STATE OF NEW YORK

896

2021-2022 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 6, 2021

Introduced by M. of A. WOERNER, VANEL, EPSTEIN, SAYEGH, B. MILLER -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to enacting the "wireless broadband eligible facility permitting act" providing for uniform municipal regulation of certain wireless facilities

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent. The legislature hereby finds and declares that it is the policy of this state to ensure the safe and efficient integration of certain wireless facility modifications necessary for the provision of broadband and other advanced wireless services across the entirety of the state. It is the intent of this act to facilitate the ongoing demand for access to broadband and other advanced wireless services by exempting certain modifications of existing wireless facilities from the need for municipal zoning, land use or other discretionary siting permits, to eliminate the burdens and resources dedicated by municipal zoning and land use agencies to review certain eligible modifications of such wireless facilities, and create a statewide uniform process for municipal permitting of such eligible facility modifications. The legislature acknowledges and confirms the authority of local governments to otherwise exercise zoning, land use and permitting authority within their territorial boundaries with regard to the placement and construction of wireless facilities in accordance with other laws, rules and requirements that may apply to the siting of wireless facilities.

§ 2. Short title. This act shall be known and may be cited as the "wireless broadband eligible facility permitting act".

§ 3. The general municipal law is amended by adding a new article 13-E to read as follows:

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

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ARTICLE 13-E
WIRELESS FACILITIES

Section 300. Definitions.
301. General municipal authority over siting of wireless facilities.
302. Eligible facilities requests.
303. Application to supreme court by aggrieved persons.
304. Preemption.

§ 300. Definitions. For the purposes of this article, the following terms shall have the following meanings unless the context indicates otherwise.

1. "Applicant" shall mean any person who files an application for wireless infrastructure pursuant to a municipal zoning law adopted pursuant to this article or an eligible facilities request with the municipal building inspector.

2. "Application" shall mean a zoning application filed with a municipality for approvals to construct, operate and maintain a wireless facility, an eligible facilities request or an application pursuant to the state uniform fire prevention and building code.

3. "Base station" shall mean a structure or equipment at a fixed location that enables Federal Communications Commission licensed or authorized wireless communications between user equipment and a communications network. Such term shall not encompass a tower or any equipment associated with a tower.

(a) Such term shall include, but not be limited to:

(1) equipment associated with wireless communications services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul;

(2) radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks); and

(3) any structure other than a tower that, at the time the relevant permit application is filed with the municipal building inspector, supports or houses equipment described in subparagraph one or two of this paragraph that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

(b) Such term shall not include any structure that, at the time the relevant permit application is filed with the municipal building inspector, does not support or house equipment described in subparagraph one or two of paragraph (a) of this subdivision.

4. "Collocation" shall mean the mounting or installation of transmission equipment on an eligible support structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes.

5. "Eligible facilities request" shall mean any request for modification of an existing tower or base station that does not substantially change the physical dimensions of such tower or base station, involving:

(a) the collocation of new transmission equipment;

(b) the removal of transmission equipment; or

(c) the replacement of transmission equipment.

6. "Eligible support structure" shall mean any tower or base station, provided that it is existing at the time a permit application is filed with a municipal building inspector.

7. "Existing" shall mean that a constructed tower or base station has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, provided that a tower that has not been reviewed and approved but was lawfully constructed prior to the current applicable zoning or siting process, shall be deemed to be existing.

8. "Modification" shall mean the improvement, upgrade or expansion of an existing wireless facility, base station or wireless support structure that is not a repair, maintenance or in kind replacement of existing transmission equipment.

9. "Municipality" shall mean a city, town or village, including any agent, board, authority, commission, agency, department or other instrumentality thereof.

10. "Municipal building inspector" shall mean the official charged with issuing building permits or enforcing the state uniform fire prevention and building code within a municipality. In the event a municipality does not have a municipal official charged with issuing building permits or enforcing the state uniform fire prevention and building code, such term shall be deemed to refer to the entity charged with enforcing the building code pursuant to subdivision two of section three hundred eighty-one of the executive law.

11. "Municipal zoning law" shall mean any local law, ordinance, rule, regulation, policy or guideline which regulates or governs the location or use of structures or land adopted by a municipality pursuant to this chapter, the general city law, the town law, the village law and/or any other applicable authority.

12. "Site" shall mean, for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower and any access or utility easements related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment deployed on the ground.

13. "Substantial change" shall mean a modification substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(a) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than ten percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater; and for other eligible support structures, it increases the height of the structure by more than ten percent or more than ten feet, whichever is greater. For the purpose of this paragraph, changes in height shall be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; and in other circumstances, changes in height shall be measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the enactment of the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law 112-96);

(b) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than twenty feet, or more than the width of the tower structure at the level of the appurtenance,

whichever is greater; and for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(c) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent larger in height or overall volume than any other ground cabinets associated with the structure;

(d) It entails any excavation or deployment outside the current site;

(e) It would defeat the concealment elements of the eligible support structure; or

(f) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation shall not apply to any modification that is non-compliant only in a manner that would not exceed the thresholds identified in paragraphs (a) through (d) of this subdivision.

14. "Transmission equipment" shall mean equipment that facilitates transmission for any Federal Communications Commission licensed or authorized wireless communications services including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. Such term shall include equipment associated with wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

15. "Tower" shall mean any structure built for the sole or primary purpose of supporting any Federal Communications Commission licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

16. "Wireless facility" shall mean the wireless services equipment including transmission equipment, base station, tower and accessory equipment, utilities and other site development components.

17. "Wireless services" shall mean the use of any wireless technology, including without limitation, commercial mobile services, commercial mobile radio services, unlicensed wireless services, common carrier wireless exchange access services, cellular radiotelephone, specialized mobile radio systems, personal communications services, advanced wireless services, two-way personal wireless services, and any such other wireless technologies that may from time to time be utilized, in order to transmit and/or receive radio waves.

§ 301. General municipal authority over siting of wireless facilities. 1. A municipality may enact municipal zoning laws regulating the siting and installation of base stations and towers provided that such municipal zoning laws comply with federal laws, including the provisions of 47 U.S.C. § 332(c)(7), the Federal Communications Commission cell tower shot clock order, the Middle Class Tax Relief and Job Creation Act of 2012 and the provisions of this article.

2. Every municipality shall act on an application for a wireless facility in accordance with the regulations and orders of the Federal Communications Commission as follows for:

(a) a base station within ninety days of the application being filed with the municipality;

(b) a tower within one hundred fifty days of the application being filed with the municipality; or

(c) an eligible facilities request within sixty days of the application being filed with the municipality, as set forth in section three hundred two of this article.

§ 302. Eligible facilities requests. 1. Notwithstanding any other provision of law to the contrary, a municipality shall not require zoning, land use or other discretionary permits for any eligible facilities request.

2. All eligible facilities requests shall be submitted to the municipal building inspector for review with any application or applications for permits that may be required by the state uniform fire prevention and building code, and shall not otherwise be subject to any municipal zoning law which may otherwise apply to wireless facilities.

3. All eligible facilities requests shall be exempt from environmental quality review pursuant to article eight of the environmental conservation law on the basis that administrative review of an eligible facilities request is an official act of a ministerial nature involving no exercise of discretion, and the issuance of any associated administrative approval by the municipal building inspector predicated solely on compliance or noncompliance with this section. No environmental assessment form shall be required for review of an eligible facilities review.

4. When a person files an eligible facilities review and asserts in writing that a request for modification is covered by this section, the municipal building inspector may only require documentation or information customarily required in a building permit application and such other information reasonably related to determining whether the request meets the requirements of this article. A municipal building inspector may adopt a form for use in assessing eligible facilities review filings in addition to any other customary forms used for the processing of building permit applications.

5. The municipal building inspector shall review and approve an application of eligible facilities review and issue any necessary building and/or electrical permits within sixty days of the submission, subject to tolling as set forth in subdivision six of this section, unless the municipal building inspector determines that the modification does not meet the criteria for an eligible facilities review in which case a written denial thereof shall be transmitted within sixty days of the filing date. If the municipal building inspector determines that the modification does not meet the criteria for an eligible facilities review, the reasons shall be stated in the written denial and include a determination of what if any application shall be required under any municipal zoning law.

6. The sixty day review period begins to run when the application for an eligible facilities review and application for any necessary permits are filed, and may be tolled only (a) by mutual agreement of the municipal building inspector and the applicant or (b) where the municipal building inspector determines that the eligible facilities review and/or any necessary permit applications are incomplete and provides written notice to the applicant within thirty days of receipt of such permit applications specifically delineating all missing supporting information

or documentation that is required. The timeframe for review begins running again when the applicant makes a supplemental submission in response to any notice of incompleteness. Following a supplemental submission, the municipal building inspector shall notify the applicant within ten days if the supplemental submission did not provide the information identified in the original notice delineating missing information and these tolling procedures. Second or subsequent notices of incompleteness shall only toll the timeframe for review to the extent they request documents or information that were delineated in the original notice of incompleteness.

7. In the event the municipal building inspector fails to approve or deny an application for eligible facilities review and issue any necessary permits within the timeframe set forth in subdivision five of this section, subject to tolling set forth in subdivision six of this section, the eligible facilities review and any necessary permits shall be deemed granted. The deemed grant approval will become effective when the applicant notifies the municipal building inspector in writing that the sixty day period, and any applicable tolling, has expired and the permits have been deemed granted by operation of law. The municipality shall issue any necessary permits within fifteen days of the date the municipality receives notice of the deemed grant approval.

§ 303. Application to supreme court by aggrieved persons. Any person or persons, jointly or severally aggrieved by any act of a municipality that is inconsistent with the provisions of this article or a failure to act in a manner consistent therewith, may, within thirty days after such action or failure to act, commence an action pursuant to article seventy-eight of the civil practice law and rules in the supreme court for the county in which such municipality is situate. The supreme court shall hear and decide such action on an expedited basis.

§ 304. Preemption. The provisions of this article shall supersede any inconsistent provision of law relating to the placement, collocation, modification or maintenance of wireless facilities.

§ 4. This act shall take effect on the thirtieth day after it shall have become a law.