-significance, i.e. negative declaration, is prepared in accordance with Article 8 of the Environmental Conservation Law: the NY State Environmental Quality Review Act (“SEQRA”) and its implementing regulations set forth in 6 NYCRR Part 617 (“Regulations”); and

**WHEREAS**, the Town Board is directly undertaking the Action and is the only involved agency and is therefore the lead agency for the environmental review of the Action pursuant to SEQRA and its implementing Regulations; and

**WHEREAS**, the name and address of the lead agency is: Town of Marlborough Town Board, 21 Milton Turnpike, Milton, NY 12547 and the Responsible Officer is Al Lanzetta, Town of Marlborough Town Supervisor, with a telephone number at (845) 795-5100; and

**WHEREAS**, the Town of Marlborough Town Board, as lead agency, has classified this Action as a Type 1 action pursuant to 6 NYCRR § 617.6 of the Regulations; and

**WHEREAS**, the Town of Marlborough Town Board has caused the preparation of a Full Environmental Assessment Form (EAF) for review of the Action, including Parts 1 and 2 of the EAF; and

**WHEREAS**, the Town of Marlborough Town Board, as lead agency for the environmental review of the Action, has reviewed the Action and all relevant supporting information and documentation, has identified the relevant areas of environmental concern, has compared the reasonably expected results of the Action with the criteria set forth in 6 NYCRR § 617.7 and has determined that there will be no significant adverse environmental impacts associated with the Action; and

**WHEREAS**, this negative declaration is supported and substantiated by the following conclusions of the Lead Agency:

The proposed code changes do not rise to the level of creating any adverse physical impacts in those areas of the Town for which they are intended to be implemented. In the policy judgment of the Town Board, the proposed code amendments will create positive and beneficial impacts to those areas of town for which they are intended, particularly the expansion and extension of telecommunication coverage subject to appropriate right-of-way management.

The proposed local law does not, of itself, cause any new action to occur.

The act of adopting the proposed local law will not result in any direct or physical adverse environmental impact. It may result in indirect or secondary effects in the event of future applications received by the Town that employ the standards or opportunities set forth in the legislation. Each application will involve a unique and individual set of circumstances. The particular nature of the secondary impacts resulting from the future applications is not currently ascertainable and will not be ascertainable until site-specific proposals are received. Each individual proposal will be subject to the standards established by this local law or elsewhere set forth in the Town's regulations.

The potential for these secondary effects do not support the conclusion that the legislation may create a significant adverse environmental impact requiring preparation of an environmental impact statement. Further, the potential secondary impacts do not give rise to any currently identifiable potential adverse environmental effects of significance.

The proposed amendments to Marlborough's Town Code will not propose any actions or land uses that may be different from, or in sharp contrast to current surrounding land use patterns (Full EAF, Part 2, 17[a]). They will not cause the permanent population of the Town to grow by more than 5% (Full EAF, Part 2, 17[b]). They are not inconsistent with the current local land use plan (Full EAF, Part 2, 17[c]). They are not inconsistent with any County plans, or other regional land use plans (Full EAF, Part 2, 17[d]). They will not cause a change in density of development that is not supported by existing infrastructure or is distant from existing infrastructure (Full EAF, Part 2, 17[e]). They are not in an area characterized by low density development that will require new or expanded public infrastructure (Full EAF, Part 2, 17[f]). They may give rise to secondary development impacts, in the nature of establishment of facilities within municipal rights-of-way, but such impacts are not currently ascertainable and will not be ascertainable until site-specific proposals are received, at which time they will be subject to legislative or administrative review, as well as review under SEQRA addressing the actual identity and nature of such proposals.

**NOW, THEREFORE, BE IT RESOLVED**, that the Town of Marlborough Town Board makes the following findings based upon the conclusions identified above:

1. The Action will not result in a substantial adverse change in existing air quality, ground or surface water quality, traffic or noise levels, a substantial increase in solid waste production; or a substantial increase in potential for erosion, flooding, leaching or drainage problems;
2. The Action will not result in the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movements of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial impacts



on a threatened or endangered species of animal or plant or the habitat of such a species or other significant adverse impacts to natural resources;

3. The Action will not create a material conflict with the community's current plans or goals as officially approved or adopted;

4. The Action will not result in the impairment of the character or quality of important historical, archeological, architectural or aesthetic resources of the existing community or neighborhood character;

5. The Action will not create a hazard to human health;

6. The Action will not cause a substantial change in the use or intensity of use of land, including agricultural, open space or recreational resources or in its capacity to support existing uses;

7. The Action will not result in the creation of a material demand for other actions that would result in one of the above consequences; and

8. The Action does not involve changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; and

**BE IT FURTHER RESOLVED**, that the Town of Marlborough Town Board, acting as lead agency, has examined the impacts which may be reasonably anticipated to result from the Action, and has determined that it will not have any significant adverse impact on the environment and that therefore a Draft Environmental Impact Statement need not be prepared; and

**BE IT FURTHER RESOLVED**, that the Town of Marlborough Town Board hereby issues this Negative Declaration and notice thereof pursuant to the requirements of SEQRA and its implementing Regulations; and

**BE IT FURTHER RESOLVED**, that the Town of Marlborough Town Board hereby authorizes the filing this Negative Declaration and notice thereof pursuant to the requirements of SEQRA and 6 NYCRR § 617.12 of its implementing Regulations.

The foregoing resolution was voted upon with all councilmen voting as follows:

Supervisor Lanzetta	_____
Councilman Molinelli	_____
Councilman Corcoran	_____
Councilman Baker	_____
Councilman Koenig	_____

This Negative Declaration is adopted this 9<sup>th</sup> day of January, 2017 and is ordered into the record of the Town of Marlborough Town Board with respect to the adoption of Local Law No 1 of 2017.

\_\_\_\_\_  
COLLEEN CORCORAN, TOWN CLERK

January 9, 2017

C). Resolution #29 To adopt Local Law #1 of the year 2017

Supervisor Lanzetta proposes the following:

WHEREAS, a local law was introduced entitled Local Law No. 1 of the year 2017, A LOCAL LAW OF THE TOWN OF MARLBOROUGH, ULSTER COUNTY, NEW YORK, ADDING A NEW CHAPTER 153 ENTITLED “TELECOMMUNICATIONS AND PUBLIC RIGHTS-OF- WAY MANAGEMENT LAW”; and

WHEREAS, a public hearing in relation to said local law was held on January 9, 2017 at 7:00 p.m., Prevailing Time; and

WHEREAS, notice of said public hearing was given pursuant to the terms and provisions of the Municipal Home Rule Law of the State of New York; and

WHEREAS, said local law as corrected has been on the desks of the members of the Town Board of the Town of Marlborough for at least seven (7) days, exclusive of Sunday;

NOW, THEREFORE, BE IT RESOLVED that the following local law is hereby enacted:

Section 1. The Marlborough Town Code is amended to add a new Chapter 153 entitled “Telecommunications and Public Rights-of-Way Management Law” reading as follows:

**§ 153-1 Findings; legislative intent.**

A. The Town of Marlborough ("the Town") has the authority to grant franchises and/or licenses for the use and occupancy of public rights-of-way. The Town has determined that these rights-of-way are valuable public resources that have required, and will continue to require, prudent management by the Town.

B. The Town finds that the enactment of a Telecommunications and Public Rights-of Way Management Law will have a beneficial impact on all citizens of the Town. Competition among telecommunications providers is increasing due to advancements in technology, changes in federal and state law and increased demand for such services from Town residents, businesses, educational institutions, governmental offices and other public and private institutions. Many telecommunications providers must utilize public rights-of-way in order to operate and would otherwise be required to invest substantial capital and incur substantial expense. The Town further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers and procedures to protect public rights-of-way, ensure the orderly development of a telecommunications infrastructure which effectively serves the current and future needs of the Town, while at the same time not erecting barriers which prohibit or effectively prohibit entry by, or competition among, telecommunications providers operating within the Town.

C. The Town desires to structure and implement a fair and orderly process for the granting and renewal of franchises and/or licenses to occupy and use public rights-of-way and to provide telecommunications services in the Town, including terms and conditions to protect the public interest consistent with applicable law. Consistent with applicable law, the Town desires to recover the Town's costs of maintaining and managing the public rights-of-way, to obtain fair and reasonable compensation from telecommunications

providers for the use of Town rights-of-way, and to manage its public rights-of-way on a competitively neutral and nondiscriminatory basis.

D. The Town desires to minimize inconvenience and disruption to the public, to provide for the orderly and efficient use of its public rights-of-way now and in the future, and to preserve adequate capacity for existing and future uses of its public rights-of-way. The Town intends to exercise, to the fullest extent permitted by applicable law, its authority with respect to the regulation of the occupation and use of its public rights-of-way by telecommunications providers.

E. The Town Board has determined that the procedures set forth in this chapter for granting franchises and/or licenses for the installation, construction, operation and maintenance of telecommunications systems in the Town promote the public interest and enhance the public health, safety and welfare.

**§ 153-2 Definitions and word usage.**

A. Definitions. As used herein, the following words shall have the meanings set forth below:

**AFFILIATED PERSON**

Each person who falls into one or more of the following categories: any person having, directly or indirectly, a controlling interest in the applicant; any person in which the applicant has, directly or indirectly, a controlling interest; each officer, director, joint venture or joint venture partner of the applicant; and any person, controlling, controlled by, or under common control with, directly or indirectly, the applicant; provided that such

"affiliated person" shall in no event mean the Town, or any creditor of the applicant solely by virtue of its status as a creditor and not otherwise an affiliated person.

#### APPLICANT

Any person that applies for a franchise and/or license pursuant to this chapter.

#### APPLICATION

A request for a franchise and/or license to use the Town rights-of-way. An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by an applicant to the Town.

#### CABLE SERVICES

"Cable services" as defined in the Communications Act of 1984, as amended by the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996, and as may be further amended from time to time (the "Cable Act").

#### CHAPTER

This chapter and all modifications and amendments hereto.

#### CUSTOMER

Any person in the Town receiving service provided by a franchisee pursuant to the authority of a franchise.

#### EQUIPMENT

The poles, wires, cables, electrical conductors, conduits, fiber-optic cables, subways, manholes, hand holes, junction boxes, terminal blocks, fixtures, appliances, headend, backbone, hubs, concentrators, nodes and any other control and/or

communications equipment and appurtenances that are used to provide telecommunications services.

#### FACILITY or FACILITIES

Any tangible component of a telecommunications system, including equipment.

#### FRANCHISE or FRANCHISE AGREEMENT

The initial authorization, or renewal thereof, issued by the Town in accordance with the provisions of this chapter, for the nonexclusive right and authority to install, construct, maintain and operate any part of a telecommunications system and to provide telecommunications services to customers within the Town through use of Town rights-of-way. The franchise agreement shall describe in detail all requirements applicable to the franchise.

#### FRANCHISEE

A holder of a franchise granted pursuant to this chapter. For the purposes of this chapter, the term "franchisee" shall include any licensee holding a license granted pursuant to this chapter.

#### GROSS REVENUE

Any and all payments or compensation, in any form whatsoever, received directly or indirectly by the franchisee or any affiliated person from or in connection with the operation of a telecommunications system pursuant to a franchise or license, or from the provision of any service over such telecommunications system by the franchisee or any affiliated person within the territorial limits of the Town. The revenues described in this definition shall include, but are not limited to:

(1) All revenue received from any telecommunications service provided to customers within the Town, such as but not limited to:

(a) All telecommunications service revenues charged on a flat rate basis;

(b) All telecommunications service revenues charged on a usage sensitive or mileage basis;

(c) All revenues from installation service charges, connection or disconnection fees;

(d) All revenues from equipment sold or rented to customer upon customer premises;

(e) All revenues from local service;

(f) All revenues from charges for access to local and long distance networks; and

(g) All other revenues collected by franchisee from business pursued within the Town; and

(2) Any access or other payments received by the franchisee or any affiliated person from interexchange carriers, connecting carriers, and others in connection with any service originating in the Town regardless of the destination of such service; and

(3) Revenues received from the lease, exchange, rental or use of any facilities, capacity, plant, conduit space or equipment of the telecommunications system; and

(4) The value of any free services provided by the franchisee (provided, however, that the value of the free service provided hereunder to the Town or to any other governmental entity shall not constitute gross revenue); and

(5) The fair market value of any nonmonetary transactions between the franchisee and any person other than an affiliated person at not less than the customary prices paid in



connection with equivalent transactions between the franchisee and any affiliated person and not less than the customary prices paid in connection with equivalent transactions conducted with persons who are not affiliated persons; and

(6) Recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excludable from gross revenues. All revenues from penalties or charges to customers from checks returned from banks, net of bank costs paid, shall also be gross revenue.

#### LICENSE

An initial authorization or renewal thereof, issued by the Town in accordance with the provisions of this chapter, which authorizes the limited occupation and use of specifically identified rights-of-way, provided that a license shall be issued only in the limited circumstances set forth in § 153-4(C) of this chapter.

#### LICENSEE

A holder of a license granted pursuant to this chapter. For the purposes of this chapter, the term "franchisee" shall include any licensee holding a license granted pursuant to this chapter.

#### OPEN VIDEO SYSTEM (OVS)

A telecommunications facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service, which includes video programming, which is provided to multiple subscribers within a community, and which the Federal Communications Commission or

its successor has certified as compliant with Part 76 of the Rules of the Federal Communications Commission, 47 CFR, Part 76, as amended from time to time.

#### PERSON

Any individual or any association, firm, partnership, joint venture, corporation or other legally recognized entity, whether for profit or not for profit, but not the Town.

#### PUBLIC RIGHTS-of-WAY

The surface of, and the space above and below, any public street, highway, freeway, bridge, land path, lane, concourse, tunnel, waterway, public grounds or waters, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips or right-of-way dedicated for compatible uses, any other public property or place belonging to the Town or any special districts of the Town as the same now exists or may hereafter be extended or altered, and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Town which shall entitle the Town and franchisee to the use thereof for the purpose of installing, operating, repairing, and maintaining the system. "Public rights-of-way" shall also mean any easement now or hereafter held by the Town for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or public rights-of-way as shall within their proper use and meaning entitle the Town and franchisee to the use thereof for the purposes of installing or transmitting the franchisee's telecommunications services over poles, wires, cables conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the system.

#### TELECOMMUNICATIONS

All transmissions of voice or electronic data, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received.

#### TELECOMMUNICATIONS PROVIDER

Any applicant who owns, leases, installs, constructs, operates or maintains equipment in the Town rights-of-way used to provide telecommunications services regardless of whether such telecommunications system originates, terminates, or merely passes through the Town.

#### TELECOMMUNICATIONS SERVICES

The offering of telecommunications for hire to the public, or to such classes of users as to be effectively available to the public, by means of the telecommunications system of the franchisee or any affiliated person in accordance with applicable federal, state, and local law. Telecommunications services shall not include Title VI "cable service," as defined in 47 U.S.C. § 522(6), and service as an open video system provider pursuant to 47 U.S.C. § 573.

#### TELECOMMUNICATIONS SYSTEM

A telecommunications provider's system of cables, wires, lines, towers, amplifiers, antennas, wave guides, optical fibers, microwaves, laser beams, any associated converters, and all other electronic devices. Equipment, real property (including interests in real property), tangible and intangible personal property, customer lists or buildings, offices, plants and facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing telecommunications to provide telecommunications services.

This definition shall be limited to systems providing audio, video, data, voice and signaling communications services.

#### TOWN

The Town of Marlborough, Ulster County, New York as now incorporated and including any special districts or improvement areas of the Town of Marlborough therein and all future annexations. "Town" shall include the Town Board and all associated departments.

#### TOWN BOARD

The governing body of the Town.

#### TRENCHLESS TECHNOLOGY

The use of directional boring, horizontal drilling and micro tunneling and other techniques in the construction of underground facilities which result in the least possible disruption and damage to public rights-of-way.

#### UNDERGROUND FACILITIES

All lines, cables, conduits, posts, tanks and other facilities owned or operated by persons other than the Town which are located wholly or partially underneath public rights-of-way.

#### VEGETATION

Any tree, bush, shrub, vine or other foliage.

B. In this chapter, the above-defined terms, phrases, words and their derivations shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. When not inconsistent with the context, words used in present tense include the future, words used in the plural number include the singular number and

words used in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive.

**§ 153-3 Authority to grant telecommunications franchises and/or licenses.**

A. The Town Board is empowered and authorized to issue nonexclusive franchises and/or licenses to install, construct, operate and maintain telecommunications systems in the public rights-of-way, as well as to regulate these activities to the extent permitted by law.

B. No person shall use or occupy the public rights-of-way as a telecommunications provider, nor shall they install, construct, operate or maintain equipment in the rights-of-way to provide telecommunications services to customers or in connection with the internal operations of such person's business, residence or employment without a franchise and/or license granted by the Town, unless such person possesses or enjoys federal or state statutory franchise rights to use or to occupy the public rights-of-way.

C. A franchise and/or a license granted in accordance with the provisions of this chapter shall not be construed to grant any rights or authorization to provide cable services in the Town, and any person seeking to provide cable services in the Town shall first obtain a separate franchise or license in accordance with applicable law. A franchisee shall not allow any other person to use its telecommunications system to provide cable services unless such person has been granted a franchise to provide cable services by the Town.

D. A telecommunications provider may not provide open video services or operate an open video system within the Town unless such provider has first obtained a separate open video franchise from the Town.

E. The Town Board reserves the right to modify any provision of this chapter by amendment hereof.

F. The granting of any franchise and/or license shall be made by adoption of a separate resolution by the Town Board and shall be on such terms and conditions as may be specified in the separate resolution and/or in the franchise and/or license agreement between the Town and the franchisee.

G. Any franchise and/or license granted shall be nonexclusive. The Town specifically reserves the right to grant, at any time, such additional franchises, licenses, or other authorizations for use of the public rights-of-way as the Town deems appropriate.

H. A franchise and/or license may be granted for all or any defined portion of the Town.

I. No license or franchise shall stop or otherwise limit the Town in the full exercise of its governmental powers to protect the health and safety of the public, and all other governmental powers may be fully exercised except as expressly provided herein.

**§ 153-4 Use of the public rights-of-way.**

A. It shall be the responsibility of each franchisee to comply with all applicable laws, ordinances, resolutions, rules, regulations and other directives of the Town and any federal, state or local governmental authority having jurisdiction.

B. In addition, all use of the public rights-of-way shall conform to all federal, state or local highway and drainage laws. Any repair to, or replacement of, any part of the Town infrastructure must be done in accordance with the applicable Town standards or specifications. To minimize the impact on the Town infrastructure, trenchless technology shall be the preferred method of installation.

C. A license is required for those applicants who wish to utilize certain public rights-of-way to install, construct, operate, or maintain their telecommunications system within the Town solely for the purpose of transiting the Town and without generating income from sources within the Town; or when the use or occupation of such public rights-of-way is for or in connection with the internal operations of the applicant's business, residence or employment and not for, or in connection with, the provision or offering of telecommunications services for sale or resale to any person.

D. Those applicants who wish to use the public rights-of-way and will be providing telecommunications services within the Town shall be required to obtain a franchise with the Town for such use.

**§ 153-5 Issuance of permit.**

A. No permits or other authorizations for the activities identified in § 153-3(B) shall be issued prior to the granting of a franchise or license pursuant to this chapter.

B. No person shall install, construct, repair and or maintain any equipment in the public rights-of-way used to provide telecommunications services without first obtaining such permits or other authorizations as may be required by the Town Code for such activity. Franchisee shall pay all applicable fees for Town construction permits.

**§ 153-6 Submission of application for franchise or license.**

A. An application is required to obtain a franchise and/or license to install, construct, operate or maintain any telecommunications system within the Town, to expand a franchisee's or licensee's current permitted territory or to obtain renewal of a telecommunications franchise and/or license granted pursuant to this chapter.

B. An applicant must complete the required application which may be obtained from the Town Clerk.

C. Five copies of the completed application for a franchise and/or license shall be submitted to the Town Board. Additional copies of the application shall also be provided to the Town Highway Superintendent and the Town Engineer for review.

D. An application shall contain, at a minimum, the following information with respect to the proposed franchise and/or license and such other information as the Town may deem necessary or appropriate, consistent with applicable law:

(1) The name, address and telephone number of the applicant and of the person the Town may contact concerning the application;

(2) A description of facilities and equipment and the manner in which telecommunications services are to be delivered to Town customers;

(3) A description of the proposed franchise and/or license area or the specifically identified public rights-of-way and/or portions thereof proposed to be used, and the capacity of the rights-of-way to accommodate the proposed telecommunications system as well as present and future users;

(4) A proposed construction schedule and sequence;

(5) Maps, plans and profiles showing the proposed location of the telecommunications system and all existing utilities within the rights-of-way, and such maps shall be paper prints 24 inches by 36 inches in size and to a scale no smaller than 50 feet per inch.

(6) Identification of the ownership of the applicant and identification of all affiliated persons;



(7) An engineer's estimate outlining the estimated costs of the proposed project.

E. At the time of filing the application, a nonrefundable application fee shall be paid to the Town Clerk. The amount of all fees shall be in accordance with a fee schedule established by the Town Board and in effect at the time of application.

**§ 153-7 Factors for review of application.**

A. In making a determination regarding any application for a franchise or license, the Town Board may consider the following factors:

(1) The legal qualifications of the applicant;

(2) The ability of the applicant to maintain the property of the Town in good condition throughout the term of the franchise or license;

(3) Any services or uses of the public rights-of-way that may be limited or precluded by the grant of the franchise or license; and the adverse impact of the proposed franchise or license on the efficient use of the public rights-of-way or utilities at present and in the future;

(4) The willingness and ability of the applicant to meet construction, physical requirements and Town highway and drainage standards and to abide by all lawful conditions, limitations, requirements and policies with respect to the franchise or license;

(5) The terms and conditions of the proposed franchise agreement or license.

B. Consistent with applicable law, the Town may take into consideration whether the Town rights-of-way have sufficient capacity to accommodate existing and future uses in a rational and efficient manner.

C. The Town may reject any application which is incomplete or otherwise fails to comply with applicable law, ordinances, resolutions, rules, regulations and other directives of the Town and any federal, state or local authority having jurisdiction.

**§ 153-8 Procedure for consideration of applications.**

A. The Town may make such investigations and take or authorize the taking of such other steps as the Town deems necessary or appropriate in considering and acting on applications for franchises or licenses and to determine whether a franchise or license should be granted to an applicant, and may require the applicant to furnish additional information and data for this purpose. In considering an application, the Town Board may seek advice from Town officials, other departments, agencies, boards, commissions or bodies, from such other advisory bodies as the Town Board may establish or determine appropriate, and may request the preparation of one or more reports to be submitted to the Town Board, which may include recommendations with respect to the applications.

B. Where the Town Board uses the services of private consultants for the purpose of engineering, environmental or legal reviews concerning application, or plans for construction of a telecommunications system, and other matters related thereto, the applicant shall be responsible for payment of the costs of such services. In no event shall the applicant's responsibility be greater than the actual cost of the Town for such consulting services. Periodic monetary deposits may be required from applicant, on account with the Town, from which the Town may make payments to such consultants for services rendered, after approval of consultants' vouchers by the Town Board.

**§ 153-9 Negotiation of agreement.**

If an application is complete and otherwise complies with applicable law, ordinances, resolutions, rules, regulations and other directives of the Town, including the provisions of this chapter, the Town may enter into negotiations with the applicant to determine whether they are able to reach agreement on the terms of the proposed franchise or license. The reaching of a proposed agreement shall be a condition precedent to final action by the Town Board on the application. Franchise agreements shall provide for the telecommunications provider to defend and to indemnify the Town for all claims for damages against the Town, except where such damages are caused by the Town's negligence.

§ 153-10 Procedure for action on applications.

A. Prior to final approval, the applicant shall provide a faithful performance bond, secured by a letter of credit, cash deposit or equivalent other than surety bond acceptable to the Town, for the Town to cover the cost associated with the restoration of the public rights-of-way and affected Town utilities.

B. Prior to the issuance of a franchise or license, the Town Board shall hold a public hearing, on at least seven days' notice to the public, at which the applicant and its application shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

C. Consistent with applicable law, upon completion of the steps deemed appropriate by the Town Board, the Town Board may grant or deny the franchise or license, and may specify the conditions under which the franchise or license is granted. The grant of a license or franchise shall be conditioned on the signing of a franchise agreement.

**§ 153-11 Terms and conditions of franchises or licenses.**

A. Construction/relocation requirements.

(1) Preconstruction requirements.

(a) After a complete application has been submitted to the Town by the applicant and the franchise or license has been granted, the application with an attached complete set of preliminary plans and specifications shall be delivered by franchisee to the Town Highway Department and the Town Engineer for review prior to the issuance of any permits for construction under this franchise or license. This provision shall also apply to each subsequent construction sequence if the construction is to be completed in phases. Maps shall be paper prints, 24 inches by 36 inches in size, and to a scale no smaller than 50 feet per inch. Franchisee shall also provide an engineer's estimate of cost of their proposed project to the Town Highway Department. This department shall then forward comments to the franchisee. The franchisee shall then address the Town's comments, or if franchisee disagrees with such comments, franchisee can request a meeting with the Highway Superintendent and the Town Engineer to explain why the changes requested in the comments are not necessary. The final determination as to changes lies with the Town Highway Superintendent.

(b) After the changes requested by the Town are made to the Town Highway Superintendent's satisfaction, the franchisee shall resubmit the modified plans and specifications to the Town Highway Superintendent and Town Engineer for review. Once all the Town's comments are addressed, the Town Highway Superintendent may approve the plans and specifications. After approval, franchisee or licensee shall provide the Town Highway Superintendent with:

[1] A construction time estimate sheet;

[2] Four copies of the final plans and specifications;

[3] A copy of any agreements with private parties for use of their lands for franchisee's facilities;

[4] A copy of any applicable pole or conduit agreement;

[5] A copy of franchisee's franchise agreement or licensee's license; and

[6] A performance bond modified to meet any changes required by the Town.

(c) Once all items are received, the Town Highway Superintendent will then schedule a preconstruction meeting with the franchisee at which time, if all is acceptable, a highway permit may be issued.

(2) Permits required. Franchisee shall apply for and obtain all permits necessary for installation, construction, repair, and maintenance of any such facilities, and for excavation and placing of any and all telecommunications system facilities within the public rights-of-way. Franchisee shall pay all applicable fees for Town construction permits. The initial highway permit required by the Town Code will allow for the installation and construction of franchisee's telecommunications system.

(3) Provision of maps.

(a) Within 30 days after franchisee's construction in the public rights-of-way is completed, franchisee shall provide the Town with a map showing the location of its installed telecommunications system in the public rights-of-way, as-built. Such "as-built" maps shall be paper prints, 22 inches by 34 inches in size, and to a scale no smaller than 50 feet per inch. If requested by the Town, franchisee shall also provide such maps in an electronic format compatible with any digital mapping standard the Town may adopt.

(b) One year after the effective date of said franchise agreement or license, and annually thereafter and in the event of any alterations, franchisee shall provide a map to the Town, which shall conform to Town standards as listed above or as later adopted, showing the location of franchisee's telecommunications system in the public rights-of-way.

(4) Placement of underground facilities.

(a) The Town prefers subterranean installation of facilities within the public rights-of-way or use of existing above-ground facilities. Franchisee shall make all efforts to comply with the Town's policies and regulations in this regard.

(b) Prior to doing underground work, franchisee must apply for, and obtain, appropriate permits from the Town. Franchisee may not make excavations in the public rights-of-way for any facilities needed for the installation, construction, repair and maintenance of franchisee's telecommunications system except to the extent allowed by permit or permits issued by the Town.

(c) Prior to excavation, all existing underground facilities shall be located using the Underground Facilities Protective Organization ("UFPO") or successors thereto. Franchisee or licensee shall be responsible for all necessary notifications.

(d) In addition, all use of the public rights-of-way shall conform to all federal, state, or local laws. Any repair to, or replacement of, any Town infrastructure must also be done in accordance with the Town Code and must be inspected by the Highway Superintendent for conformance. In the case of subterranean installation, and to minimize the impact on the Town infrastructure, trenchless technology shall be the preferred method of installation.

(e) All excavations or other construction in the public rights-of-way shall be carried on so as to interfere as little as practicable with the use of public and private property and

in accordance with any direction given by the Town under the police and regulatory powers of the Town.

(f) After such construction is completed, additional highway permits must be obtained for any necessary repairs or maintenance of franchisee's telecommunications system requiring access to the underground facilities.

(5) Emergency repairs. In the event that emergency repairs are necessary, franchisee shall immediately notify the Town Highway Superintendent of the need for such repairs. Franchisee may immediately initiate such emergency repairs and shall apply for appropriate permits no later than the next business day following the discovery of the emergency. Franchisee must comply with all laws and provisions relating to such emergency excavations or construction, including the payment of permit fees. Failure by franchisee to apply for such necessary permits timely will be considered a breach of this agreement and could lead to the revocation of the franchise agreement or license.

(6) Public emergency. The Town shall have the right to sever, disrupt, dig up or otherwise destroy facilities of franchisee, without any prior notice, if such action is deemed necessary by the Town Supervisor because of a public emergency. However, the Town shall provide notice to franchisee as soon as reasonably possible. "Public emergency" shall be any condition which, in the opinion of either of the officials so named, possesses an immediate threat to the lives or property of the citizens of the Town caused by any natural or man-made disaster, including but not limited to, storms, floods, fire, accidents, explosions, major water main breaks, hazardous material spills. Franchisee shall be responsible for repair, at its sole expense, of any of its facilities damaged pursuant to any such action taken by the Town.

(7) Relocation. The Town shall have the right to require franchisee to protect, support, temporarily disconnect, relocate or remove its telecommunications system within the public rights-of-way when the public convenience requires such change, and the expense thereof shall be paid solely by franchisee. The Town shall provide the franchisee with written notification requesting such relocation. Should franchisee fail to remove or relocate any such facilities by the date established by the Town, the Town may cause such removal or relocation, and the expense thereof shall be paid by franchisee, including all costs and expenses incurred by the Town due to franchisee's delay. If the Town requires the franchisee to relocate facilities located in the public rights-of-way, the Town will make a reasonable effort to provide franchisee with an alternate location for its facilities within public rights-of-way.

(8) Restoration of rights-of-way. Whenever franchisee disturbs or excavates the surface of any public right-of-way or opens the hard surface pavement in any street for any purpose, franchisee shall promptly restore the public right-of-way to at least its prior condition and in compliance with the Town Code and to the satisfaction of the Town Highway Superintendent. The Town may, after providing notice to franchisee, refill and/or repave any opening made by franchisee in the public rights-of-way and the expense thereof shall be paid by franchisee. The Town reserves the right, after providing notice to franchisee, to remove and/or repair any work done by franchisee, which, in the determination of the Town, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the franchisee. Franchisee shall properly safeguard all excavations made by franchisee in the rights-of-way. All of franchisee's work under this



section shall be done in strict compliance with all applicable rules, regulations and laws of the Town.

(9) Restoration of damage. The franchisee, at its sole expense, shall restore all damage to property, both public and private, caused by the installation, construction, operation, maintenance or repair of franchisee's telecommunications system. Such restoration shall be made as soon as practicable after completion of work necessitating the restoration and shall be done in a manner approved by Highway Superintendent. If any such damage involves pavements, sidewalks, driveways, water mains, storm and sanitary sewers, traffic control conduits, cable, or loop system, other public facilities or other emergency circumstances, the damage shall be repaired to the Town's satisfaction immediately. In the event that franchisee or licensee fails to so restore, the Town has the right, but not the obligation, to restore the same and charge the franchisee therefore and collect reimbursement from the franchisee. Franchisee waives any claims for damages to the telecommunications system that may arise as a result of the Town's actions.

(10) Vegetation management. Upon the express written permission of the Town, the franchisee may trim trees or other vegetation owned by the Town and private persons or encroaching upon the public rights-of-way to prevent their branches or leaves from touching or otherwise interfering with its wires. All trimming or pruning shall be at the sole cost of the franchisee under the supervision of the Town.

(11) Reservation of rights. Nothing in this chapter shall prevent the Town from constructing sewers, grading, paving, repairing and/or altering any street or public right-of-way or the laying down, repairing or removing of sewer and/or water mains or constructing or establishing any other public work or improvement. All such work shall be done, in so

far as practicable, so as not to hinder or prevent the unrestricted use and operation of the telecommunications system by a franchisee. If any telecommunications system interferes with the construction or repair of any public right-of-way or public improvement, including construction, repair or removal of a sewer and/or water main and any other public work or improvement, the applicable franchisee's equipment shall be removed or replaced at franchisee's expense in the manner the Town shall direct. The Town will cooperate with the franchisee to identify possible alternate locations within the public rights-of-way. Any and all such removal or replacement shall be at the expense of franchisee. Should franchisee fail to remove, adjust or relocate its facilities by the date established by the Highway Superintendent's written notice to franchisee, the Town may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by franchisee, including all costs and expenses incurred by the Town due to franchisee's delay.

(12) Public rights-of-way vacation. If any public rights-of-way or portion thereof used by franchisee is vacated by the Town during the term of the franchise agreement or license, and unless the Town Board specifically reserves to the franchisee the right to continue in the vacated public rights-of-way area, franchisee shall, without expense to the Town, forthwith remove its telecommunications system from such public rights-of-way, and restore, repair or reconstruct the public rights-of-way area, where such removal has occurred, and place the public rights-of-way area in such condition as may be required by Town Highway Superintendent which shall be no worse than the condition of such public rights-of-way immediately prior to removal. In the event of failure, neglect or refusal of franchisee, after 30 days' notice by the Town Highway Superintendent, to repair, improve or maintain such public rights-of-way portions, the Town may do such work, or cause it to

be done, and the direct cost thereof shall be charged to the franchisee. The Town will cooperate with franchisee to identify alternate locations within public rights-of-way.

(13) Maintenance of facilities.

(a) Franchisee shall use its telecommunications system facilities in such a way so as to prevent injury to the Town's property or property belonging to any person, firm, or corporation within the Town. Franchisee, at its sole expense, shall repair, renew, change and improve its facilities from time to time as may be necessary to accomplish this purpose.

(b) Franchisee shall not construct its telecommunications system in a manner that requires any customer to install cables, ducts, conduits or other facilities, in, under or over the Town streets or other public rights-of-way.

(c) Franchisee's facilities shall be installed, constructed, operated, maintained, used and repaired in such a manner as to provide for the safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of New York and the Town Code.

(d) Franchisee shall, to the extent reasonably practicable, use the public rights-of-way where construction of the facilities can be coordinated with other Town and private construction activities and will least impact the existing condition of the public rights-of-way, will least impact traffic during construction, and will least impact adjacent neighbors during construction and after installation.

(14) Discontinuance, expiration or abandonment of facilities.

(a) Whenever franchisee intends to discontinue use of its telecommunications system, by either expiration, abandonment, failure to renew or default under this chapter,

its franchise agreement or license within all or part of a particular portion of the rights-of-way, and does not intend to use said facilities again in the future, franchisee shall submit to the Town Highway Superintendent, for approval, a completed application describing the facility and the date on which the franchisee intends to discontinue using such facility.

Franchisee may remove the facility or request that the Town permit it to remain in place.

(b) If franchisee is permitted by the Town to abandon its facilities in place, the Town shall have the right, but not the obligation, to assume ownership of the telecommunications system located within the rights-of-way at no cost, and franchisee shall deliver all documents in connection therewith.

(c) Notwithstanding the franchisee's request that any such facility remain in place, the Town may require the franchisee to remove its facilities from the rights-of-way or modify the facility in order to protect the public health and safety or otherwise serve the public interest. The Town may also require the franchisee to perform a combination of modification and removal of the facility. Franchisee shall complete such removal or modification in accordance with a schedule set by the Town.

(d) Until such time as franchisee removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by the Town or another franchisee so authorized by the Town, franchisee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance and restoration of the rights-of-way, in the same manner and degree as if the facility were in active use, and franchisee shall retain all liability for such facility.

(15) Inspection of facilities. The Town reserves the right to require at reasonable times, and upon reasonable notice, the inspection of franchisee's telecommunications

system in the public rights-of-way during installation, construction, and upon completion. The cost of any such inspection shall be the sole responsibility of franchisee.

(16) Compliance with regulations.

(a) All work, including all working conditions and facilities, associated with the installation, construction, operation, maintenance and repair of the telecommunications system shall comply with:

[1] All applicable federal, state, and county and Town laws, rules and regulations now or hereinafter enacted and all fees, taxes and other payments required hereunder or by such laws, codes, rules or regulations;

[2] The insurance/bond requirements associated with street openings in the Town contained herein, unless any other applicable laws, rules or regulations for street openings are stricter than those set forth herein, and in such case, the franchisee or licensee shall comply with such stricter requirements; and

[3] The National Electric Safety Code ("NESC") and the National Electric Code ("NEC") then current.

(b) The Town shall have the right to reasonable inspections to insure such compliance.

(17) Construction on private property. Where the telecommunications system runs along private property with the permission of the owner thereof, it shall comply with all applicable rules and regulations. The franchisee shall provide notice to property owners and tenants of the property prior to the permitted construction on such private property, even in the event that franchisee has an easement for such property.

(18) Public hazards. Any openings or obstructions in public rights-of-way on any Town or public property made by the franchisee shall be guarded and protected at all times, subject to the approval of Town Highway Superintendent, by the placement of adequate barriers, fences, bordering or other protective devices shall be clearly designated by warning lights. Franchisee shall defend and indemnify the Town with respect to any claim in connection herewith, unless caused by the Town's negligent acts, and franchisee shall provide insurance therefore.

(19) Company identification. The franchisee shall insure that all of its vehicles and employees are clearly identified to the general public as being associated with franchisee when engaged in construction, maintenance or service of the telecommunications system within the Town.

(20) Condition of Town rights-of-way. Franchisee's telecommunications system shall be neat and slightly and shall not unnecessarily interfere with the use of public rights-of-way. Franchisee's cables shall be suspended or buried so as not to endanger or injure persons or property in the public rights-of-way. All work by franchisee in the public rights-of-way shall be performed so as not to interfere with the use thereof, and when completed, the public rights-of-way shall be left in as good condition as when work was commenced.

(21) Noninterference with construction or utilities.

(a) All lines, cables and distribution equipment including poles and necessary appurtenances erected by the franchisee within the Town shall be located so as not to obstruct or interfere with the proper use of public rights-of-way or any other public ways and places, and so as to cause minimum interference with the rights of property owners who abut any of such public rights-of-way or other public ways and places, and so as not to

interfere with existing public utility installations or traffic control systems. Franchisee shall remove, at its own cost and expense, any equipment that now or in the future restricts, obstructs or interferes with the operation or location or such public rights-of-way and public places.

(b) Franchisee or licensee shall not place poles, conduits, or other fixtures where they will interfere with any gas, electricity, telephone fixtures, water hydrants, traffic control systems and loops, or other utility use, and all such poles, conduits or other fixtures in or upon any public right-of-way shall be so placed as to comply with all requirements of the Town or other applicable authority and comply with local regulations, including the aesthetic provisions thereof.

(22) No liability. The Town shall not be liable to the franchisee or to franchisee's customers for any interference with, or disruption in, the operation of franchisee's telecommunications system, or for any damages arising out of franchisee's use of the public rights-of-way, unless caused by the Town's negligent acts.

**B. Records/reports required.**

(1) Franchisee shall keep the Town fully informed as to all matters in connection with or affecting the installation, construction, reconstruction, removal, maintenance, operation and repair of franchisee's telecommunications system.

(2) Franchisee shall keep its books of account and records in conformity with generally accepted accounting principles and in such a way that breakdowns of revenues are available by type of service within the Town. The Town may also require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectible. Such books and

records shall be maintained and available for inspection for five years after the end of the time period which they record or until the end of any audit or litigation involving such time period, whichever is the later.

(3) In order to help determine the gross revenues received by the franchisee for compensation purposes, franchisee agrees to file annually with the Town, no later than 120 days after the end of the franchisee's fiscal year, a copy of a financial report, audited by the franchisee's certified public accountant, covering the telecommunications system, showing, in detail, the revenues, expenses, capital expenditures, sources and use of funds, assets and liabilities, a profit and loss statement and a certification containing such information as the Town shall specify. Such information or report shall be accurate and complete. The Town may have the books and records of franchisee examined by a representative of the Town to ascertain the correctness of the reports agreed to be filed herein.

(4) Franchisee shall keep on file with the Town Clerk a current list of officers with current addresses. Franchisee shall comply with the Town's requirements regarding forms for reports, the time for reports, the frequency with which reports are to be made, and reports under oath. Filings shall be deemed current if filed within the times provided under federal law for publicly held companies.

(5) Franchisee shall provide the Town with access at reasonable times and for reasonable purposes, to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans, and other records of franchisee or licensee pertaining to their respective agreements. The Town may make inquiries pertaining to franchisee's operation of the telecommunications system within the Town, and franchisee shall respond to such inquiries in a timely matter.



(6) If requested by the Town, franchisee shall, within 30 days of the request, provide the Town with notices of all nonconfidential petitions, applications, communications, and reports submitted by the franchisee to the FCC, Securities and Exchange Commission or their successor agencies, relating to any matters affecting the use of the public rights-of-way and/or telecommunications operations authorized pursuant to the franchise agreement, license or this chapter.

(7) Within 30 days of receipt, the franchisee shall submit to the Town copies of all decisions, correspondence and actions by any federal, state and local courts, regulatory agencies and other governmental bodies relating to its telecommunications operations within the public rights-of-way. This subsection shall also apply to legal actions initiated by the franchisee in relation to its telecommunications operations within the public rights-of-way, and the Town shall submit similar information to the franchisee.

(8) Franchisee acknowledges that information submitted to the Town is open to public inspection under the New York State Freedom of Information Law ("FOIL").<sup>[1]</sup> Franchisee is responsible for becoming familiar and understanding the provisions of FOIL. Franchisee may identify information, such as trade secrets, financial records, customer information or technical information, submitted to the Town as confidential under FOIL. Franchisee shall prominently mark any information for which it claims confidentiality with the word "confidential," on each page of such information, prior to submitting such information to the Town. The Town shall treat any material so marked as confidential until the Town receives a request for disclosure of such information. To the extent authorized by FOIL and other applicable state and federal laws, the Town shall maintain the confidentiality of information designated as such by the franchisee.

(9) Within five working days of receiving a request which covers such confidential material, the Town shall provide the franchisee with written notice of the request, including a copy of the request. Franchisee shall have five working days within which to provide a written response to the Town before the Town may disclose any of the requested confidential information. The Town retains the final discretion to determine whether to release the requested confidential information.

C. Insurance requirement.

(1) Franchisee shall obtain and maintain in full force and effect throughout the term of the respective agreements and any extensions or renewals thereof, insurance with an insurance company licensed to do business in the State of New York. Said insurance shall protect the franchisee and the Town from any claims which may arise directly or indirectly or result from its granting of a franchise agreement or license, including but not limited to activity associated with the placement or maintenance of the franchisee's telecommunications system, whether such operations are performed by the franchisee, or by anyone for whose acts the franchisee may be liable.

(2) The Town reserves the right to review these insurance requirements during the effective period of the franchise agreement or license and any extension or renewal thereof, and to adjust insurance coverage and limits when deemed necessary and prudent by the Town Attorney, based upon changes in statutory law, court decisions, or the claims history of the industry or the franchisee.

(3) The insurance to be maintained by the franchisee shall include, but shall not be limited to, the following:

(a) Workers' compensation and employees liability insurance supplied in statutory amounts providing protection for franchisee's employees;

(b) Automobile liability insurance with the limits of not less than \$1,000,000 for each accident arising out of the ownership, maintenance or use of motor vehicles.

(c) Comprehensive general liability insurance including contractual, liability, premises/completed operations, explosion, collapse and underground property damage and broad form property insurance with limits of not less than \$2,000,000 for bodily injury, including accidental death, and \$10,000,000 in the aggregate, and property damage liability insurance in an amount not less than \$1,000,000 per occurrence.

(4) Franchisee shall, with respect to the required insurance, procure insurance contracts which:

(a) Name the Town and its officers, employees, board members and elected representatives as additional named insured's, as the interests of each insured may appear, as to all applicable coverage;

(b) Provide for 30 days' written notice to the Town Attorney of cancellation, nonrenewal, or material change;

(c) Provide that all provisions of the franchise agreement or license, as amended, concerning liability, duty, and standard of care, including indemnity under any franchise or license agreement shall be insured by contractual coverage sufficient to cover franchisee's obligations;

(d) Provide that insurers shall have no right of recovery against the Town, it being intended that the insurance policies shall protect franchisee and the Town and shall be primary coverage for all losses covered by the policies;

(e) Provide that the policy clause "other insurance" shall not apply to the Town where the Town is an insured on the policy;

(f) Insurers shall have no recourse against the Town for payment of any premiums or assessments which shall be the sole responsibility of franchisee.

#### D. Bonds.

(1) Franchisee shall obtain and maintain, at its sole cost and expense, and file with the Town Attorney, a corporate surety bond which shall be renewable annually or multiyear, with a surety company authorized to do business in the State of New York and acceptable to the Town Attorney, in the amount of 50% of the projected total project cost to secure franchisee's faithful performance of its obligations and faithful adherence to all of the terms and conditions of the franchise agreement or license. This bond shall have the further condition that, in the event that the franchisee shall fail to complete the required construction of the system as set forth in the franchise, there shall be recoverable, jointly, and severally, from the principal and the surety of the bond any damage or loss suffered by the Town as a result of said construction, including the full amount of any cost of removal or abandonment of any property of the franchisee, plus an allowance for reasonable attorney's fees and costs up to the full amount of the bond. Franchisee shall maintain and keep the bond in full force and effect at all times throughout the term of the franchise agreement or license, including, if necessary, the time required for removal of all franchisee's telecommunications system facilities installed in the public rights-of-way.

(2) Each such bond shall contain a covenant or endorsement of the surety to provide 60 days' written notice to the Town Attorney and franchisee of such surety's intention to cancel, substantially change, or not to renew such bond. The franchisee shall, in the event

of such notice, obtain, pay premiums for, and file with the Town Attorney written evidence of the issuance of replacement bonds prior to the expiration of any such bond.

(3) The bond shall provide, but not be limited to, the following condition: there shall be recovery by the Town, jointly and severally from the principal and surety, of any and all damages, losses, or costs suffered by the Town resulting from the failure of the franchisee to adhere to the terms and conditions of the franchisee agreement or license. The Town's right to recover under the bond shall be in addition to any other rights it may have pursuant to this chapter, franchise agreement or license.

(4) If the financial condition of any bonding company issuing a bond pursuant to this section materially and adversely changes, the Town may, at any time, require that any such bond be replaced with such other bond consistent with the requirements set forth in this section. The Town reserves the right to stop any work related to the telecommunications system until proper evidence of bonding is furnished.

(5) Upon substantial completion of all construction within the public rights-of-way authorized or required by its franchise, a franchisee may request in writing to the Town Board that the bond be reduced to an amount of \$10,000 or two times the estimated cost of the remaining construction, whichever is greater. Upon the completion of all remaining construction, the franchisee shall request in writing that the requirement for said bond be ended. The Town Board shall, after satisfying itself of the appropriateness of such request, approve the franchisee's request for reduction or cancellation of the required performance bond. Prior to any additional required construction within the public rights-of-way within the service area, a performance bond as described in Subsection D(1) shall be submitted and maintained during the additional construction in its original penal sum.

E. Assignment/transfer.

(1) The franchisee or licensee may not assign its rights and/or obligations hereunder without the Town's consent except to any subsidiary, parent company or affiliate of franchisee; or pursuant to any financing, merger or reorganization of franchisee, provided that franchisee shall have given the Town written notice of such assignment not less than 30 days after the date on which such assignment became effective. Such assignment shall not discharge franchisee from liability or responsibility for the performance of franchisee's obligations under the local law, franchise agreement, or license.

(2) In the event of assignment to any other third party by franchisee, such assignment shall be subject to and contingent upon the consent of the Town as authorized by resolution of the Town Board, and then only on such conditions as may therein be prescribed. Such consent shall not be unreasonably withheld. Franchisee shall notify the Town of any such assignment requiring the Town's consent not less than 30 days prior to the effective date of the assignment. Such notice shall be accompanied by:

(a) The proposed agreement between the franchisee and the proposed buyer, lessee, mortgagee, assignee or transferee; and

(b) An agreement from the proposed buyer, lessee, mortgagee, assignee or transferee assuming the provisions of the local law, franchise agreement or license; and

(c) A statement setting forth in reasonable detail the identity of the proposed buyer, lessee, mortgagee, assignee or transferee.

(3) The franchisee shall also provide the Town with any additional information or documents reasonably requested by the Town and an opportunity to meet and interview the

proposed assignee or transferee. In the event that the franchisee complied with the foregoing, the Town shall not unreasonably withhold its consent so long as:

(a) The franchisee shall have paid the Town any reasonable costs incurred by the Town to review the requested consent, including, without limitation, attorney's fees;

(b) The proposed assignee or transferee is a reputable entity and the Town has been finished with reasonable proof thereof;

(c) The proposed assignee or transferee is of sound financial condition as reasonably determined by the Town given the obligations to be assumed by the proposed assignee or transferee; and

(d) The proposed assignee or transferee agrees to enter into an agreement approved by the Town, under which it assumes the obligations under the franchise agreement or license.

F. Remaining terms and conditions.

(1) Neither a franchise nor a license shall create a vested right in a franchisee to occupy a particular location or particular locations in the public rights-of-way.

(2) The remaining terms and conditions applicable to any franchise or license granted pursuant to this chapter shall be set forth in the separate resolution granting the franchise or license and/or in the franchise agreement or the license itself.

(3) A franchise or license granted pursuant to this chapter shall be for a period of ten years, except that lesser terms may be specified in particular cases. Licenses may be renewed upon timely application by the licensee for a term and on such conditions and at a fee or rent accepted by the Town. The renewal of any franchise shall be conducted in a manner consistent with applicable federal law.

**§ 153-12 Franchise compensation.**

A. The public rights-of-way to be used by franchisee in the operation of its telecommunications system within the boundaries of the Town are valuable public properties, acquired and maintained by the Town at great expense to its taxpayers. The grant to franchisee of the use of public rights-of-way is a valuable property right without which franchisee would be required to invest substantial capital in rights-of-way costs and acquisitions. The franchisee therefore shall pay the Town, no later than March 31 of each year of the franchise agreement, as general compensation, the greater of the minimum annual fee or the annual gross revenue based fee, as set forth below. Where a telecommunications provider's system is using the public rights-of-way pursuant to a license granted under § 153-4(C), compensation to the Town shall be calculated as set forth in § 153-13.

B. The annual gross revenue based fee is equal to 5% of franchisee's gross revenues, as defined in this chapter. The minimum annual franchise fee is the greater of \$5,000 or the amount paid to the Town as compensation for the prior year. The payment of these fees shall in no way be construed to be the payment of real estate taxes or permit and application fees to the Town nor shall such franchise fee constitute a deduction from the gross revenues for the purposes of computing the amount of franchise fee due. Interest at 9% per annum will be payable on late payments.

**§ 153-13 License compensation.**

The public rights-of-way are valuable public properties, acquired and maintained by the Town at great expense to its taxpayers, and the grant to licensee of the use of the public rights-of-way is a valuable property right without which licensee would be required to



invest substantial capital in rights-of-way costs and acquisitions. Therefore, licensee shall pay the Town as general compensation, no later than March 31 of each year for the duration of the license, an amount equal to the greater of a minimum annual fee of \$5,000; or an annual fee of \$2.50 per linear foot of licensee's telecommunications system in the public rights-of-way. The total number of linear feet of licensee's telecommunications system located in the public rights-of-way shall be determined by the as-built maps submitted by the licensee and approved by the Town Highway Department. Interest at 9% per annum will be payable on late payments.

**§ 153-14 Severability.**

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

**§ 153-15 Delegation.**

The Town Board shall have the right to delegate and redelegate, and to revoke any such delegation or redelegation, from time to time, of any of its rights or obligations under this chapter to anybody, organization or official of the Town. Any such delegation, redelegation or revocation, no matter how often made, shall not be deemed an amendment to this chapter or to require the consent of any applicant for a franchise or license.

**§ 153-16 Retroactivity.**

To the extent permitted by law, the Town shall apply all provisions of this chapter to telecommunications providers, franchisees, licensees or other rights-of-way authorizations existing on the effective date of this chapter.

**§ 153-17 Penalties for offenses.**

A. Failure to comply with the requirements of this chapter shall constitute a violation. Should the Town determine franchisee to be in violation of this chapter or their respective agreements, the Town may foreclose on all or any part of any security provided for under this chapter or in the respective agreements, including, without limitation, any bonds or other surety; provided however, the foreclosure shall only be in such a manner and in such an amount as the Town reasonably determines is necessary to remedy the default and provided that the Town shall not make any withdrawals by reason of any violation for which the franchisee or licensee has not been given notice. A person who is found to be in violation of this chapter shall thereafter be made to comply with all applicable requirements and shall be required to submit all paperwork and pay all required fees.

B. Failure to obtain the necessary approvals shall additionally result in late charges for the time period in which the violator did not have approval plus the actual costs incurred by the Town in enforcing this chapter against a person found in violation. In such an instance, the offender shall be required to remove all equipment illegally placed in the Town rights-of-way and to restore said property to its original condition in addition to any other penalty provided by law. Failure to follow the procedures in this chapter may result in the refusal by the Town to consider future applications for permits, licensees or franchises.

C. In the event that a permit in furtherance of a franchise has been issued to a franchisee by the Town, franchisee's failure to comply with the requirements set forth by law and all standards required by the Town may additionally result forfeiture of the permit as determined by the Town Board after notice and reasonable opportunity to be heard is extended to the franchisee.

D. Sanctions.

(1) In addition to all other rights and powers pertaining to the Town by virtue of any franchise, license, this chapter or otherwise, the Town reserves the right to impose penalties or liquidated damages, revoke, terminate, or reduce the term of any franchise or license and all rights and privileges of a franchisee in the event that franchisee:

(a) Defaults in the performance of any of its material obligations under its franchise or license, this chapter, or under such documents, contracts and other terms and provisions entered into by and between the Town and the franchisee or licensee;

(b) Fails to provide or maintain in full force and effect, the liability and indemnification coverage as required herein;

(c) Frequently and materially violates any orders or rulings of any regulatory body having jurisdiction over the franchisee or licensee relative to this franchise or license unless such orders or rulings are being contested by the franchisee in a court of competent jurisdiction;

(d) Fails to receive necessary FCC approvals within the applicable and appropriate time;

(e) Attempts to evade any of the provisions of this chapter or its franchise or license agreement or practices any fraud or deceit upon the Town.

(2) A franchisee shall not be declared at fault or be subject to any sanction under any provision of its franchise or this chapter in any case in which performance of any such provision is prevented for reasons beyond the franchisee's control.

E. Any person who knowingly violates any prohibition in this chapter shall be guilty of a violation of this chapter and upon conviction thereof shall be fined the amount of \$500 per day for each week that such violation is proven to have occurred or continued.

F. In addition to any other remedies hereunder, the Town may seek an injunction or other judicial relief to mitigate or terminate a violation, or employ any other remedy available at law or equity.

G. Revocation, reduction of term and forfeiture of facilities.

(1) In the event that the Town believes that a franchisee or licensee has not complied with the terms of its license or franchise, the Town shall notify the franchisee in writing of the exact nature of the alleged noncompliance.

(2) Franchisee shall have 30 days from receipt of the notice described in Subsection G(1) above to:

(a) Respond to the Town contesting the assertion of noncompliance; or

(b) Cure such default; or

(c) In the event that, by the nature of the default, such default cannot be cured within the thirty-day period, the franchisee shall initiate reasonable steps to remedy such default and notify the Town of the steps being taken and the projected date that they will be completed.

(3) Forfeiture of facilities. Any communications facility constructed, maintained, or operated in this Town in material violation of this chapter, including but not limited to

default as to timely payment of annual fees hereunder, is subject to forfeiture; and the Town may seize, disable, remove, or destroy such facility upon thirty days' advance notice in writing to the franchisee or owner or operator thereof; provided, however, that where the safety of any person or property lawfully within the public rights-of-way is endangered thereby, only such notice as is practicable under the circumstances need be given.

(4) Revocation.

(a) A license or franchise may be revoked by the Town with the approval of the Town Board; provided, however, the Town shall have then given further notice of the Town's intention to revoke the license or franchise for failure to timely correct the breach or violation, and advising the franchisee of its right to demand, within 10 days, a public hearing with the Town Board.

(b) Following such hearing as the licensee or franchisee may demand, or upon the failure to make timely demand for a hearing, the Town Board may request public comments on the proposed revocation.

(c) The Town Board shall give public notice of its intention to consider the revocation of a license or franchise and shall hold a public hearing thereon unless waived by the franchisee. The Town Board shall thereafter determine by written resolution or other form of decision whether to revoke the franchise or license based on information presented at the public hearing and other evidence in the record. The resolution or other form of decision shall set forth the particulars of the breach of the franchise or license agreement or any violations of this chapter which were the basis for the revocation.

(d) Subject to applicable federal and state law, in the event the Town Board, after such meeting, determines that a licensee or franchisee is in substantial default of a material

provision of the license or franchise, the Town Board may declare the license or franchise to be revoked.

(e) In a situation where a license or franchise is revoked, in removing its plant, structures and equipment, the franchisee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public rights-of-way and public property in as good condition as prevailed prior to the franchisee's removal of its equipment and appliances without effecting the electrical or telephone cable wires, or attachments. The Town Highway Superintendent shall inspect and approve the condition of the public rights-of-way and public property. Liability and indemnity insurance as provided herein shall continue in full force and effect during the period of removal and until full compliance by the franchisee with the terms and conditions of this subsection and this chapter.

(f) In the event of a failure by a franchisee to complete any work required by Subsection G(4)(e) above, or any other work required by the Town Code within the time as may be established by the Town Board and to the satisfaction of the Town, the Town may cause such work to be done and the franchisee shall reimburse the Town the cost thereof within 30 days after receipt of an itemized list of such costs. The Town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(g) Upon the revocation of a franchise, the Town may require the franchisee to continue to operate the system for a period not to exceed six months from the date of such revocation. The franchisee shall, as trustee for its successor in interest, continue to operate the system under the terms and conditions of its franchise and to provide cable service that may be provided at that time. The Town shall be permitted to seek legal and equitable relief to enforce the provisions of this section.

(h) The termination and forfeiture of any license or franchise shall in no way affect any of the rights of the Town or franchisee under the license or franchise or any provision of law.

(5) No waiver. The failure of the Town to insist on timely performance or compliance by any person holding a license, franchise, lease, or work permit shall not constitute a waiver of the Town's right to later insist on timely performance or compliance by that person or any other person holding such a license, franchise, lease, or work permit.

Section 2. If any section of this local law shall be held unconstitutional, invalid, or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder of this local law.

Section 3. This local law shall take effect immediately upon filing with this state's Secretary of State.

RESOLVED, that the Town Clerk shall file a certified original of this local law in the office of the Town Clerk and one (1) certified copy in the Office of the Secretary of State, State of New York, such certified copy to have attached thereto a certificate executed by the attorney for the Town of Marlborough that it contains the correct text and that all proper proceedings have been had or taken for the enactment of this local law.

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Lanzetta	_____
Councilman Molinelli	_____
Councilman Corcoran	_____
Councilman Baker	_____
Councilman Koenig	_____

DATED: Milton, New York  
January 9, 2017

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COLLEEN CORCORAN, TOWN CLERK

U:\DOCS\10244\00320\LL\23A2625.DOCX



January 9, 2017

D).Resolution # 30 To adopt Local Law #2 of the year 2017

Supervisor Lanzetta proposes the following:

WHEREAS, a local law was introduced entitled A LOCAL LAW OF THE TOWN OF MARLBOROUGH, ULSTER COUNTY, NEW YORK TO AMEND CHAPTER 140 “TOW TRUCKS;” and

WHEREAS, a public hearing in relation to said local law was held on October 24, 2016 at 7:00 p.m., Prevailing Time; and

WHEREAS, notice of said public hearing was given pursuant to the terms and provisions of the Municipal Home Rule Law of the State of New York; and

WHEREAS, after public comment, certain amendments were made to the local law, which resulted in a second public hearing in relation to said local law to be held on January 9, 2017; and

WHEREAS, notice of the second public hearing was given pursuant to the terms and provisions of the Municipal Home Rule Law of the State of New York; and

WHEREAS, said local law has been on the desks of the members of the Town Board of the Town of Marlborough for at least seven (7) days, exclusive of Sunday;

NOW, THEREFORE, BE IT RESOLVED that the following local law is hereby enacted:

**TOWN OF MARLBOROUGH LOCAL LAW NO 2 OF THE YEAR 2017**

Section 1. Existing Chapter 140 of the Town Code is hereby deleted.

Section 2. A new Chapter 140 is hereby adopted as follows:

## **CHAPTER 140 “TOW TRUCKS”**

### **140-1 Declaration of purpose and intent**

- A. It is the intention of this Chapter of the Town Code to allow the Town of Marlborough, through its Police Department, to supervise and administer the removal of vehicles from the public highways of the Town that are disabled, abandoned, or otherwise need to be removed via a tow truck operators list from which the Police Department will call and request services in a rotating basis. This Chapter only applies to tow trucks called into service by the Town of Marlborough.
- B. It is hereby declared and found that it is of vital importance to the travelling public that disabled vehicles are removed from the roadways and highways as promptly as possible, that delay in removal results in restricting the movement of traffic unnecessarily and causes street accidents. The towing of disabled motor vehicles from the roadways and highways of the Town of Marlborough is a matter affecting the public interest and consequently should be subject to supervision and administrative control for the purpose of safeguarding the public against traffic problems and confusion at the scene of accidents, fraud and exorbitant rates and similar abuses. The Town Board believes that establishing a tow list for use by the police can accomplish this purpose.
- C. It is the intent of the Town Board of the Town of Marlborough to establish a fair and uniform regulation and procedure for the towing of vehicles. The following issues have been taken into consideration in the development of this Chapter:
  - 1. The needs of the public: To meet the needs of the public, the business practices on the part of private towing companies acting at the direction of the Town police must be regulated. Towing companies who wish to participate in the Town towing program must demonstrate that they can give prompt, safe, and professional service. The community needs tow operators who are competent and able to respond to calls within a minimum of time delay. This requirement mandates an appropriate

administrative response to deal with those towing agencies which do not provide services which meet Town Standards.

2. The needs of the towing industry: The needs of the towing industry must be met by providing them with a consistent system for the equitable distribution of tow calls within the Town. This provides the towing industry with clear and precise requirements for continued service to the community. This Chapter also allows for a fair and equitable means to resolve disputes between tow operators.
3. The needs of the Town police. The needs of the Town police must be met by providing for a clear procedure for contacting towing companies.

### **140-2 Definitions**

For purposes of this Chapter, the following terms shall have the following meanings:

**Permittee** – the person, corporation or other entity to whom a permit has been issued pursuant to this Chapter.

**Police Department** - the Police Department of the Town of Marlborough

**Towing** - The moving of a vehicle where a fee, charge or other consideration is directly or indirectly imposed for such moving.

**Towing Company or Towing Operator or Towing Business** - A person or entity engaged in the business of offering towing services whereby motor vehicles are moved by use of a motor vehicle designated or adapted for that purpose.

**Towing permit or Towing license** – A permit issued pursuant to this chapter.

**Tow truck** - A vehicle used for towing usually equipped with a crane, winch, tow bar, push plate or other device designed to pull or push a vehicle or to raise a vehicle or the front or rear end thereof or a flatbed tow truck.

**Town Board** – the Town Board of the Town of Marlborough

**Vehicle** - A motor vehicle as defined in § 125 of the Vehicle and Traffic Law, a tractor as defined in § 151-a of such law or a trailer as defined in § 156 of such law.

### **140-3 Permit required**

- A. A valid permit issued pursuant to this Chapter shall be required before a tow truck

operator or towing company will be permitted to tow a vehicle upon request by the Town of Marlborough Police Department.

- B. Nothing herein shall prohibit tow truck operators from outside the Town of Marlborough from entering the Town of Marlborough to remove a motor vehicle from a registered repair shop, garage, and salvage yard.
- C. It shall be unlawful for any person, corporation, or other entity to service or tow away any motor vehicle which has been involved in an accident without the prior consent of the owner or operator or the police officer at the scene of the accident.

#### **140-4 Criteria**

Every person, corporation, or other entity who desires to operate, except as herein otherwise provided, the business of automotive towing by a tow truck(s) or car carrier(s) owned, controlled or leased by him as a permittee on the rotational towing list maintained by the Town shall comply with the following criteria:

- A. The applicant must own or lease a licensed and registered New York repair shop within  $\frac{1}{4}$  mile of the Town of Marlborough or own or lease an impound or storage yard within  $\frac{1}{4}$  mile of the Town of Marlborough. All towing businesses must have a secure indoor or outdoor storage area available in which to store specific vehicles out of the public access. All outdoor lots utilized to store vehicles in conjunction with the Town tow list must be secured with a fence designed to limit or restrict access to the public.
- B. The towing business must be sufficiently staffed so that the vehicle owner may make payment and retrieve their vehicle within one (1) hour of contacting the towing business but only if that the one (1) hour window ends between the hours of 8:00 am and 6:00 pm. Otherwise, it shall be in the discretion of the towing company whether to permit evening/overnight retrieval.
- C. All towing business shall maintain adequate equipment to perform the required towing task.
- D. All towing business must be capable of a twenty-minute response time to the scene of the tow after receiving the request for their service.
- E. All towing companies must make their facilities and equipment available for scheduled inspections. These inspections will be made to ensure that each company has the

appropriate registration, equipment, insurances and an employee on site. The Police Department will give 48 hours' notice to the towing business for the inspection.

- F. All towing business shall comply with the requirement for the charging of fees as established from time to time by resolution of the Town Board.
- G. Required equipment. In addition to the required equipment specified in § 375 of the Vehicle and Traffic Law or as promulgated by the Commissioner of Motor Vehicles, all tow trucks shall be equipped with:
  - 1. Lettering on the truck identifying the exact name of the holder of the permit issued pursuant to this Chapter, as well as a phone number for the holder of the permit.
  - 2. An amber rotating light mounted at the top of the cab or on a light bar so that the light is visible for not less than 500 feet under normal atmospheric conditions.
  - 3. At least two yellow flashing lights to show the width of the vehicle from the rear.
  - 4. Speedy Dry or similar materials to absorb minor fluid spills. If the permittee, while at the scene for a tow, feels that it cannot safely or adequately handle the minor fluid spill, that permittee shall notify the officer on scene so that other arrangements may be made for the cleanup of the spill.
  - 5. Garbage bags for the removal of debris at the scene.
  - 6. A broom and shovel for clean up at the scene.

#### **140-5 Application**

- A. The Town Board, through the Town Clerk, shall accept all applications for permits from persons desiring to engage in the business of towing on such forms as adopted by the Town Board. Every person, corporation, or other entity who desires to operate, except as herein otherwise provided, the business of automotive towing by a tow truck(s) or car carrier(s) owned, controlled or leased by him as a permittee on the rotational towing list maintained by the Town shall be duly licensed as a tow truck operator in the Town upon written application, made under oath, as follows:
  - 1. The name and address of the applicant and the address of the place from which tow trucks are proposed to be garaged or dispatched, specifying, in the case of any corporation, the names and addresses of each member thereof and, in the case of any unincorporated association or other entity, the names and addresses of each

- officer, director and stockholder.
2. A copy of the valid registration and inspection for each of their towing vehicles. The registration on said towing vehicles must be registered in the name of the towing business which has been issued the permit from the Town of Marlborough pursuant to this Chapter.
  3. A list of drivers including a copy of their New York State issued driver's license indicating the appropriate classification to operate the tow trucks listed on the application, as well as a driver's abstract for each driver showing the license is valid and is not currently suspended or revoked. This list will be updated annually with each permit renewal.
  4. The number of vehicles proposed to be operated by the applicant and a description of each vehicle, including make, model, year of manufacture, New York State registration number and vehicle identification number. This will be updated yearly with the Town at the time of permit renewal.
  5. All crimes, if any, of which that applicant or any member thereof has been convicted and, if an unincorporated association, of which any officer or director has been convicted and, if a corporation, of which any officers, directors or stockholders thereof have been convicted, stating the name, if any, and location of the courts and the dates on which such convictions were had and the penalties imposed thereon
  6. Proof of insurance in the minimum amount of \$500,000 personal liability and \$150,000 property damage liability, which shall include a garage keeper's legal liability policy to cover fire, theft, and property damage that will fully cover any vehicle towed, impounded or stored and will keep such policy in effect throughout their permit period. Additionally, all towing companies will name the Town of Marlborough as coinsured on their policies.
  7. That the applicant satisfies all the criteria of subsection 140-4, above.
  8. Any additional information as reasonably requested by the Town.
- B. The Town Board may, in its sole discretion, adopt a renewal application form to be submitted each year by existing permit holders.

**140-6 Review of Application; Recommendation to Town Board**

- A. All applications shall be reviewed by the Police Liaison Committee, consisting of the Chief of Police and two (2) members of the Town Board. The Police Liaison Committee shall:
  - 1. Review the application for compliance with the criteria of this Chapter; and
  - 2. Verify that any repair shop or impound or storage yard within the Town of Marlborough is in compliance with all applicable planning, zoning and building laws; and
  - 3. Conduct any necessary inspections of either vehicles and/or the repair shop or impound or storage yard in order to determine compliance.
- B. The Police Liaison Committee shall make a recommendation to the full Town Board on whether to approve or deny the application for a towing permit within 20 business days from the date the application was submitted to the Town Clerk. The Town Board shall then review the application and adopt a resolution approving or denying the application within 30 days from the date it receives the recommendation of the Police Liaison Committee. The Town Board is not bound by the recommendation of the Police Liaison Committee but shall consider the recommendation in addition to the information set forth in the application.

**140-7 Approval: Issuance of Permit for Vehicles.**

Upon passage of a resolution by the Town Board approving the application, the Town Clerk shall issue a permit to the applicant after a review process. Before the permit is issued, the applicant shall pay the fee for a permit in an amount set by resolution of the Town Board. Every permit issued hereunder shall expire on the 31st day of December next succeeding the date of its issuance unless sooner revoked, as hereinafter provided. For the year 2017 only, permit fees shall be pro-rated based upon the month in which the permit is issued.

**140-8 Denial of permit: Appeal**

The Town Board may deny a permit to any applicant whom the Town Board shall find does not satisfy the criteria set forth in this Chapter or that the Town Board shall determine

to be incapable of properly conducting a road service or tow truck business. If the Town Board shall deny any application for a license, such denial shall be in writing and state the reasons therefore. Any applicant who shall be denied a license, for any reason other than the fact that the tow list has reached the maximum number of permittees per subsection 140-10(B), shall have the right to appeal such denial to the Town Board within 20 business days with a written submission explaining why the Town Board's denial was in error and why the application should be approved. A decision of the Town Board to approve or deny such an application after an appeal to it shall be in writing and entered into the minutes. After the administrative appeal, such decision shall then be considered final. The applicant shall then have the right to challenge the decision by way of Article 78 or other action that may be appropriate.

#### **140-9 Nontransferability of Permit**

Each license shall not be transferred from one person to another or from vehicle to vehicle. Notification of vehicle replacement must be made within 30 days to the Chief of Police, who in turn will notify the Town Clerk and have the application updated.

#### **140-10. Permit list; General Procedure**

- A. Lists: Two Rotational lists shall be kept. Only permitted towing companies will be included on these lists. An up to date copy of the rotational tow list will be made available to the public. This list will be maintained in the lobby of the police station. The public can view the list 24 hours a day and it will be updated at least once per business day to reflect the current state of the rotation.
  - 1. One list shall be for normal passenger vehicles and light trucks.
  - 2. The second list shall be used for towing companies capable of towing larger commercial type vehicles (GVWR of 18,001 lbs or more) otherwise known as the heavy-duty list.
- A. Each list will be limited to eight (8) permittees. This number has been determined based upon the number of tow companies historically on the Town's tow list for passenger vehicles and light trucks. The purpose is that each permittee receives enough calls for service during any given year that tow companies wish to continue to apply for inclusion



on the tow list.

1. As December 1, 2016, there are eight (8) companies on the tow list for passenger vehicles and light trucks. In 2017, those eight (8) companies will receive priority for inclusion on the tow list under this Chapter, assuming each tow company complies with all application requirements and the payment of the permit fee within the time limits set by the Town Board.
  2. For years 2018 and forward, any towing company submitting any application for the renewal of an existing and valid permit issued under this Chapter shall maintain its spot on the list, assuming the towing company submits their renewal application and pays the permit fee within the time limits set by the Town Board.
  3. When a tow list has reach the maximum of eight (8) permittees, any new applications received shall be date stamped and remain on file with the Town Clerk. Upon the opening of a spot on the two list, the first application to have been filed will be reviewed and processed for possible inclusion on the tow list.
- B. Priority for contacting towing companies shall be made in the following sequence:
1. Emergency needs at the towing scene when, in the sole reasonable discretion of officer at scene, it is necessary for the vehicle to be immediately towed from the scene for safety reasons.
  2. Owners request for a specific towing agency (within a reasonable distance and if applicable).
  3. Next permittee from the rotational towing list.
- C. Permittees will initially be placed on the towing list in random order. Once the use of the towing list has been commenced, a new permittee to be included on the list shall be placed on the bottom of the list.
- D. Each company shall be allowed 5 rings to answer the phone and the company will be allowed three (3) minutes to return any voicemail message when the call is not answered.
- E. Once a tow company has not answered a call or is not available, they will be deemed a declination and the next company on the list contacted and afforded the same opportunity. This practice will be repeated until the list is exhausted. A permittee who does not answer a call or is not available when called shall lose his turn on the towing roster and must wait for the roster to be called again in its entirety before he is eligible to

be called again. If the entire tow list has been called and those calls have failed to obtain a response to an incident, then the closest available tow from an adjacent town shall be utilized. The same principal shall apply when seeking a heavy-duty tow truck. If there are none available in Town, then the closest to the scene from an adjacent town will be utilized.

- F. In the event that a permittee called for towing or service assistance is unable or fails to arrive at the location within a twenty-minute time period, the next permittee on rotation shall be called and the first permittee shall lose its turn in rotation. If a permittee uses an answering service, the twenty-minute response time shall commence when the original phone call is made and not from the time voice contact is made with that tow company.
- G. Assistance:
  - 1. If a permittee on the passenger vehicle/light truck tow list accepts a call from the established list, they must respond to the scene. In the event that the responding company cannot complete the task at hand without assistance, the original responding company may, after notifying the officer at the scene, seek the assistance of another permittee on the established tow list without a loss of turn or spot for either company responding. Both the original accepting company and the assisting company must be involved in completing the tow. If the police officer on the scene, in his/her sole discretion, finds that the tow is simply being handed over to the assisting company, both companies will lose their spot in the rotation of the list. In the event the two companies together cannot complete the task, then the next company on the list will be called and the original accepting company will lose their spot on the list and be marked as unable to provide services requested.
  - 2. If a permittee on the heavy-duty tow list cannot complete the task at hand without assistance, the original responding company may seek the assistance from first, another permittee on the heavy-duty tow list or, if there is no other permittee on the heavy-duty tow list, a towing company outside of the Town. Both the original accepting company and the assisting company must be involved in completing the tow. If the police officer on the scene, in his/her sole discretion, finds that the tow is simply being handed over to the assisting company, the original accepting

company and the assisting company (if a permittee on the heavy-duty tow list) will lose their spot in the rotation of the list.

- H. In the event that the permittee responds and the vehicle is no longer in need of tow or the vehicle is no longer present at the site, he will not lose his turn on the rotational list.
- I. It shall be unlawful for a permittee to transfer or exchange his place on the roster to any other license on the roster. Additionally, participating tow companies may not send another company's tow truck in their place to handle a tow request they have in fact accepted.
- J. If more than one tow truck is needed at the scene of an accident, the dispatcher shall call the next permittee in rotation. In that event, the choice of disabled motor vehicles to be towed shall be determined by the officer in charge.
- K. A permittee shall have but one place on the towing roster although he maintains several licensed tow trucks in the Town of Marlborough.
- L. Any permittee willfully refusing to tow away a motor vehicle shall lose his turn in rotation.
- M. All participating tow companies will provide up to three telephone numbers to be called for tow assignments in priority order. Pager numbers will not be utilized.

#### **140-11 General Regulations**

- A. Tow companies shall be available 24 hours per day, seven days a week. Tow companies must be willing to respond to any type of tow call, whether it be a collision, disabled vehicle, impound, etc. Tow companies who do not desire to tow at night or weekends, etc. or who elect to respond only to certain types of tow calls, will not be considered for placement on the towing list. (This does not preclude the tow company from being called as a result of an owner's request.)
- B. Failure to respond to three calls, absent extenuating circumstances, will result in temporary suspension from the towing list for a period of 20 consecutive days which will be imposed in accordance with subsection 140-13.
- C. All permittees called upon to impound a vehicle for the Town of Marlborough Police Department must store the vehicle within  $\frac{1}{4}$  mile of the limits of the Town of Marlborough unless otherwise directed by a member of the Police Department.

- D. The permittee shall be responsible for the collection of all fees for service, towing or storage of any vehicle. Neither the Town of Marlborough nor the Town of Marlborough Police Department shall act as agent for the collection of any fees, nor shall they be held responsible in the event of nonpayment of any moneys due to any permittee as a result of service performed in accordance with this chapter.
- E. When called to the scene of an accident, the permittee shall be responsible for removing debris from the roadway.
- F. Absent extenuating circumstances (such as severe snow storms, states of emergency, etc. where tow companies will be extremely busy), tow companies will not contact the Town Police and attempt to leave phone numbers of an on call tow truck operator. It shall be in the sole discretion of the Chief of Police whether such extenuating circumstances exist to permit tow truck operators to leave on call numbers with the Police Department.
- G. Town Police and Town Employees shall comply with the following guidelines:
  - 1. The towing of vehicles will be completed in accordance with both the Town Police Manual/Rules and Regulations and the procedures set forth in this Chapter.
  - 2. The tow company, whether an owners request or from the tow list, shall not be changed once the company has been notified to respond to the scene.
  - 3. Police Officers and Town Employees shall not offer personal recommendations to motorists who wish to request the tow, but have no preference of a tow company. Police Officers and Town Employees shall inform the person in need that a tow list is maintained, comprised of certain companies which have all met certain criteria, thus offering them the opportunity to be utilized for towing calls. If an “owner’s request” is made, an owners request form will be completed by the officer at the scene and signed by the person making such request. This list will be maintained at the Police Department for record keeping purposes.
  - 4. A towing log shall be maintained at the Town Police Department answering point (Dispatch). After a towing agency has been contacted, and has failed to answer after 5 rings or failed to return a voicemail within three (3) minutes, the call shall be logged onto the towing log. The log shall include the name of permittee, the time of call, the blotter number associated with the event requiring a tow and whether or not the company responded. Upon the companies’ response to the scene, the officer on the

scene shall advise dispatch of the arrival. The arrival time shall then be recorded on the towing log.

**140-12 Soliciting prohibited.**

It shall be unlawful for any person, corporation, or other entity to solicit towing or repair work at the scene of any motor vehicle accident on private property or on a public highway in the Town of Marlborough. A participating tow company shall be considered to be in violation of this section if they come within 500 feet of the scene of an accident or of a disabled vehicle without being called to the scene by either the Town, another governmental agency or owner request. Any participating tow company truck alleged to be in violation of this section will be subject to an investigation by the Chief of Police or his designee and potential penalties as set forth in this Chapter.

**140-13 Penalties for offenses.**

A. Permit Suspension or Revocation

1. The Town Board may, in each case, after a hearing on seven (7) days' notice to the permittee of the alleged violations of this Chapter, impose penalties against any permittee that the Town Board shall determine has violated any provisions of this Chapter. The permittee shall be permitted to submit its response to the allegations either in person during the hearing or in writing. If the Town Board should find that the permittee has violated this Chapter, penalties are as follows:
  - a. First offense: 20-day suspension from the rotation towing program.
  - b. Second offense: A suspension from the rotation towing program for up to one year.
  - c. Third offense: Permanent revocation of towing permit. If revoked, the towing company will not be eligible to reapply for a towing permit.
2. A decision of the Town Board to impose a suspension or revocation of a permit shall be in writing and entered into the minutes. Such decision shall then be considered final. The applicant shall then have the right to challenge the decision by way of Article 78 or other action that may be appropriate.

In addition to the penalties provided in subsection 140-13(A), any person, corporation, or other entity that violates any provision of this Chapter shall, upon conviction, be subject to a fine of up to \$100 for a first offense, and up to \$250 for each additional offense thereafter. The Chief of Police and/or his designee is hereby empowered by the Town Board with the duty, power and authority to enforce the provisions of this Chapter.

**140-14. Severability.**

If any section, paragraph, subdivision, clause or provision of this chapter shall be adjudicated as invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudicated and the remainder of this chapter shall be deemed valid and effective.

Section 3. This Local Law shall take effect immediately upon filing with the Secretary of State.

RESOLVED that the Town Clerk shall file a certified original of this local law in the office of the Town Clerk and one (1) certified copy in the Office of the Secretary of State, State of New York.

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Lanzetta	_____
Councilman Baker	_____
Councilman Corcoran	_____
Councilman Koenig	_____
Councilman Molinelli	_____

DATED: Milton, New York  
January 9, 2017

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COLLEEN CORCORAN, TOWN CLERK

January 9, 2017

E). Resolution #31 To reappoint part time police officer

Supervisor Lanzetta proposes the following:

Be it resolved that Andres Arestin be reappointed as part time police officer effective January 21, 2017.

And moves for its adoption

Councilman Corcoran	-----
Councilman Molinelli	-----
Councilman Koenig	-----
Councilman Baker	-----
Supervisor Lanzetta	-----