

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2020**

**A LOCAL LAW AMENDING CHAPTER 75 OF THE TOWN CODE
ENTITLED “WIRELESS TELECOMMUNICATIONS FACILITIES”**

BE IT ENACTED by the Town Board of the Town of North Hempstead, as follows:

Section 1. Legislative Intent.

The Board finds that it is in the best interest of the Town of North Hempstead to amend Chapter 75 of the Town Code entitled “Wireless Telecommunications Facilities” in order address the expansion of wireless networks throughout the Town.

Section 2.

Chapter 75 of the Town Code is hereby amended as follows:

§ 75-1. Legislative intent.

This chapter is enacted in order to assure access of our local residents to telecommunications technologies while at the same time maintaining the aesthetic qualities of our neighborhoods, scenic locales and historic areas, [~~preventing the uncontrolled~~] **managing the deployment and controlling the potential proliferation** of Wireless Telecommunications Facilities, ensuring meaningful input by the community into important land use decisions, encouraging cooperation between telecommunications providers and resulting in the fewest possible intrusions on traffic, streets and sidewalks. This chapter is intended to minimize the aesthetic impacts of wireless communications facilities by encouraging the exploration of alternatives that use methods to disguise or camouflage the facilities, by minimizing the height of the facilities, by encouraging collocation of facilities and by locating facilities on existing structures whenever possible. This chapter is not intended to prohibit or have the effect of prohibiting the provision of personal wireless services, nor to discriminate among providers of functionally equivalent services.

§ 75-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ABANDONED

Any Wireless Telecommunications Facility which has not been operational for six consecutive months.

ACCESSORY STRUCTURE

A structure such as a storage shed or other type of enclosure for equipment, equipment cabinets, support structures for equipment or other appurtenances used in conjunction with the operation of a wireless telecommunications facility as defined herein and located on the same lot as, or in the general vicinity of, the wireless telecommunications facility.

ANTENNA

A system of electrical conductors that transmits or receives radio frequency signals. Such signals shall include, but not be limited to, those associated with cellular telephone, personal communication services and microwave communications. For the purpose of this chapter an antenna shall include any panels, boxes, dishes or other type of enclosures which contain the actual transmitting or receiving devices.

ANTENNA LOCATION PERMIT

A type of building permit issued by the Building Department in accordance with the requirements set forth in § 70-5 for the placement of Wireless Telecommunications Facilities.

APPLICANT

A person, firm, organization or company applying for either an antenna location permit or a Special Permit under the provisions of this section. An applicant must qualify as a wireless carrier/service provider as defined herein.

BASE STATION

A. A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless telecommunications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. "Base station" Includes, without limitation:

- (1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small cell networks).
- (3) Any structure other than a tower that, at the time the relevant application is filed with the Town under this section, supports or houses equipment defined as a "wireless telecommunications facility" that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process.

B. The term does not include any structure that, at the time the relevant application is filed with the Town under this chapter, does not support or house equipment defined as a "wireless telecommunications facility."

BUILDING COMMISSIONER

The Commissioner of the Building Department.

BUILDING DEPARTMENT

The Town of North Hempstead Department of Building Safety, Inspection and Enforcement.

CAMOUFLAGE

A method of disguising a wireless telecommunications facility which makes it appear as part of the surroundings, either natural or man-made.

CELL ON WHEELS

A wireless telecommunications facility which is usually affixed to a truck, trailer or other mobile base and is located temporarily at a particular site.

COLLOCATION

The mounting or installation of Wireless Telecommunications Facilities on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

DISTRIBUTED ANTENNA SYSTEMS or DAS

A network of partially separated antenna nodes connected to a tower, Right-of-Way Structure or Public Utility Structure via a fiber system or other transport medium that provides wireless telecommunications services within a limited geographic area or structure.

ELIGIBLE FACILITY REQUEST

A. Any request for modification of an existing tower or existing base station or an existing Right-of-Way Structure that is not a substantial change to the physical dimensions of such tower, base station or structure and involves:

- (1) The collocation of new transmission equipment; or
- (2) The removal of transmission equipment; or
- (3) The replacement of transmission equipment.

B. A request for the modification of an existing Right-of-Way Structure shall not be an Eligible Facility Request unless the applicant has obtained a Right-of-Way Use Agreement from the Town in compliance with this chapter.

ELIGIBLE SUPPORT STRUCTURE

Any tower or base station as defined in this section, provided that it is existing at the time the relevant application is filed with Building Department under this chapter.

EQUIPMENT

Computers, batteries, generators, transmission equipment and cabinets, etc., which are utilized to power and/or operate a wireless telecommunications facility.

HEIGHT

The distance measured vertically from the average level of the curb of the lowest adjoining street or from the lowest point within a radius of 200 feet measured radially from the

facility, whichever is lower, to the highest point on the building, structure, or freestanding wireless telecommunications facility as prescribed in Chapter 70 of the Code.

INCUMBENT WIRELESS TELECOMMUNICATIONS FACILITY

Any wireless telecommunications facility legally constructed, erected and operated as of the date of adoption of this chapter, or one erected under a Special Permit issued by the town in accordance with this chapter and for which any applicable permits have been acquired from all appropriate government authorities.

NONCOMPLIANT STRUCTURE or NONCOMPLIANT USE

A structure or use that does not conform to the regulations of the district in which it is situated.

PLANNING COMMISSIONER

The Commissioner of the Planning Department.

PLANNING DEPARTMENT

The Town of North Hempstead Department of Planning and Environmental Protection.

PUBLIC RIGHT-OF-WAY

Any right-of-way owned or maintained by the Town of North Hempstead.

PUBLIC UTILITY

Any company authorized (either by the New York State Public Service Commission, a municipality or other such authority) to provide water, electric, gas or telephone services to the public.

PUBLIC UTILITY STRUCTURE

Any structure erected for the purposes of providing a public utility service, including, but not limited to, water towers, electric transmission towers/poles and telephone poles, but not including a Right-of-Way Structure.

RIGHT-OF-WAY STRUCTURE

Any pole or other structure within the Public Right-of-Way.

SMALL CELL FACILITY

A Wireless Telecommunications Facility that meets each of the following conditions;

A. The structure on which Wireless Telecommunications Facility is mounted:

- (1) Is 50 feet or less in height; or
- (2) Is no more than 10% taller than other adjacent structures; or
- (3) Is not extended to a height of more than 10% above its preexisting height as a result of the collocation of new antenna facilities; and

B. Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and

C. All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and

D. The facility does not require antenna structure registration under applicable federal regulations; and

E. The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR § 1.1307(b).

SMALL CELL NETWORK

One or more small cell facilities connected by a fiber to a carrier switching system or other means of interconnection for provision of wireless services within a limited geographic area or structure.

SPECIAL PERMIT

A permit for a use which is deemed allowable within a given zoning district, but which is potentially incompatible with other uses and is subject to special standards and conditions set forth by the Town Board, consistent with § 274-b of the Town Law.

STEALTH TECHNOLOGY/STEALTH STRUCTURE

A method of installing/constructing Wireless Telecommunications Facilities which conceals, hides or camouflages their presence. Some examples of stealth structures are man-made antenna supports which resemble trees, flagpoles and light poles.

SUBSTANTIAL CHANGE

A modification to the physical dimensions of an Eligible Support Structure if it meets any of the following criteria;

A. The mounting of the proposed antenna on existing towers that increases the existing height of the tower by more than 10%, or the mounting of an additional antenna array with separation from the nearest existing antenna exceeding 20 feet, whichever is greater;

B. The mounting of a proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter;

C. The mounting of the proposed antenna would involve adding an appurtenance to the body of existing towers, other than towers in the public rights-of-way that would protrude from the edge of the towers more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater;

D. The modification would involve excavation outside the current existing tower or base station site, defined as the current boundaries of the leased or owned property surrounding the existing tower or base station and any access or utility easements currently related to the site;

- E. The modification defeats concealment elements of the support structure; or
- F. The modification does not comply with prior conditions of the approval for the existing tower or base station; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds in Subsections **A** through **D** above.

TOWER

Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antenna(s) and their associated facilities, including structures that are constructed for wireless communications 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, and the associated site. Street light poles, public utility and traffic light poles without an attached approved wireless Telecommunications Facility or Right-of-Way Structures shall not be considered a tower.

WIRELESS CARRIER/SERVICE PROVIDER

Any company which is licensed by the FCC to operate Wireless Telecommunications Facilities.

WIRELESS TELECOMMUNICATIONS FACILITY

Antenna(s) and associated equipment used to transmit and/or receive audio, video, data and other information using radio frequency energy and other electronic or electromagnetic systems. The antenna(s) and equipment of each wireless carrier, including Small Cell and DAS Networks, shall be separately considered a wireless telecommunications facility.

§ 75-3. Enabling authority.

Any Wireless Telecommunications Facility which is established, installed, erected, constructed, reconstructed or significantly altered subsequent to the date of adoption of this chapter must conform to the provisions herein. The Building Department is authorized to review, approve, approve with modifications or disapprove applications for Antenna Location Permits for Wireless Telecommunications Facilities as provided for herein. Those applications for a Wireless Telecommunications Facility that do not qualify for an Antenna Location Permit will require a Special Permit from the Town Board in accordance with this chapter. The Town Board is authorized to review, approve, approve with modifications, or disapprove all such applications for Special Permits for Wireless Telecommunications Facilities as provided for herein.

A. Nothing in this chapter shall be construed to exempt an applicant from the site plan review requirements described in § **70-219** of the Town Code should any proposed work at a site meet the conditions described in Subsection **A** of that section; provided, however, that any application for a Special Permit in accordance with this Chapter may be made simultaneously with an application for site plan review in accordance with § **70-219** of the Town Code.

B. All Incumbent Wireless Telecommunications Facilities without a Special Permit shall be allowed to continue in their present usage as a noncompliant use and shall be treated as a

noncompliant use provided that a certificate of existing use is obtained from the Building Department. Such certificate must be renewed in accordance with the provisions set forth in § 75-5C of this chapter. Routine maintenance shall be permitted on such existing Wireless Telecommunications Facilities.

C. All existing Wireless Telecommunications Facilities which were constructed without obtaining the necessary permits and approvals and which do not qualify as Incumbent Wireless Telecommunications Facilities will be required to conform to the provisions of this chapter within one year following its adoption, or shall be considered in violation of this chapter and will be subject to the penalties specified in § 75-9 of this chapter.

§ 75-4. Exemptions.

Satellite dish antennas that are regulated separately by § 70-100.2J of the Town Code are exempt from the provisions of this chapter.

§ 75-4.1. Installations within the Public Right-of-Way.

A. Notwithstanding any other provisions in Chapter 75, an applicant seeking approval for deployment of Wireless Telecommunications Facilities within the Town's right-of-way shall be required to first apply for a Special Permit as approved by the Town Board pursuant to §75-6, a Right of Way Use Agreement as approved by the Town Board and an Antenna Location Permit from the Building Department, together with all other ancillary permits associated therewith, such as street opening permits, electrical permits, and grading permits and the like. No Antenna Location Permit shall be issued unless the Town Board approves the Special Permit and Right of Way Use Agreement. If approved, the Special Permit and Right of Way Use Agreement will authorize the issuance of Antenna Location Permits, provided such construction, plans, drawings are compliant with all applicable construction related laws, rules and regulations, and if all other required ancillary permits have been issued.

B. No application for the deployment of any Wireless Telecommunications Facilities shall be deemed complete until all required permit applications have been applied for and determined by the Planning Department to be complete.

[A] C. All installations of Wireless Telecommunications Facilities, whether or not the installation is a Small Cell Facility, a Small Cell Network or a DAS network, within the Public Right-of-Way shall be subject to this §7[6]5-4.1.

[B] D. No Wireless Telecommunications Facility may be installed within the Public Right-of-Way unless[;] **all permits noted above shall have been obtained and** [prior to the installation of the facility, the Town and] the applicant **and the Town have executed** a right-of-way use agreement, [governing the use of the Public Right of Way and the installation of Wireless Telecommunications Facilities within the Public Right of Way, which agreement shall be in a form approved by the Town Board.] All requests for Town Board issuance of a right-of-way use agreement shall be subject to a public hearing.

[E] Any person or entity proposing to install Wireless Telecommunications Facilities within the Public Right-of-Way shall apply to the Planning Department to be granted a **Special Permit and Right-of-Way Use Agreement** by the Town Board. **The applicant shall also file completed applications for Antenna Location Permits and all other ancillary permits associated therewith, such as street opening permits, electrical permits, and grading permits and the like.**

(1) **In addition to the applicable requirements of §75-6,** [F]the application shall include:

(a) The name, business address and telephone number of the applicant, and the name of the applicant's authorized representative and the representative's phone number and e-mail address[-] **and the full names and contact information for all related third parties on whose behalf the applicant is acting, including contracting parties and co-locaters.**

(b) Drawings **and before and after photo simulations** showing [a-typical] **the proposed design, appearance** and installation of a Wireless Telecommunications Facility within the Public Right-of-Way, including pole-mounted antennas and equipment, aboveground cable installations, ground equipment and underground installations demonstrating compliance with § **75-7D** of this chapter. **The applicant shall also demonstrate that the proposed facilities comply with any applicable Order issued by the Federal Communications Commission regulating deployment of 5G technology.**

(c) Elevations showing the height of all proposed antennas, equipment and supporting structures (i.e., monopoles, towers, etc.) from ground level. Dimensions of all antennas and equipment and the distances of each from the top of any structures upon which they are located shall also be shown.

[G] **(d)** A listing of those Public Rights-of-Way within which the applicant is applying to be permitted to install Wireless Telecommunications Facilities.

[H] **(e)** A full statement explaining in detail how each of the proposed facilities conform to the design requirements stated in § **75-7D** below.

[I] **(f)** A statement indicating:

[1] a location map to scale indicating the location of the proposed facility or facilities;

[2] the section, block and lot number(s) of the property on which the proposed facility or facilities will be located;

[3] whether the applicant anticipates installing any new poles within the Public Rights-of-Way and, if so, the approximate number and location of the new poles;

[4] whether the applicant anticipates installing ground equipment within the Public Right-of-Way and, if so, the approximate number and location of such equipment

~~[[4]]~~ **[5] The maximum number of facilities that may be installed in compliance with § 75-7D below within the Public Rights-of-Way referenced in the application. [;and]**

~~[[2] Whether the applicant anticipates installing any new poles within the Public Rights of Way and, if so, the approximate number and location of the new poles; and]~~

~~[[3] Whether the applicant anticipates installing ground equipment within the Public Right of Way and, if so, the approximate number and location of such equipment.]~~

(g) If applicable, a copy of an agreement between the applicant and the owner of each proposed site which authorizes the use of the site as a location for the proposed wireless telecommunications facility, or, if the Wireless Telecommunications Facility is to be located within a Public Right-of-Way or the right-of-way of another municipality, an executed franchise agreement with the municipality owning or controlling the right-of-way.

(h) Certification by an Radio Frequency Engineer that the proposed small cell installation(s) addresses an existing and significant gap in coverage in the service area, such certification to include a detailed map of the "gap areas" and documentation of such gaps causing an inability for a user to connect with the land-based national telephone network or maintain a connection capable of supporting a reasonably uninterrupted communication.

(i) Documentation demonstrating potential alternative locations for the location of the small cell installations in non-residential areas, including but not limited to changes to the proposed small cell network.

~~[(#)]~~ **(j) A completed full environmental assessment form Part 1, together with a visual assessment addendum[-] and demonstrate compliance with NEPA requirements as set forth by the FCC, unless exemption is claimed. If exempt, applicant must state the basis is for such exemption and provide proof, including all supporting documents, that each and every exempt installation meets prescribed requirements.**

~~[(g)]~~ **(k)** A certificate of insurance naming the Town of North Hempstead as an additional insured, in the types and amounts shown in the Town's standard form Right-of-Way Use Agreement [-] **and does not exclude coverage for claims due to exposure to radio-frequency microwave radiation.**

~~[(h)]~~ **(l)** A copy of any Federal Communications Commission licenses and approvals allowing the applicant to operate a Wireless Telecommunications Facility.

~~[(i)]~~ **(m)** The application fee stated in the Town of North Hempstead Fee Schedule.

(n) Performance specifications and data that identify the maximum and minimum amount or level of radio-frequency emissions that are produced by the proposed equipment when it is in full operating mode, and a monitoring plan for the Applicant's equipment capable of tracking and recording the daily amounts or levels of radio-frequency emissions that are produced by the equipment in order to verify compliance with applicable FCC regulations.

(2) Upon receipt of an application, the Planning Commissioner shall notify the councilmember or councilmembers representing the Town Council district or districts in which the applied-for Public Rights-of-Way are located that an application has been filed. Upon review of the application, the Planning Commissioner, **or designee,** shall determine whether the application is complete or not sufficient to demonstrate compliance with this chapter. If the application is not complete, the Planning Commissioner shall so inform the applicant. The applicant shall have 30 days after being informed that its application is incomplete in order to provide the required additional documents and materials to complete the application. If the required additional documents and materials are not provided within 30 days of the Planning Commissioner's notice, the application will be deemed abandoned and the applicant will be required to ~~[make another application]~~ **re-apply.**

~~[(d)]~~**F.** If the Planning Commissioner deems the applicant's **Special Permit** application complete, the Planning Commissioner shall request that the Town Board set a date for a public hearing **within 30 days** to consider ~~[approval of]~~ the **Special Permit and Right of Way Use Agreement.** The Planning Commissioner shall inform the applicant of the date of the hearing when the date is made known to the Planning Commissioner. ~~[Upon being informed of the hearing date, and]~~ ~~[a]~~**At least [14] 10** days prior to the public hearing, the applicant shall deliver, by certified mail, return receipt requested, and regular mail, a notice to the owners (as shown on the property tax rolls maintained by the Receiver of Taxes) of all properties within 350 feet of the **proposed location(s) within the** Public Rights-of-Way applied for in the applicant's application. The notice shall be on the applicant's letterhead and shall state that an application **for a Special Permit and Right of Way Use Agreement have** ~~[has]~~ been filed with the Planning Department ~~[for Right of Way Use Agreement]~~, a map showing the Public Rights-of-Way applied for and the date, time and location of the public hearing. The applicant shall, ~~[within]~~ **at least** five days ~~[of]~~ **before the date of the public hearing,** ~~[delivering the notices required by this section,]~~ submit to the Planning Department an affidavit of mailing ~~[on a form maintained by the Planning Department]~~ evidencing compliance with this section.

[E]G. The Town Board may review any documentation or hear any testimony in favor of or in opposition to the application, and may adjourn the public hearing to any future date if deemed necessary by the Town Board. The applicant shall ensure that representatives of the applicant attend the public hearing to answer questions regarding the application either from representatives of the Town or members of the public. In the event that the application demonstrates compliance with **applicable provisions of §75-6 and § 75-7D** of this chapter and otherwise complies with the requirements for an application as stated in this section and otherwise complies with any other requirement stated in this chapter, the Town Board shall approve the **Special Permit** application and authorize the execution of a Right-of-Way Use Agreement.

[F]H. The **granting of a Special Permit and** issuance of a right-of-way use agreement **pursuant to this Section** shall not permit the applicant to begin installation of Wireless Telecommunications Facilities within the Public Rights-of-Way. Each individual installation shall also require the issuance of an Antenna Location Permit, **as set forth in 75-4.1(A), and all other required permits required to be issued by the Town.** [~~in accordance with § 75-5 of this chapter and may require the issuance of a Special Permit in accordance with § 75-6 of this chapter.~~]

[G]I. Once a Wireless Telecommunications Facility is installed within the Public Right-of-Way, the Building Commissioner may, at such times as deemed necessary by the Building Commissioner, test any facility for its compliance with the radiofrequency exposure limitations set forth in 47 CFR 1.1307(b) and 1.1310.

(1) In the event that such test finds that that the radiofrequency emissions generated by a tested facility exceed those limitations set forth in 47 CFR § 1.1307(b) and 1.1310, the Building Commissioner shall:

(a) In the case of a first test showing emissions in excess of those permitted by 47 CFR 1.1307(b) and 1.1310 with regard to a specific facility, order that the Wireless Telecommunications Facility be modified such that the facility is brought into compliance with 47 CFR 1.1307(b) and 1.1310 and provide documentation showing such compliance; and

(b) In the case of a subsequent test showing emissions in excess of those permitted by 47 CFR 1.1307(b) and 1.1310, revoke the permit for such Wireless Telecommunications Facility and order that the Wireless Telecommunication Facility be removed at the owner's expense.

(2) For any violation of the limitations stated in 47 CFR 1.1307(b) and 1.1310, the owner of the Wireless Telecommunications Facility shall reimburse the Town for the cost of the test and pay a fine in the amount shown in § 75-9 below.

§ 75-5. Antenna Location Permits.

A. Wireless Telecommunications Facility installations eligible for Antenna Location Permits. The Building Department is authorized to issue antenna location permits for the following Wireless Telecommunications Facilities, provided that all of the requirements set forth herein are met.

(1) Nonresidential zoning districts. Parking District (P), Transportation District (T), Business AA District (B-AA), Business A District (B-A), Business B District (B-B), Planned Industrial Park District (PIP), Industrial A District (I-A), Industrial B (I-B), Modified Planned Industrial Park District (MPIP):

(a) Small Cell Facilities, Small Cell Networks and DAS networks upon an existing or new Right-of-Way Structure within the Public Right-of-Way, [~~provided that an increase in the height of an existing structure is not required and that all applicable height, setback and design requirements as set forth in § 75-7 can be met. Any equipment cabinets, shelters, etc., must also comply with the applicable standards set forth in § 75-7 herein~~] **provided that a Special Permit is granted by the Town Board and Right of Way Use Agreement is executed by the Town and applicant.**

(b) An Eligible Facilities Request, where such application does not result in a Substantial Change to the Eligible Support Structure. If a Substantial Change is proposed, the application shall require a Special Permit pursuant to § 75-6 of this Chapter.

(c) New Wireless Telecommunications Facilities on existing commercial or industrial buildings, provided that all applicable height, setback and design requirements as set forth in § 75-7 herein can be met. Any accessory structures, including, but not limited to, equipment, equipment cabinets, equipment sheds/shelters, etc., must also comply with the applicable standards set forth in § 75-7 herein.

(d) Minor modifications to existing Wireless Telecommunications Facilities, that do not result in Substantial Change as defined herein, if a substantial change is proposed, the application shall require a Special Permit pursuant to § 75-6 of this chapter.

(2) Residential Zoning Districts, Residence Open Space District (R-O-S), Residence AAA District (R-AAA), Residence AA District (R-AA), Residence A District (R-A), Residence B District (R-B), Residence C District (R-C), Residence D District (R-D), Residence District Multiple (RM), Residence District, Public Housing (RPH), Golden Age Residence District (GAR), Senior Residence District (R-S):

(a) Small Cell Facilities, Small Cell Networks and DAS networks upon an existing or new Right-of-Way Structure within the Public Right-of-Way, [~~provided that an increase in the height of an existing structure is not required and that all applicable height, setback and design requirements as set forth in § 75-7 can be met. Any accessory structures including, but not limited to, equipment cabinets, shelters/sheds, etc., must also comply with the applicable standards set forth in § 75-7 herein~~] **provided that a Special Permit is granted by the Town Board and Right of Way Use Agreement is executed by the Town and applicant.**

(b) An Eligible Facilities Request of Wireless Telecommunications Facilities, where such application does not result in a Substantial Change. If a substantial change is proposed, the application shall require a Special Permit pursuant to § 75-6 of this Chapter.

B. Term and fees for Antenna Location Permits. The fee for an antenna location permit shall be in the amount indicated in the Town of North Hempstead Fee Schedule, and the permit expires and must be renewed every three years.

C. Renewal of antenna location permits. At the expiration of its three-year term, an application for renewal of the antenna location permit shall be filed with the Building Commissioner together with the fee stated in the Town of North Hempstead Fee Schedule and current certification by a licensed professional engineer or other qualified person that the wireless telecommunications facility is within the nonionizing electromagnetic radiation levels adopted by the FCC. The permit may be renewed upon a finding that the wireless facility and all associated equipment and support structures are structurally sound and comply with the provisions of the law.

D. Antenna Location Permit application requirements. The Building Commissioner is authorized to design appropriate application forms, if necessary, to assist in the completion and evaluation of an application packet. The following materials shall be submitted in triplicate to the Building Commissioner, who shall certify that an application packet is complete before an Antenna Location Permit is issued:

- (1) Completed Antenna Location Permit application form.
- (2) Name, address and telephone number of the applicant.
- (3) Name, address and telephone number of the owner of the property on which the Wireless Telecommunications Facility will be located.
- (4) Section, block and lot number(s) of the property on which the proposed facility will be located.
- (5) A copy of an agreement between the applicant and the owner of the site which authorizes the use of the site as a location for the proposed wireless telecommunications facility, or, if the Wireless Telecommunications Facility is to be located within a Public Right-of-Way or the right-of-way of another municipality, an executed franchise agreement with the municipality owning or controlling the right-of-way.
- (6) A location map to scale indicating the location of the proposed facility.
- (7) A site plan or plans to scale specifying the location of the proposed facility on the property. All setbacks of the facility from front, rear and side yards shall be shown. (If the facility is located upon an existing structure, the setbacks of the existing structure from front, rear and side yards shall be shown and the location of the facility on the existing structure, including all dimensions, shall be shown).

(8) Elevations showing the height of all proposed antennas, equipment and supporting structures (i.e., monopoles, towers, etc.) from ground level. Dimensions of all antennas and equipment and the distances of each from the top of any structures upon which they are located shall also be shown.

(9) Construction/engineering drawings to be reviewed by the Building Commissioner to determine whether the proposed facility meets with all applicable building, fire and safety codes and showing that the facility includes appropriate deicing equipment.

(10) A completed full environmental assessment form Part 1, together with a visual assessment addendum.

(11) A cash deposit or bond from a surety company that is both an admitted carrier in the State of New York and has a Best's Rating of B- or better, or a Best's rating of four or better.

(a) The cash deposit or bond must be in an amount equal to 200% of the estimated cost of removing any wireless telecommunications facility, if it is abandoned, and of restoring the site, except that this requirement may be waived for a cells on wheels.

(b) In the event that a penalty is assessed pursuant to the provisions of this chapter, the Building Commissioner or the Town Comptroller may deduct the amount of such penalty from the cash deposit.

(c) The applicant must maintain the required cash deposit or bond at all times.

(12) A certificate of insurance naming the Town of North Hempstead as an additional insured.

(13) A copy of any Federal Communications Commission licenses and approvals allowing the applicant to operate a Wireless Telecommunications Facility.

(14) Certification by a licensed professional engineer or other qualified person that the proposed facility will not cause interference with existing communication devices and that electromagnetic radiation levels at the proposed site are within any threshold levels that have been adopted by the Federal Communications Commission.

~~[(15) If the application involves the installation of a Small Cell Facility or DAS facility within the Public Right of Way, a listing of those addresses to which the applicant would be required to submit a notice of the application in compliance with Subsection E below.]~~

~~[E. Within five days of filing an application for an Antenna Location Permit that proposes to install a Small Cell Facility or DAS facility within the Public Right of Way, the applicant shall deliver, by certified mail, return receipt requested, and regular mail, a notice to the owners (as shown on~~

~~the property tax rolls maintained by the Receiver of Taxes) of all properties within 350 feet of the proposed installation. The notice shall be on the applicant's letterhead and shall state that a Small Cell Facility or DAS facility is proposed to be installed within 350 feet of the owner's property, that an application has been filed with the Building Department for an Antenna Location Permit for the facility, the date of the application, a map showing the location of the proposed Small Cell Facility or DAS facility, and an e-mail address maintained by the applicant where information regarding the application may be requested. The applicant shall, within five days of delivering the notices required by this section, submit to the Building Department an affidavit of mailing on a form maintained by the Building Department evidencing compliance with this section. The Building Commissioner shall provide a copy of this affidavit to the councilperson for the Town Council district in which the facility is to be located. In addition, within five days of the filing of an application described in this subsection, the Building Commissioner or his or her designee shall give notice to the councilperson for the Town Council district in which the facility is to be located that an application for an Antenna Location Permit has been filed and shall provide a copy of the application to the councilperson.]~~

[F]E. Review of applications for antenna location permits. Upon receipt of a complete application for an Antenna Location Permit, the Building Commissioner or his or her designee shall review such application to determine whether the application so qualifies for an Antenna Location Permit as defined in this chapter. If determined to be eligible for an Antenna Location Permit, such application shall be approved **or denied** within the following time frames, **unless such time periods are lawfully extended:**

(1) Installation of a Small Cell Facility on an existing Right-of-Way Structure: 60 days.

(2) Installation of any other Wireless Telecommunications Facility on an Existing Support Structure: 90 days.

(3) Installation of a Small Cell Facility on a new Right-of-Way Structure: 90 days, unless it has been determined that the application creates a Substantial Change or otherwise does not meet the criteria of an Eligible Facilities Request, in which case other applicable provisions of this chapter apply, and further provided that the above time periods may be tolled if the Building Commissioner or his or her designee finds that the application is incomplete or if the Building Commissioner or his or her designee finds that additional information is needed to evaluate the application within 10 days of its submission. Once an Eligible Facilities request application has been approved, the Building Inspector shall issue the Antenna Location Permit and a building permit.

§ 75-6. Special Permits.

A. Wireless Telecommunications Facility Installations eligible for a Special Permit. Subject to the provisions of this section, the Town Board is authorized to review and approve, or approve with modifications, applications for Special Permits for all Wireless Telecommunications Facility Installations **pursuant to §75-4.1 and those** not eligible for an Antenna Location Permit as provided for in § 75-5 above.

B. Priority list. **Except as provided in §75-4.1,** [F]the following is a list of priorities (in order of preference with (1) being the most preferred) for the placement of Wireless Telecommunications Facilities which do not qualify for an Antenna Location Permit as provided for in § 75-5 above:

(1) New Wireless Telecommunications Facilities (including cells on wheels) in the Industrial A (I-A), Industrial B (I-B), Planned Industrial Park (PIP), Modified Planned Industrial Park (MPIP) and Transportation (T) Zoning Districts which:

(a) Are designed or located so that the visual impact of the facility is minimized either by:

[1] Utilizing some type of stealth technology to camouflage their appearance as Wireless Telecommunications Facilities; or

[2] By being located on a portion of the site where they are not visible from any residential area, public roadway, public property, site of historical significance or scenic area; and

(b) Are located more than 200 feet from the nearest property line of a residential site or the nearest boundary line of a residential zoning district (whichever is closer); and

(c) Are located more than 200 feet from the nearest property line or boundary of any park, scenic area, site of historical significance; and

(d) Are located more than 200 feet from the nearest property line of a school.

(2) New Wireless Telecommunications Facilities (including cells on wheels) in the Industrial A (I-A), Industrial B (I-B), Planned Industrial Park (PIP) and Modified Planned Industrial Park (MPIP) Zoning Districts which:

(a) Meet one or more of the criteria listed in § 75-6B(1) above.

(3) New Wireless Telecommunications Facilities (including cells on wheels) in the Industrial A (I-A), Industrial B(I-B), Planned Industrial Park (PIP) and Modified Planned Industrial Park (MPIP) Zoning Districts which:

(a) Do not meet any of the criteria listed in § 75-6B(1) above but are less than 50 feet tall.

(4) New Wireless Telecommunications Facilities (including cells on wheels) in the Business AA (B-AA), Business A (B-A), Business B (B-B), Hospital (H) or Service Commercial (SC) Zoning Districts which:

(a) Meet one or more of the criteria listed in § 75-6B(1) above.

(5) New Wireless Telecommunications Facilities (including cells on wheels) in the Business AA (B-AA), Business A (B-A), Business B (B-B), Hospital (H) or Service Commercial District (SC) which:

(a) Meet one or more of the criteria listed in § **75-6B(1)** above.

(6) All other Wireless Telecommunications Facilities and structures.

C. Special Permit application fees. The application fee for such a Special Permit shall be in the amount indicated in the Town of North Hempstead Fee Schedule.

D. Special Permit application requirements, **including pursuant to §75-4.1**. The Building Commissioner and the Planning Commissioner are authorized to design appropriate application forms, if necessary, to assist in the completion and evaluation of an application packet. These application requirements shall apply to all Special Permit applications. The following materials shall be submitted to the Building Commissioner[;] **or if pursuant to §75-4.1 to the Planning Commissioner**, who shall certify that an application packet is complete before forwarding it to the Town Board for review:

(1) All items required in § **75-5D** above.

(2) For all Special Permit applications, provide documentation as to how the proposed facility meets any one or more of the criteria listed in § **75-6B** herein, **except for facilities proposed in the right of way pursuant to § 75-4.1**.

(3) A definition of the area of service to be served by any proposed wireless telecommunications facility and information showing how any proposed wireless telecommunications facility would provide needed coverage or capacity.

(4) A description of the technological requirements for the proposed site (i.e., height requirements, coverage requirements, etc.).

(5) Total anticipated capacity of any proposed freestanding wireless telecommunications facility such as a monopole or tower.

(6) A list and description of all existing telecommunications facilities within the described service area (search ring), including the name of the owners of each site and the names of all wireless carriers operating facilities at the site.

(7) A "Zone of Visibility Map" or photo simulations in order to determine locations where the wireless telecommunications facility and supporting structure(s) may be seen, including "before" and "after" views, from key viewpoints. These key viewpoints will include, but not be limited to, any historic site or historic district or any staffed Town of North Hempstead park facility, within one mile of a proposed wireless telecommunications facility (to be measured from the outer limits of the structure supporting the proposed facility, i.e., towers, buildings, etc.).

(8) Where excavation or disturbance of land is required as part of the installation of any wireless telecommunications facility, a utilities inventory showing locations of all affected water lines, sewage lines or power lines must be provided by the applicant.

(9) A landscape plan demonstrating how the proposed facility will be screened.

(10) An analysis of at least three alternatives as set forth in Subsection **E** below.

E. Review of alternatives.

(1) Every applicant for a Special Permit must establish [~~either~~]:

(a) That no existing site (i.e., a collocated site which would qualify for an antenna location permit), a site listed higher on the priority list (§ **75-6B** herein) or a site located within the Northern State Parkway or Long Island Expressway transportation corridor would satisfy the needs of the applicant for either technological, legal, economic or other reasons; or

(b) That the owner(s) of an existing site(s) would not allow for the collocation of a wireless telecommunications facility by the applicant. The applicant must prove that a reasonable effort was made to negotiate with the owners of such facilities, such proof to include, but not be limited to, copies of all letters, proposals, documents, etc., which were sent to or received by the owner(s) of an existing wireless telecommunications facility (or structures containing existing facilities) regarding permission to collocate on such facilities[-]; **or**

(c) In the case of deployment of new support structures or poles within the Town's rights of way, that establishes:

[1] The proposed small wireless facility cannot be located on an existing utility pole, light pole, electrical transmission tower or on a site outside of the public rights-of-way such as a public park, public property, parking lot pole or in or on a non—residential use in a residential zone whether by roof or panel-mount or separate structure; and

[2] The proposed small wireless facility is properly concealed, to the extent practicable;

[3] The location of the small wireless facility is physically possible, does not obstruct vehicular or pedestrian traffic or the clear zone, complies with ADA and city construction and sidewalk clearance standards and state and federal regulations in order to provide a clear and safe passage within the rights-of-way, does not interfere with utility or safety fixtures (e.g., fire hydrants, traffic control devices), and does not adversely affect the public welfare, health or safety.

[4] The design should seek to minimize the visual obtrusiveness of small wireless installations. For small wireless facilities, the proposed utility pole or structure should have similar designs to existing neighboring poles in the public rights-of-way, including to the extent technically feasible similar height and if neighboring poles are decorative, they shall mimic the design of the decorative poles. Other concealment methods include, but are not limited to, integrating the installation with architectural features or building design components, utilization of coverings or concealment devices of similar material, color and texture — or the appearance thereof — as the surface against which the installation will be seen or on which it will be installed, landscape design, or other camouflage strategies appropriate for the type of installation. Applicants are required to utilize designs in which all wirelines and conduit are installed internally in the structure. If evaluating concealment strategies for ground mounted equipment, the applicant is encouraged to use concealment techniques such as benches, kiosks, trash cans, planters, and other items which may be considered public amenities.

(2) In order to establish the facts listed in Subsection **E(1)** above, the applicant shall present an evaluation of at least three alternatives comparing the characteristics of each of the sites with the requirements of the proposed facility and demonstrating why the alternative sites, **including sites within the Town's right of way,** would result in a significant gap in coverage and that the applicant's solution is the least intrusive means to filling this gap. Reasons supporting such a determination could include, but not be limited to, the following:

(a) Existing structures and/or towers are not of sufficient height to meet the applicant's engineering requirements within the geographic service area described.

(b) Existing structures and/or towers do not have sufficient structural strength to support the applicant's antennas and equipment.

(c) The applicant's proposed antenna or antennas would cause electromagnetic interference with the antenna or antennas of the existing Wireless Telecommunications Facilities.

(d) The cost or contractual provisions required by the owner of an existing wireless telecommunications facility site, or to adapt an existing wireless telecommunications facility site for sharing, would exceed the cost of erecting a new site.

(e) For deployment of small wireless facilities in the Town's right or way, detailed documentation establishing potential alternate configurations of the proposed antenna and pole locations, including but not limited to different pole heights and reduced number of antennas and poles. The intent being to

reduce or otherwise limit the number of antenna and new or replacement poles while ensuring the adequacy of cellular coverage.

F. Review of Special Permit applications by the Town Board. The Town Board may issue a Special Permit, provided that it shall have determined that all of the **applicable** requirements in this chapter have been satisfied **and that the applicant has sufficiently established that denial of the application would prohibit, effectively prohibit, materially limit or materially inhibit the deployment of Wireless Telecommunications facilities.** [~~and, further, that the benefits of and need for the proposed facility outweigh the detriment to the health, safety and welfare of the neighborhood or community.~~]

In addition, required findings by the Town Board for issuance of a special permit for deployment of small cell facilities on existing facilities, new poles and other associated facilities within the Town's right of way, the applicant shall have demonstrated that:

- (i.) The proposed project meets the definition of a small cell facility, as may be amended from time to time.**
- (ii.) The small cell facilities are necessary in order to provide adequate service to the public, having considered reasonable alternatives to the location or locations of the small cell facilities network.**
- (iii.) The proposed project complies with all applicable requirements prescribed in Section 75-4.1, unless the application of such requirements to the proposed small cell facilities would result in an effective prohibition of service.**
- (iv.) The small cell facilities will be in harmony with the general purpose of this Chapter.**
- (v.) The small cell facilities will be compatible with existing uses adjacent to and near the property to the greatest extent possible, including consistency with the design elements.**
- (vi.) The small cell facilities will not create a hazard to health, safety or general welfare and there will be no nuisance or serious hazard to vehicles or pedestrians.**
- (vii.) The applicant has demonstrated that the proposed project will comply with all applicable health and safety regulations, which include without limitation the Americans with Disabilities Act and all FCC regulations relating to RF emissions.**

(1) In granting a Special Permit, the Town Board may impose additional conditions necessary to buffer or otherwise minimize adverse effects of the proposed tower or antenna on surrounding properties. The Town Board may also reduce or waive conditions described in this chapter, but only upon finding that the goals and stated intent of this chapter are better served and that doing so will have no detrimental effect on adjacent properties or on the public health, safety and welfare.

(2) All property owners within 200 feet or three times the height of any proposed tower or other wireless telecommunications facility, whichever is greater, shall receive notice by certified mail of any hearing scheduled by the Town Board regarding a Special Permit. This notice shall be sent in the same manner as described in § 70-225 of the Town Code. The cost of this notice shall be borne by the applicant.

(3) The Town Board is authorized to hire any consultants and/or experts necessary to assist in reviewing and evaluating the application. The applicant shall reimburse the Town of North Hempstead for all costs and expenses incurred for such evaluation and consultation. Notice of the hiring of a consultant/expert shall be given to the applicant prior thereto. Failure to reimburse the Town of North Hempstead within a reasonable period of time may constitute sufficient grounds for the disapproval or revocation of a Special Permit.

G. Standard Conditions of Approval for Special Permits.

In addition to any other conditions of approval permitted under federal and state law and this Code that the Town Board deems appropriate or required under this Code, all small cell wireless facility permits under this subsection shall include the following conditions of approval:

1. As-Built Plans. The applicant shall submit to the Planning Director an as-built set of plans and photographs depicting the entire small cell wireless facilities, including all transmission equipment and all utilities, within ninety (90) days after the completion of construction.

2. Indemnification. To the fullest extent permitted by law, the applicant and any successors and assigns, shall defend, indemnify and hold harmless the Town, its elected and appointed officials, employees, and agents, from and against any liability, claims, suits, actions, arbitration proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, but not limited to, actual attorney fees, litigation expenses and court costs of any kind without restriction or limitation, incurred in relation to, as a consequence of, arising out of or in any way attributable to, actually, allegedly or impliedly, in whole or in part, related to the small wireless facility permit and the issuance of any permit or entitlement in connection therewith. The applicant shall pay such obligations as they are incurred by the Town, its employees, agents and officials, and in the event of any claim or lawsuit, shall submit a deposit in such amount as the Town reasonably determines necessary to protect the Town from exposure to fees, costs or liability with respect to such claim or lawsuit.

3. Compliance with applicable laws. The applicant shall comply with all applicable provisions of this code, any permit issued under this code, and all other applicable federal, state, and local laws. Any failure by the Town to enforce compliance with any applicable laws shall not relieve any applicant of its obligations under this code, any permit issued under this code, or all other applicable laws and regulations.

4. Compliance with approved plans. The proposed project shall be built in compliance with the approved plans on file.

[G]H. Term and renewal of Special Permits. The Special Permit has an initial term of three years. At the expiration of its three-year term, an application for renewal of the Special Permit may be filed with the Commissioner of Building and Safety Inspection and Enforcement, together with a

fee in the amount indicated in the Town of North Hempstead Fee Schedule and current certification by a licensed professional engineer or other qualified person that the wireless telecommunications facility is within the nonionizing electromagnetic radiation levels adopted by the FCC. The permit may be renewed upon a finding that the wireless facility is structurally sound and complies with the provisions of the law and has not been changed or otherwise modified since the issuance of the Special Permit, unless authorized in the Special Permit.

§75-7. Height, setback and design requirements.

Other than as stated in Subsection **D**, The following requirements must be met for all proposed Wireless Telecommunications Facilities:

A. Height.

(1) No antenna or any other transmitting or receiving device used in conjunction with a wireless telecommunications facility may extend more than 20 feet above the top of the structure upon which it is placed. This height shall be measured from the bottom of the antenna assembly (including any masts, supports, etc., used to affix an antenna to a building or other structure) to the top.

(2) The height of any proposed freestanding Wireless Telecommunications Facility shall be the minimum necessary in order to meet the service needs of the wireless carrier (applicant), unless the support structure, i.e., monopole, tower, etc., is being constructed in order to allow collocation by other wireless carriers. In such cases, the height of the facility shall be the minimum necessary in order to meet the needs of the applicant together with the anticipated needs of the additional carriers being accommodated for at the site. However, the antennas and/or transmitting/receiving devices belonging to an applicant for a proposed freestanding wireless telecommunications facility must be located at the highest available position on the support structure. Collocation and/or the ability to collocate may be provided for at lower heights on the support structure.

(3) The height of any accessory structure used in conjunction with the operation of a wireless telecommunications facility, including but not limited to equipment sheds and shelters, shall not exceed 12 feet. Equipment located on the roof of a building shall not exceed the maximum height of the highest point of the building (including, but not limited to, penthouses, parapets, staircase enclosures, etc.).

B. Setbacks and placement.

(1) Where possible, antennas placed on buildings shall be flush mounted to the facade of the building or to existing structures on the roof of the building (i.e., penthouses, staircase enclosures, etc.) in order to minimize their obtrusiveness and to reduce visual impacts. In no case shall this requirement supersede any building and safety code requirements or any other requirements set forth herein.

(2) All freestanding Wireless Telecommunications Facilities shall be set back from any public roadways a distance equal to the height of the tower, **except as provided in §75-4.1.**

(3) **Except as provided in §75-4.1,** [A]all freestanding Wireless Telecommunications Facilities and accessory structures (including equipment sheds, shelters, etc.) must satisfy the setback requirements in any zoning district (except that in industrial zoning districts a freestanding Wireless Telecommunications Facility may encroach into the rear yard setback if it can be demonstrated that by doing so, the visibility of the structure will be reduced).

(4) **Except as provided in §75-4.1,** [A]all freestanding Wireless Telecommunications Facilities and accessory structures must be located a minimum of 200 feet from the nearest property line of a residential site or the nearest boundary line of a residential zoning district (whichever is closer).

(5) **Except as provided in §75-4.1,** [A]all freestanding Wireless Telecommunications Facilities must be located a minimum of 200 feet from the nearest property line or boundary of any park, scenic area, environmentally sensitive site/area or site of historical significance (with the exception of antennas and equipment which are entirely concealed within an existing historical structure and which do not affect the integrity of the structure or otherwise compromise its historical significance).

(6) **Except as provided in §75-4.1,** [A]all freestanding Wireless Telecommunications Facilities must be located a minimum of 200 feet from the nearest property line of any school.

C. Design, screening and camouflaging.

(1) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical equipment, mechanical equipment and visible accessory structures must be of a neutral color and similar material that is identical to, or closely compatible with, the color and material of the supporting structure so as to make the antenna and other equipment as visually unobtrusive as possible.

(2) Where feasible, concealment of antennas within existing structures should be used to reduce visual impacts.

(3) Where feasible, the use of stealth technology or stealth structures shall be utilized to minimize the visual impacts of freestanding Wireless Telecommunications Facilities.

(4) All new freestanding Wireless Telecommunications Facilities must be designed to allow collocation by one or more additional wireless carriers unless this requirement would result in construction of a freestanding wireless facility to a height greater than that required by the applicant.

(5) All accessory structures, such as equipment, equipment cabinets, etc., used in conjunction with a Wireless Telecommunications Facility which is located on a building, must be located either on the roof of the building or within the building.

(6) All equipment, equipment cabinets, etc., used in conjunction with the operation of either a new freestanding wireless facility, a collocated Wireless Telecommunications Facility on an existing freestanding structure or a wireless telecommunications facility on a public utility structure shall be enclosed in an equipment shed or shelter.

(7) Existing on-site vegetation shall be preserved or improved, and disturbance of the existing topography shall be minimized, unless such disturbance would result in less visual impact of the site to the surrounding area.

(8) Landscaping must be used to screen all new freestanding Wireless Telecommunications Facilities and a landscape plan must be submitted with any applications to erect freestanding Wireless Telecommunications Facilities in accordance with § 75-6D(9) herein.

(9) All new freestanding Wireless Telecommunications Facilities and associated accessory structures shall be enclosed by fencing not less than six feet in height and shall also be equipped with appropriate anticleimbing devices. Fencing shall be of chain link, wood or other approved alternative.

(10) Wireless Telecommunications Facilities shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable authority.

(a) If lighting is required, the Town Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding view.

(b) The use of floodlighting is prohibited.

(11) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure.

D. Design elements for Wireless Telecommunications Facilities within Public Rights-of-Way.

The public right-of-way in the Town is a uniquely valuable public resource, closely linked with the Town's natural beauty including the beach and coastline, and significant number residential communities. The reasonably regulated and orderly deployment of wireless telecommunications facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents an ever-increasing and threat to the health, welfare and safety of the community.

The Town recognizes its responsibilities under the Federal Telecommunications Act of 1996 and state law, and believes that it is acting consistent with the current state of the law in

ensuring that irreversible development activity does not occur that would harm the public health, safety, or welfare.

The Town does not intend that this Local Law prohibit or have the effect of prohibiting telecommunications service or materially limit or materially inhibit the deployment of Wireless Telecommunications facilities; rather, but includes appropriate regulations to ensure that the installation, augmentation and relocation of wireless telecommunications facilities in the public rights-of-way are conducted in such a manner as to lawfully balance the legal rights of applicants under the Federal Telecommunications Act and the New York Transportations Corporations Law while, at the same time, protect to the full extent feasible against the safety and land use concerns described herein.

(1) Basic requirements.

(a) Wireless Telecommunications Facilities located in the Public Right-of-Way are subject to the design and development standards set forth in this Subsection **D** in addition to all design and development standards that apply to all Wireless Telecommunications Facilities.

(b) Right-of-way authority. A Right-of-Way Use Agreement must be obtained for installation of a Wireless Telecommunications Facility within the Public Right-of-Way. Only applicants authorized to enter the Public Right-of-Way pursuant to such an agreement shall be eligible for a permit to install or modify a wireless telecommunications facility in the Public Right-of-Way.

(c) All Wireless Telecommunications Facilities shall be constructed in compliance with the Americans with Disabilities Act.

(d) Any electricity required for the Wireless Telecommunications Facility shall be supplied through a separate meter. All charges for electricity shall be the sole responsibility of the facility installer or owner.

(e) The requirements of this Subsection **D** may be varied at the request of the Town, with the consent of the applicant applying to install a Wireless Telecommunications Facility, in order to best implement the purposes of this chapter.

(f) Where feasible, the use of stealth technology or stealth structures shall be utilized to minimize the visual impacts of freestanding Wireless Telecommunications Facilities.

(g) Wireless Telecommunications Facilities shall not be artificially lighted, unless required by the Federal Aviation Administration or other applicable authority.

(h) No signage or other identifying markings of a commercial nature shall be permitted upon any tower or alternative tower structure.

(i) No lighting shall be placed on Wireless Telecommunications Facilities located in the right of way.

(j) All proposed installations on existing utility poles, street lights, traffic signals, electric, gas, and other utility structures, and other similar facilities, located within the public right-of-way shall use the design techniques set forth in this section to minimize visual impacts to the public right of way. Antennas and pole-mounted equipment shall be screened, concealed or disguised with shrouding matching the appearance of the existing structure or be integrated into the structure of the proposed facility so as to be hidden from view. Screening/concealing equipment shall be of minimal, functional size necessary to achieve concealment objectives under this subsection. Cabling and conduit shall be hidden from view by integrating such cabling or conduit into existing equipment where technically feasible, and visible spooling of cable shall be prohibited.

(k) All cables or wiring associated with a facility shall be concealed within a sleeve between the bottom of the antenna and the mounting bracket.

(l) All pole-mounted equipment and antennas shall be painted to match the color of the pole or other type of support structure to which it is attached.

(m) All small cell wireless facilities shall include signage that accurately identifies the facility's owner/operator, the site name or identification number, and a phone number to the owner/operator's network operations center. No other signage except that required by law or recommended by FCC, OSHA or other federal government agency for compliance with radio-frequency emissions regulations shall be allowed on any small cell wireless facility.

(n) All non-antenna equipment, including equipment which is susceptible to being installed in an equipment cabinet, shall be installed underground unless the installation of such equipment underground is not technically feasible. This undergrounding requirement shall not apply to cabling and conduit necessary to mount the antenna of a small wireless facility on a new or existing pole, nor apply to non-antenna equipment concealed from public view by being structurally integrated into the construction of a new or existing pole for any utility.

(o) All vents, exhausts and similar features for undergrounded equipment shall be flush to grade to the maximum extent feasible.

(p) In no case shall a small wireless facility block any public sidewalk or functionally impede an accessible path of travel.

(q) All disturbed or damaged pavement and/or landscaping within or adjacent to the public right-of-way shall be replaced and areas of bare or disturbed soils must be revegetated upon completion of an installation.

(r) Landscaping shall be required to provide screening to minimize visual impacts where site conditions allow for installation of new landscaping. Landscaping shall not be required where installation shall be entirely on existing paved surfaces. New landscaping shall be drought-tolerant and designed and installed to be natural in appearance.

(s) No wireless facility shall create unnecessary noise in excess of the decibel limits in the Town's noise ordinance that negatively impacts on nearby residential properties. For projects proposed adjacent to residential uses when generators, air conditioning units, or other noise-generating devices are utilized a noise report shall be provided.

(2) Antennas and equipment.

(a) Utility poles. The maximum height of any antenna mounted to a Right-of-Way Structure that is a utility pole shall not exceed 24 inches above the height of the Right-of-Way Structure, nor shall any portion of the antenna or equipment mounted on such a pole be less than 12 feet above any drivable road surface.

(b) Streetlight poles. The maximum height of any antenna mounted to a Right-of-Way Structure that is a streetlight pole shall not exceed seven feet above the existing height of the streetlight pole within a business or industrial zoning district and shall not exceed 24 inches above the existing height of the streetlight pole in any other zoning district. Any portion of the antenna or equipment mounted on such a pole shall be no less than 12 feet above any drivable road surface. Notwithstanding the above, any pole that contains a streetlight and other connected utilities shall be deemed a utility pole.

(c) Antennas and other equipment shall be shaded in a color consistent with the shading of other structures or vegetation in the vicinity of the installation such that the installation is integrated into the surrounding environment.

(d) With the exception of electric meters, which shall be pole mounted, and other pole-mounted equipment, all accessory equipment shall be located underground to the extent feasible. When aboveground is the only feasible location for a particular type of accessory equipment and when such accessory equipment cannot be pole mounted, such accessory equipment shall be enclosed within a structure, and shall not exceed a height of five feet and a total footprint of 15 square feet, and shall be screened and camouflaged to the fullest extent possible, including the use of landscaping or alternate screening.

(e) Pole-mounted equipment shall not exceed six cubic feet in dimension. The total square footage for all equipment associated with the Small Cell Facility (excluding the antenna) shall be no more than 28 cubic feet in volume.

(3) Poles.

(a) Wireless Telecommunications Facilities within the Public Rights-of-Way may only be attached to existing Right-of-Way Structures. Only pole-mounted Wireless Telecommunications Facilities shall be permitted in the Public Right-of-Way. Mounting to other structures shall be prohibited.

(b) No new poles may be installed unless;

[1] The new pole is replacing an existing pole, **or adequate proof is provided establishing the need for a new pole;** or

[2] No existing pole, because of its physical condition, may safely support a Wireless Telecommunications Facility.

(c) Requirements for new poles.

[1] All poles shall be designed to be the minimum functional height and width required to support the proposed antenna installation and meet FCC requirements. Poles and antennas and similar structures shall be no greater in diameter or other cross-sectional dimensions than is necessary for the proper functioning of the facility.

[2] Notwithstanding the above, no new pole shall be greater in height and width than the highest and widest of the existing poles within 1,500 feet of the new pole.

[3] No new pole may be located greater than 12 inches from the boundary of the paved portion of the Public Right-of-Way, whether or not the boundary is formed by a curb.

[4] No new pole may be located within 90 feet of an existing pole.

[5] No new pole may be constructed in a location that would cause the Public Right-of-Way to no longer be accessible in compliance with the Americans with Disabilities Act.

[6] No new pole shall be installed adjacent to the frontage of any property within a residential district, except:

[a] A new pole may be located within 12 inches of the boundary line of a property in a residential district and the adjacent property; and

[b] A new pole may be located adjacent to the frontage of a property with no structures thereon

[7] If the new pole replaces an existing pole, the pole shall match the appearance of the original pole to the extent feasible, unless another design better accomplishes the objectives of this section in the reasonable judgment of the [~~Building Commissioner~~] **Town Board**.

(4) Location.

(a) Each component part of a Wireless Telecommunications Facility shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way, or safety hazards to pedestrians and motorists.

(b) No ground-mounted equipment cabinet shall be installed adjacent to the frontage of any residential property within a residential district. For purposes of this subsection, the term "frontage" shall mean the area adjacent to the front property line of a residential property that faces the main entrance of a residential structure on the residential property.

(c) A Wireless Telecommunications Facility shall not be located within any portion of the public right-of-way interfering with access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing structures, or any other public health and safety facility.

(d) Each wireless telecommunications facility must be separated by at least 1,500 feet, **unless the applicant establishes that such requirement would prohibit, effectively prohibit, or materially limit or materially inhibit the deployment of Wireless Telecommunications facilities.**

(e) No Wireless Telecommunication Facility shall be located within 350 feet of a boundary line of a lot containing a school.

(f) All cables, including, but not limited to, electrical and utility cables, between the pole and any accessory equipment shall be placed underground, if feasible.

(g) New small cell facilities shall not be located in the Historic District unless the applicant demonstrates to the Town Board's satisfaction that the selected site is necessary to provide adequate service.

§ 75-8. Removal of abandoned or unsafe Wireless Telecommunications Facilities.

A. If it has been determined that a wireless telecommunications facility is abandoned or has become unsafe or that there have been recurring, repeated or continuing violations of any of the

provisions of this chapter, the Commissioner of Building and Safety Inspection and Enforcement may revoke an antenna location permit or the Town Board may revoke a Special Permit.

B. Upon written notice to the former holder of the revoked permit, the wireless communications facility shall be removed.

C. Upon revocation of any permit issued pursuant to this chapter, the provisions of § **28-37** of this Code, entitled "Continued violation," shall be applicable, if deemed necessary by the Commissioner of Building and Safety Inspection and Enforcement.

§ 75-9. Penalties for offenses.

A. Any person who attempts to erect, erects or substantially modifies a wireless telecommunications facility without having first obtained the necessary permits or permissions described in this chapter shall be deemed in violation of this chapter. Any responsible party or other persons convicted by a court of competent jurisdiction of violating any provision of this chapter shall be punished by a fine not to exceed \$10,000 or by imprisonment not to exceed 30 days, or both. The court shall have the power and authority to place any person guilty of violation of this chapter on probation and to suspend or modify any fine or sentence. As a condition of such suspension, the court may require payment of restitution or impose other punishment allowed by law.

B. If any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained in violation of this chapter or without obtaining any required permits or permissions, or if any building, structure or land is used in violation of this chapter, the Town Attorney, in addition to any other remedies, may institute proceedings to prevent such unlawful violation or to correct or abate such violations. Each and every day such violation continues may be deemed a separate offense.

§ 75-10. Special provisions and severability.

A. If any section, subsection, sentence, clause, phrase or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

B. This chapter supersedes all ordinances and local laws or parts thereof adopted prior hereto which are in conflict herewith, to the extent of such conflict.

Section 3.

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