

## ***Local Law Filing***

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Town of Oyster Bay

Local Law No. \_\_\_\_\_ of the year 2017

A local law entitled "A LOCAL LAW TO ADD CHAPTER 242 OF THE CODE OF THE TOWN OF OYSTER BAY ENTITLED 'WIRELESS TELECOMMUNICATIONS FACILITIES' AND TO REVISE SECTIONS OF CHAPTER 246-5 OF THE CODE"

Be it enacted by the Town Board of the  
(Name of Legislative Body)

Town of Oyster Bay as follows:

### **Section 1.**

#### **ADD:**

#### **CHAPER 242 – WIRELESS TELECOMMUNICATIONS FACILITIES.**

##### **§ 242-1 Legislative Intent.**

##### **Legislative Intent.**

A. The Town of Oyster Bay finds that wireless telecommunications facilities may pose significant concerns to its residents, and the character and environment of its neighborhoods. The Town also recognizes that facilitating the development of wireless service technology can be of significant benefit to its residents. In order to ensure that the placement, construction or modification of wireless telecommunications facilities will adequately serve the needs of the users of those facilities, while posing the least possible adverse effect upon the Town and its residents, the Town is enacting this wireless telecommunications facilities application and permit process. The process will establish a fair and efficient process for review and approval of applications; assure an integrated, comprehensive review of environmental impacts; and protect the rights of the Town and its residents, to the maximum extent allowed under the law.

**B.** This chapter will seek to promote, wherever possible, the sharing and/or co-location of wireless telecommunications facilities among service providers; the use of stealth technology; and employment of the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances to minimize adverse aesthetic and visual impacts on the surrounding areas.

**§ 242-2 Legislative authority.**

This chapter is enacted as a local law under the Municipal Home Rule Law, and pursuant to all applicable authority granted by the state and federal governments.

**§ 242-3 Definitions; word usage.**

For purposes of this chapter, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word "shall" is always mandatory, and not merely directory.

**ACCESSORY FACILITY OR STRUCTURE**

An accessory facility or structure serving or being used in conjunction with wireless telecommunications facilities, and located on the same property or lot as the wireless telecommunications facilities, or an immediately adjacent lot, including but not limited to, utility or transmission equipment storage sheds or cabinets.

**APPLICANT**

Any wireless service provider submitting an application for a special use permit or other approval for wireless telecommunications facilities.

**APPLICATION**

A formal request that the Town grant a building permit, special use permit, or other approval for a wireless telecommunications facility, including all documentation, information, and communications from or on behalf of the applicant relating to the request.

**ANTENNA**

A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.

**BOARD**

The Zoning Board of Appeals of the Town of Oyster Bay.

## **BUILDING CONSTRUCTION ORDINANCE**

The Building Construction Ordinance of the Town of Oyster Bay.

### **CO-LOCATION**

The use of an existing tower or a structure used as an existing cell antenna site to support antenna(s) for the provision of wireless services pursuant to a building permit or special use permit from the Town. A replacement tower that is constructed on the same site as an existing tower will be considered a co-location as long as the new tower is no taller than the old tower, the old tower is removed in a time frame as determined by the Department of Planning and Development after the new tower is constructed, and the site remains in compliance with applicable permits.

### **COMMERCIAL IMPRACTICABILITY OR COMMERCIALLY IMPRACTICABLE**

The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone, shall not deem a situation to be commercially impracticable and shall not render an act or the terms of an agreement commercially impracticable.

### **COMPLETED APPLICATION**

An application that contains all information and/or data requested by the Town from the applicant in applications forms or otherwise to enable an informed decision to be made with respect to an application.

### **DISTRIBUTED ANTENNA SYSTEM OR DAS**

A network of spatially separated antenna nodes connected to a carrier base station or similar facility via a fiber system or other transport medium that provides wireless telecommunications services within a limited geographic area or structure.

### **FAA**

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

### **FCC**

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

### **HEIGHT**

When referring to a tower or structure, the distance measured from the mean level of the established center-line grade of the street adjacent to the parcel to the highest point on the tower or structure, even if said highest point is an antenna or lightning protection device.

#### **MICRO WIRELESS TELECOMMUNICATION NETWORK OR MICRO NETWORK**

A network of relatively small Wireless Telecommunication Facilities for provision of wireless services to a limited geographical area or structure, including DAS and Small Cell Networks and such other network and infrastructure technologies for provision of similarly limited wireless services as may be designated from time to time by the Planning and Development Commissioner.

#### **MODIFICATION OR MODIFY**

The addition, removal or change of any of the physical or visually discernible components, colors, or other aspects of a wireless telecommunications facility (such as antennas, cabling; equipment shelters, landscaping, shrouding, fencing, utility feeds, vehicular access, or parking, specifically including new transmission equipment, removal of transmission equipment, replacement of transmission equipment, or changes of wireless carrier or service provider) which addition, removal or change that would be inconsistent with an existing permit for the facility but, in the judgment of the Commissioner of Planning and Development, will likely qualify for approval under a permit conformed to reflect such addition, removal or change.

#### **NIER**

Nonionizing electromagnetic radiation.

#### **NEW WIRELESS TELECOMMUNICATION FACILITY**

A new wireless telecommunications facility which is located at a site where there are no existing permitted wireless facilities.

#### **PERSON**

Any individual, corporation, estate, trust, partnership, joint stock company, association of two or more persons having a joint common interest, or any other entity.

#### **PERSONAL WIRELESS FACILITY**

See definition of "wireless telecommunications facility."

#### **PERSONAL WIRELESS SERVICES OR PWS OR PERSONAL TELECOMMUNICATIONS SERVICE OR PCS**

Shall have the same meaning as defined and used in the 1996 Telecommunications Act.

#### **REPAIRS AND MAINTENANCE**

Any matters that involve the normal repair and maintenance of a wireless facility and are not a modification as defined in this chapter. Normal repair and maintenance does not change the physical or visually discernible appearance of the facility or any part thereof as it was originally permitted. It also means the normal replacement of any equipment or components of a wireless facility without an increase in height, and where the replacement is, in the judgment of the Commissioner of Planning and Development, identical to the existing equipment or component being replaced. The term "repair and maintenance" shall not include any matters which the Commissioner of Planning and Development determines is a modification, as defined herein.

#### **SMALL CELL NETWORK**

A network of one or more nodes connected by a fiber or substantially equivalent system to a carrier switching system or other means of interconnection for provision of wireless services within a limited geographic area or structure.

#### **SPECIAL USE PERMIT**

The official document or permit granted by the Zoning Board of Appeals under which an applicant is allowed to obtain a building permit from the Department of Planning and Development to construct a new wireless telecommunications facility.

#### **STATE**

The State of New York.

#### **STEALTH OR STEALTH TECHNOLOGY**

To minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

#### **TELECOMMUNICATIONS**

The transmission and/or reception of audio, video, data, and any other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

#### **TELECOMMUNICATION SITE**

See definition of "wireless telecommunications facilities."

#### **TELECOMMUNICATIONS STRUCTURE**

A building or structure used in the provision of services described in the definition of "wireless telecommunications facilities."

## **TEMPORARY**

Temporary in relation to all aspects and components of this chapter; something intended to, or that does not exist for more than 90 days.

## **TOWER**

Any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.

## **TOWN**

The Town of Oyster Bay.

## **WIRELESS TELECOMMUNICATIONS FACILITY OR WIRELESS FACILITY**

Includes a telecommunications site and personal wireless facility. It means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes, without limit, towers of all types and kinds and structures, including, but not limited to, buildings, church steeples, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), wireless broadband services, commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

### **§ 242-4 Exclusions.**

**A.** The following wireless telecommunications facilities shall be exempt from this chapter:

- (1) Any facilities operated by or on behalf of any unit of government for public or municipal purposes;
- (2) Any facilities expressly or impliedly exempt from the Town's zoning or permitting authority under law.
- (3) Any facilities exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial telecommunications.
- (4) Any repairs and maintenance of a lawfully existing facility.

**B.** The following wireless telecommunications facilities shall be exempt from this chapter until they are modified:

- (1) Any facilities that are authorized and regulated by or under an unexpired license agreement or lease with the Town of Oyster Bay, or any district or agency under the control of the Town of Oyster Bay, which facility was already lawfully installed on the effective date of this chapter,

except that nothing herein shall exempt any such facility from complying with any and all provisions or requirements set forth under such agreement or lease.

(2) Any facilities that are authorized and regulated by or under a valid and unexpired building permit or, as the case may be, a decision of the Zoning Board of Appeals, which was issued prior to the effective date of this chapter, except that nothing herein shall exempt any such facility from complying with any and all provisions or requirements set forth under such permit or decision or other applicable law.

C. Any wireless service provider of wireless telecommunication facilities excluded under Subsection A-2 or Subsection B of this Section must file within one year of the effective date of this Chapter a disclosure statement for each such facility with the Department of Planning and Development identifying the location of the site, emergency contact information for the wireless service provider, and providing a site diagram and such other identifying information as the Commissioner of Planning and Development may require. The acceptance of filing of such identifying information does not and shall not be construed as approval of the site or any aspect thereof by the Town or waive any existing rights of either the Town or the wireless service provider. If no such disclosure statement is filed for such a site within one year, it shall no longer be exempt from the provisions of this Chapter. Operating or maintaining such site thereafter is prohibited and constitutes a violation subject to all applicable legal remedies including without limitation the penalties specified in Section 20 of this Chapter.

**§ 242-5 Permit and application requirements.**

A. As of the effective date of this chapter, and except as otherwise expressly provided herein, no person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of wireless telecommunications facilities without having first obtained a building-permit from the Department of Planning and Development and any and all other approvals as required herein or under other applicable law. A new wireless facility must, in addition to a building permit, obtain a special use permit from the Zoning Board of Appeals. Applicants may request a waiver of the requirement for a special use permit from the Commissioner of Planning and Development pursuant to the provisions of the chapter.

B. The Zoning Board of Appeals, pursuant to its authority and criteria under Article 16 of the Town Law and Chapter 246 of this Code, and subject to the provisions of the federal Telecommunications Act of 1996, as modified, and any other applicable state or federal law, is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting or revoking special use permits for new wireless telecommunications facilities.

C. Except as provided herein or otherwise by law, an application for a special use permit or other approval under this chapter shall commence with a building permit application and be administered by the Department of Planning and Development under the requirements of Chapter 93 of this Code and, and the Zoning Board of Appeals procedure shall be as provided in Article 16 of the Town Law and Chapter 246 of this Code, and any and all other applicable laws.

**D.** If the Commissioner of Planning and Development determines that particular applications or classes of applications under this chapter may be considered more fairly, quickly, and inexpensively with the assistance of third-party agencies or expert consultants, the Department of Planning and Development shall have discretion to retain such consultants as may be appropriate to accept, review, analyze, and evaluate applications and all documentation submitted therewith, advise and provide information to Town personnel on technical and other issues relating to such applications, and make recommendations to the Department of Planning and Development, the Zoning Board of Appeals, and any other involved agency or Department of the Town with respect to the administration of this chapter and decisions made hereunder.

**E.** In the course of considering an application pursuant to this chapter, the Department of Planning and Development and the Zoning Board of Appeals may waive submission of information otherwise required in the application which they deem unnecessary in the circumstances and may require submission of such additional information as they deem sufficient to permit a determination that in the circumstances the proposed work is in compliance with this chapter and all other applicable local, state, or federal law. The Department of Planning and Development and the Zoning Board of Appeals may reject applications which fail to establish compliance with the requirements of this chapter or other applicable law or which fail to include information required for a determination of such compliance. If an applicant contends that certain information which has been requested need not be submitted in its application, the applicant shall submit a sworn written statement explaining why such information ought not be required in the circumstances. The Department of Planning and Development and the Zoning Board of Appeals may reject any application which fails to include required information, or they may consider the application on its merits giving such weight as they deem appropriate to the applicant's failure to provide the required information.

**F.** Any and all representations made by the applicant to the Department of Planning and Development, Zoning Board of Appeals, or other governmental agency relating to the application, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Department of Planning and Development and Zoning Board of Appeals. Where a certification is called for in this chapter, such certification shall be dated and bear the signature of a licensed attorney or the signature and seal of an architect or engineer in the State of New York.

**G.** In addition to all other general requirements for the filing of a building permit application, the application for a building permit for a wireless telecommunications facility shall include:

(1) A written certification by the applicant that the wireless telecommunications facility which is the subject of the application will be maintained in compliance with all conditions of the building permit, including all conditions of any required special use permit or other approval, without exception, as well as any and all applicable agreements and Town, state and federal laws, rules, and regulations; and that the work proposed in the application is legally permissible, including, but not limited to the fact that the applicant is authorized to do business in the state.

(2) A descriptive summary statement of the nature and objective(s) for the work proposed in the application, and the impact(s) of the work on the surrounding area.

(3) The name, address and phone number of the person(s) preparing the application and supporting documentation.

(4) A site plan showing the existing and proposed structures on the subject property, and the type, locations and dimensions of all proposed and existing landscaping and fencing on the subject property; the azimuth, size and center-line height location of all proposed and existing antennas on the supporting structure; the number, type and model of the antenna(s) proposed with a copy of the specification sheet; the make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users.

(5) The frequency, modulation and class of service of radio or other transmitting equipment.

(6) The actual intended transmission power stated as the maximum effective radiated power (ERP) in watts.

(7) Signed documentation such as the "Checklist to Determine Whether a Facility is Categorically Excluded" to verify that the wireless telecommunication facility with the proposed installation will be in full compliance with the current FCC RF emissions guidelines (NIER). If not categorically excluded, a complete RF emissions study is required to provide verification.

(8) A statement signed by the wireless service provider that it will expeditiously remedy any physical or RF interference with other telecommunications devices caused by its equipment or the operation of such.

(9) A copy of the FCC license is required for a co-location.

(10) The applicant shall provide certification with documentation (structural analysis) including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and are constructed to meet all local, city, state and federal structural requirements for loads, including wind and ice loads.

(11) A copy of the geotechnical subsurface soils investigation, evaluation report and foundation recommendation for a proposed or existing tower site and if an existing tower, a copy of the installed foundation design.

(12) The number, type and model of the antenna(s) proposed with a copy of the specification sheet.

(13) A written copy of an analysis, completed by a qualified individual or organization, to determine if a proposed new tower or existing structure intended to support wireless facilities is in compliance with Federal Aviation Administration Regulation Part 77 and if it requires lighting. This requirement shall also be for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that an FAA determination is required, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

(14) A radius map showing all properties within 300 feet or ten times the height of the proposed new tower or other structure, whichever is greater.

**H.** In addition to all other required information as stated in this chapter, all applications for a special use permit for the construction or installation of new wireless telecommunications

facilities or modification of an existing facility shall contain a complete building permit application and the additional information hereinafter set forth.

(1) Documentation that demonstrates and proves the need for the wireless telecommunications facility to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites that demonstrate a significant gap in coverage; and/or if there is a capacity need, such documentation shall include an analysis of current and projected usage. Drive test or call test data shall be required as determined to be appropriate by the Building Department or the Town's wireless consultant;

(2) The name, address and phone number of the person(s) preparing the documentation referenced in Subsection **H(1)** above and conducting the studies and analyses;

(3) An area map showing the location, size, height and usage of all structures and buildings within 1,500 feet of the subject property;

(4) The site plan must also show, in addition to all standard information, a description of any proposed tower and/or antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above the mean level of the established center-line grade of the street adjacent to the parcel, materials, color and lighting;

(5) The make, model, type and manufacturer of the tower and design plan stating the tower's capacity to accommodate multiple users; and

(6) A full statement and substantive explanation to show that pursuant to a study undertaken by applicant employing due diligence, the proposed placement site is justified, in that alternate placement sites, co-location sites, or other alternate methods, which would have a lesser negative effect on area character, property values and aesthetics than the selected site would be technically unfeasible, commercially impracticable, or otherwise inappropriate. Such statement shall address potential alternatives identified by the Building Department. The applicant should submit technical, financial or other evidence to support rejection of any such alternatives as inappropriate.

**I. Application for new tower or other structure.**

(1) In the case of an application for a new tower or other structure, in addition to all other pertinent application requirements set forth above, the Department of Planning and Development and/or Zoning Board of Appeals shall require the applicant to submit such additional information and undertake other activities as may be appropriate in the circumstances, including the following:

(2) A written report demonstrating the applicant's meaningful efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the Town, with copies of written requests and responses, along with any letters of rejection, stating the reason for rejection.

(3) A "balloon test" prior to the public hearing on the application to better inform the public regarding the proposed new tower. The applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a three-foot-in-diameter brightly colored balloon at the maximum height of the proposed new tower. (The size of the balloon must be representative of the size of the

antenna configuration proposed.) The dates (including a second date, in case of poor visibility on the initial date), times and location of this balloon test shall be advertised by the applicant between seven and 14 days in advance of the first test date in a newspaper with a general circulation in the general vicinity. The applicant shall inform the Department of Planning and Development, in writing, of the dates and times of the test, at least 14 days in advance. The balloon shall be flown for at least four consecutive hours sometime between 7:00 a.m. and 4:00 p.m. on the dates chosen. The primary date shall be on a weekend, but in case of poor weather on the initial date, the secondary date may be on a weekday. A report with pictures from various locations of the balloon shall be provided to the Department of Planning and Development.

**(4)** A study of the feasibility of designing the proposed tower to accommodate future demand for at least four additional commercial applications, for example, future co-locations.

**(5)** A requirement that the tower be structurally designed to accommodate at least four additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. This requirement may be waived by the Zoning Board of Appeals; provided that the applicant, in writing, demonstrates that the provision of future shared usage of the tower is not technologically feasible, is commercially impracticable, or creates an unnecessary and unreasonable burden, based upon:

**(a)** The foreseeable number of FCC licenses available for the area;

**(b)** The kind of wireless telecommunications facilities site and structure proposed; and

**(c)** The number of existing and potential licenses without wireless telecommunications facilities spaces/sites.

**(6)** Available space on existing and approved towers.

**(a)** The owner of a proposed new tower, and his/her successors in interest, shall provide a written statement in the application from someone in authority to bind the applicant, stating that the applicant will negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:

**[1]** Respond within 60 days to a request for information from a potential shared-use applicant;

**[2]** Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;

**[3]** Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

**J.** The owner of a proposed new tower shall provide certification with documentation (structural analysis) including calculations that the telecommunication facility tower and foundation and attachments, rooftop support structure, water tank structure, and any other supporting structure as proposed to be utilized are designed and will be constructed to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads.

**K.** In applications for a co-location or modification on an existing tower, the applicant is to provide signed documentation of the tower condition such as an ANSI report as per Annex E,

Tower Maintenance and Inspection Procedures, ANSI/TIA/EIA-222G, or most recent version in effect. If signed documentation of tower inspection provided by another permit holder for the tower is already on file with and satisfactory to the Department of Planning and Development at the time the applicant is required to file an initial or an updated tower inspection report, the Building Department shall waive such filing by the applicant. It is the responsibility of the applicant to confirm any such waiver with the Department of Planning and Development whenever it would otherwise have been required to file an initial or an updated report.

**L.** All special use permit applications for a new wireless telecommunications facility shall contain a demonstration that the facility will be sited so as to minimize visual intrusion as much as possible, given the facts and circumstances involved, and will thereby have the least adverse visual effect on the environment and its character and on the residences in the area of the new wireless telecommunications facility.

**M.** In an application for a special use permit for a new tower or a building permit for an existing structure involving a potentially significant adverse visual impact, the applicant shall furnish a visual impact assessment, which shall include:

(1) If a new tower or increasing the height of an existing structure is proposed, a computer-generated "Zone of Visibility Map" at a minimum of one-mile radius from the proposed structure, with and without foliage, to illustrate locations from which the proposed installation may be seen.

(2) Pictorial representations of "before and after" (photo simulations) views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to major roads; parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. In the case of a co-location or modification, the photo simulation need show only the effect of the co-location or modification in relation to other equipment located on the support structure, i.e. the effect on the profile of the facility, and may be taken at or near the site. The applicant should consult with the Building Department to insure that the selection of key viewpoints for the assessment is appropriate.

(3) A map showing the locations of where the pictures were taken and distance from the proposed structure.

(4) A written description of the visual impact of the proposed facility, including and as applicable the tower base, guy wires, fencing and accessory buildings from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.

(5) In narrative and/or by drawing, a demonstration of how applicant shall effectively screen from view the base and all related equipment and structures of the proposed wireless telecommunications facility.

**N.** Applications for a special use permit or a building permit shall document that the proposed work will maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings; this shall include the utilization of stealth or concealment technology required by the Town.

**O.** All utilities at wireless telecommunication's facilities shall be installed underground whenever possible and in compliance with all laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code, where appropriate, as well as Town regulations applicable to excavations in public streets.

**P.** Where a special use permit is required, the application shall show that at a telecommunications site, an access road, turnaround space and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.

**Q.** All wireless telecommunications facilities subject to this chapter shall be constructed, operated, maintained, repaired, modified, removed or restored in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, state, or United States, including but not limited to the most recent editions of the ANSI Code, National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, and health. In the event of a conflict between or among any of the preceding, the more stringent shall apply.

**R.** The applicant and owner of the property shall covenant that a holder of a special use permit or other approval granted under this chapter shall obtain, at its own expense, all other permits and licenses required by applicable law, rule, regulation or code, and shall maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.

**S.** In the course of any application under this chapter, the applicant and its representatives may request a meeting with the Town and its representatives to discuss and identify what documentation and supporting information is required in the particular circumstances of the permit application and generally address issues that will help to expedite the review and permitting process. Applicants who do not meet with the Town to limit the application materials required should submit all the documentation and information identified in this chapter as potentially required for such applications to avoid delay in consideration of their application. The Building Department may in its discretion require an inspection of the site by its representatives in connection with an application. The applicant shall fully cooperate in arranging access for the inspection and may participate in the inspection.

**T.** With respect to any application requiring a special use permit from the Zoning Board of Appeals, the Board will have lead agency status pursuant to SEQRA. The Board shall conduct an environmental review of the proposed project pursuant to SEQRA in combination with its review of the application.

**§ 242-6 Locations subject to special use permit requirement.**

A. In its review of applications for special use permits, the Zoning Board of Appeals shall consider the following factors affecting the suitability of a proposed location for a new wireless facility. These factors are designed and intended to facilitate the provision of wireless services in the Town while minimizing the adverse economic, environmental, and quality of life impacts by encouraging co-location on existing towers and structures improved with wireless telecommunications facilities when such co-location is technically feasible and not commercially impracticable and encouraging the location of new wireless facilities so as to minimize their impact on historically sensitive areas around residences, schools, houses of worship, day-care centers, and similar uses, listed in order from the more preferred to the less preferred.

(1) On existing towers or other structures already improved with wireless telecommunications facilities on Town-owned or other publicly owned property.

(2) On existing towers or other structures already improved with wireless telecommunications facilities on other property in the Town.

(3) A new tower or other structure on Town-owned or other publicly owned properties.

(4) A new tower or other structure on properties in areas zoned for industrial use, or if not feasible, then “LI Light Industry” use under Chapter 246 of this Code.

(5) A new tower or other structure on properties in areas zoned for primarily any nonresidential except “REC Recreation”, “NB Neighborhood Business”, “RO Residential Office”, or “Waterfront-A” districts under Chapter 246 of this Code.

(6) A new tower or other structure on properties in areas zoned for “CB Central Business”, “GB General Business”, or “ORD Office, Research and Development” districts use under Chapter 246 of this Code.

(7) A new tower or other structure on properties in any areas zoned for residential uses under Chapter 246 of this Code.

B. The Zoning Board of Appeals may approve any new wireless facility site located within an area in the above list of priorities if the site is appropriate taking into account the totality of the circumstances, including potential alternatives, under the provisions of this chapter and other applicable law. An applicant proposing a new wireless facility should explain in its application why co-location or any higher priority locations are not feasible or appropriate in the circumstances. Any technological, financial, or other factors should be identified and any quantitative data relating to such factors should be included in the application. Unilateral or contractual obstacles to co-location created by the applicant and/or others holding permits for wireless facilities in the Town are typically contrary to the public interest and may be given little weight. Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, an application may be denied by the Zoning Board of Appeals if the applicant has not otherwise satisfied the requisites for a permit under other provisions of this chapter or other applicable federal, state, or local laws and regulations.

#### **§ 242-7 Shared use, modifications, repairs and maintenance.**

A. The applicant for a special use permit for a new wireless facility shall submit a report inventorying existing towers and other suitable alternative structures already improved with

wireless facilities located within two miles (or such other distance agreed to by the Department of Planning and Development) of a proposed new tower, and explaining why a new tower or wireless facility would be preferable to co-location on any such alternatives.

**B.** An applicant intending to locate on an existing tower or other suitable structure shall be required to document proof from the owner or person in control of the existing tower to permit its use by the applicant.

**C.** Co-locations and modifications at a permitted wireless facility shall be reviewed and approved administratively by the Building Department as modifications to the existing building permit in accordance with all applicable federal, state and local laws and regulations, specifically including § 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, codified at 28 U.S.C. § 1455. The Commissioner shall use his authority under § **242-24** of this chapter as appropriate to effectuate compliance with all such applicable laws.

**D.** Repairs and maintenance consistent with the current building permit of a wireless facility do not require approval of the Building Department or modification of the existing permit. The Commissioner may require inspections and reporting of repair and maintenance work to assure compliance with the requirements of existing permits and all other requirements of this chapter.

#### **§ 242-8 Justification for height of telecommunications towers.**

**A.** In addition to satisfying all other special use permit criteria, the applicant for a new wireless telecommunications facility shall submit documentation justifying the total height of any tower, facility and/or antenna requested and the basis therefor. Documentation in the form of propagation studies must include all backup data used to perform at requested height and a minimum of 10 feet lower height to allow verification of this height need. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

**B.** No tower constructed after the effective date of this chapter, including allowing for all attachments, shall exceed that height which shall permit operation without required artificial lighting of any kind in accordance with Town, state, and/or any federal statute, law, local law, Town ordinance, code, rule or regulation.

#### **§ 242-9 Visibility.**

**A.** Wireless telecommunications facilities shall not be artificially lighted or marked, except as otherwise required by law.

**B.** Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this chapter.

**C.** If lighting is required, the applicant shall provide a detailed plan for sufficient lighting, demonstrating as unobtrusive and inoffensive an effect as is permissible under state and federal regulations.

**§ 242-10 Security.**

All wireless telecommunications facilities and antennas shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically, all antennas, towers and other supporting structures, including guy anchor points and wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with; and transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.

**§ 242-11 Signage.**

**A.** Wireless telecommunications facilities shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of RF radiation or to control exposure to RF radiation within a given area. A sign of the same size is also to be installed to contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the applicant and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet.

**B.** On tower sites, an FCC registration sign as applicable is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

**§ 242-12 Lot size and other zoning specifications.**

**A.** In any case in which a special use permit is required, all proposed towers and any other proposed wireless telecommunications facility structures shall be regulated in all aspects of lot size, height, fencing, and all other applicable area specifications, as provided under the Chapter 246 of this Code for the zoning district in which the premises is located, except that notwithstanding same, no part of any tower or building on which one or more wireless telecommunications antennas are to be affixed shall be located no closer than technically required for provision of wireless services to any property improved with a residential building, house of worship, day-care center, or school, or similar historically protected uses. Proposed deviations from any of the above-referenced standards shall be considered by the Zoning Board of Appeals in the context of its action upon a special use permit application, and subject to the requirements of the Federal Telecommunications Act of 1996, as amended.

**§ 242-13 Retention of experts; escrow funds for reimbursement by applicant.**

**A.** The Town may hire any consultant and/or expert necessary to assist the Town or any of its Departments in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any site inspections.

**B.** An applicant shall deposit with the Town Comptroller escrow funds sufficient to reimburse the Town for all reasonable costs of the Town's consultant in providing expert evaluation and consultation to any agency of the Town in connection with the review of any application, including any expert consultation services deemed necessary by the Commissioner of Planning and Development or the Zoning Board of Appeals. The initial deposit for a new wireless facility

shall be \$8,500. The initial deposit for a co-location or modification shall be \$6,000. The placement of the deposit with the Town Comptroller shall precede the preapplication meeting, or shall occur at such later time as the Commissioner of Planning and Development may direct. The Town Comptroller will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town Department employing its services related to the application.

**C.** If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Town or consultant, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall, upon request of the applicant, be promptly refunded to the applicant.

**D.** When notified by the Town that additional escrow is required, the applicant may request copies of invoices paid to consultants and/or experts. If the applicant finds errors in those invoices, the applicant may ask the Town to audit those specific items for reasonableness, and may request relief therefrom.

**E.** The total amount of the funds needed as set forth in Subsection **B** of this section may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

**F.** Notwithstanding the above, there shall be a fee cap as to the total consultant fees to be charged to the applicant in a case, which shall be the greater of \$17,000 or 10% of the highest annual lease payment to be made by the applicant to the owner of the property under the lease authorizing placement of the wireless telecommunications facilities at a given site. However, the fee cap shall not apply as to any fees which the Commissioner of Planning and Development determines to be attributable to the dilatory or otherwise bad faith actions of the applicant in providing a complete application or in proceeding with a public hearing.

**§ 242-14 Referral to Zoning Board of Appeals; public hearing and notification requirements.**

**A.** If a special use permit is required, then once the Department of Planning and Development determines that the application is complete, with all required submissions having been received in proper form, it shall refer the file to the Zoning Board of Appeals to schedule a public hearing. The Zoning Board of Appeals may require such additional information as it deems necessary and relevant to the case or the scheduling of a public hearing.

**B.** In order for a public hearing to be held by the Zoning Board of Appeals, notice of the hearing shall be published in a newspaper of general circulation in the vicinity of the premises, no less than 10 calendar days prior to the scheduled date of the public hearing. In order that nearby property owners shall be specifically notified of the application, the applicant shall, no less than 14 calendar days prior to the scheduled date of the public hearing, mail a written notice of the

hearing to all property owners within 300 feet or ten times the height of the proposed new tower or other structure, whichever is greater, of any property line of the lot or parcel on which the new wireless telecommunications facilities are proposed to be located, and, for that purpose, the applicant shall complete and utilize a form provided by the Board, and provide affidavits or such other proof to the Board as the Board requires to ensure that such mailing has properly taken place. The notice of hearing shall be sent by certified mail, return receipt requested, to all property owners within 300 feet, and by first-class mail to all other property owners entitled to notice hereunder.

**§ 242-15 Action on application for special use permit.**

**A.** The Zoning Board of Appeals shall consider the merits of the case, based on the evidence in the record, and under the applicable standards set forth under Chapter 246 of this Code, and subject to the provisions of the Federal Telecommunications Act of 1996, as amended, as is required by law. The burden of proof for showing compliance with applicable standards and criteria shall always be upon the applicant.

**B.** After the public hearing is completed, and within the time frame required by law, the Board may approve, approve with conditions, or deny a special use permit.

**C.** No special use permit shall be assigned, transferred or conveyed without the express prior written notification to the Zoning Board of Appeals, received by the Secretary to the Board not less than 10 days prior thereto.

**D.** In addition to any other remedy of the Town at law or equity, any special use permit may, following a hearing upon due prior notice to the applicant, be revoked, canceled, or terminated by the Zoning Board of Appeals if the Board determines that there are substantial violations of the conditions and provisions of the special use permit, or a substantial violation of the provisions of this chapter.

**§ 242-16 Fees.**

**A.** The building permit fees for a wireless telecommunications facility shall be determined by the Department of Planning and Development pursuant to the provisions of Chapter 93 of this Code.

**B.** At the time that the building permit application is filed, the applicant shall provide a qualified cost of construction affidavit to the Department of Planning and Development to establish the basis for the cost of the building permit fees, providing such information therein as the Department of Planning and Development shall deem sufficient for that purpose.

**C.** Prior to issuance of a building permit, if it appears to the Department of Planning and Development that the affidavit underestimated the actual cost, the Department shall require payment of such additional fees as it shall deem appropriate, at the time that the building permit is to be issued.

**D.** The fee to be paid to the Zoning Board of Appeals for a special use permit herein shall be the fee prescribed under Chapter 246 of this Code. The required fee shall be paid to the Board prior to the time that the Board places the case on a public hearing calendar.

**E.** The fee to be paid to the Highway Department for any application receiving treatment under § 242-22 of this chapter shall be \$2,000 per pole utilized for a wireless antenna, to be paid prior to the time that the Highway Department conducts its comprehensive site review as set forth therein. On an application to the Zoning Board of Appeals under § 242-22 of this chapter, the Board shall treat each disapproved site as a separate case, and require a fee from the applicant in the amount required by this Code.

**G.** All fees paid shall be nonrefundable.

**§ 242-17 Performance security.**

Prior to issuance of any building permit, the applicant and the owner of record of any proposed wireless telecommunications facilities property site shall, at its cost and expense, be jointly required to execute and file with the Department of Planning and Development a bond, or other form of security acceptable to the Town Attorney as to type of security, and the form and manner of execution, in an amount of at least \$75,000 for a tower facility and \$25,000 for a co-location on an existing tower or other structure, and with such sureties as are deemed sufficient by the Town Attorney to assure the faithful performance of the terms and conditions of this chapter and conditions of any special use permit, including payment of costs of future demolition of an abandoned tower or other facilities. The full amount of the bond or security shall remain in full force and effect while the facility is in existence and until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit or other approval.

**§ 242-18 Authority to inspect facilities.**

In order to verify that the holder of a special use permit or other approval for wireless telecommunications facilities and any and all lessees, renters, and/or licensees of wireless telecommunications facilities, place and construct such facilities, including towers and antennas, in accordance with all applicable technical, safety, fire, and building codes, laws, ordinances and regulations and other applicable requirements, the Town may designate persons to conduct an inspection on its behalf of all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennas and buildings or other structures constructed or located on the permitted site.

**§ 242-19 Applicability.**

This chapter shall apply to all applications originally filed with the Town of Oyster Bay after the filing of this chapter in the Office of the Secretary of State of the State of New York.

**§ 242-20 Penalties for offenses.**

**A.** In the event of a violation of this chapter or any of the terms and conditions of a special use permit or other approval issued pursuant to this chapter, and in addition to any other remedy available to the Town at law or equity, the Town may impose and collect, and the holder of the special use permit for wireless telecommunications facilities shall pay to the Town, civil

penalties in the amount of \$2,000 per day, until the violation or violations are abated to the satisfaction of the Town.

**B.** Additionally, the failure to comply with provisions of this chapter or the terms and conditions of any special use permit, building permit, or other approval shall constitute a violation of this chapter by the owner of the property, the owner of the improvements, and any lessee or other person or entity in control of the property or facilities, jointly and severally, and shall subject them or any of them to prosecutions in the District Court of Nassau County, or injunction actions in any court of competent jurisdiction to compel compliance.

**C.** In the case of a District Court prosecution, any person,, firm or corporation which shall construct, alter, repair, move, remove, demolish, equip, use, occupy or maintain any wireless telecommunications facility or part thereof in violation of this chapter, or the conditions of any special use permit or other approval issued hereunder, shall be guilty of a violation punishable by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 15 days for each such offense, or by both such fine and imprisonment. Each day that an offense continues shall be deemed a separate offense. For conviction of a second offense, both of which were committed within a period of five years, such violation shall be punishable by a fine of not less than \$250 and not more than \$1,000 or by imprisonment for a period not to exceed 15 days, or both. Upon conviction of a third offense and any further offenses, all of which were committed within a period of five years, such violations shall be punishable by a fine of not less than \$500 and not more than \$2,000 or by imprisonment for a period not to exceed 15 days, or both. Except as provided otherwise by law, such a violation shall not be a crime and the penalty or punishment imposed therefor shall not be deemed for any purpose a penal or criminal penalty or punishment and shall not impose any disability upon or affect or impair the credibility as a witness, or otherwise, of any person convicted thereof.

#### **§ 242-21 Removal.**

**A.** Under the following circumstances, the Department of Planning and Development may determine that the health, safety, and welfare interests of the Town warrant and require the removal of wireless telecommunications facilities:

(1) Wireless telecommunications facilities with a permit have been abandoned (i.e., not used as wireless telecommunications facilities) for a period exceeding 90 consecutive days or a total of 180 days in any three-hundred-sixty-five-day period, except for periods caused by force majeure or acts of God, in which case, repair or removal shall commence within 90 days;

(2) Permitted wireless telecommunications facilities fall into such a state of disrepair as to create a health or safety hazard;

(3) Wireless telecommunications facilities have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit or any other necessary authorization and the special permit or any approval has been revoked as provided in this chapter.

**B.** If the Department of Planning and Development makes a determination under this section, then the Town shall notify the holder of the special use permit or other approval within 48 hours

that said wireless telecommunications facilities are to be removed, on such terms and time frames as the Department may direct, within not-less-than 90 days of receipt of written notice from the Department. Nothing herein shall prevent the Department of Planning and Development from declaring any structure a dangerous structure under Chapter 96 of this Code, and proceeding in any manner authorized thereunder.

**C.** In such a case, the holder of the special use permit or other approval, or its successors or assigns, shall dismantle and remove such wireless telecommunications facilities, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Department. However, if the owner of the property upon which the wireless telecommunications facilities are located wishes to retain any access roadway to the wireless telecommunications facilities, the owner may do so with the approval of the Town.

**D.** If wireless telecommunications facilities ordered to be removed under this section are not removed or substantial progress has not been made to remove the wireless telecommunications facilities within the ninety-day period, then the Town may remove the wireless telecommunications facilities at the sole expense of the owner or holder of the special use permit or other approval, dispose of the equipment as it sees fit, and charge a tax lien against the property on which the structure(s) are situated to cover the Town's cost.

**E.** Notwithstanding anything in this section to the contrary, the Department of Planning and Development may in its sole discretion approve a temporary use permit/agreement for the wireless telecommunications facilities, for no more 180 days, during which time a suitable plan for removal, conversion, or relocation of the affected wireless telecommunications facilities shall be developed by the holder of the special use permit or other approval, and an agreement to such plan shall be executed by the holder of the special use permit or other approval and the Town.

#### **§ 242-22 Permits for micro wireless facilities in public streets or rights-of-way.**

**A.** Applications for permits for new micro wireless facilities on poles of 40 feet in height or less in public streets or rights-of-way in the Town shall be determined in accordance with the specific provisions of this section and, to the extent not inconsistent with this section, under the general procedures and standards applicable to all applications under this chapter. Nothing in this section shall be construed to authorize approval of a building permit or special use permit in violation of applicable local, state and federal laws and regulations, including all Town laws applicable to public streets and rights-of-way.

**B.** An application under Subsection A above to construct, install, operate or otherwise establish any number of new micro wireless facilities shall require an administrative permit to be issued by the Department of Planning and Development. Such administrative permit shall be issued upon a determinations by the Commissioner of Planning and Development that (1) the applicant's building permit applications demonstrate compliance with Chapter 93 of this Code, as well as all other applicable federal, state and local codes and regulations relating to construction

and safety of wireless telecommunications facilities; and (2) approval of each proposed site is warranted based on a report from the Administrative Site Review Panel established in Subsection C of this Section based on a comprehensive site review by Review Panel, submission by the applicant of all information required by the Department of Planning and Development or the Review Panel, and all other relevant information in the administrative record.

C. The Administrative Site Review Panel (Review Panel) shall consist of representatives of the applicant, the Commissioner of Planning and Development, the Highway Commissioner, the Town's consultant, and such representatives of other Town Departments as the Commissioner of Planning and Development may designate with the concurrence of the Commissioner of such other Department. For purposes of its reports, the Review Panel may require the applicant to provide all information to the Town consultant as the Town consultant may need to offer an expert assessment as to the propriety of each proposed site under the standards hereinafter set forth. The Commissioner of Planning and Development shall designate a representative to chair the Review Panel, who shall be responsible for the preparation and timely submission of its reports and the scheduling and procedures the Review Panel's activities. Any member of the Review Panel may add an addendum to a Review Panel's report expressing his or her individual views.

D. The Review Panel will conduct comprehensive site reviews, including evaluation of alternate sites (including but not limited to public lands), and seek to ensure that the proposed placement(s) minimize any adverse impact on residences, houses of worship, day-care centers and schools by stealthing and all other feasible means which are not commercially impracticable in the applicant's circumstances.

E. The Review Panel's report shall be based on information compiled and received by the Panel. Force. It shall assess each proposed site individually, addressing whether the applicant has a substantial need to place a micro wireless facility at the proposed location, and whether there are alternate suitable and commercially practicable locations (including but not limited to available public lands) which will adequately serve the lawful interest of the applicant while reducing any impacts on the surrounding community and residential, religious or educational uses in comparison to the location proposed by the applicant.

F. If the Review Panel in its report recommends approval of one or more of the proposed sites, then administrative permits may be granted by the Department of Buildings if otherwise authorized under Subsections A and B hereof. If it disapproves one or more of the proposed sites, then as to those sites, the applicant will not be entitled to a building permit, and will be required to either accept an alternate approved site designated in the report, or file an application for a different site for consideration by the Review Panel, or apply to the Zoning Board of Appeals for a special use permit to utilize the disapproved site(s).

G. On any such application to the Zoning Board of Appeals as referenced above, the Board shall treat each disapproved site as a separate case, and require a fee from the applicant of \$500 per location. In considering the case(s), the Board shall employ all standard procedures, including all public notice and hearing requirements as required generally under § 267-a of the New York State Town Law, Article 16 of the Town Code, and the rules of the Zoning Board of Appeals,

except that a notice of the hearing shall be sent by certified mail, return receipt requested, to all properties within a one-hundred-foot radius of the facility, and by first-class mail to all properties within a two-hundred-foot radius of the facility; and subject to any applicable provisions of the federal Telecommunications Act of 1996.

H. The Review Panel's report and all data before the Review Panel shall be included in the Board's record. The Board may seek the advice and testimony of the Town's consultant, and may require the applicant to provide any further information it deems relevant to the Town consultant to enable the consultant to provide full expert and probative input to the Board as to the merits of the application.

I. The Zoning Board of Appeals shall grant a special use permit only if it shall determine that the applicant has demonstrated its satisfaction of all applicable requirements, specifically including those referenced in Subsections D and E of this Section.

J. The Department of Planning and Development shall issue an administrative permit only for those sites or alternate which have been approved by the Review Panel or for which a special use permit has been granted by the Board of Appeals under this section.

#### **§ 242-23 Severability.**

**A.** If any word, phrase, sentence, part, section, subsection, or other portion of this chapter or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

**B.** Any special use permit issued under this chapter shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total.

#### **§ 242-24 Relief.**

The Department of Planning and Development in an administrative capacity, and the Zoning Board of Appeals in accord with the special use permit process, are authorized to grant relief from the provisions of this chapter under the criteria hereof and to ensure compliance with all applicable laws, including the federal Telecommunications Act of 1996.

**Section 2.** Amend Chapter 246 – Zoning as follows, so as to avoid inconsistencies with newly adopted Chapter 242 – Wireless Telecommunications Facilities.

### **Chapter 246 – ZONING.**

#### **§ 246-2.4 DEFINITIONS**

**DELETE:**

§ 246-2.4 ANTENNA In its entirety.

**ADD:**

§ 246-2.4

**ANTENNA**

A system of electrical conductors that transmit or receive electromagnetic wave's or radio frequency or other wireless signals.

**WIRELESS TELECOMMUNICATIONS FACILITY**

Includes a telecommunications site and personal wireless facility. It means a structure, facility or location designed, or intended to be used as, or used to support antennas or other transmitting or receiving devices. This includes, without limit, towers of all types and kinds and structures, including, but not limited to, buildings, church steeples, signs or other structures that can be used as a support structure for antennas or the functional equivalent of such. It further includes all related facilities and equipment such as cabling, equipment shelters and other structures associated with the site. It is a structure and facility intended for transmitting and/or receiving radio, television, cellular, SMR, paging, 911, personal communications services (PCS), wireless broadband services, commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

**§ 246-5.5.4 SCHEDULE OF USE REGULATIONS – RESIDENCE DISTRICTS**

**DELETE:**

Uses Uses Permitted Only Where Specifically Indicated	Residence District Designation				
	<b>R1-5A R1-2A</b>	<b>R1-1A R1-20 R1-15 R1-10 R1-10/OHG</b>	<b>R1-7 R1-6</b>	<b>RFM-6 RMF-10 RMF-16 RPH-20 RSC-25</b>	<b>RNG-12</b>
<i>Antennas</i> (§ 246-5.5.4)	PA	PA	PA	PA	PA
Communication and cellular telephone towers					

**ADD:**

Uses Uses Permitted Only Where Specifically Indicated	Residence District Designation				
	<b>R1-5A R1-2A</b>	<b>R1-1A R1-20 R1-15 R1-10 R1-10/OHG</b>	<b>R1-7 R1-6</b>	<b>RFM-6 RMF-10 RMF-16 RPH-20 RSC-25</b>	<b>RNG-12</b>
<i>Antennas</i> (§ 246-5.5.4)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)
Wireless Telecommunications Facilities	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)

**§ 246-5.5.4 SCHEDULE OF USE REGULATIONS – NONRESIDENCE DISTRICTS**

**DELETE:**

Uses Uses Permitted Only Where Specifically Indicated	Nonresidence District Designation									
	REC	RO	OB	NB	CB	GB	WF-A	WF-B	ORD	LI
<i>Antennas</i> (§ 246-5.5.4)		PA	PA	PA	PA	PA			PA	PA
Communication and cellular telephone towers	SP (ZBA)			SP (ZBA)	SP (ZBA)	SP (ZBA)				SP (ZBA)

**ADD:**

Uses Uses Permitted Only Where Specifically Indicated	Nonresidence District Designation									
	REC	RO	OB	NB	CB	GB	WF-A	WF-B	ORD	LI
<i>Antennas</i> (§ 246-5.5.4)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)
Communication and cellular telephone towers	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)	SP (ZBA)

#### **§ 246-5.5.4 ANTENNAS**

##### **DELETE:**

§ 246-5.5.4.2 In its entirety.

##### **ADD:**

§ 246-5.5.4.2 – Permit Required. All antennas and wireless telecommunications facilities shall require a permit and any other approvals as required by Chapter 242, unless such antenna or wireless telecommunications facility is excluded as provided by Section 242-4.

##### **DELETE:**

§ 246-5.5.4.3 In its entirety.

#### **§ 246-5.5.9 COMMUNICATION AND CELLULAR TELEPHONE TOWERS.**

##### **DELETE:**

In its entirety.

##### **ADD:**

#### **§ 246-5.5.9 WIRELESS TELECOMMUNICATIONS FACILITIES.**

§ 246-5.5.9.1 – All antennas and wireless telecommunications facilities shall require a permit and any other approvals as required by Chapter 242, unless such antenna or wireless telecommunications facility is excluded as provided by Section 242-4.

**Section 3.** This local law shall become effective immediately upon filing with the Secretary of State.

(Complete the certification in the paragraph that applies to the filing of this local law and strikeout that which is not applicable).

1. (Final adoption by local legislative body only).

I hereby certify that the local law annexed hereto, designated as local law No. \_\_\_\_\_ of 2017 of the Town of Oyster Bay was duly passed by the Town Board on \_\_\_\_\_ 2017, in accordance with the applicable provisions of law.

\_\_\_\_\_  
Clerk of the Town of Oyster Bay

(Seal)

Date: \_\_\_\_\_, 2017

(Certification to be executed by Town Attorney).

STATE OF NEW YORK  
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Town Attorney

\_\_\_\_\_  
Title

Town of Oyster Bay

Date: \_\_\_\_\_ 2017

S:\Attorney\LOCAL LAWS\Wireless Telecommunications\LL.docx