

**TOWN OF NORTH HEMPSTEAD
LOCAL LAW NO. OF 2022**

**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 finds it in the best interests of the Town to amend Chapter 75 of the Town Code to create an administrative process for the issuance of temporary antenna location permits by the Building Department for temporary support structures and the temporary relocation of existing wireless telecommunications equipment to those structures to facilitate the repair and/or renovation of the existing permanent tower or base station.

Section 2.

Section 75-2 of the Town Code is hereby amended as follows:

§ 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.

CO-LOCATION

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 co-location 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 co-location 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.

TEMPORARY SUPPORT STRUCTURE

Any tower or base station as defined in this section, which does not exist, or is intended not to exist, for more than 180 days and is located within the current boundaries of the leased or owned property surrounding an existing permanent tower or base station.

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.

Section 3.

Section 75-5 of the Town Code is hereby amended as follows:

§ 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 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.

(e) Temporary support structures constructed for the temporary relocation of existing equipment to facilitate the repair and/or renovation of the existing permanent tower or base station. In addition to a permit for the temporary support structure a separate antenna location permit shall be required for each wireless carrier/service provider relocating their equipment to the temporary support structure. The standards set forth in § 75-7 herein shall not apply to temporary support structures under this section or any equipment relocated to a temporary support structure.

(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 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.

(c) Temporary support structures constructed for the temporary relocation of existing equipment to facilitate the repair and/or renovation of the existing permanent tower or base station. In addition to a permit for the temporary support structure a separate antenna location permit shall be required for each wireless carrier/service provider relocating their equipment to the temporary support structure. The standards set forth in § 75-7 herein shall not apply to temporary support structures under this section or any equipment relocated to a temporary support structure.

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, **except in the case of an antenna location permit for a temporary support structure constructed for the temporary relocation of existing equipment, which fee shall be listed in the Town of North Hempstead Fee Schedule for temporary structures and which permit shall expire after 180 days and may be renewed for up to a maximum of three 180 day extensions.**

- C. Renewal of antenna location permits. At the expiration of its [~~three-year~~] term, **as set forth in subsection (B) above,** 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.
- 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.

Section 4.

This local law shall take effect immediately upon filing with the Secretary of State.