

MEETINGS: 22
NO. OF REGULAR: 21

VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF DEPEW
January 27, 2020 7:00PM

ROLL CALL: Trustee Jakubowski – Pr
Trustee Stempniak - Pr
Trustee Hamernik - Pr
Trustee Voll - ABS
Mayor Peterson– Pr

ON A MOTION BY, Trustee Jakubowski, and seconded by Trustee Hamernik the January 13, 2019 Village Board Minutes were approved.

PUBLIC COMMENT

Verizon Wireless representatives were present to address the board regarding their feelings on the amendment. They would like to schedule a meeting with the board to discuss this in person, in more detail. They are very interested in coming into the Village with their 5G small cell wireless towers. Meeting to be scheduled.

AUTHORIZE ADMINISTRATOR TO ADVERTISE FOR PUBLIC HEARING
-AMENDMENT TO § 220 ARTICLE II § 220-13 – LOCAL LAW 1 OF 2020

Be It Resolved; the Village Administrator held a public hearing on Monday January 27, 2020 at 7:00PM in the Depew Village Hall Council Chambers The purpose of this hearing is to consider Local Law 1 of 2020 authorizing an amendment to the existing Telecommunications Facilities Law Chapter 220. Adding 220-13 – Small Wireless Facility to the existing Chapter 220 Telecommunications Facility in the General Municipal Law. If adopted, the proposed local law addition shall read as follows:

AMENDMENT TO § 220 ARTICLE II § 220-13

Small Wireless Facilities.

A. Conditions Applying to All Small Wireless Facilities

1. Definitions. As used in this section, the following terms shall have the meanings indicated.

APPLICANT: A person or entity submitting an application to the Village for a Special Use Permit under this Section.

CAMOUFLAGE: To use concealment techniques to blend the installation of the structure into the surrounding area by mimicking its surroundings or otherwise disguising it in the environment.

CO-LOCATE: For purposes of this Section, co-locate or collocation shall mean mounting or installing a SWF on a pre-existing structure and/or modifying a structure for the purpose of mounting or installing a SWF on that structure.

CONCEALED INSTALLATION ON BUILDING: Building-mounted Small Wireless Facilities that completely screen all associated equipment and facilities from public view by approved methods that are in keeping with the character of the building, surrounding area and any applicable design guidelines or standards as determined by the Village.

GROUND-BASED EQUIPMENT or GROUND-BASED ENCLOSURES: Any equipment associated with installation of a Small Wireless Facility and/or support structure that will be located on the

surface of the ground with some or all of the facility located above grade.

LICENSE: The document granted to an individual under this Section, which permits its holder, the Licensee (see definition), to have all the rights, privileges, and obligations arising under this Local Law. Any license issued under this Section is non-exclusive and is subject to the limitations provided herein.

LICENSEE: Any person having applied for a License under this Section and holding such a License.

PERMITTEE: An Applicant that has received a Special Use Permit under this Section.

POLE: A legally constructed pole, such as a utility, lighting, traffic, or similar pole.

RIGHT-OF-WAY or ROW: The area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, under the jurisdiction of the Village.

RF: Radio frequency.

SMALL WIRELESS FACILITY or MICRO WIRELESS FACILITY, SMALL CELL, "SWF": A wireless facility that meets both of the following qualifications:

- (i) each antenna is located inside an enclosure measuring no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six (6) cubic feet; and

- (ii) all other wireless equipment associated with the facility measuring no more than twenty-eight (28) cubic feet in volume.

The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

SUPPORT STRUCTURE: A freestanding structure such as a utility pole, monopole, or other existing or proposed structure designed to support or be capable of supporting wireless facilities.

UTILITY POLE: A pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications; cable or electric service; or for lighting, traffic control, signage, or a similar function regardless of ownership, including Village-owned poles. Such term shall not include structures supporting only Small Wireless Facilities.

2. Purpose and Legislative Intent

a. The Village desires to encourage small-cell wireless telecommunication infrastructure investment by providing a fair and predictable process for the deployment, while enabling the Village to promote the management of its public ROW in the overall interests of the public health, safety, and welfare. The Village recognizes that wireless facilities are critical to delivering wireless access to advanced technology, broadband, and 911 services to homes, businesses, and schools within the Village, and new technology has increased the need for towers and antennas to serve the Village. The Village further recognizes that SWF often may be deployed most effectively in the ROW. The Village desires to enact a legal framework which will permit the expedited review process for the deployment of such SWF when specified criteria are met and to permit placement of towers and antennas in locations which will allow telecommunications services to be rendered in conformity with both the Federal Telecommunications Act of 1996, and with the goals of local comprehensive plans and zoning ordinances. b. In enacting this Section, the Village is establishing uniform standards to address issues presented by SWF, including, without limitation, to:

1. Prevent interference with the use of streets, sidewalks, alleys, parkways, and other public ways and places;
2. Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
3. Prevent interference with existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
4. Ensure reasonable efforts are made to preserve the character of neighborhoods in which facilities are installed;
5. Protect community aesthetics and visual and historic resources;
6. Protect against environmental damage, including damage to trees;
7. Facilitate the installation of SWF to provide benefits of reliable access to wireless telecommunications technology, broadband, and 911 services to homes, business, and schools within the Village;

3. Applicability

This Section applies to all existing SWF and all Applications and requests for approval to construct, install, modify, co-locate, relocate, or otherwise deploy SWF.

4. Application Requirements.

a. Special Use Permit Application. All persons wishing to construct, install, modify (except for in-kind replacements of previously permitted SWF), co-

locate, relocate, or otherwise deploy SWF must submit an application for a Special Use Permit for approval by the Village Board of the Village of Depew. The Village Board shall follow the procedures set forth in New York Village Law § 7-725-b for consideration of the Special Use Permit Applications. The SWF Special Use Permit Application shall contain the following, to include 9 hard copies and 1 digital copy:

1. Letter Application and Applicable Application Fee(s). The letter application must contain a detailed description of the proposal, the number of SWFs involved in the subject application, their proposed locations, and a description of the proposed locations, including the zoning districts and nearby land uses. The letter application must also contain the Applicant's name and contact information, as well as the names and contact information for all consultants acting on behalf of the Applicant, if any.
2. Owner's Authorization and/or Evidence of Property Rights. The Applicant must demonstrate it has adequate real property rights for the installation and maintenance of the SWF. This would include, but not be limited to, owner authorization, an easement, a lease, and/or a License issued pursuant to this Section. The Applicant bears all risk that it has the legal right to construct the SWF in the designated location.
3. Project Plans. The Applicant must provide a fully dimensioned site plan and elevation drawings prepared and sealed by a New York-licensed engineer showing any existing wireless facilities with all existing transmission equipment and other improvements, the proposed SWF with all proposed transmission equipment and other improvements and the legal boundaries of the leased, licenses, or owned area in the general vicinity surrounding the proposed SWF and any associated access or utility easements.
4. Site Photos and Photo Simulations. The Applicant must provide photographs and simulations that show the proposed SWF in context of the site from reasonable line-of-sight locations from public streets or other adjacent viewpoints, together with a map that shows the photo location of each view angle. These simulations must indicate both location of the proposed SWF as well as design aesthetics that reflect compliance with this Section.
5. RF Compliance Demonstration. The Applicant must provide an RF exposure compliance report prepared and certified by a New York licensed engineer acceptable to the Village that certifies that the proposed SWF, as well as any co-located SWF, will comply with applicable federal RF exposure standards and exposure limits. The RF report must include the actual frequency and power levels (in watts effective radiated power ("ERPP")) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of the areas

with RF exposures in excess of the controlled/occupations limit (as that term is defined by the FCC)). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site in accordance with FCC requirements, if applicable.

6. Acoustic Analysis. The Applicant must provide a written report that analyzes acoustic levels for the proposed SWF and all associated equipment. The acoustic analysis must be prepared and certified by an engineer and include an analysis of the manufacturer's specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. This requirement may be satisfied by providing manufacturers specifications of the SWF demonstrating that the equipment does not generate noise, or generates noise at an imperceptible level.

7. Project Purpose Statement/Need Demonstration. The Applicant must provide a written statement that includes:

- a. A description of the technical objectives to be achieved, including the services to be offered and/or improvement of existing services;
- b. An annotated topographical map that identifies the targeted service area to be benefited;
- c. The estimated number of potentially affected users in the targeted service area; and
- d. Full-color signal propagation maps with objective units of signal strength measurements that show the Applicant's current service coverage levels from all adjacent sites without the proposed site, predicted service coverage levels from all adjacent sites with the proposed site, and predicted service coverage levels from the proposed site without all adjacent sites (or a statements that the objectives are other than coverage related).

8. Alternatives Analysis. The Applicant must list all existing structures considered as alternatives to the proposed location, together with a general description of the site design considered at each location. The Applicant must also provide a written explanation for why the alternatives considered were unacceptable or not feasible, unavailable or not as consistent with the design standards. This explanation must include a comparative analysis and such technical information and other factual justification as are necessary to document the reasons why each alternative is unacceptable, not feasible, unavailable, or not as consistent with the design standards in this Section as the proposed location. This would include an analysis of the siting preferences set forth in this Section.

9. The Applicant shall provide manufacturer's information for the SWF and support structure, if applicable.

10. The Applicant shall provide technical specifications of the SWF and support structure, if applicable, and evidence that such structure is capable of handling the addition of SWF.

11. The Applicant shall provide a written maintenance and removal plan, made to and acceptable by the Village, to include an agreement by the Applicant and/or owner to remove all the components of the SWF in the event the facility becomes non-functional, ceases to be used for its originally intended purposes or is otherwise abandoned, as determined by the Village. The maintenance and removal plan shall remain in full force for the life of the SWF. An acceptable bond and/or surety, for the purposes of removing the SWF, submitted to the Village for review, shall be purchased and remain in force for the life of the SWF.

12. The Applicant shall provide any other items that the Village shall deem necessary for a thorough and complete review of the proposal.

b. One Application Required. Although each SWF requires its own Special Use Permit, the Applicant need submit only one Application regardless of the number of proposed SWF or locations. The Board may, in its sole discretion, deny the Application, grant the Application in full, or partially grant the Application by issuing Special Use Permits for only some of the SWF proposed in the Application.

c. Maintenance. Subject to the requirements for the initial application, an Application shall not be required for routine maintenance or in-kind replacement, unless otherwise specified within this Section. In-kind replacement shall mean replacement of an existing permitted SWF with another SWF of the substantially same dimensions, appearance, and characteristics. Any other modifications or replacements of any portion of a SWF shall require an amendment to the Special Use Permit, requiring compliance with all applicable requirements and procedures set forth in this Section.

d. Application Fees. The Applicant shall pay the Village a fee for review of the Special Use Permit Application, in an amount to be determined by the Village Board by resolution, which may be amended from time to time by further resolution.

e. Third-Party Professional Consultants. The Village, in its sole discretion, may retain third-party consultant(s) to assist in the review of a proposed SWF. The cost of such third-party consulting services shall be reimbursed by the Applicant to the Village within thirty (30) days of the Village receiving an invoice for third party consulting services.

5. Exceptions to the Special Use Permit Requirement. The following SWFs shall be -exempt from the Special Use Permit requirements of Section 260-59 and, upon compliance with the substantive requirements of this Section, require only an approval determination from the code enforcement officer. The fee for this review by the code enforcement officer shall be in an amount to be determined by the Village Board by resolution, which may be amended from time to time by further resolution.

- a. SWFs that are Concealed Installations on Buildings or Camouflaged on existing buildings within the following zoning districts: C1, C2, M1, M2 and MS.
- b. Collocation on existing Poles that are within the following zoning districts: C1, C2, M1, M2 and MS.

6. Site Location Guidelines.

- a. Preferred Locations. The Village prefers co-location and siting in manufacturing and/or commercial business districts as defined in Chapter 260 over residential zoning districts. The Village prefers collocation as opposed to the construction of a new support structure. The Village prefers the siting on existing buildings, provided they are camouflaged or concealed.
- b. Discouraged Locations. The Village discourages new support structures and the location in residential zoning districts, although siting in residential districts may be necessary if no alternatives are available to meet the provider's objectives. Where possible, efforts should be made to co-locate or to locate in manufacturing or business zoning districts. If location in a residential zoning district is necessary, techniques to minimize aesthetic impacts are mandatory, including Camouflage.
- c. Prohibited Locations. The Village prohibits any structures or parts of structures associated with SWF placement from obstructing access to above- or underground traffic control infrastructure, public transportation vehicles, shelters, street furniture, or other improvements, above- or underground utility infrastructure, fire hydrants, doors, gates, or other ingress and egress points to any building appurtenant to the ROW, or any fire escape. Ground-mounted equipment shall not be closer than twelve (12) feet from any existing lawful encroachment in the ROW and driveway aprons.

7. Design Standards.

- a. Construction categories. Each SWF shall comply with the standards set forth for each location type.
 - 1. Existing support structure or replacement support structure of the same type, size, and height, in the same location.
 - a. Equipment. All equipment must be installed as close to the Support Structure as technically feasible to minimize its visibility from public view to the greatest extent feasible. All conduits, conduit attachments, cables, wires, and other connectors shall be concealed from the public view to the greatest extent feasible. Ground-mounted equipment is not preferred and shall be minimized to the greatest extent feasible. Where used, ground mounted equipment must incorporate concealment techniques in compliance with the requirements of subsection (c) of this Section 7.

b. Minimum Clear Height. With the exception of any ground mounted equipment, no part of the SWF shall be less than ten (10) feet above grade or the maximum height permitted by the owner of the utility pole as confirmed by the utility pole owner in writing.

c. Maximum Height. No part of the SWF shall exceed ten (10) feet above the existing Support Structure. Ground mounted cabinets shall be secured to a concrete slab and shall not exceed three feet in height.

d. Maximum Volume. The maximum volume of each antenna shall not exceed six (6) cubic feet.

e. Maximum Equipment Volume. The maximum equipment volume shall not exceed twenty-eight (28) cubic feet, or fifteen (15) cubic feet for ground-mounted equipment.

f. Reservation of Rights. The Village reserves its right to request additional information, analysis, studies, including further expert opinion, at the Applicant's expense, pertaining to the Application and any issues of concern.

g. Each SWF shall be on one support structure.

h. Each SWF shall be at least 500 feet from another SWF.

2. New support structure.

a. Basis. The Village will consider new poles only if the Applicant can demonstrate that replacing or utilizing an existing pole is not possible or feasible. Any new poles must meet all Village and other applicable laws.

b. Support Structure Requirements. All Applicants shall propose new Support Structures that complement the community character of the area, and any applicable design guidelines that may exist for the area. When existing utility poles exist, new support structures may feature a similar design and aesthetic. Where no existing utility poles exist, architecturally significant support structures shall be proposed, including, but not limited to, flag poles and decorative light standards.

c. Equipment. All equipment must be installed as close to the support structure as technically feasible to minimize its visibility from public view. All conduits, conduit attachments, cables, wires, and other connectors shall be concealed from the public view to the greatest extent feasible. Ground-mounted equipment is not preferred and shall be minimized to the greatest extent feasible. Where used, ground-mounted

equipment must incorporate concealment techniques in compliance with the requirements of subsection (c) of this Section 7.

d. Minimum Clear Height. With the exception of any ground mounted equipment, no part of the SWF shall be less than ten (10) feet above grade or the maximum height permitted by the owner of the utility pole as confirmed by the utility pole owner in writing.

e. Maximum Height. No part of the SWF shall exceed fifty (50) feet above ground level or ten (10) feet above the average height of all Utility Poles within a five hundred (500) foot radius, whichever is greater. This is the maximum height and the Village may approve a lesser height depending on the surrounding structures and character. Ground mounted cabinets shall be secured to a concrete slab and shall not exceed three feet in height.

f. Maximum Diameter. The maximum diameter of any new poles not intended for public distribution shall not exceed twenty-four (24) inches at the base.

g. Maximum Volume. The maximum volume of each antenna shall not exceed six (6) cubic feet.

h. Maximum Equipment Volume. The maximum equipment volume shall not exceed twenty-eight (28) cubic feet, or fifteen (15) cubic feet for ground-mounted equipment.

i. Installation. Any new poles not intended for public distribution shall:

i. Be installed as far as practicable off the traveled way;

ii. Meet the height requirements set forth herein;

iii. Not be installed in the ROW unless fixed objects exist at the same or closer distance from the roadway;

iv. Not be any closer to the roadway than any existing pole line;

v. Be buried with no foundation unless an exception is justified and approved by the Village Engineer or designee; and

vi. To the extent practicable, be located outside of residentially-zoned neighborhoods.

j. Reservation of Rights. The Village reserves its right to:

- i. Reject new poles for any of the following reasons: traffic, safety, conflict with existing structure or utilities, conflict with pedestrian or complete street features, or future planned activities. Any notice of denial must be in writing and explain the basis for the denial, and be sent to the Applicant and the authority controlling the ROW, if not controlled by the Village of Depew.
- ii. Request additional information, analysis, studies, including further expert opinion, at the Applicant's expense, pertaining to the Application and any issues of concern.

3. Concealed Installation on Building.

- a. Equipment. All equipment must be installed such that its visual appearance is consistent with other accessory mechanical and/or building service appurtenances. All conduits, conduit attachments, cables, wires, and other connectors shall match the color of existing building mechanicals or the adjacent building material color. Ground-mounted equipment is not preferred and shall be minimized to the greatest extent feasible. Where used, ground mounted equipment must incorporate concealment techniques in compliance with the requirements of subsection (c) of this Section 7.
 - b. Minimum Clear Height. With the exception of any ground mounted equipment, no part of the SWF shall be less than ten (10) feet above grade.
 - c. Maximum Height. No part of the SWF shall exceed ten (10) feet above the building roof or parapet wall. Ground-mounted cabinets shall be secured to a concrete slab and shall not exceed three feet in height.
 - d. Maximum Volume. The maximum volume of each antenna shall not exceed six (6) cubic feet.
 - e. Maximum Equipment Volume. The maximum equipment volume shall not exceed twenty-eight (28) cubic feet, or fifteen (15) cubic feet for ground-mounted equipment.
 - f. Applications. Applicants must secure an approved building permit.
- b. Engineering Requirements. The applicant must provide an installation design prepared by a professional engineer licensed in New York State that demonstrates the pole strength of the pole to be used.
- c. Aesthetic Requirements. The character of the neighborhood and the visual quality of the surroundings must be taken into account when

installing SWF, whether to new or existing poles. In order to avoid unnecessary adverse visual impacts and to preserve the area in which the SWFs are being installed, and in addition to the conditions set forth above, all SWFs shall meet the following requirements:

1. Poles and equipment shall be painted in a neutral color that is consistent with other new and existing poles in the general geographic area so as to reduce visual intrusiveness, unless existing surrounding poles are not painted.
2. Poles shall be constructed of the same or similar material as other new and existing poles in the general geographic area.
3. Poles shall be constructed in the same or similar shape as other new and existing poles in the general geographic area.
4. Poles may be camouflaged or disguised as deemed appropriate by the Village Board.
5. No artificial lighting is permitted on the pole unless otherwise required by law or permitted e.g., where no existing utility poles exist and a decorative light pole is used with express permission. Any permitted lighting must be consistent in design and bulb type with other lighting fixtures in the general geographic area.
6. Commercial signage is not permitted on any pole unless already existing at the time of the installation.
7. Equipment shall be affixed to the pole in a tight, neat, and orderly fashion. Where possible, equipment shall be flush mounted with the pole and in no case shall offset mounting exceed the greater of six (6) inches or the minimum distance permitted by the owner of the pole as confirmed by the owner of the pole in writing. No wires may be loose or dangling, with a preference that the wires be enclosed within the pole where possible.
8. Equipment shall consistent in size with the pole of which it is being attached and minimally shall be consistent with the suggested designs shown in the Appendix to this Section.
 - a. Maximum Volume. The maximum volume of each antenna shall not exceed six (6) cubic feet.
 - b. Maximum Equipment Volume. The maximum equipment volume shall not exceed twenty-eight (28) cubic feet.
9. Ground mounted equipment shall be minimized to the greatest extent feasible. Where used, ground equipment shall incorporate camouflage techniques matching color and materials of the wireless support structure, unless other materials or colors are approved by the Village. Applications shall include proposed camouflage techniques for ground-

mounted equipment, which may include, but are not limited to: strategic choice of color, paint, and/or materials, landscaping, placement in less visible locations, and placement within existing or replacement street furniture.

8. Waiver. For good cause shown, the Village Board may grant a waiver of any of the provisions of this Section. The burden of demonstrating good cause is on the Applicant.

9. Standard Conditions of Approval. In addition to any other conditions imposed by the Village Board or the code enforcement officer in the case of applications exempt from the Special Use Permit requirement, Special Use Permits and approvals by the code enforcement officer for the installation of SWFs shall be automatically subject to the conditions set forth herein. The Village Board and/or the code enforcement officer shall have discretion to modify or amend these conditions on a case-by-case basis as may be necessary or appropriate under the circumstances to allow for the proper operation of the approved facility consistent with the goals of this Section.

a. Approved Plans. Before the Permittee submits any applications to the Building Department, the Permittee must incorporate the Permit, all conditions associated with this Permit and the approved photo simulations into the project plans. The Permittee must construct, install and operate the SWF in strict compliance with the approved plans. Any alterations, modifications or other changes to the approved plans, whether requested by the permittee or required by other departments or public agencies with, must be submitted in a written request subject to the Building Department prior to review and approval, who may refer the request to the Village Board if it is found that the requested alteration, modification or other change implicates a significant or substantial land use concern.

b. Build-out Period. The Permit will automatically expire one (1) year from the issuance date unless the Permittee obtains all other permits and approvals required to install, construct, and/or operate the approved SWFs and commences the installation and construction, which includes without limitation any permits or approvals required by any federal, state, or local public agencies with jurisdiction over the subject property, the SWF, or its use. The Village may grant extensions to a date certain when the Permittee shows good cause to extend the limitations period in a written request for an extension submitted at least 30 days prior to the automatic expiration date in this condition.

c. Maintenance Obligations: Vandalism. The Permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, and access routes, in a neat, clean, and safe condition in accordance with the approved plans and all conditions in the Permit. The Permittee shall keep the site area free from all litter and debris at all times. The Permittee, at no cost to the Village, shall remove and remediate any graffiti or other vandalism at the site within forty-eight (48) hours after the

Permittee received notice or otherwise becomes aware that such graffiti or other vandalism occurred.

d. Compliance with Laws. The Permittee shall maintain compliance at all times with all federal, state, and local statutes, regulations, orders or other rules that carry the force of law applicable to the Permittee, the subject property, the SWF or any use or activities in connection with the use authorized in the Permit. The Permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve, or otherwise lessen the Permittee's obligations to maintain compliance with all applicable laws, regulations, orders, and rules.

e. Inspections. The Permittee expressly acknowledges and agrees that the Village or its designee may enter onto the site and inspect the improvements and equipment upon reasonable prior notice to the Permittee; provided, however, that the Village may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable, or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The Permittee will be permitted to supervise the Village or its designee while such inspection or emergency access occurs.

f. Contact Information. The Permittee shall furnish the Village with accurate and up-to-date contact information for a person responsible for the SWF, which includes, without limitation, such person's full name, title, direct telephone number, facsimile number, mailing address, and email address. The Permittee shall keep such contact information up-to-date at all times.

g. Rescission of Permit for Non-compliance. The Village Board may rescind any Permit issued under this Local Law for review at any time due to noncompliance with applicable law or any approval conditions. At a duly noticed hearing and in accordance with all applicable laws, the Village Board may revoke any such Permit or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.

h. Record Retention. The Permittee shall retain full and complete copies of all licenses, permits, and other regulatory approvals issued in connection with the SWF, which includes, without limitation, all conditions of approval, approved plans, resolutions, and other documentation associated with the license, permit, or regulatory approval.

B. Conditions Applying to Small Wireless Facilities Located in the Village ROW

1. Applicability. The contents of this subsection (B.) are applied in addition to the contents of subsection (A.) for Applicants proposing SWF located in the Village ROW.

2. License. Where the proposed SWF is in the Village ROW, before any Application may be submitted, a non-exclusive license to place the SWF is required. No SWF is allowed in the Village ROW unless first a non-exclusive license is obtained from the Village by the Applicant.

- a. No exclusive, irrevocable property right or any other interest is created by the License. There is no right to convey, express or implied, with the License.
- b. The License may not be assigned, except upon written consent of the Village, which shall not be unreasonably withheld, provided the assignee assumes all obligations of the License, agrees to abide by its terms in writing, and meets all other criteria as set forth in this Section.
- c. A general License will be granted per Applicant for all Village ROWs provided that the Applicant meets the requirements for such a License.
- d. An Applicant shall demonstrate the entitlement to use the land for the designated purpose e.g., through demonstration that the Village owns the fee of the highway at issue, through the grant of an easement or a pole attachment agreement, and/or other legal mechanism that may be applicable. The Applicant bears any and all risk that it has the legal right to construct the SWF in the location that it has chosen.
- e. The License agreement shall be in the general form as developed by the Village.
- f. Each License agreement is subject to approval by the Village Board.
- g. By issuance of a License, the Village does not represent or warrant title or ownership of the ROW. The Applicant proceeds at its own risk.
- h. Indemnification. Any License agreement shall contain indemnification provisions, indemnifying the Village for the Licensee's use of the Village ROW and related activities, to the maximum extent permitted by law.
- i. Performance Bond/Surety. Any License agreement shall contain the requirements that the Licensee provide a performance bond or other appropriate surety, as approved by the Village Board in an amount equal to or greater than a written estimate from a New York Licensed Engineer with experience in SWF removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without imitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings, and foundations, whether above ground or below ground, constructed or installed, in connection with the SWF. In establishing or adjusting the bond amount required under this condition, and in accordance with New York Code, the Village shall take into consideration information provided by the Licensee regarding the cost to remove the wireless facility.
- j. The License shall require compliance with this Section, as may be amended by the Village Board.
- k. Insurance. Without limiting the indemnification provision herein, and in addition to the performance bond/surety required herein, the License agreement shall contain a requirement that the Licensee

procure, at the Licensee's expense, insurance in an amount sufficient as determined by the Village Board, with the Village named as an additional insured.

3. Rates and Fees. In addition to the fees outlined in subsection (A.) of this Section, the following fees apply for SWF to be located in the Village ROW:

a. License Review Fee. The Applicant shall pay the Village a License Review Fee upon execution of the License, in the amount to be determined by the Village Board by resolution, which may be amended from time to time by further resolution.

b. Annual License Fee. A Wireless Provider authorized to place SWF in the ROW shall pay to the Village an annual license fee in an amount to be determined by the Village Board by resolution, which may be amended from time to time by further resolution.

Section 2. Severability. Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Section 3. Effective Date. This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

ACCEPT RESIGNATION – DEPUTY MAYOR / TRUSTEE

Trustee Jakubowski, offered the following resolution and moved for its adoption:

BE IT RESOLVED, the resignation of Edwin Voll III, Deputy Mayor and Trustee for the Village of Depew effective January 23, 2020 is accepted.

The foregoing resolution was seconded by Trustee Stempniak and duly put to a roll call vote which resulted in the following:

Trustee Jakubowski - Y
Trustee Stempniak -Y
Trustee Hamernik -Y
Mayor Peterson – Y

Authorization and Appropriation of Local Match (20% local match)

Trustee Stempniak, offered the following resolution and moved for its adoption:

BE IT RESOLVED, that the Village authorizes and appropriates a minimum of 20% local match as required by the Engineering Planning Grant Program for the Village of Depew Engineering Study (Phase 6) involving the evaluation of inflow and infiltration sources within the Village sanitary sewer collection system associated with Sewer shed No. 5. Under the Engineering Planning Grant Program, this local match must be at least 20% of the total project cost. The maximum local share appropriated, subject to any changes agreed to by the Mayor, shall not exceed \$20,000 based upon a total estimated maximum project cost of \$120,000.00. The Mayor may increase this local match through the use in kind services without further approval for the Village of Depew.

The foregoing resolution was seconded by Trustee Hamernik, and duly put to a roll call vote which resulted in the following:

Trustee Jakubowski - Y

Trustee Stempniak -Y
Trustee Hamernik - Y
Mayor Peterson – Y

AWARD BID- STREET SWEEPER

Trustee Stempniak, offered the following resolution and moved for its adoption:

BE IT RESOLVED, that the award for the street sweeper from the bid opening January 14, 2020 in the bid amount of \$215,000- which is in line with what was budgeted, be awarded to:

J & J Equipment
8913 Terex Trail
Cicero, NY 13039

The following resolution was seconded by Trustee Jakubowski, and duly put to a roll call vote which resulted in the following:

Trustee Jakubowski - Y
Trustee Stempniak -Y
Trustee Hamernik –Y
Mayor Peterson – Y

PERMISSION – DEPEW FIRE DEPT

Trustee Hamernik, offered the following resolution and moved for its adoption:

Permission is hereby granted to Central Hose Company #4 to conduct a fundraiser at Route 78 Street Restaurant, 6036 Transit Rd on Saturday April 4, 2020 from 6:00 PM – 11:00 PM.

And

Permission is hereby granted to Central Hose Company #4 to use the Northside Fire Hall on Saturday December 5, 2020 from 5:00 PM – 1:00 AM for their Company Christmas Party.

The foregoing resolutions were seconded by Trustee Stempniak, and **CARRIED**.

PERMISSION – MEMBERSHIP – DEPEW FIRE DEPARTMENT

Trustee Jakubowski, offered the following resolution and moved for its adoption:

BE IT RESOLVED, membership is hereby granted to the following in the Depew Fire Department:

CENTRAL HOSE #4

Matt Gryczkowski

WEST END

Kevin Schmitt

The foregoing resolution was seconded by Trustee Hamernik, and duly put to a roll call vote which resulted in the following:

Trustee Jakubowski - Y
Trustee Stempniak -Y
Trustee Hamernik -Y
Mayor Peterson – Y

EMPLOYMENT APPLICATIONS – N/A

DEPARTMENT HEAD REPORTS – Police – December 2019 & Annual for 2019

UNFINISHED AND OTHER BUSINESS – N/A

PUBLIC CONCERNS AND COMMENTS

Rec Dep't – Kevin reported that the banner program at the rink is going well. The banners are hanging and also on the zambonie. Hosted hockey tournament which went extremely well. Very well attended.

OEM – Judy thanked the Mayor and board for asking her to attend the Village Officials meeting where the County EOM Manager was the key speaker. Very well done and very informative.

DPW – Ken told the board and residents that Village maintenance is being done now and that they are also working on removing trees.

Fire – Jamie reported that the department is gaining new members, which is a great thing. He also reviewed his report

PD – Jerry said that the men and women in his department are out there working hard. The Stop DWI program had the highest totals in more than 4 years. He then reviewed his December report.

Attorney Alba thanked Verizon for coming to the public hearing and explained that the Village is more than willing to sit down with them as the Village is only trying to be open and transparent as they move into this new area.

Trustee Hamernik reminded everyone about the Adoption of Soldiers program that she and many local businesses have been working on. The Police Department has chosen the month of December to be a collection point for donations. Chief Miller said items are already being collected.

Mr. Paul Sprada asked what types of items the soldiers are looking for. Audrey said socks, candy, chips, toiletries, etc. Beef jerky is one of the most popular items they ask for.

Mayor Peterson announced that there will be 2 NARCAN training sessions here at Village Hall and the second is open to the public. There will be a sign-up sheet.

Paul Sprada, 58 Argus asked if the Verizon Small Cell Wireless has anything to do with FIOS. The Mayor replied that it did not. He wanted to know if the tree board had a meeting. Trustee Stempniak said yes, we have and it was more of an organizational meeting to begin planning for the year. An Arbor Day Event is being planned for Fireman's Park with plantings and kids games, something family friendly. There will more on that in late April or early May. Mayor Peterson told him that he has a company who will be donating \$1000 towards this board.

Paul asked about the parking on Argus Drive. Mayor Peterson said the parking is an issue. It is one sided parking which causes families problems for birthdays, graduations, baptisms, etc. There is not enough room to allow both side of the street parking. Emergency vehicles cannot access the street if people were to park on both sides. Chief Miller will take another look at it. He also told Paul that a petition would be the first place to start with his neighbors if they want to switch which sides the residents are allowed to park on.

CLAIMS AND ACCOUNTSON A MOTION BY Trustee Stempniak and seconded by Trustee Jakubowski, the following claims are to be paid: \$199,144.52 General, \$800.00 Sewer, \$6,736.95 Capital Projects and \$206,681.47 Capital was **CARRIED**.

EXECUTIVE SESSION

ON A MOTION BY, Trustee Stempniak, pursuant to Open Meeting Law Section 105 we adjourn to executive session to discuss a personnel matter. The motion was seconded by Trustee Jakubowski. Roll Call Vote to adjourn:

Trustee Jakubowski – Y
Trustee Hamernik - Y
Trustee Stempniak - Y
Mayor Peterson - Y

The Executive Session Began: 7:54 PM and was adjourned with the meeting being called back to order by Mayor Peterson at 8:05 PM

Roll Call Vote to come out of executive session

Trustee Jakubowski – Y
Trustee Hamernik - Y
Trustee Stempniak - Y
Mayor Peterson - Y

ADJOURNMENT

ON A MOTION BY Trustee Jakubowski, seconded by Trustee Stempniak, the meeting was adjourned with a moment of silence for Walter Paluzak, Depew Fireman at 8:06 **PM**. The motion was **CARRIED**.

Respectfully submitted,

Teresa Wachowiak
Village Administrator