

**TOWN OF NORTH HEMPSTEAD  
LOCAL LAW NO. \_\_ OF 2019**

**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 Town Board has found that the implementation of advanced wireless telecommunications services known as “5G” is imminent, and will result in the proliferation of wireless technology within the Town’s rights of way. In addition, the Town is aware of recent orders by the Federal Communications Commission governing the installation of these facilities in the rights of way. In order to ensure the rational siting of wireless facilities within the Town, the protection of the aesthetic characteristics of the Town, the proper maintenance of the Town’s rights of way and the Town’s compliance with federal mandates, the Town Board intends to amend Chapter 75 of the Town Code to make comprehensive changes to the Town’s regulations regarding wireless telecommunications facilities.

**Section 2.**

Chapter 75 of the Town Code of the Town of North Hempstead Entitled “Wireless Telecommunications Facilities” 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 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 [facility]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 article, 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 [(COW)]**

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**

**[Placement]The mounting or installation of [two or more wireless telecommunications facilities upon a single structure (including but not limited to existing freestanding wireless telecommunications facility structures, buildings, water towers, etc.)]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**

**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:**

- A. The collocation of new transmission equipment; or**
- B. The removal of transmission equipment; or**
- C. The replacement of transmission equipment.**

**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.

**~~[FACILITY~~**

~~A wireless telecommunications facility.]~~

**~~[FREESTANDING WIRELESS TELECOMMUNICATIONS FACILITY~~**

~~A structure such as a monopole or lattice tower, constructed or existing specifically for the purposes of supporting antenna(s) and/or equipment used in conjunction with the operation of one or more wireless telecommunications facilities.]~~

**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:**

- (1) The structure on which Wireless Telecommunications Facility is mounted**
  - (i) Is 50 feet or less in height, or**
  - (ii) Is no more than 10 percent taller than other adjacent structures, or**
  - (iii) Is not extended to a height of more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities; and**
- (2) Each antenna (excluding associated antenna equipment) is no more than three cubic feet in volume; and**
- (3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 28 cubic feet in volume; and**
- (4) The facility does not require antenna structure registration under applicable federal regulations; and**
- (5) The facility does not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 C.F.R. § 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 increase 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

[A type of structure used to support wireless telecommunications facilities.] **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[~~and/or structures (including, but not limited to, monopoles, lattice towers, etc.)~~] 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[~~will be~~], **including Small Cell and DAS Networks, shall be separately** considered a wireless telecommunications facility.

### §75-3. Enabling authority.

[Any wireless telecommunications facility] **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] **Antenna Location Permits** for [wireless telecommunications facilities] **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] **Special Permits** for [wireless telecommunications facilities] **Wireless Telecommunications Facilities** as provided for herein.

- A. Noting 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]~~**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~~[-of Building, Safety Inspection and Enforcement]~~. 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.]~~**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 ~~[as described herein]~~ will be required to conform to the provisions of this ~~[chapter]~~**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.

~~[The following are exempt:]~~

- ~~[A. — All wireless telecommunications facility installations on properties owned or operated by the Town of North Hempstead, provided that the appropriate authorization (lease, contract or other type of official agreement) is given to locate such facilities.]~~
- ~~[B. — ]~~Satellite dish antennas ~~[which]~~**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. 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 § 75-4.1.**
- B. No Wireless Telecommunication Facility may be installed within the Public Right of Way unless, prior to the installation of the facility, the Town and the applicant execute 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.**
- C. 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 Right of Way Use Agreement by the Town Board. The application shall include:**



- (1) 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 email address.**
- (2) Drawings showing a typical design and installation of a Wireless Telecommunications Facility within the Public Right of Way, including pole-mounted antennae and equipment, above-ground cable installations, ground equipment and underground installations demonstrating compliance with Section 75-7(D) of this Chapter.**
- (3) A listing of those Public Rights of Way within which the applicant is applying to be permitted to install Wireless Telecommunications Facilities.**
- (4) A full statement explaining in detail how each of the proposed facilities conform to the design requirements stated in § 75-7(D) below.**
- (5) A completed full environmental assessment form Part 1 together with a visual assessment addendum.**
- (6) 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.**
- (7) A copy of any Federal Communications Commission licenses and approvals allowing the applicant to operate a Wireless Telecommunications Facility.**
- (8) The application fee stated in the Town of North Hempstead Fee Schedule.**

**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 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 thirty (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 thirty (30) days of the Planning Commissioner's notice, the application will be deemed abandoned and the applicant will be required to make another application.**

- D. If the Planning Commissioner deems the applicant's application complete, the Planning Commissioner shall request that the Town Board set a date for a public hearing to consider approval of the application. 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 at least**

fourteen (14) 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 fronting 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 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 five (5) days of 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. 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 § 75-7(D) 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 application and authorize the execution of a Right of Way Use Agreement.

F. The issuance of a right of way use agreement 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 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.

§75-5. Antenna Location Permits.

A. [~~Wireless telecommunication facility~~]Wireless Telecommunications Facility installations eligible for [~~antenna location permits~~]Antenna Location Permits. The Building Department is authorized to issue antenna location permits for the following [~~wireless telecommunications facilities~~]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) [~~Wireless telecommunications facilities on existing public utility structures, including, but not limited to, telephone poles, electric transmission towers, water towers, etc.~~]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 [~~the~~]an

existing structure is not required and that all **applicable** height, setback and design requirements as set forth in §75-7 can be met. ~~[In addition to these requirements, any wireless telecommunications facility to be installed on a structure within a public right of way shall require a franchise agreement with the Town of North Hempstead.]~~ Any equipment cabinets, shelters, etc., must also comply with the **applicable** standards set forth in § 75-7 herein.

(b) ~~[Collocation of wireless telecommunications facilities on buildings, towers and other structures which contain one or more wireless telecommunications facilities which have been approved in accordance with this chapter or which qualify as incumbent freestanding wireless telecommunications facilities as defined herein, provided that, in the case of collocation on an existing freestanding wireless facility, an increase in the height of the support structure is not required, and provided that all height, setback and design requirements as set forth in § 75-7]~~ **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 Section 75-6 of this law.**

(c) ~~[New wireless telecommunications facilities]~~ **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, ~~[provided]~~ that ~~[the modifications]~~ do not result in ~~[an increase in the height]~~ **a Substantial Change as defined herein, If a substantial change is proposed, the application shall require a special permit pursuant to Section 75-6 of [the facility]this law.**

(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) ~~[Wireless telecommunications facilities on]~~ **Small Cell Facilities, Small Cell Networks and DAS networks upon an** existing ~~[public utility structures, including, but not limited to, telephone poles, electric transmission towers, water towers, etc.,]~~ **or new Right of Way Structure within the Public Right of Way,** provided that an increase in the height of ~~[the]~~ **an** existing structure is not required and that all **applicable** height, setback and design requirements as set forth in §75-7 herein can be met. ~~[In~~

~~addition to these requirements, any wireless telecommunications facility to be installed on a structure within a public right of way shall require a franchise agreement with the Town of North Hempstead.~~ 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.

**(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 law.**

- B. Term and fees for ~~[antenna location permits]~~ **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. [Amended 4-11-2006 by L.L. No. 5-2006)
- 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~~[of Building and Safety Inspection and Enforcement]~~, together with ~~[a fee in]~~ the ~~[amount]~~ **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]~~ **Location Permit** application requirements. The **Building** Commissioner~~[of Building and Safety Inspection and Enforcement]~~ 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~~[of Building and Safety Inspection and Enforcement]~~, who shall certify that an application packet is complete before an ~~[antenna location permit]~~ **Antenna Location Permit** is issued:
- (1) Completed Antenna Location Permit application form.**
  - ~~(1)~~ **2**) Name, address and telephone number of the applicant.
  - ~~(2)~~ **3**) Name, address and telephone number of the owner of the property on which the wireless telecommunications facility will be located.
  - ~~(3)~~ **4**) Section, block and lot number(s) of the property on which the proposed facility will be located.

- ([4]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 telecommunication 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.
- ([5]6) A location map to scale indicating the location of the proposed facility.
- ([6]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).
- ([7]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.
- ([8]9) Construction/engineering drawings to be reviewed by the **Building** Commissioner [~~of Building and Safety Inspection~~] to determine whether the proposed facility meets with all applicable building, fire and safety codes and showing that the facility includes appropriate deicing equipment.
- ([9]10) A completed full environmental assessment form Part [H]1 together with a visual assessment addendum.
- ([10]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 4 or better.
- (a) The cash deposit or bond must be in an amount equal to 200% of the estimated cost of removing any [~~freestanding~~] wireless telecommunications facility, if it is abandoned, and of restoring the site, except that this requirement may be waived for [~~mobile wireless telecommunications facilities~~] (a cells on wheels[~~]~~).
  - (b) In the event that a penalty is assessed pursuant to the provisions of this chapter, the **Building** Commissioner [~~of Building and Safety Inspection and Enforcement~~] 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.

(~~11~~)**12**) A certificate of insurance naming the Town of North Hempstead as an additional insured.

(~~12~~)**13**) A copy of any Federal Communications Commission licenses and approvals allowing the applicant to operate a [~~wireless telecommunications facility.~~] **Wireless Telecommunications Facility.**

(~~13~~)**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 F below.**

**F. Within five (5) 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 200 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 200 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 email address maintained by the applicant where information regarding the application may be requested. The applicant shall, within five (5) 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 (5) 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.**

**G. 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 within the following time frames:**

- (a) Installation of a Small Cell Facility on an existing Right of Way Structure: 60 days**
- (b) Installation of any other Wireless Telecommunications Facility on an Existing Support Structure: 90 days**
- (c) 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 30 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.~~ **Permits.**

- A. **Wireless Telecommunications Facility** installations eligible for a special permit. **Subject to the provisions of this section,** ~~[The]~~**the** Town Board is authorized to review and approve, or approve with modifications, applications for special permits for ~~[the following wireless telecommunications facilities, provided that all requirements of this chapter are met:]~~**all Wireless Telecommunications Facility installations not eligible for an Antenna Location Permit as provided for in § 75-5 above.**

~~[(1) All wireless telecommunications facility installations not eligible for an antenna location permit as provided for in § 75-5 above.]~~

- B. Priority list. The following is a list of priorities (in order of preference with (1) being the most preferred) for the placement of ~~[wireless telecommunications facilities]~~**Wireless Telecommunications Facilities** which do not qualify for an ~~[antenna location permit]~~**Antenna Location Permit** as provided for in §75-5 above:

- (1) New ~~[freestanding-]~~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 freestanding~~ **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 freestanding~~ **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 all of the criteria listed in § **75-6B(1)** above.
  - (5) [~~New freestanding~~ **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.  
[Amended 4-11-2006 by L.L. No. 5-2006]



D. Special permit application requirements. The **Building** Commissioner [~~of Building and Safety Inspection and Enforcement~~] and the **Planning** Commissioner [~~of Planning and Economic Development~~] 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 [~~of Building and Safety Inspection and Enforcement~~], 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 applications to erect freestanding wireless telecommunications facilities~~]**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.
- (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~~] or 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 ~~[to the satisfaction of the Town Board]~~ 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.
  
- (2) In order to establish ~~[this]~~ **the facts listed in subsection 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 ~~[alternate]~~ **alternative** sites would ~~[be incompatible.]~~ **result in a significant gap in coverage and that the applicant's solution is the least intrusive means to filling this gap.** Reasons supporting ~~[incompatibility]~~ **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.

- 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 requirements in this chapter have been satisfied 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.
- (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 two hundred feet or three times the height of any proposed tower or other wireless telecommunications facility, whichever is greater, shall receive notice by registered 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 Section 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. 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.**  
[Amended 4-11-2006 by L.L. No. 5-2006]

§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~~]**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 [~~façade~~]**façade** 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~~]**Wireless Telecommunications Facilities** shall be set back from any public roadways a distance equal to the height of the tower.
- (3) All freestanding [~~wireless telecommunications facilities~~]**Wireless Telecommunications Facilities** and accessory structures (including equipment sheds, shelters, etc.) must satisfy the [~~minimum~~] setback requirements in any zoning district (except that in industrial zoning districts a freestanding [~~wireless telecommunications facility~~]**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) [~~All freestanding wireless telecommunications facilities~~]**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) [~~All freestanding wireless telecommunications facilities~~]**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) All freestanding [~~wireless telecommunications facilities~~]**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~~]**Wireless Telecommunications Facilities**.
- (4) All new freestanding [~~wireless telecommunications facilities~~]**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~~]**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~~]**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~~]**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 anti-climbing devices. Fencing shall be of chain link, wood or other approved alternative.
- (10) [~~Wireless telecommunications facilities~~]**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.**

**(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.

(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) Street light poles. The maximum height of any antenna mounted to a Right of Way Structure that is a street light pole shall not exceed seven feet above the existing height of the street light pole within a business or industrial zoning district and shall not exceed 24 inches above the existing height of the street light 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 street light 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 above-ground 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 6 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:**

**(i) The new pole is replacing an existing pole; or**

**(ii) No existing pole, because of its physical condition, may safely support a Wireless Telecommunications Facility.**

**(c) Requirements for New Poles:**

**(i) 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.**

**(ii) 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.**

**(iii) No new pole may be located greater than twelve inches from the boundary of the paved portion of the Public Right of Way, whether or not the boundary is formed by a curb.**

**(iv) No new pole may be located within 90 feet of an existing pole.**

**(v) 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.**

**(vi) No new pole shall be installed adjacent to the frontage of any property within a residential district, except:**



**(I) a new pole may be located within twelve inches of the boundary line of a property in a residential district and the adjacent property, and**

**(II) a new pole may be located adjacent to the frontage of a property with no structures thereon.**

**(v) 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.**

**(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.**

**(e) No Wireless Telecommunication Facility shall be located within 200 feet of a boundary line of a lot containing a school.**

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

§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 \$~~5~~**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 apply to Wireless Telecommunications Facilities (as defined in Section 2 above) installed, modified or removed after the effective date of this Local Law.

**Section 3.**

If any clause, sentence, paragraph, subdivision, or part of this Local Law or the application thereof to any person or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this article or in its application to the person or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

**Section 4.**

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