

**Local Law No. - 2022**

This local law shall be known as the “Update in the Regulation of Wireless Telecommunications Facilities” Law.

BE IT ENACTED by the Town Board of the Town of Mamaroneck

Section 1 – Purpose:

This law is being enacted because advances in technology require the Town to update its law regarding wireless telecommunications facilities.

Section 2 – Replacement of a current section of the Mamaroneck Code:

Section 240-19.1 of the Code of the Town of Mamaroneck hereby is repealed and the following substituted in its place:

§ 240-19.1. **Wireless telecommunications facilities.**

**A. Purpose.**

The purpose of this section is to establish regulations for the location and design of wireless telecommunications facilities that recognize the need to balance the technical requirements of the wireless telecommunications industry with the Town's desire to minimize the visual and other adverse effects of such facilities. This section expresses a preference for locations on Town property, acknowledging the ability of the Town to exert greater controls arising from ownership rights and a preference for the collocation of new wireless telecommunications facilities on existing or approved wireless telecommunications support structures that are located in nonresidential areas.

Such regulations are intended to:

- (1) Ensure that the placement, construction or modification of wireless telecommunications facilities and related equipment are consistent with the Town's land use and zoning code regulations to the extent permitted by law,
- (2) Minimize the negative and adverse visual, acoustic and aesthetic impacts of wireless telecommunications facilities to the maximum extent practicable, through creative design, siting, landscaping, screening and innovative camouflaging techniques,
- (3) Assure a comprehensive review of environmental impacts of such facilities,
- (4) Protect the health, safety and welfare of the residents of the Town and persons working in or visiting the Town from potential adverse impacts of wireless telecommunications facilities, to the extent permitted by law,

- (5) Allow for shared use (collocation) of wireless telecommunications facilities when such use is the more aesthetically sensitive alternative,
- (6) Establish fair and efficient processes for review and approval of development applications,
- (7) Preserve the visual character of established communities and the natural beauty of the landscape,
- (8) Protect property values,
- (9) Minimize the impact of wireless telecommunications facilities on residential properties,
- (10) Encourage the siting of wireless telecommunications facilities on properties and areas, which are not zoned exclusively for residential purposes, and
- (11) Minimize the number of structures placed near to each other in the rights-of-way.

**B. Definitions.**

ASSOCIATED EQUIPMENT – Any equipment serving or being used in conjunction with wireless telecommunications facilities including, but not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters, buildings and similar structures, and, when co-located on a structure, which is mounted or installed prior to, at the same or at a subsequent time as an antenna.

ANTENNA – An apparatus designed for the purpose of emitting or receiving radio frequency (RF) radiation, to be operated or operating from a fixed location, for the provision of personal wireless service (whether on its own or with other types of services). For purposes of this definition, the term "antenna" does not include a mobile station or device authorized under Part 15 of Title 47 of the United States Code.

BASE STATION – A structure or equipment at a fixed location that enables FCC licensed or authorized wireless telecommunications between user equipment and a telecommunications network.

- (1) The term includes, but is not limited to, equipment associated with wireless telecommunications facilities such as but not limited to private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) The term includes, but is not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies and comparable equipment, regardless of technological configuration (including DAS and small or macro cell equipment).
- (3) The term includes, but is not limited to any structure that supports or houses equipment described in paragraphs (1) and (2) above that has been reviewed and approved under

the applicable zoning code or siting process, even if the structure was not built for the sole or primary purpose of providing such support.

- (4) The term does not include any structure that, at the time the relevant application is filed with the Town under this section, does not support or house equipment described in paragraphs (1) and (2) of this definition.

**BUILDING INSPECTOR** --- The Town 's Building Inspector or its Director of Building Code Enforcement and Land Use Administration

**COLLOCATION**— The mounting or installation of an antenna on an existing tower, building or structure for the purpose of transmitting and/or receiving radio frequency signals for telecommunications purposes, whether or not there is an existing antenna on the structure.

**DISTRIBUTED ANTENNA SYSTEM (DAS)** — A network of spatially separated antenna sites connected to a common source that provides wireless telecommunications service within a geographic area or structure.

**EAF** – The Environmental Assessment Form promulgated by the New York State Department of Environmental Conservation.

**FAA** — The Federal Aviation Administration, or its duly designated and authorized successor agency.

**FCC** — The Federal Communications Commission, or its duly designated and authorized successor agency.

**HEIGHT** — When referring to a structure, the distance measured from the pre-existing grade to the highest point on the structure, including the antenna(s) and any other appurtenances.

**MACRO WIRELESS TELECOMMUNICATIONS FACILITY** — Any wireless telecommunications facility that enables authorized wireless telecommunications between user equipment and a telecommunications network that is not a Small Wireless Telecommunications Facility.

**MODIFICATION** — The improvement, upgrade or expansion of existing wireless telecommunications facilities or the improvement, upgrade or expansion of the wireless telecommunications facilities located within an existing equipment compound if the improvement, upgrade, expansion or replacement does not substantially change the physical dimensions of the wireless telecommunications facilities.

**MONOPOLE** — A wireless telecommunications support structure which consists of a single pole, designed and erected on the ground or on top of a structure to support one or more wireless telecommunications antennas and associated equipment.

NIER – Nonionizing electromagnetic radiation. A series of energy waves composed of oscillating electric and magnetic fields traveling at the speed of light which includes the spectrum of ultraviolet (UV), visible light, infrared (IR), microwave (MW), radio frequency (RF), and extremely low frequencies (ELF).

PERMIT – A Wireless Facility Permit.

PLANNING BOARD – The Town of Mamaroneck Planning Board.

PUBLIC RIGHT-OF-WAY (“ROW”) – Any land over which the public possesses the right to travel. The term "road" includes state, county and Town highways, roads, streets, squares, places, courts, boulevards, parkways, sidewalks and other ways, however, designated, over which the public has access.

RELIABLE SERVICE – The transmission and reception of communications voice and/or data by a wireless telecommunications facility that meets or exceeds a wireless service provider’s reasonable and generally accepted industry quality metrics, including but not limited to, received signal strength or signal quality measurements or calibrated predictions of such data throughput, call or session performance objectives including, but not limited to, key performance indicators such as lost calls, system blocking or lack of capacity.

REPLACEMENT – The replacement of existing wireless telecommunications antenna on any existing support structure or on existing associated equipment for maintenance, repair or technological advancement with equipment composed of the same wind loading and structural loading which does not substantially increase the physical dimensions of any existing support structure.

SMALL WIRELESS TELECOMMUNICATIONS FACILITY – A small wireless telecommunications facility including, but not limited to, DAS, microcells, picocells, and femtocells or any name employed to identify a compact, low power base station and its associated equipment that function like cells in a mobile wireless network, typically covering targeted indoor or localized outdoor areas ranging in size from homes and offices to stadiums, shopping malls, hospitals, and metropolitan outdoor spaces that meets each of the following conditions:

- (1) The structure on which antenna facilities are mounted:
  - (a) is fifty (50) feet or less in height, or
  - (b) is no more than ten percent (10%) taller than other adjacent structures, or
  - (b) is not extended to a height of more than ten percent (10%) above its preexisting height as a result of the collocation of new antenna facilities;
- (2) Each antenna (excluding associated antenna equipment) is no more than six (6) cubic feet in volume;

- (3) In the aggregate, the volume of all antenna equipment associated with the facility (excluding antennas and back-up power and related back-up power equipment) does not exceed twenty-eight (28) cubic feet;
- (4) The facility does not require antenna structure registration under 47 CFR Part 17; and
- (5) The facility does not result in human exposure to radio-frequency radiation in excess of the applicable safety standards specified in Parts 1 and 2 of the FCC's Rules and Regulations [47 C.F.R. 1.1307(b), 1.1310, 2.1091, 2.1093] or any FCC rule or regulation that replaces these regulations or add additional safety standards.

SMALL WIRELESS PERMIT --- The permit issued by the Planning Board approving a small wireless telecommunications facility.

STEALTH TECHNOLOGY — Camouflaging methods applied to wireless telecommunications facilities, which render them more visually appealing or which serve to blend the proposed facility into the existing structure or visual backdrop, in such a manner as to render it minimally visible to the casual observer. Such methods include, but are not limited to, architecturally screened roof-mounted facilities, building-mounted antennas painted to match the existing structure, and facilities constructed to resemble trees, shrubs, light poles and the like.

STRAND — A cable or wire run between two utility poles, or between a utility pole and a structure, or between two structures.

STRUCTURE — A pole, base station supporting hardware, commercial billboard, street furniture or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or commingled with other types of services).

STRUCTURALLY MOUNTED — The attachment of antennas to an existing building or structure other than a monopole or tower having a location on the ground and comprising a part of a wireless telecommunications facility. For purposes of this chapter, the term "structurally mounted" shall include, in addition to the antennas, all other components of the wireless telecommunications facility.

SUBSTANTIAL CHANGE — A modification substantially changes the physical dimensions if it meets any of the following criteria:

- (1) The mounting of the proposed antenna on the wireless structure would increase the existing height of the tower by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater;
- (2) The mounting of the proposed antenna or small wireless telecommunications facility would involve the installation of more than four (4) equipment cabinets or more than one (1) new equipment shelter;

- (3) The mounting of the proposed antenna or small wireless telecommunications facility would involve adding an appurtenance to the body of an existing wireless telecommunications support structure that would protrude from the edge of the original support structure:
  - (i) more than twenty feet in the case of a macro wireless telecommunications facility,
  - (ii) more than three feet in the case of a small wireless telecommunications facility, and
  - (iii) in all cases more than the original width of the support structure at the level of the appurtenance

It will not be considered a “substantial change” if the mounting of the proposed antenna or small wireless telecommunications facility exceeds the limits herein if it is necessary or appropriate to do so in order to shelter the antenna from inclement weather or to provide stealth shielding for the antenna or small wireless telecommunications facility;

- (4) The mounting of the proposed antenna would involve excavation outside the current existing structure site, defined as the current boundaries of the leased or owned property surrounding the existing structure and any access or utility easements currently related to the site;
- (5) The modification defeats concealment and/or stealth elements of the support structure;
- (6) The modification does not comply with prior conditions of the approval for the existing structure and/or site; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified above; or
- (7) The modification does not increase the square footage of the existing equipment compound to an area greater than two thousand five hundred (2,500) square feet.

**TOWER** — Any structure built for the sole or primary purpose of supporting FCC licensed or authorized antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that tower but not installed as part of an antenna as defined herein.

**TRANSMISSION OR WIRELESS TELECOMMUNICATIONS EQUIPMENT** — Equipment that facilitates transmission and reception for any FCC licensed or authorized wireless telecommunications service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable and regular and back-up power supply. The term includes equipment associated with wireless telecommunications services, including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul.

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 Town-owned poles or poles owned by utility companies. Any utility pole in excess of fifty (50) feet in height shall be deemed a tower and not eligible as a location for small wireless telecommunications facilities.

WIRELESS TELECOMMUNICATIONS EQUIPMENT --- Any equipment used in connection with the commercial operation of wireless telecommunications services, as defined herein, and as the term "personal wireless service facility" is defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 332(c)(7)(C), or any statute that may replace it, to transmit and/or receive frequencies, including but not limited to antennas, monopoles, towers and related appurtenances.

WIRELESS TELECOMMUNICATIONS FACILITY — A structure, facility or location designed or intended to be used as or used to support antennas, along with any antennas located on such structure, facility or location and any associated equipment. It includes but is not limited to, monopoles, lattice towers, DAS, microcell or small wireless facilities on utility poles or strand mounted in the public right-of-way or property of the Town or within the Town and similar structures that employ stealth technology, including, but not limited to, structures such as a multistory building, church steeple, silo, water tower, sign or other similar structures intended to mitigate the visual impact of an antenna or the functional equivalent of such. It includes any structure, antennas and associated equipment intended for transmitting and/or receiving radio, television, cellular, paging, 911, personal telecommunications services, commercial satellite services, microwave telecommunications or other cellular telecommunications technologies, but excluding those used exclusively for the Town's fire, police, ambulance, and other dispatch telecommunications or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar telecommunications.

WIRELESS TELECOMMUNICATIONS PROVIDER — An FCC licensed service provider offering wireless telecommunications to deliver such telecommunications services. These services may include, but are not limited to, voice, data, or video in either licensed or unlicensed spectrum. An enterprise business offering to host licensed or unlicensed service providers by deploying small cell technology such as, but not limited to, DAS and similar small cells.

Any term contained in this section that is not defined above but is defined by the FCC shall have the meaning ascribed to it by the FCC.

**C. Permissible locations for wireless telecommunications facilities.**

Provided it complies with the requirements of this section:

(A) (1) A macro wireless telecommunications facility may be located only in the following zoning districts of the Town:

B-R  
LI  
UR  
SB-R  
B-MUB and  
R

but not (i) on a property designated by the Town as historic, or (ii) on a property listed on the New York State Register or the National Register of Historic Places or in a neighborhood that has been designated as historic by the Town, the State of New York, the County of Westchester or the federal government or (iii) on those properties that are owned or leased by the Town but are not listed in section 240-19.1 (H).

(2) A small wireless telecommunications facility may be located only in any of the districts that a macro wireless telecommunications facility may be located and in the ROWs of the Town.

(3) In addition to the areas specified in section 240-19.1 C (A) (1) and C (A) (2), a macro wireless telecommunications facility or a small wireless telecommunications facility may be located on the Town-owned properties listed in section 240-19.1 (H) if permission therefor is granted by the Town Board.

(B) Neither type of wireless telecommunications facility shall be permitted in any area within the unincorporated area of the Town other than the areas specified in section 240-19.1 (A) (1), (2) or (3).

**D. Requirements for the installation, alteration, expansion or replacement of a wireless telecommunications facility whether on private property or Town-owned property.**

Except as otherwise provided in this section, no person shall be permitted to construct, install, or prepare a site for the installation of a wireless telecommunications facility or alter, expand or replace an existing wireless telecommunications facility without first obtaining:

(i) in the case of a macro wireless telecommunications facility, site plan approval from the Planning Board followed by a Building Permit issued by the Building Inspector, or

(ii) in the case of a small wireless telecommunications facility, a small wireless permit from the Planning Board followed by a Building Permit issued by the Building Inspector.

**E. Application for all types of wireless telecommunications facilities.**

(1) An application for the construction or installation of a new wireless telecommunications facility or a substantial change to an existing wireless telecommunications facility,

whether a small wireless facility or a macro wireless facility, shall contain the following information:

- (a) A descriptive statement of the applicant's or operator's objectives, and whether the applicant seeks to satisfy a need, such as improved coverage and/or capacity requirements;
- (b) Documentation that demonstrates the need for the wireless telecommunications facility to provide service primarily and essentially within the Town. Such documentation shall include, but not be limited to: (i) information relating to all other wireless telecommunications facilities and antennas associated with such wireless telecommunications facilities that are to be deployed in the Town in conjunction with the proposed wireless facility; and (ii) propagation and/or capacity studies of the proposed site including, but not limited to, both drive test and calibrated predictive coverage plots, and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant area of less than reliable service in coverage and/or capacity, including an analysis of current and projected usage and a copy of the search ring within which a new wireless telecommunications facility is proposed to be located;
- (c) The name, postal address, email address and phone number of the person preparing the report;
- (d) The name, postal address, email address and phone number of the property owner, operator and applicant;
- (e) The postal address and Tax Map Section, Block and Lot of the property, or the postal address and Tax Map Section, Block and Lot of the closest property if the wireless communication facility is proposed to be located in a right of way,
- (e) The zoning district or designation in which the property is situated;
- (f) The size of the property, stated both in square feet and lot line dimensions and a survey prepared by a licensed professional surveyor showing the location of all lot lines (an application to use a ROW does not have to supply this information);
- (g) The lot line of the nearest residential structure;
- (h) The location, size and height of all existing and proposed structures on the property which is the subject of the application;
- (i) The type, locations and dimensions of all proposed and existing landscaping and fencing;
- (j) The number, type and model of the antenna(s) and if the proposed wireless telecommunications facility is a small cell installation, the small cell equipment proposed;
- (k) A description of the utility pole, monopole or other structure on which any antenna or associated equipment for a wireless telecommunications facility is to be located and a design plan stating the structure's capacity to accommodate multiple users;

- (l) A site plan describing any new proposed structure and antenna(s) and all related fixtures, associated equipment, appurtenances and apparatus, including, but not limited to, height above pre-existing grade, materials, color and lighting;
  - (m) The frequency band, modulation and class of service of radio or other transmitting equipment;
  - (n) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts of the antenna(s);
  - (o) Direction of maximum lobes and associated radiation of the antenna(s);
  - (p) Documentation justifying the total height of any proposed antenna and structure and the basis therefor. Such justification shall be to provide service within the Town, to the extent practicable, unless good cause is shown;
  - (q) Certification that NIER levels at the proposed site will be and remain within the current threshold levels adopted by the FCC and the State of New York;
  - (r) A statement signed by an engineer licensed by the State of New York that the analysis of site RF compliance for the proposed installation is consistent with applicable FCC regulations, additional guidelines issued by the FCC and industry practice and in clear compliance with FCC regulations concerning RF exposure;
  - (s) A copy of the FCC license applicable for the intended use of the wireless telecommunications facility;
  - (t) Certification that a topographic and geomorphologic study and analysis has been conducted and that the subsurface and substrate and the proposed drainage plan, the site is adequate to assure the stability of the proposed wireless telecommunications facility on the proposed site;
  - (u) Certification that if the proposed wireless telecommunications facility will be a small cell or DAS that each unit/installation will not exceed fifty-five (55) dBA of acoustic noise, measured five (5) feet from the unit in any direction, or violate any applicable noise regulation.
  - (v) Visual EAF with visual addendum
  - (w) Written certification by an engineer licensed by the State of New York that the wireless telecommunications facility and support structures and attachments are designed and will be constructed to meet all local, county, state and federal structural requirements for loads, including wind and ice loads;
  - (x) Proof that the wireless telecommunications facility or expansion of an existing facility is not proposed to be located within the front yard setback area or closer to the front property line than the setback of the existing principal building, whichever is more restrictive.
- (2) In addition to the requirements of section 240-19.1 (E), an application for collocation whether for a small wireless facility or a macro wireless facility, shall contain the following proof:

- (a) The existing wireless telecommunications support structure has been granted all necessary approvals by the appropriate approving authorities;
- (b) The proposed collocation shall not substantially increase the existing wireless support structure; and
- (c) The proposed collocation complies with the final approval of the wireless telecommunications support structure and all conditions attached thereto and either does not create a condition for which a variance would be required or for which relief would be required pursuant to any other applicable law, rule or regulation or that a variance or other required relief has been obtained.

**F. Provisions applicable to macro wireless telecommunications facilities only.**

In addition to complying with the other requirements of this section, a macro wireless telecommunications facility shall meet the following standards and contain the following submissions:

- (1) Ground-mounted equipment associated with macro wireless telecommunications facilities shall be limited to a height of twelve (12) feet above the existing grade and shall be no closer to side or rear property lines than the minimum setbacks applicable to accessory structures within the zone or one (1) foot in those districts where there are no minimum setbacks.
- (2) Support structures for macro wireless telecommunications facilities other than existing buildings or structures shall be set back from the closest property line a distance equal to at least one hundred and twenty percent (120%) of the height of the composite support structure and attached antennas measured from the highest point of the composite facility to the existing ground level at the base of the facility.
- (3) No signs shall be permitted, except for signs two square feet or less in area that display the name, address and telephone number of the owner of the facility, safety warnings or instructions, and information regarding the equipment on site. Height shall be measured from ground level, to the highest point on the wireless telecommunications facility, or if higher, the highest point on any extension to an existing supporting structure required to support the wireless telecommunications facility.
- (4) A macro wireless telecommunications facility shall be no higher than the minimum height necessary to achieve its purpose and under all circumstances, no more than one hundred twenty-five feet in height.
- (5) The applicant for a macro wireless telecommunications facility shall submit a list of eligible locations within the applicant's search area and has ranked the locations in accordance with the priorities in section 240-19.1 G (7)

- (6) Wind and ice. All macro wireless telecommunications facilities structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- (7) Aviation safety. All macro wireless telecommunications facilities shall comply with all federal and state laws and regulations concerning aviation safety, including but not limited to, the regulations of the FAA.
- (8) Public safety communications. All macro wireless telecommunications facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- (9) Radio frequency emissions. A macro wireless telecommunications facility shall not, by itself or in conjunction with other wireless telecommunications facilities, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (10) Before a building permit is issued, a bond in favor of the Town in an amount sufficient in amount to secure the removal of a macro wireless telecommunications facility when it is decommissioned shall be posted. The amount of such bond shall be determined by the Planning Board, issued by a surety with assets sufficient to assure that it will be capable of satisfying its obligation and be in a form approved by the attorney for the Town.
- (11) As condition of site plan approval, the Planning Board, upon advice from the Town of Mamaroneck's insurance carrier, shall determine the amount of insurance coverage against liability for personal injury, death or property damage that must be maintained while the macro wireless telecommunications facility is being constructed, after it is installed and until it is removed. Such insurance shall be issued by an insurance company with an AM Best Rating of A+, shall name the Town as an additional insured and must provide that the underwriter notify the Town if the policy expires. Before a building permit is issued, a copy of such policy must be delivered to the Building Department. When such policy is renewed or replaced, a copy of the renewed or replacement policy shall be delivered to the Building Department within thirty (30) days of its issuance. If such policy lapses, the Town will have the right to revoke permission for the macro wireless telecommunications facility

**G. Provisions applicable to small wireless telecommunications facilities only.**

- (1) Design. All small wireless telecommunications facilities shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety related codes, including, but not limited to, the most-recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, and National Electrical Code. All small wireless facilities shall, at all times, be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any person or any property. In addition to the provisions listed in this section, all small wireless telecommunications facilities shall be designed to comply with the following requirements:
  - (a) All equipment shall be the smallest and least visibly intrusive equipment feasible.
  - (b) Small wireless telecommunications facilities and associated equipment shall be treated to match the supporting structure and may be required to be painted, or otherwise coated, to be visually compatible with the support structure upon which they are mounted.
  - (c) Pole and strand mounted small wireless telecommunications facilities shall be a minimum of two hundred fifty (250) feet apart radially. They shall be located in line with trees, existing streetlights, utility poles and other street furniture when possible.
  - (d) No more than two (2) small wireless telecommunications facilities with associated antennas shall be mounted to a freestanding pole or structure
  - (e) Small wireless telecommunications facilities and any associated equipment in the public right-of-way shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic or bicyclists or to otherwise create safety hazards to pedestrians, motorists, bicyclists or residents or occupants of buildings, or to otherwise cause inconvenience to the public's use of the public right-of-way.
  - (f) To the extent feasible, associated equipment shall be placed underground. Mounted associated equipment that cannot be placed underground shall be screened from surrounding views, to the fullest extent possible, through the use of landscaping or other decorative features. Ground-mounted associated equipment shall be screened, when possible, by utilizing existing structures. If screening by utilizing existing structures is not possible, ground mounted associated equipment shall be made architecturally and aesthetically compatible with the surrounding area through the use of coatings, landscaping, and/or screening walls, enclosures or other stealth technology.
  - (g) Electrical meter cabinets, if required, shall be screened to blend in with the surrounding area.
  - (h) Associated equipment attached to a small wireless telecommunications facility support structure shall have such vertical clearance as the Planning Board or in the

case of a variance, the Board of Appeals may determine and an applicable utility company may require.

- (2) Wind and ice. All small wireless telecommunications facilities structures shall be designed to withstand the effects of wind gusts and ice to the standard designed by the American National Standards Institute as prepared by the engineering departments of the Electronics Industry Association and Telecommunications Industry Association (ANSI/EIA/TIA-222, as amended).
- (3) Aviation safety. Small wireless facilities shall comply with all federal and state laws and regulations concerning aviation safety, including but not limited to, the regulations of the FAA.
- (4) Public safety communications. Small wireless telecommunications facilities shall not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties.
- (5) Radio frequency emissions. A small wireless telecommunications facility shall not, by itself or in conjunction with other wireless telecommunications facilities, generate radio frequency emissions in excess of the standards and regulations of the FCC, including, but not limited to, the FCC Office of Engineering Technology Bulletin 65, entitled "Evaluating Compliance with FCC Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended.
- (6) Small wireless telecommunications facilities shall be no higher than the minimum height necessary. The proposed height, which may be in excess of the maximum height permitted for other structures in the applicable zone, shall address any additional height necessary to accommodate collocation by additional antenna arrays or small cells, but under no circumstances is the height to be in excess of what is permitted for small wireless telecommunications facilities.
- (7) Visibility
  - (a) A small wireless telecommunications facility shall be sited so as to have the least-adverse visual effect on the environment and its character, on existing vegetation and on the residents in the area of the site.
  - (b) Both the small wireless telecommunications facility and any and all associated equipment shall maximize the use of building materials, colors and textures designed that blend with the structure to which it may be affixed and/or harmonize with the natural surroundings.
  - (c) Small wireless telecommunications facilities shall not be artificially lit or marked, except as required by law. If lighting is required, the applicant shall present a photometric analysis that shows that the applicant will use best practices for mitigating the impact of lighting.

- (d) Where deemed appropriate by the Planning Board, electrical and land-based telephone or fiber lines extended to serve the small wireless telecommunications facility sites shall be installed underground.
  - (e) Stealth technologies shall be employed in an effort to blend into the surrounding environment and minimize aesthetic impact.
  - (f) Landscaping shall be provided, where appropriate.
- (8) Small wireless telecommunications facilities and any associated equipment in the public right-of-way shall also comply with the procedures and requirements set forth in chapter 187 of the Town Code relating to construction activities within the public right-of-way. To the extent any provisions in section 187 are inconsistent with the provisions set forth in this section, the provisions in this section shall control.
- (9) Before a building permit is issued, a copy of a liability insurance policy issued by an insurance company with an AM Best Rating of A+ must be delivered to the Building Department. Such insurance shall name the Town as an additional insured and must provide that the underwriter notify the Town if the policy expires. Such liability insurance must be maintained throughout the existence of the small wireless telecommunications facility. When such policy is renewed or replaced, a copy of the renewed or replacement policy shall be delivered to the Building Department within thirty (30) days of its issuance.

(6) Maintenance. To the extent permitted by law, the following maintenance requirements shall apply:

- (a) Small wireless telecommunications facilities shall be fully automated and not require in-person attendance on a daily basis and shall be visited only for maintenance, replacement or emergency repair.
- (b) Such maintenance shall be performed to ensure the upkeep of the facility in order to maintain an acceptable appearance and promote the safety and security of the Town.
- (c) All maintenance activities shall utilize the best available technology for preventing failures and accidents.
- (d) Any graffiti on any small wireless telecommunications facility support structure or any associated equipment shall be removed at the sole expense of the owner within ten (10) days upon notification by the Town.

(7) Priorities.

- A. The locations listed (a) through (f) below are the locations for small wireless telecommunications facilities within the Town listed in the order of preferred locations with (a) being the most desirable location and (f) being the least desirable location. Applicants for small wireless communication facilities shall categorize the site that

they propose according to the following priorities or shall advise that the proposed site does not fall into any of the categories.

- (a) Collocation on existing utility poles, monopoles, or other small wireless telecommunications facility support structures on lands owned or controlled by the Town,
- (b) Collocation on a site with existing small wireless telecommunications facilities or other wireless telecommunications facility structures in the Town,
- (c) On the Town-owned properties listed in section 240-19.1 H (1),
- (d) On lands owned or controlled by other municipal corporations within the Town, to the extent permitted by such other municipal corporation, and
- (e) On nonresidential zoned properties, and
- (f) Within public rights of way.

(B) If the proposed site is not in the most preferred category, the applicant must supply a detailed explanation as to why a site in a more preferred category was not selected. The applicant also must satisfactorily demonstrate why approval should be granted for the proposed site and the hardship that would be incurred if the application were not approved. Stating that the proposed site has already been leased or purchased is not a satisfactory demonstration of why approval should be granted for the proposed site.

(C) If collocation is not proposed, the applicant must provide a compelling reason why collocation it is not being proposed.

**H. Application when a wireless telecommunications facility is proposed for Town property.**

- (1) New wireless telecommunications facilities and the collocation of such facilities shall be permitted only on the following properties owned by the Town:

- The Weaver Street firehouse
- The Maxwell Avenue site
- The Town owned building in Memorial Park
- Town owned parking lots
- Public rights-of-way
- The Ambulance Building on Weaver Street
- The Hommocks Ice Rink
- The Town Center
- The Senior Center and
- The Shel Drake Environmental Center

- (2) This section shall not be construed so as to create a right or entitlement to use Town property for a wireless telecommunications facility.

(3) Applications for a wireless telecommunications facility to be located upon Town-owned property must satisfy the same requirements and undergo the same type of review as a wireless telecommunications facility located on privately owned property must satisfy and undergo.

(4) (a) Before the Building Inspector can issue a small wireless permit for a small wireless telecommunications facility or pole to be installed within the public right-of-way, a right of way agreement between the person or entity that will operate the small wireless telecommunications facility and the Town must be executed by both parties.

(b) The term of the right of way agreement shall not exceed fifteen (15) years, shall contain the conditions imposed by the Planning Board when it granted the small wireless permit and require, among other things, that the operator maintain liability insurance with coverage for an amount that is reasonable under the circumstances. A form right of way agreement shall be maintained by the Building Department.

(5) In addition to the fees, for a small wireless telecommunications facility permit, every small wireless telecommunications facility located in a right-of-way shall pay an annual fee for the use and occupancy of the right-of-way.

**I. Provisions applicable to applications for both macro wireless telecommunications facilities and small wireless telecommunications facilities**

(1) All proposed wireless telecommunications facilities (a) shall be sited so as to minimize visual intrusion as much as possible given the facts and circumstances involved with the proposed site and facility, (b) where appropriate, will employ stealth technologies as directed by the applicable municipal board (Town Board, Planning Board or Board of Appeals), and (c) will be designed, engineered and constructed so as to have the least-adverse visual and sonic effect on the environment, the character of the community and surrounding properties.

(2) The Town Board, the Planning Board or the Board of Appeals may retain outside consultants, including, but not limited to, radio frequency engineers and other wireless telecommunications consultants to assist it in reviewing an application made pursuant to this section., The Board may require an applicant to establish, fund and replenish an escrow account to pay the fees and related costs incurred by the Board for outside consultants The outside consultant(s) will conduct an independent investigation and analysis of all applicable data relating to existing and proposed wireless telecommunications facilities, including whether there exists a considerable area(s) of less than reliable service in coverage and/or capacity and whether the proposed wireless telecommunications facility will improve service in the area(s) of less than reliable service. The outside consultant(s) also shall conduct an independent review and assessment of alternate sites and other technologies that may improve service in

the area(s) of less reliable service and have a less intrusive impact upon the neighborhood than the site and/or the technology proposed by the applicant.

**J. Exemptions.**

- (1) The following actions shall not require site plan approval or a small wireless permit:
  - (a) a change in the dimensions of a wireless telecommunications facility if such change is not substantial.
  - (b) a modification to, or the replacement of, an existing wireless telecommunications facility that does not substantially change the existing wireless telecommunications facility.
  - (c) the repair and/or maintenance of an existing wireless telecommunications facility.
  - (d) collocation; provided (a) the existing tower, building or structure to which the proposed antennae are to be mounted or installed has been granted all necessary approvals by the appropriate approving authorities, (b) was designed to receive the proposed collocation, (c) will not substantially increase the existing wireless support structure and (d) complies with the special permit and site plan approval (in the case of a macro wireless telecommunications facility) or the small wireless permit (in the case of a small wireless telecommunications facility) and all conditions attached thereto and would not create a condition for which a variance would be required or for which relief would be required pursuant to any other applicable law, rule or regulation.
  - (e) installation of a personal wireless telecommunications device designed for in-home or in-office use that either provides telecommunications or to boost an existing signal for telecommunications; provided that there are no installations outside the walls of the building in which the device is installed and that such device(s) shall be FCC approved to not interfere with public safety communications or the reception of broadband, television, radio or other communications services enjoyed by occupants of nearby properties .
- (2) The exempt actions described above shall require a building permit from the Building Inspector.

Section 3 – Severability:

Should any provision of this Local Law be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration of unconstitutionality or invalidity shall not affect any other provisions of this Local Law, which may be implemented without the invalid or unconstitutional provisions.

Section 4 – Effective Date:

This Local Law shall become effective upon filing with the Secretary of State.

July 15, 2022