

S T A T E O F N E W Y O R K

1896

2009-2010 Regular Sessions

I N S E N A T E

February 9, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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

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

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1 placement, construction and modification of wireless services facilities
2 in cities.

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

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

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

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

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

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

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

40 ARTICLE 13-E

41 WIRELESS FACILITY SITING ACT

42 SECTION 300. DEFINITIONS.

43 301. PERMIT REQUIREMENTS.

44 302. PROCEDURE FOR MUNICIPAL REVIEW OF PERMIT REQUESTS.

45 303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A
46 WIRELESS FACILITY.

47 304. CO-LOCATION STANDARDS.

48 305. PERMIT APPROVAL; NON-CONFORMING FACILITIES.

49 306. APPLICABILITY.

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

53 1. "MUNICIPALITY" MEANS ANY CITY.

54 2. "MUNICIPAL BOARD" MEANS THE DULY CREATED BOARD OF A MUNICIPALITY
55 AUTHORIZED BY THE MUNICIPALITY TO REVIEW APPLICATIONS FOR WIRELESS
56 FACILITIES. IN THE EVENT A MUNICIPALITY DOES NOT DESIGNATE A BOARD,

1 REFERENCES IN THIS ARTICLE TO THE MUNICIPAL BOARD SHALL BE DEEMED TO
2 REFER TO THE LEGISLATIVE BODY OF SUCH MUNICIPALITY.

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

7 4. "MUNICIPAL ZONING LAW" MEANS A MUNICIPALITY'S DULY ENACTED ZONING
8 LAW OR ORDINANCE.

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

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

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

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

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

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

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

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

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

53 14. "SCENIC AREA" MEANS AN AREA WHOLLY OR PARTIALLY WITHIN, OR A WIRE-
54 LESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE HUNDRED FEET OF, ANY
55 PUBLICLY OWNED OR OPERATED PARKLAND, RECREATION AREA OR DESIGNATED OPEN
56 SPACE, INCLUDING ANY WIRELESS FACILITY HAVING ITS FOUNDATION WITHIN FIVE

HUNDRED FEET OF THE CENTERLINE OF ANY SCENIC BYWAY AS DEFINED IN ARTICLE TWELVE-C OF THE HIGHWAY LAW OR AS DESIGNATED BY THE MUNICIPALITY.

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

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

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

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

(B) UPON APPROVAL OF AN APPLICATION RECEIVED PURSUANT TO THIS SUBDIVISION, THE MUNICIPAL BOARD SHALL PROVIDE WRITTEN NOTICE OF SUCH APPROVAL TO THE BUILDING INSPECTOR. UPON RECEIPT OF SUCH NOTICE THE BUILDING INSPECTOR SHALL ISSUE A WRITTEN PERMIT AND FILE THE PERMIT WITH THE MUNICIPAL CLERK WITHIN TWENTY DAYS.

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

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

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

S 303. STANDARDS FOR REVIEW AND APPLICATION REQUIREMENTS FOR A WIRELESS FACILITY. 1. PERMIT APPROVAL SHALL BE GRANTED IF THE APPLICANT DEMONSTRATES COMPLIANCE WITH THE FOLLOWING SUBSTANTIVE STANDARDS FOR THE REVIEW, PAYS ALL APPLICABLE FEES AND COSTS DUE AND OWING TO THE MUNICIPALITY, AND SUBMITS THE REQUIRED DOCUMENTS.

1 2. (A) THE APPLICATION SHALL INCLUDE WRITTEN DOCUMENTATION, WHICH MAY
2 INCLUDE A MAP, THAT SHOWS THE LOCATION OF ALL THE APPLICANT'S EXISTING
3 WIRELESS FACILITIES TOGETHER WITH ALL FACILITIES FOR WHICH AN APPLICA-
4 TION HAS BEEN FILED BY THE APPLICANT WITHIN THE COUNTY WITHIN WHICH SUCH
5 FACILITIES ARE TO BE LOCATED AND A ONE-HALF MILE AREA OUTSIDE OF THE
6 BOUNDARIES OF SUCH COUNTY.

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

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

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

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

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

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

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

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

53 8. WIRELESS FACILITIES SHALL NOT BE ILLUMINATED BY ARTIFICIAL MEANS
54 AND SHALL NOT DISPLAY OBSTRUCTION MARKING AND/OR LIGHTING UNLESS SUCH
55 MARKING AND/OR LIGHTING IS SPECIFICALLY REQUIRED BY THE FEDERAL AVIATION
56 ADMINISTRATION OR OTHER FEDERAL OR STATE AUTHORITY FOR A PARTICULAR

1 WIRELESS FACILITY; PROVIDED, HOWEVER, WHEN INCORPORATED INTO THE DESIGN,
2 LIGHT FIXTURES USED TO ILLUMINATE BALL FIELDS, PARKING LOTS, OR OTHER
3 GROUND AREAS OR GROUND STRUCTURES MAY BE ATTACHED TO WIRELESS FACILI-
4 TIES.

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

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

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

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

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

S 304. CO-LOCATION STANDARDS. 1. WHERE AN APPLICATION PROPOSES CONSTRUCTION OF A WIRELESS FACILITY DESIGNED TO SUPPORT ONLY ONE PROVIDER, THE APPLICANT SHALL DEMONSTRATE THAT CO-LOCATING WITH ANOTHER WIRELESS FACILITY INSTEAD OF CONSTRUCTION OF THE PROPOSED WIRELESS FACILITY IS NOT TECHNICALLY AND COMMERCIALY REASONABLE.

2. THE MUNICIPAL BOARD MAY, IN ITS SOLE DISCRETION, REQUIRE THE APPLICANT FOR A WIRELESS FACILITY TO MAKE A REASONABLE ATTEMPT TO CO-LOCATE WITH ANOTHER WIRELESS FACILITY PROVIDED THE MUNICIPAL BOARD NOTIFIES THE APPLICANT IN WRITING, WITHIN FIFTEEN DAYS OF THE FILING OF THE APPLICATION, OF THE LOCATION OF ANY EXISTING WIRELESS FACILITY, UPON WHICH THE MUNICIPAL BOARD BELIEVES THE APPLICANT CAN SUCCESSFULLY CO-LOCATE A WIRELESS FACILITY THAT WILL ADEQUATELY SERVE THE TECHNICAL AND COMMERCIAL REQUIREMENTS OF THE APPLICANT.

3. IF THE MUNICIPAL BOARD REQUIRES THE APPLICANT TO ATTEMPT TO CO-LOCATE A WIRELESS FACILITY WITH AN EXISTING WIRELESS FACILITY, THE APPLICANT SHALL PROVIDE THE MUNICIPAL BOARD WITH A STATEMENT INDICATING THAT THE APPLICANT HAS EITHER:

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

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

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

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

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

(I) THE WIRELESS FACILITY IS A PUBLIC NECESSITY IN THAT IT IS REQUIRED TO RENDER THE SAFE AND ADEQUATE LEVEL OF SERVICE REQUIRED BY THE APPLICANT; AND

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

S 306. APPLICABILITY. 1. THE PROVISIONS OF THIS ARTICLE SHALL GOVERN THE PLACEMENT, CONSTRUCTION AND MODIFICATION OF ALL WIRELESS FACILITIES

1 IN A MUNICIPALITY; PROVIDED, HOWEVER, THIS ARTICLE SHALL NOT APPLY TO
2 ANY WIRELESS FACILITY PLACED, CONSTRUCTED OR MODIFIED PURSUANT TO A
3 MASTER PERMIT WITH ANY AGENCY OR AUTHORITY OF THE STATE OF NEW YORK
4 ENTERED INTO ON OR BEFORE THE EFFECTIVE DATE OF THIS ARTICLE, AND ANY
5 FUTURE SITE PERMITS ISSUED PURSUANT TO ANY SUCH MASTER PERMIT.

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

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

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

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

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

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

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