

5994

2009-2010 Regular Sessions

I N A S S E M B L Y

February 23, 2009

Introduced by M. of A. COLTON -- read once and referred to the Committee on Energy

AN ACT to enact the "wireless facility siting act"; to establish a one hundred twenty day moratorium upon the construction of wireless facilities in cities; to amend the general municipal law, in relation to the placement, construction and modification of wireless services facilities; to direct the department of health to study, evaluate and make recommendations on the health effects of radio frequency signals and microwave energy emitted by wireless communications service facilities and wireless communications devices; and providing for the repeal of certain provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Legislative intent. In 1996, the United States Congress  
2 adopted the Telecommunications Act of 1996 which addresses, in part, the  
3 siting of wireless services facilities and the authority of state and  
4 local governments to regulate the placement, construction and modifica-  
5 tion of such facilities. While municipal control over the siting of  
6 wireless services facilities is an important component of municipal home  
7 rule in the state of New York, the legislature nevertheless recognizes  
8 the similarly important federal, state and local interests of providing  
9 for wireless services to the public in a manner that addresses state and  
10 local concerns. As such, the legislature has identified the need to  
11 balance federal interests with local concerns by providing for an appro-  
12 priate and efficient process of municipal review for applications to  
13 site, construct and modify wireless services facilities. It is the  
14 intent of the legislature in adopting the "wireless facility siting act"  
15 to implement enabling legislation which specifically sets forth a  
16 uniform statewide process for municipal review of applications for the  
17 placement, construction and modification of wireless services facilities  
18 in cities.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD05276-01-9

1 S 2. Short title. This act shall be known as and may be cited as the  
2 "wireless facility siting act".

3 S 3. Moratorium upon the construction of wireless facilities. 1.  
4 Notwithstanding any provision of law to the contrary, and in accordance  
5 with the federal Telecommunications Act of 1996, there is hereby estab-  
6 lished a moratorium upon the construction of wireless facilities in  
7 every city. During the period this section is in effect, no wireless  
8 facility shall be constructed or commence operation in any city in this  
9 state. The purpose of such moratorium shall be to afford cities time to  
10 review and enact land use laws, ordinances, rules and regulations relat-  
11 ing to the placement, construction and modification of wireless facili-  
12 ties in a manner that addresses local concerns and provides the public  
13 with access to wireless services pursuant to article 13-E of the general  
14 municipal law.

15 2. For the purposes of this section, the term:

16 (a) "Ancillary equipment" means all equipment necessary for the secure  
17 and successful operation of a wireless facility including but not limit-  
18 ed to, support structures, transmitting, receiving and combining equip-  
19 ment, equipment shelters, transmission cables, and backup power sources.  
20 Ancillary equipment shall not include residential, industrial or commer-  
21 cial buildings, but shall include any such equipment placed on residen-  
22 tial, industrial or commercial buildings.

23 (b) "Wireless services" means all commercial mobile services, as that  
24 term is defined in section 332(d) of title 47, United States Code, as  
25 amended from time to time, including, but not limited to, all broadband  
26 personal communications services, wireless radio telephone services,  
27 geographic area specialized and enhanced specialized mobile radio  
28 services, and incumbent-wide area specialized mobile radio licensees,  
29 which offer real time, two-way voice or data service that is intercon-  
30 nected with the public switched telephone network or otherwise provides  
31 access to communications services.

32 (c) "Wireless facility" means only the part or parts of any facility  
33 used in connection with the provision of wireless services including,  
34 but not limited to, antennas, ancillary equipment and telecommunications  
35 towers.

36 S 4. The general municipal law is amended by adding a new article 13-E  
37 to read as follows:

#### 38 ARTICLE 13-E

#### 39 WIRELESS FACILITY SITING ACT

40 SECTION 300. DEFINITIONS.

41 301. PERMIT REQUIREMENTS.

42 302. PROCEDURE FOR MUNICIPAL REVIEW OF PERMIT REQUESTS.

43 303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A  
44 WIRELESS FACILITY.

45 304. CO-LOCATION STANDARDS.

46 305. PERMIT APPROVAL; NON-CONFORMING FACILITIES.

47 306. APPLICABILITY.

48 S 300. DEFINITIONS. WHERE USED IN THIS ARTICLE, THE FOLLOWING WORDS  
49 AND PHRASES SHALL HAVE THE MEANINGS SET FORTH IN THIS SECTION UNLESS THE  
50 CONTEXT CLEARLY INDICATES OTHERWISE:

51 1. "MUNICIPALITY" MEANS ANY CITY.

52 2. "MUNICIPAL BOARD" MEANS THE DULY CREATED BOARD OF A MUNICIPALITY  
53 AUTHORIZED BY THE MUNICIPALITY TO REVIEW APPLICATIONS FOR WIRELESS  
54 FACILITIES. IN THE EVENT A MUNICIPALITY DOES NOT DESIGNATE A BOARD,  
55 REFERENCES IN THIS ARTICLE TO THE MUNICIPAL BOARD SHALL BE DEEMED TO  
56 REFER TO THE LEGISLATIVE BODY OF SUCH MUNICIPALITY.

1 3. "BUILDING INSPECTOR" MEANS THE MUNICIPAL OFFICIAL CHARGED WITH  
2 ISSUING BUILDING PERMITS AND/OR ENFORCING THE MUNICIPAL ZONING LAW OF A  
3 MUNICIPALITY OR OTHER INDIVIDUAL DESIGNATED BY THE LEGISLATIVE BODY TO  
4 ISSUE PERMITS FOR WIRELESS FACILITIES.

5 4. "MUNICIPAL ZONING LAW" MEANS A MUNICIPALITY'S DULY ENACTED ZONING  
6 LAW OR ORDINANCE.

7 5. "PERSON" MEANS ANY INDIVIDUAL, CORPORATION, LIMITED LIABILITY  
8 COMPANY, JOINT VENTURE, PUBLIC BENEFIT CORPORATION, PARTNERSHIP, LIMITED  
9 LIABILITY PARTNERSHIP, ASSOCIATION, TRUST OR ESTATE, AND ANY OTHER ENTI-  
10 TY, PUBLIC OR PRIVATE, HOWEVER ORGANIZED.

11 6. "WIRELESS SERVICES" MEANS ALL COMMERCIAL MOBILE SERVICES, AS THAT  
12 TERM IS DEFINED IN SECTION 332(D) OF TITLE 47, UNITED STATES CODE, AS  
13 AMENDED FROM TIME TO TIME, INCLUDING, BUT NOT LIMITED TO, ALL BROADBAND  
14 PERSONAL COMMUNICATIONS SERVICES, WIRELESS RADIO TELEPHONE SERVICES,  
15 GEOGRAPHIC AREA SPECIALIZED AND ENHANCED SPECIALIZED MOBILE RADIO  
16 SERVICES, AND INCUMBENT-WIDE AREA SPECIALIZED MOBILE RADIO LICENSEES,  
17 WHICH OFFER REAL TIME, TWO-WAY VOICE OR DATA SERVICE THAT IS INTERCON-  
18 NECTED WITH THE PUBLIC SWITCHED TELEPHONE NETWORK OR OTHERWISE PROVIDES  
19 ACCESS TO COMMUNICATIONS SERVICES.

20 7. "WIRELESS FACILITY" MEANS ONLY THE PART OR PARTS OF ANY FACILITY  
21 USED IN CONNECTION WITH THE PROVISION OF WIRELESS SERVICES INCLUDING,  
22 BUT NOT LIMITED TO, ANTENNAS, ANCILLARY EQUIPMENT AND TELECOMMUNICATIONS  
23 TOWERS.

24 8. "TELECOMMUNICATIONS TOWER" MEANS ANY FREESTANDING TOWER, MONOPOLE  
25 OR SIMILAR STRUCTURE USED FOR THE PROVISION OF WIRELESS SERVICES INCLUD-  
26 ING ANCILLARY TELECOMMUNICATIONS EQUIPMENT REQUIRED TO INTEGRATE SUCH  
27 FACILITY INTO AN EXISTING OR PROPOSED WIRELESS NETWORK.

28 9. "PERMIT" MEANS THE AUTHORIZATION BY THE BUILDING INSPECTOR PURSUANT  
29 TO THIS ARTICLE TO CONSTRUCT A WIRELESS FACILITY.

30 10. "TECHNICALLY AND COMMERCIALY REASONABLE" MEANS IN ACCORDANCE WITH  
31 GENERAL INDUSTRY PRACTICE IN THE PROVISION OF WIRELESS SERVICES PERTAIN-  
32 ING TO COST AND SERVICE COVERAGE.

33 11. "TECHNICAL REVIEW" MEANS REVIEW OF A PERMIT APPLICATION BY AN  
34 INDEPENDENT EXPERT IN TELECOMMUNICATIONS SITING.

35 12. "ANCILLARY EQUIPMENT" MEANS ALL EQUIPMENT NECESSARY FOR THE  
36 SECURE AND SUCCESSFUL OPERATION OF A WIRELESS FACILITY INCLUDING BUT NOT  
37 LIMITED TO, SUPPORT STRUCTURES, TRANSMITTING, RECEIVING AND COMBINING  
38 EQUIPMENT, EQUIPMENT SHELTERS, TRANSMISSION CABLES, AND BACKUP POWER  
39 SOURCES. ANCILLARY EQUIPMENT SHALL NOT INCLUDE RESIDENTIAL, INDUSTRIAL  
40 OR COMMERCIAL BUILDINGS BUT SHALL INCLUDE ANY SUCH EQUIPMENT PLACED ON  
41 RESIDENTIAL, INDUSTRIAL OR COMMERCIAL BUILDINGS.

42 13. "HISTORIC AREA" MEANS AN AREA WHOLLY OR PARTIALLY WITHIN, OR WIRE-  
43 LESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE HUNDRED FEET OF, ANY  
44 HISTORIC BUILDING, STRUCTURE, FACILITY, SITE OR DISTRICT, OR PREHISTORIC  
45 SITE, THAT IS LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES, OR  
46 THAT HAS BEEN PROPOSED BY THE NEW YORK STATE BOARD ON HISTORIC PRESERVA-  
47 TION FOR A RECOMMENDATION TO THE STATE HISTORIC PRESERVATION OFFICER FOR  
48 NOMINATION FOR INCLUSION IN THE NATIONAL REGISTER, THAT IS LISTED ON THE  
49 STATE REGISTER OF HISTORIC PLACES, OR HAS BEEN DESIGNATED AS A HISTORIC  
50 PLACE OR LANDMARK BY THE MUNICIPALITY.

51 14. "SCENIC AREA" MEANS AN AREA WHOLLY OR PARTIALLY WITHIN, OR A WIRE-  
52 LESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE HUNDRED FEET OF, ANY  
53 PUBLICLY OWNED OR OPERATED PARKLAND, RECREATION AREA OR DESIGNATED OPEN  
54 SPACE, INCLUDING ANY WIRELESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE  
55 HUNDRED FEET OF THE CENTERLINE OF ANY SCENIC BYWAY AS DEFINED IN ARTICLE  
56 TWELVE-C OF THE HIGHWAY LAW OR AS DESIGNATED BY THE MUNICIPALITY.

1 15. "SITE CONSOLIDATOR" MEANS ANY INDIVIDUAL, CORPORATION (OR ANY  
2 SUBSIDIARY, DIVISION OR AFFILIATE THEREOF), LIMITED LIABILITY COMPANY,  
3 JOINT PARTNERSHIP, ASSOCIATION, TRUST OR ESTATE, AND ANY OTHER ENTITY,  
4 PUBLIC OR PRIVATE, HOWEVER ORGANIZED (OR ANY SUBSIDIARY, DIVISION OR  
5 AFFILIATE THEREOF) WHICH: (A) IS PRIMARILY OR PRINCIPALLY ENGAGED IN THE  
6 BUSINESS OF OWNING, LEASING, MANAGING OR OPERATING WIRELESS FACILITIES  
7 FOR ITSELF AND/OR OTHERS, REGARDLESS AS TO WHETHER OR NOT THE SITE  
8 CONSOLIDATOR IS A PROVIDER OF WIRELESS SERVICES; AND (B) CAN DEMONSTRATE  
9 THROUGH WRITTEN EVIDENCE A PROVEN ABILITY TO OPERATE AND MANAGE WIRELESS  
10 FACILITIES USED BY WIRELESS SERVICES PROVIDERS.

11 S 301. PERMIT REQUIREMENTS. NO PERSON, INCLUDING A SITE CONSOLIDATOR,  
12 SHALL COMMENCE THE CONSTRUCTION OR MODIFICATION OF A WIRELESS FACILITY  
13 WITHOUT FIRST HAVING OBTAINED A PERMIT FROM THE BUILDING INSPECTOR IN  
14 THE MUNICIPALITY IN WHICH SUCH WIRELESS FACILITY WILL BE LOCATED.

15 S 302. PROCEDURE FOR MUNICIPAL REVIEW OF PERMIT REQUESTS. 1.  
16 NOTWITHSTANDING ANY STATE OR LOCAL LAW TO THE CONTRARY, A MUNICIPALITY  
17 SHALL FOLLOW THE PROCEDURES SET FORTH IN THIS ARTICLE FOR THE REVIEW AND  
18 ISSUANCE OF A PERMIT FOR A WIRELESS FACILITY.

19 2. (A) UPON RECEIPT OF A COMPLETED APPLICATION FOR PERMISSION TO  
20 CONSTRUCT, PLACE OR MODIFY A WIRELESS FACILITY, THE MUNICIPAL BOARD  
21 SHALL DECIDE UPON THE APPLICATION AND RENDER A WRITTEN DECISION WITHIN  
22 THIRTY DAYS OF RECEIPT. ANY DENIAL OF SUCH APPLICATION SHALL BE  
23 SUPPORTED BY SUBSTANTIAL EVIDENCE. THE TIME WITHIN WHICH THE MUNICIPAL  
24 BOARD MUST RENDER ITS WRITTEN DECISION MAY BE EXTENDED BY MUTUAL CONSENT  
25 OF THE APPLICANT AND THE MUNICIPAL BOARD.

26 (B) UPON APPROVAL OF AN APPLICATION RECEIVED PURSUANT TO THIS SUBDIVI-  
27 SION, THE MUNICIPAL BOARD SHALL PROVIDE WRITTEN NOTICE OF SUCH APPROVAL  
28 TO THE BUILDING INSPECTOR. UPON RECEIPT OF SUCH NOTICE THE BUILDING  
29 INSPECTOR SHALL ISSUE A WRITTEN PERMIT AND FILE THE PERMIT WITH THE  
30 MUNICIPAL CLERK WITHIN TWENTY DAYS.

31 (C) EACH APPLICANT SHALL MAKE A GOOD FAITH EFFORT TO PROVIDE WRITTEN  
32 NOTICE TO ALL OWNERS AND RESIDENTS OF PROPERTY LOCATED WITHIN FIVE  
33 HUNDRED FEET OF THE PROPOSED WIRELESS FACILITY WITHIN TEN DAYS OF FILING  
34 AN APPLICATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION. THE FAIL-  
35 URE OF A PROPERTY OWNER OR RESIDENT TO RECEIVE WRITTEN NOTICE SHALL NOT  
36 AFFECT THE VALIDITY OF THE APPLICATION OR APPROVAL.

37 3. (A) NO APPLICATION FEE IMPOSED BY A MUNICIPALITY UPON AN APPLICANT  
38 FOR THE PLACEMENT, CONSTRUCTION OR MODIFICATION OF A WIRELESS FACILITY  
39 SHALL EXCEED THE NORMAL AND CUSTOMARY FEE FOR A BUILDING PERMIT APPLICA-  
40 TION IN SUCH MUNICIPALITY.

41 (B) UPON REQUEST OF THE MUNICIPAL BOARD, AN APPLICANT MAY BE REQUIRED  
42 TO ESTABLISH AN ESCROW ACCOUNT FOR THE PAYMENT OF THE ACTUAL, REASONABLE  
43 AND CUSTOMARY COSTS INCURRED BY THE MUNICIPALITY FOR ONE INDEPENDENT  
44 TECHNICAL REVIEW OF EACH ASPECT OF THE APPLICATION; PROVIDED, HOWEVER,  
45 IN NO EVENT SHALL THE TOTAL OF SUCH COSTS EXCEED THE GREATER OF FIVE  
46 THOUSAND DOLLARS OR TWO AND ONE-HALF PERCENT OF THE TOTAL PROJECT COST  
47 EXCLUSIVE OF REAL ESTATE AS SET FORTH IN THE APPLICATION; AND PROVIDED  
48 FURTHER THAT THE APPLICANT SHALL NOT BE REQUIRED TO PAY FOR MORE THAN  
49 ONE REVIEW OF ANY ASPECT OF THE APPLICATION.

50 S 303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A WIRE-  
51 LESS FACILITY. 1. PERMIT APPROVAL SHALL BE GRANTED IF THE APPLICANT  
52 DEMONSTRATES COMPLIANCE WITH THE FOLLOWING SUBSTANTIVE STANDARDS FOR THE  
53 REVIEW, PAYS ALL APPLICABLE FEES AND COSTS DUE AND OWING TO THE MUNICI-  
54 PALITY, AND SUBMITS THE REQUIRED DOCUMENTS.

55 2. (A) THE APPLICATION SHALL INCLUDE WRITTEN DOCUMENTATION, WHICH MAY  
56 INCLUDE A MAP, THAT SHOWS THE LOCATION OF ALL THE APPLICANT'S EXISTING

1 WIRELESS FACILITIES TOGETHER WITH ALL FACILITIES FOR WHICH AN APPLICA-  
2 TION HAS BEEN FILED BY THE APPLICANT WITHIN THE COUNTY WITHIN WHICH SUCH  
3 FACILITIES ARE TO BE LOCATED AND A ONE-HALF MILE AREA OUTSIDE OF THE  
4 BOUNDARIES OF SUCH COUNTY.

5 (B) THE APPLICATION SHALL CONTAIN SUBMISSION OF WRITTEN DOCUMENTATION  
6 ESTABLISHING THAT THERE EXISTS A SPECIFIC NEED FOR THE PROPOSED WIRELESS  
7 FACILITY INCLUDING, BUT NOT LIMITED TO, EVIDENCE THAT THE EXISTING WIRE-  
8 LESS FACILITIES DO NOT PROVIDE ADEQUATE COVERAGE AND DO NOT HAVE THE  
9 VIABILITY TO PROVIDE ADEQUATE COVERAGE BY ADJUSTING THE FACILITIES AT  
10 EXISTING SITES.

11 (C) THE INFORMATION SUBMITTED PURSUANT TO THIS SUBDIVISION SHALL BE  
12 DEEMED PROPRIETARY AND CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER  
13 ARTICLE SEVEN OF THE PUBLIC OFFICERS LAW.

14 3. THE APPLICATION SHALL CONTAIN PROOF THAT OPERATION OF THE WIRELESS  
15 FACILITY COMPLIES WITH ANY APPLICABLE REGULATIONS PROMULGATED BY THE  
16 FEDERAL COMMUNICATIONS COMMISSION, INCLUDING REGULATIONS REGARDING RADI-  
17 O-FREQUENCY EMISSIONS. IF NEW, MORE RESTRICTIVE STANDARDS ARE ADOPTED  
18 BY THE FEDERAL COMMUNICATIONS COMMISSION, THE FACILITY SHALL, IN A  
19 MANNER CONSISTENT WITH SUCH STANDARDS, BE BROUGHT INTO COMPLIANCE, OR  
20 CONTINUED OPERATIONS MAY BE RESTRICTED BY THE MUNICIPALITY.

21 4. THE WIRELESS FACILITY SHALL BE DESIGNED AND FINISHED IN A MANNER  
22 WHICH MINIMIZES THE VISUAL IMPACT ON SURROUNDING PROPERTIES IN ACCORD-  
23 ANCE WITH GENERALLY ACCEPTED PRACTICES AND AT A REASONABLE COST, WHILE  
24 PROVIDING THE LEVEL OF SERVICE REQUIRED BY THE APPLICANT. MINIMIZATION  
25 OF VISUAL IMPACT IN AN HISTORIC OR SCENIC AREA SHALL INCLUDE REASONABLE  
26 EFFORTS THAT TAKE INTO ACCOUNT THE SURROUNDINGS OF THE WIRELESS FACILITY  
27 THAT ARE THE BASIS FOR DESIGNATION AS AN HISTORIC OR SCENIC AREA AND  
28 SHALL BE FINISHED IN A MANNER WHICH MINIMIZES THE VISUAL IMPACT ON  
29 SURROUNDING PROPERTIES IN ACCORDANCE WITH GENERALLY ACCEPTED PRACTICES  
30 AND AT A REASONABLE COST, WHILE PROVIDING THE LEVEL OF SERVICE REQUIRED  
31 BY THE APPLICANT.

32 5. A WIRELESS FACILITY SHALL NOT EXCEED A HEIGHT OF SEVEN FEET IN ANY  
33 RESIDENTIAL ZONE.

34 NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION TWO OF SECTION THREE  
35 HUNDRED FIVE OF THIS ARTICLE, NOTHING CONTAINED IN THIS SUBDIVISION  
36 SHALL PROHIBIT A MUNICIPALITY FROM PERMITTING A GREATER HEIGHT IN ANY  
37 SUCH ZONE FOR THE PURPOSES OF ACCOMMODATING CO-LOCATION OR A MUNICIPAL  
38 OR STATE WIRELESS SYSTEM. WHERE A NEW ANTENNA FACILITY IS PROPOSED WHICH  
39 IS BEING BUILT AS A REPLACEMENT FOR AN EXISTING ANTENNA FACILITY, SO  
40 LONG AS THE PROPOSED ANTENNA FACILITY IS OF SUBSTANTIALLY SIMILAR  
41 CONSTRUCTION TYPE AND NO TALLER THAN THE EXISTING ANTENNA FACILITY, THE  
42 PROPOSED ANTENNA FACILITY SHALL BE DEEMED TO MEET THE CRITERIA SET FORTH  
43 IN THIS SECTION EVEN IF THE PROPOSED ANTENNA FACILITY EXCEEDS THE OTHER-  
44 WISE APPLICABLE HEIGHT LIMITATIONS CONTAINED IN THIS SECTION.

45 6. NO TELECOMMUNICATIONS TOWER SHALL BE LOCATED WITHIN FIVE HUNDRED  
46 FEET OF ANY NURSERY, ELEMENTARY OR SECONDARY SCHOOL.

47 7. THE WIRELESS FACILITY SHALL BE DESIGNED, CONSTRUCTED, MAINTAINED  
48 AND OPERATED IN A MANNER THAT ENSURES THE SECURITY OF THE FACILITY AND  
49 PROTECTS AGAINST UNAUTHORIZED ACCESS IN ACCORDANCE WITH ACCEPTED INDUS-  
50 TRY PRACTICES.

51 8. WIRELESS FACILITIES SHALL NOT BE ILLUMINATED BY ARTIFICIAL MEANS  
52 AND SHALL NOT DISPLAY OBSTRUCTION MARKING AND/OR LIGHTING UNLESS SUCH  
53 MARKING AND/OR LIGHTING IS SPECIFICALLY REQUIRED BY THE FEDERAL AVIATION  
54 ADMINISTRATION OR OTHER FEDERAL OR STATE AUTHORITY FOR A PARTICULAR  
55 WIRELESS FACILITY; PROVIDED, HOWEVER, WHEN INCORPORATED INTO THE DESIGN,  
56 LIGHT FIXTURES USED TO ILLUMINATE BALL FIELDS, PARKING LOTS, OR OTHER

1 GROUND AREAS OR GROUND STRUCTURES MAY BE ATTACHED TO WIRELESS FACILI-  
2 TIES.

3 9. THE APPLICANT SHALL PRESERVE EXISTING ON-SITE VEGETATION TO THE  
4 MAXIMUM EXTENT PRACTICABLE. TO THE EXTENT REASONABLY PRACTICABLE, THE  
5 BASE OF THE FACILITY AND ANY ACCESSORY STRUCTURES SHALL BE LANDSCAPED.

6 10. (A) ANY CONTRACT WITH AN OWNER OF PROPERTY UPON WHICH A WIRELESS  
7 FACILITY IS TO BE PLACED, CONSTRUCTED OR MODIFIED SHALL INCLUDE A  
8 PROVISION REQUIRING THE OWNER OF THE WIRELESS FACILITY TO REMOVE SUCH  
9 FACILITY IN THE EVENT THE FACILITY HAS NOT BEEN IN USE FOR A PERIOD OF  
10 AT LEAST TWELVE MONTHS. THE TERMS OF SUCH PROVISION SHALL BE FILED WITH  
11 THE MUNICIPAL BOARD WHERE THE PROPOSED WIRELESS FACILITY IS TO BE  
12 LOCATED. THE PERMIT MAY BE REVOKED UPON A FINDING THAT THE REQUIRED  
13 CONTRACT LANGUAGE HAS BEEN REMOVED.

14 (B) THE MUNICIPAL BOARD MAY REQUIRE THAT, IN THE EVENT THE WIRELESS  
15 FACILITY IS NOT USED BY THE APPLICANT, OTHER CO-LOCATORS, THEIR SUCCES-  
16 SORS AND/OR ASSIGNS FOR A PERIOD OF ONE YEAR OR MORE, SUCH FACILITY  
17 SHALL BE REMOVED BY ITS THEN-CURRENT OWNER. IN THE EVENT THE WIRELESS  
18 FACILITY IS NOT SO REMOVED, THE MUNICIPAL CLERK SHALL GIVE WRITTEN  
19 NOTICE TO THE OWNER OF SUCH FACILITY (I) STATING THAT THE WIRELESS  
20 FACILITY IS CONSIDERED ABANDONED, AND (II) SETTING A TIME, DATE AND  
21 PLACE FOR A PUBLIC HEARING BEFORE THE MUNICIPAL BOARD ON THE MATTER.  
22 SUCH PUBLIC HEARING SHALL BE ON NOT LESS THAN TWENTY DAYS NOTICE TO SUCH  
23 OWNER, AND SHALL BE PUBLISHED IN A NEWSPAPER HAVING GENERAL CIRCULATION  
24 IN THE MUNICIPALITY. UPON A FINDING THAT THE WIRELESS FACILITY HAS BEEN  
25 ABANDONED, THE MUNICIPAL BOARD SHALL DELIVER WRITTEN NOTICE TO THE  
26 APPLICANT INDICATING THE REASONS FOR ITS FINDING, AND DIRECTING THAT THE  
27 WIRELESS FACILITY BE REMOVED WITHIN SIXTY DAYS, WEATHER PERMITTING. IN  
28 THE EVENT THAT THE WIRELESS FACILITY IS NOT SO REMOVED, THE MUNICIPALITY  
29 MAY COMMENCE AN ACTION IN SUPREME COURT AGAINST THE OWNER OF SUCH FACIL-  
30 ITY SEEKING AN ORDER REQUIRING THE REMOVAL. THE PREVAILING PARTY IN  
31 SUCH ENFORCEMENT ACTION SHALL BE ENTITLED TO RECOVER FROM THE OTHER  
32 REASONABLE ATTORNEYS FEES, AS DETERMINED BY THE COURT.

33 (C) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPHS (A) AND (B) OF THIS  
34 SUBDIVISION, A MUNICIPALITY MAY ADOPT A LOCAL LAW TO REQUIRE THE POSTING  
35 OF A BOND OR OTHER SECURITY IN ORDER TO FINANCE DISMANTLING OF AN ABAN-  
36 DONED WIRELESS FACILITY; PROVIDED, HOWEVER, THE AMOUNT OF ANY SUCH BOND  
37 MAY NOT EXCEED THE ACTUAL AND REASONABLE COSTS OF DISMANTLING SUCH  
38 FACILITY AS SET FORTH IN THE APPLICATION.

39 11. WHERE THE APPLICANT FOR A WIRELESS FACILITY IS A SITE CONSOLIDA-  
40 TOR, SUCH APPLICATION SHALL ALSO INCLUDE A SWORN AFFIDAVIT OF THE APPLI-  
41 CANT STATING THAT THE APPLICANT HAS OBTAINED CONTRACTUAL COMMITMENTS  
42 FROM AT LEAST TWO SITE USERS WHICH FALL WITHIN ANY OF THE FOLLOWING  
43 CLASSES OF ENTITIES: (A) WIRELESS SERVICE PROVIDERS (HEREINAFTER  
44 REFERRED TO IN THIS ARTICLE AS "FEDERAL COMMUNICATIONS COMMISSION LICEN-  
45 SEES"), (B) PUBLIC SAFETY OR OTHER GOVERNMENTAL AGENCIES, OR (C) OTHER  
46 LICENSEES CATEGORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION AS  
47 COMMERCIAL MOBILE RADIO SERVICE PROVIDERS OR PRIVATE LAND MOBILE OPERA-  
48 TORS, AND WHICH SITE USERS HAVE COMMITTED TO PLACING THEIR WIRELESS  
49 SERVICES EQUIPMENT ON THE PROPOSED WIRELESS FACILITY IF SUCH WIRELESS  
50 FACILITY IS CONSTRUCTED. THE CONTRACTUAL COMMITMENTS REFERRED TO IN THE  
51 SWORN AFFIDAVIT MAY BE CONTINGENT UPON THE APPLICANT RECEIVING ALL  
52 NECESSARY PERMITS AND APPROVALS FOR, AND ACTUAL ERECTION OF THE PROPOSED  
53 WIRELESS FACILITY.

54 S 304. CO-LOCATION STANDARDS. 1. WHERE AN APPLICATION PROPOSES  
55 CONSTRUCTION OF A WIRELESS FACILITY DESIGNED TO SUPPORT ONLY ONE PROVID-  
56 ER, THE APPLICANT SHALL DEMONSTRATE THAT CO-LOCATING WITH ANOTHER WIRE-

1 LESS FACILITY INSTEAD OF CONSTRUCTION OF THE PROPOSED WIRELESS FACILITY  
2 IS NOT TECHNICALLY AND COMMERCIALY REASONABLE.

3 2. THE MUNICIPAL BOARD MAY, IN ITS SOLE DISCRETION, REQUIRE THE APPLI-  
4 CANT FOR A WIRELESS FACILITY TO MAKE A REASONABLE ATTEMPT TO CO-LOCATE  
5 WITH ANOTHER WIRELESS FACILITY PROVIDED THE MUNICIPAL BOARD NOTIFIES THE  
6 APPLICANT IN WRITING, WITHIN FIFTEEN DAYS OF THE FILING OF THE APPLICA-  
7 TION, OF THE LOCATION OF ANY EXISTING WIRELESS FACILITY, UPON WHICH THE  
8 MUNICIPAL BOARD BELIEVES THE APPLICANT CAN SUCCESSFULLY CO-LOCATE A  
9 WIRELESS FACILITY THAT WILL ADEQUATELY SERVE THE TECHNICAL AND COMMER-  
10 CIAL REQUIREMENTS OF THE APPLICANT.

11 3. IF THE MUNICIPAL BOARD REQUIRES THE APPLICANT TO ATTEMPT TO CO-LO-  
12 CATE A WIRELESS FACILITY WITH AN EXISTING WIRELESS FACILITY, THE APPLI-  
13 CANT SHALL PROVIDE THE MUNICIPAL BOARD WITH A STATEMENT INDICATING THAT  
14 THE APPLICANT HAS EITHER:

15 (A) SUCCESSFULLY AGREED TO CO-LOCATE THE WIRELESS FACILITY WITH AN  
16 EXISTING WIRELESS FACILITY, AND WHICH STATEMENT IDENTIFIES THE LOCATION  
17 OF THE FACILITY ON WHICH THE APPLICANT WILL BE CO-LOCATED; OR

18 (B) UNSUCCESSFULLY ATTEMPTED TO CO-LOCATE THE WIRELESS FACILITY WITH  
19 AN EXISTING WIRELESS FACILITY AND WHICH STATEMENT IDENTIFIES THE  
20 LOCATION OF THE FACILITIES WHICH THE APPLICANT ATTEMPTED TO CO-LOCATE ON  
21 WIRELESS FACILITIES WHICH THE APPLICANT HAS REVIEWED, AND LISTS THE  
22 REASONS WHY EACH SUCH ATTEMPT TO CO-LOCATE A WIRELESS FACILITY WAS  
23 UNSUCCESSFUL.

24 S 305. PERMIT APPROVAL; NON-CONFORMING FACILITIES. 1. UPON FINDING  
25 THAT A PROPOSED WIRELESS FACILITY COMPLIES WITH THE PROVISIONS OF  
26 SECTIONS THREE HUNDRED THREE AND THREE HUNDRED FOUR OF THIS ARTICLE, THE  
27 MUNICIPAL BOARD SHALL ISSUE APPROVAL AND TRANSMIT A WRITTEN COPY OF ITS  
28 APPROVAL TO THE BUILDING INSPECTOR IN ACCORDANCE WITH SUBDIVISION TWO OF  
29 SECTION THREE HUNDRED TWO OF THIS ARTICLE. APPEALS FROM MUNICIPAL BOARD  
30 ACTIONS PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE GOVERNED BY  
31 ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

32 2. (A) WHERE THE WIRELESS FACILITY DOES NOT MEET THE SPECIFICATIONS  
33 OUTLINED IN THIS ARTICLE, THE MUNICIPAL BOARD SHALL NOT ISSUE THE PERMIT  
34 PURSUANT TO THIS ARTICLE.

35 (B) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (A) OF THIS SUBDIVI-  
36 SION, UPON A SHOWING THAT CONSTRUCTION OF A WIRELESS FACILITY MEETING  
37 THE REQUIREMENTS OF THIS ARTICLE IS NOT TECHNICALLY AND COMMERCIALY  
38 REASONABLE, APPLICATION MAY BE MADE PURSUANT TO THE PROVISIONS OF ANY  
39 MUNICIPAL ZONING LAW OR OTHER LOCAL LAW, ORDINANCE, RULE OR REGULATION  
40 ADOPTED PURSUANT TO THE PROVISIONS OF ARTICLE FIVE-A OF THE GENERAL CITY  
41 LAW, THE STATUTE OF LOCAL GOVERNMENTS OR MUNICIPAL HOME RULE LAW GOVERN-  
42 ING THE PLACEMENT, CONSTRUCTION OR MODIFICATION OF WIRELESS FACILITIES;  
43 PROVIDED, HOWEVER THAT AN AREA OR USE VARIANCE SHALL BE GRANTED FOR A  
44 WIRELESS FACILITY UPON A SHOWING THAT:

45 (I) THE WIRELESS FACILITY IS A PUBLIC NECESSITY IN THAT IT IS REQUIRED  
46 TO RENDER THE SAFE AND ADEQUATE LEVEL OF SERVICE REQUIRED BY THE APPLI-  
47 CANT; AND

48 (II) THE PLACEMENT, CONSTRUCTION OR MODIFICATION OF THE WIRELESS  
49 FACILITY IS NECESSARY IN ORDER FOR THE APPLICANT TO RENDER THE REQUIRED  
50 LEVEL OF SERVICE IN A MANNER THAT IS TECHNICALLY AND COMMERCIALY  
51 REASONABLE.

52 S 306. APPLICABILITY. 1. THE PROVISIONS OF THIS ARTICLE SHALL GOVERN  
53 THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF ALL WIRELESS FACILITIES  
54 IN A MUNICIPALITY; PROVIDED, HOWEVER, THIS ARTICLE SHALL NOT APPLY TO  
55 ANY WIRELESS FACILITY PLACED, CONSTRUCTED OR MODIFIED PURSUANT TO A  
56 MASTER PERMIT WITH ANY AGENCY OR AUTHORITY OF THE STATE OF NEW YORK

1 ENTERED INTO ON OR BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, AND ANY  
2 FUTURE SITE PERMITS ISSUED PURSUANT TO ANY SUCH MASTER PERMIT.

3 2. ISSUANCE OF A PERMIT PURSUANT TO THIS ARTICLE SHALL SATISFY AND BE  
4 IN LIEU OF ANY CERTIFICATIONS, APPROVALS OR OTHER REQUIREMENTS CONCERN-  
5 ING THE CONSTRUCTION OF A WIRELESS FACILITY INCLUDING, BUT NOT LIMITED  
6 TO, SUBDIVISION APPROVAL UNDER ANY STATE OR LOCAL LAW, ORDINANCE, RULE,  
7 REGULATION OR OTHER RESTRICTION, EXCEPT FOR THE REQUIREMENT TO DEMON-  
8 STRATE COMPLIANCE WITH THE NEW YORK STATE UNIFORM BUILDING AND FIRE  
9 PREVENTION CODE.

10 3. FOR THE PURPOSES OF THIS ARTICLE, AND IN COMPLIANCE WITH ARTICLE  
11 EIGHT OF THE ENVIRONMENTAL CONSERVATION LAW AND ALL RULES AND REGU-  
12 LATIONS PROMULGATED THEREUNDER, WIRELESS FACILITIES SHALL BE CONSIDERED  
13 TYPE II ACTIONS CONSISTENT WITH THE RULES AND REGULATIONS RELATING TO  
14 SUCH DESIGNATIONS.

15 S 5. The department of health shall study, examine, evaluate and make  
16 recommendations concerning the health effects of exposure to the radio  
17 frequency signals and microwave energy emitted by wireless facilities,  
18 as defined in subdivision 2 of section three of this act, and wireless  
19 communications devices, as defined in section 301 of the county law.  
20 Such department shall report its findings, conclusions and recommenda-  
21 tions thereon to the governor and the legislature on or before the one  
22 hundred eightieth day after this act shall have become a law, and shall  
23 submit with its report such legislative proposals as it deems necessary  
24 to implement its recommendations.

25 S 6. Severability clause. If any clause, sentence, paragraph, subdivi-  
26 sion, section or part of this act shall be adjudged by any court of  
27 competent jurisdiction to be invalid, such judgment shall not affect,  
28 impair, or invalidate the remainder thereof, but shall be confined in  
29 its operation to the clause, sentence, paragraph, subdivision, section  
30 or part thereof directly involved in the controversy in which such judg-  
31 ment shall have been rendered. It is hereby declared to be the intent  
32 of the legislature that this act would have been enacted even if such  
33 invalid provisions had not been included herein.

34 S 7. This act shall take effect immediately, provided that:

35 (a) section three of this act shall expire and be deemed repealed on  
36 the one hundred twentieth day after it shall have become a law; and

37 (b) section four of this act shall take effect on the one hundred  
38 twentieth day after it shall have become a law and shall apply to all  
39 applications for building permits for wireless facilities submitted on  
40 or after the effective date of such section.