MODEL WIRELESS TELECOMMUNICATIONS FACILITY SITING ORDINANCE

New York State Wireless Association

2012

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About New York State Wireless Association (NYSWA)

NYSWA is a trade association whose members represent the wireless industry in New York State. NYSWA provides a forum for the cultivation of relationships and exchange of ideas among wireless telecommunication professionals, government officials and the public. NYSWA serves as the voice of the wireless industry in New York State, and strives to educate the public about wireless services and infrastructure. Our members include hundreds of workers who live and work in New York State.

For more information, please go to www.newyorkstatewireless.org.
I. Purpose and Legislative Intent.

The purpose of this Wireless Telecommunications Ordinance is to ensure that residents, public safety operations and businesses in [Jurisdiction] have reliable access to wireless telecommunications networks and state of the art communications services while also ensuring that this objective is achieved in a fashion that preserves the intrinsic aesthetic character of the community and is accomplished according to [Jurisdiction’s] zoning, planning, and design standards. The Telecommunications Act of 1996 preserved, with certain limitations, local government land use and zoning authority concerning the placement, construction, and modification of wireless telecommunications facilities.

To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable Federal laws and is consistent with [the Jurisdiction’s] land use policies, [the Jurisdiction] is adopts this single, comprehensive, wireless telecommunications ordinance.

This Ordinance establishes parameters for the siting of Wireless Telecommunications Facilities. By enacting this Ordinance it is [the Jurisdiction’s] intent to:

1. Ensure [Jurisdiction] has sufficient wireless infrastructure to support its public safety communications throughout [Jurisdiction];
2. Ensure access to reliable wireless communications services throughout all areas of [the Jurisdiction];
3. Encourage the use of Existing Structures for the collocation of Telecommunications Facilities;
4. Encourage the location of Support Structures, to the extent possible, in areas where any potential adverse impacts on the community will be minimized;
5. Facilitate the responsible deployment of Telecommunications Facilities in areas required to ensure comprehensive wireless services across [Jurisdiction];
6. Minimize the potential adverse effects associated with the construction of Monopoles and Towers through the implementation of reasonable design, landscaping, and construction practices;
7. Ensure public health, safety, welfare, and convenience.

II. Definitions.

For the purposes of this Ordinance, the following definitions apply:
Abandon — Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Accessory Equipment -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries or other backup power supply sources, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

Administrative Review -- Non-discretionary evaluation of an application by the [Zoning Administrator] or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV E of this Ordinance.

Antenna -- Any structure or device used to retransmit or receive electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Collocation -- The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of a Existing Structure.

Carrier on Wheels or Cell on Wheels (“COW”) -- A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis.

Existing Structure -- Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications -- Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Monopole -- A single, freestanding pole-type structure supporting one or more Antennas. For purposes of this Ordinance, a Monopole is not a Tower.
Ordinary Maintenance - Work that is undertaken to ensure that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure’s foundation or of the Support Structure itself. Ordinary Maintenance includes replacing equipment with equipment of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility. Ordinary Maintenance does not include Minor and Major Modifications.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility -- Any Telecommunications Facility that is integrated as an aesthetic or architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure provides visual mitigation.

Substantial Increase: Occurs when:

(1) [t]he mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to avoid interference with existing antennas; or

(2) [t]he mounting of the 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; or

(3) [t]he mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Structure that would protrude from the edge of the Existing Structure more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or

(4) [t]he mounting of the proposed antenna would involve excavation outside the current Existing Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Structure and any access or utility easements currently related to the site.

Support Structure(s) -- A structure designed to support Telecommunications Facilities including, but not limited to, Monopoles, Towers, and other freestanding self-supporting structures.

Telecommunications Facility(ies) -- Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information including, but not limited to, cellular telephone service, personal communications service (PCS), and paging.
service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment.

Tower -- A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

III. Approvals Required for Telecommunications Facilities and Support Structures.

(A) Administrative Review

(i) Collocations and Minor Modifications shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance. Collocations and minor modifications shall be deemed Type II Actions under the State Environmental Quality Review Act (SEQRA).

(ii) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use is not otherwise exempt. If the use of the COW is either not in response to a declaration or emergency, or will last in excess of one hundred-eighty (180) days, Administrative Review and Administrative Approval shall also be required.

(B) Special Permit. Telecommunications Facilities and Support Structures not permitted by Administrative Approval shall be permitted in any district upon the granting of a Special Permit from the [Planning Board/Commission] in accordance with the standards set forth in this Ordinance.

(C) Exempt. Ordinary Maintenance of existing Telecommunications Facilities and Support Structures, as defined herein, shall be exempt from zoning and permitting requirements. In addition, the following facilities are not subject to the provisions of this Ordinance: (1) antennas used by residential households solely for broadcast radio and television reception; (2) satellite antennas used solely for residential or household purposes; (3) COWs placed for a period of not more than one hundred eighty (180) days at any location within [the Jurisdiction] after a declaration of an emergency or a disaster; and (4) television and AM/FM radio broadcast towers and associated facilities.

IV. Telecommunications Facilities and Support Structures Permitted by Administrative Approval.

(A) Telecommunications Facilities Located on Existing Structures

(1) Telecommunications Facilities are permitted in all zoning districts when located on any Existing Structure subject to Administrative Approval in accordance with the requirements of this Part.
(2) Antennas and Accessory Equipment may exceed the maximum building height limitations within a zoning district, provided they do not constitute a Substantial Increase.

(3) Minor Modifications are permitted in all zoning districts subject to Administrative Approval in accordance with the requirements of this Part.

(B) COW Facilities and Minor Modifications

(1) The use of COWs shall be permitted in any zoning district after Administrative Review and Administrative Approval in accordance with the standards set forth in this Ordinance if the use of the COW is either not in response to a declaration or emergency by the Governor or will last in excess of one hundred-eighty (180) days.

(E) General Standards, Design Requirements, and Miscellaneous Provisions

(1) Unless otherwise specified herein, all Telecommunications Facilities and Support Structures permitted by Administrative Approval are subject to the applicable general standards and design requirements of Section VI and the provisions of Section VII.

(F) Administrative Review Process

(1) All Administrative Review applications must contain the following:

(a) Administrative Review application form signed by applicant.

(b) Copy of letter of authorization from property owner evidencing applicant’s authority to pursue zoning application.

(c) Site plans detailing proposed improvements including anticipated future expansion which complies with [Jurisdiction’s existing site plan requirements] as applicable.

(e) Administrative Review application fee as listed in [Jurisdiction’s published fee schedule].

(2) Procedure

(a) Within thirty (30) days of the receipt of an application for Administrative Review, the [Zoning Administrator] shall inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements. In the
event such notification of incompleteness is not provided within thirty (30) days the application shall be deemed complete.

(b) The [Zoning Administrator] must issue a written decision granting or denying the request within forty-five (45) days of the submission of the initial application unless:

Failure to issue a written decision within forty-five (45) days shall constitute an approval of the application.

(c) Should the [Zoning Administrator] deny the application, the [Zoning Administrator] shall provide written justification for the denial.

(d) Applicant may appeal any decision of the [Zoning Administrator] as permitted by State or Local law.

V. Telecommunications Facilities and Support Structures Permitted by [Special Permit].

(A) Any Telecommunications Facility or Support Structures Not Meeting the Requirements of Section IV Shall Be Permitted by [Special Permit] in all Zoning Districts Subject to:

(1) The submission requirements of Section V (B) below; and

(2) The applicable standards of Sections VI and VII below; and

(3) The requirements of the [special permit] general conditions at Code Section ____. [Insert cross reference to Jurisdiction code section that establishes general conditions applicable to Special Permits.]

(B) Submission Requirements for Special Permit Applications

(1) All Special Permit applications for Telecommunications Facility and Support Structures must contain the following:

(a) Special Permit application form signed by applicant.

(b) Copy of letter of authorization from the property owner evidencing applicant’s authority to pursue zoning application.

(c) Site plans detailing proposed improvements including anticipated future expansion which complies with [Jurisdiction’s existing site plan requirements] as applicable.
(d) Number of proposed Antennas and their height above ground level.

(e) Line-of-sight diagram or photo simulation, showing the proposed Support Structure set against the skyline.

(f) A statement justifying why Collocation is not feasible. Such statement shall include:

(i) Such technical information and other justifications as are necessary to document the reasons why collocation is not a viable option; This may include evidence that (a) no suitable towers or structures are located within the geographic area that meet applicant's engineering requirements, or (b) that the applicant's proposed antenna would cause electromagnetic interference with the antennas on the existing tower(s) or structure(s), or (c) the antennas on the existing tower(s) or structure(s) would cause interference with the applicant's proposed antennas and/or (d) that there are other limiting factors that render existing towers and structures unsuitable. It may also include evidence that the fees, costs or contractual provisions required by the owner of an existing tower or structure in order to share an existing tower or structure or to adapt an existing tower or structure for shared use are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.

(ii) A list of the existing structures considered as possible alternatives to the proposed location and a written explanation why the alternatives considered were either unavailable or technologically infeasible.

(g) For applications for New Support Structures, a statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.

(h) Special Permit application fee as listed in [Jurisdiction’s published fee schedule].

(C) Procedure

(1) Within thirty (30) days of the receipt of an application for [Special Permit], the [Zoning Administrator] shall inform the Applicant in writing the specific reasons why the application is incomplete and does not meet the submittal requirements. In the event such notification of incompleteness is not provided within thirty (30) days the application shall be deemed complete.
(2) Applications for new Support Structures with proposed Telecommunications Facilities shall be considered as one application requiring only a single application fee.

(3) The posting of the property and public notification of the application shall be accomplished in the same manner required for any [Special Permit] application under this Ordinance.

(4) The [Planning Board/Commission] must issue a written decision granting or denying the request within one hundred-fifty (150) days of the submission of the initial application unless:

(i) [Planning Board/Commission] notified applicant that its application was incomplete within thirty (30) days of filing. If so, the remaining time from the one hundred-fifty (150) day total review time is suspended until the Applicant provides the missing information; or
(ii) Extension of time is agreed to by the Applicant.

Failure to issue a written decision within one hundred-fifty (150) days shall constitute an approval of the application.

VI. General Standards and Design Requirements.

(A) Design

(1) Support Structures shall be subject to the following:

(a) Shall be designed to accommodate a minimum number of collocations based upon their height:
   (i) Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;
   (ii) Support structures from one hundred (100) to one hundred-fifty feet (150) shall support at least three (3) telecommunications providers;
   (iii) Support structures greater than one hundred-fifty (150) feet in height shall support at least four (4) telecommunications carriers.

(b) The compound area surrounding the Support Structure must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section VI(A)(1)(a).
(2) Stealth Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible.

(3) Upon request of the Applicant, the [Planning Board/Commission] may waive the requirement that new Support Structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.

(B) Setbacks

(1) Property Lines. Unless otherwise stated herein, Support Structures shall be set back from all property lines a distance equal to their height measured from the base of the structure to its highest point.

(2) Residential Dwellings. Unless otherwise stated herein, Monopoles, Towers and other Support Structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure. There shall be no setback requirement from dwellings located on the same parcel as the proposed structure. Existing or Replacement structures shall not be subject to a setback requirement.

(3) Unless otherwise stated herein, all Accessory Equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district. Accessory Equipment associated with an existing or Replacement utility pole shall not be subject to a setback requirement.

(4) The [Planning Board/Commission] shall have the authority to vary any required setback upon the request of the applicant if the Applicant provides a letter stamped by a certified structural engineer documenting that the proposed structure’s fall zone is less than the actual height of the structure.

(C) Height

(1) In any zoning district, Support Structures shall be designed to be the minimum height needed to meet the service objectives of the applicant and anticipated collocators.

(D) Lighting and Marking. Telecommunications Facilities or Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
(E) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.

(F) Landscaping. In all districts, the [Planning Board/Commission] shall have the authority to impose reasonable landscaping requirements surrounding the Accessory Equipment. The [Planning Board/Commission] may choose to not require landscaping for sites that are not visible from the public right-of-way or adjacent property or in instances where in the judgment of the [Planning Board/Commission], landscaping is not appropriate or necessary.

(G) Fencing

(1) Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the [Zoning Board] or [Zoning Administrator].

(2) The [Zoning Board or Zoning Administrator] may waive the requirement of Subsection (1) above if it is deemed that a fence is not appropriate or needed at the proposed location.

VII. Miscellaneous Provisions.

(A) Abandonment and Removal. If a Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the [Jurisdiction] may require that such Support Structure be removed only after first providing written notice to the owner of the Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Support Structure within thirty (30) days of receipt of said written notice. In the event the owner of the Support Structure fails to reclaim the Support Structure within the thirty (30) day period, the owner of the Support Structure shall be required to remove the same within six (6) months thereafter. The [Jurisdiction] shall ensure and enforce removal by means of its existing regulatory authority.

(B) Multiple Uses on a Single Parcel or Lot. Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

(C) Relief. Any applicant desiring relief, waiver or exemption from any aspect or requirement of this chapter may request. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the applicant to prove. No such relief or exemption shall be approved unless the applicant demonstrates that, if granted, the relief, waiver or exemption will have no significant adverse effect on the health, safety and welfare of the [Jurisdiction], its residents and other service providers.
VIII. **Telecommunications Facilities and Support Structures in Existence on the Date of Adoption of this Ordinance.**

(A) Telecommunications Facilities and Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.

(B) Non-conforming Support Structures

(1) Non-conforming Support Structure. Ordinary Maintenance may be performed on a Non-conforming Support Structure or Telecommunications Facility.

(2) Collocation and/or Minor Modifications of Telecommunications Facilities on an existing non-conforming Support Structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section IV.

(3) Major Modifications may be made to non-conforming Support Structures utilizing the regulatory approval process defined in Section V.
For Further Questions Please Contact:

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