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Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

County _____ Bill No. 6 of 2017
City of Plandome Heights
Town _____
Village _____

Local Law No. _____ of the year 20

A local law to regulate telecommunication towers and antennae

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

County _____
City of Plandome Heights
Town _____
Village _____

as follows:

Section 1. Chapter 140, "Zoning," of the Code of the Village of Plandome Heights is hereby amended by adding a new article, Article VII, entitled "Telecommunication Towers," to read as follows:

**"ARTICLE VII
Telecommunications Towers**

Section 1. Purpose and Intent.

The purpose of this Article is to establish predictable and balanced regulations for the siting and screening of personal wireless services antennae, towers, and accessory structures in order to accommodate the growth of such systems within the Village while protecting the public against any adverse impacts on aesthetic resources, avoiding potential damage to adjacent properties from tower failure through structural standards and setback requirements, and reduce the number of towers needed to serve the community by maximizing the use of existing towers and buildings.

Section 2 Definitions.

Unless otherwise expressly stated, the following words shall, for the purposes of this Article, have the meanings herein indicated:

ACCESSORY STRUCTURES - accessory buildings and structures, including base stations designed and used to shelter equipment and/or to support Personal Wireless Services. The term accessory structures does not include offices, long-term storage of vehicles or other equipment storage, or broadcast studios.

ANTENNA - a device used to transmit and/or receive radio or electromagnetic waves, including but not limited to directional antennae, such as panels and microwave dishes and omni-directional antennae, such as whip antennae, as part of, or in conjunction with, a personal wireless services system.

BOARD - Board of Trustees of the Village of Plandome Heights.

PERSONAL WIRELESS SERVICES (sometimes referred to as 'PWS') - commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined by Section 704 of the Federal Telecommunications Act.

TOWER - any ground or roof mounted pole, spire, structure, or combination thereof taller than 15 feet, including supporting lines, cables, wires, braces, and masts, built for the purpose of mounting an antenna, meteorological device, or similar apparatus above grade as part of, or in conjunction with, a personal wireless services system.

Section 3. Special Exception Permit.

- A. No antenna or tower shall hereafter be used, erected, changed or altered except after obtaining a special exception permit in conformity with this Article.
- B. The Board is hereby authorized to review and approve, approve with modifications or disapprove special exception permits pursuant to this Article. The Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed antenna, tower, or accessory structures and the protection of the health, safety, and welfare of the Village, including, but not limited to, the aesthetics thereof.

Section 4. Collocation Requirements.

- A. All towers erected, constructed, or located within the Village shall comply with the following requirements:

- (1) A proposal for a tower shall not be approved unless the Board finds that the antenna planned for the proposed tower cannot be accommodated on an existing or approved tower or building within a one-mile search radius of the proposed tower due to one or more of the following reasons:
 - (2) The antenna would exceed the structural capacity of the existing or approved tower or building, as documented by a qualified professional engineer, and the existing or approved tower cannot be reinforced, modified, or replaced to accommodate the planned or equivalent antenna at a reasonable cost.
 - (3) The antenna would cause interference materially impacting the usability of other existing or planned antenna at the tower or building as documented by a qualified professional engineer and the interference cannot be prevented at a reasonable cost.
 - (4) Existing or approved towers and buildings within the search radius cannot accommodate the antenna at a height necessary to function reasonably as documented by a qualified professional engineer.
 - (5) Other foreseen reasons that make it unfeasible to locate the antenna upon an existing or approved tower or building.
- B. Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's Antennae and comparable Antennae for at least five additional users. Towers must be designed to allow for future rearrangement of Antennae upon the tower and to accept Antennae mounted at varying heights.
- C. The applicant shall submit to the Board a letter of intent committing the applicant, and its successors in interest, to negotiate in good faith for shared use of the proposed tower by other PWS providers in the future. The issuance of a permit (assuming the tower is approved according to this Article), shall commit the new tower owner and its successors in interest to:
- (1) Respond in a timely and comprehensive manner 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 PWS providers.
 - (3) Allow shared use of the new tower if another PWS provider agrees in writing to pay charges.

- (4) Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, Village fees, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

- D. In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that an existing tall structure or existing tower in a neighboring municipality be considered for shared use, an applicant shall submit to the Board an affidavit that it has sent by registered or certified mail, return receipt requested, at least fifteen days prior to the public hearing a notification to the Town Clerk of the Town of North Hempstead, and to the village clerk of each village, each fire department and each public water supplier within two miles of the proposed location of the tower. Such notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to the height of the tower and its capacity for future shared use.

Section 5. Performance, Installation, and Design Standards.

- A. Proof of Non-Interference from Antenna.

Each application for installation of an antenna shall include either a preliminary or a certified statement that the installation of the antenna, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and nonresidential properties or with public safety telecommunications. In the event only a preliminary statement is submitted with the application, a final certified statement of non-interference shall be provided, subject to the approval of the Village, prior to the issuance of a permit. The statement shall be prepared and certified by a professional engineer.

- B. Antenna Safety.

Antennae shall be subject to state and federal regulations pertaining to non-ionizing radiation and other health hazards related to such facilities. The owner shall submit evidence of compliance with the Federal Communication Commission's standards on a yearly basis. If new, more restrictive, standards are adopted, the Antennae shall be made to comply therewith or continued operations may be restricted by the Board. The cost of verification of compliance shall be borne by the owner and operator of the tower.

- C. Tower Lighting.

Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower. When incorporated into the approved design of the tower, and approved by the Board, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

D. Uses, Signs and Advertising on Towers.

- (1) Towers shall not be used for any purposes other than for the mounting of antennae, meteorological devices, or similar apparatus above grade.
- (2) The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

E. Tower Height Limitations.

The maximum height of a tower is limited to 50 feet above the ground upon which the antenna is placed. The ground elevation may not be raised to increase the height of the tower. The height limitation may be waived by the Board when the antenna is mounted on an existing building or structure or to accommodate colocation.

F. Tower Building Requirements.

- (1) The use of guyed towers is prohibited. Towers must be self-supporting without the use of wires, cables, beams, or other means. The design should utilize an open framework or monopole configuration. Permanent platforms or structures exclusive of Antennae that serve to increase off-site visibility are prohibited.
- (2) The base of the tower shall occupy no more than 500 square feet and no portion of the tower shall be any larger than the base.
- (3) Minimum spacing between tower locations shall be 1/4 mile.

G. Access to Towers.

A road and parking shall be provided to assure adequate emergency and service access. Maximum uses of existing roads, public or private, shall be made.

H. Setbacks for Towers and Accessory Structures.

- (1) The tower and accessory structures shall comply with all minimum setbacks of the zoning district.

- (2) A tower's setback may be reduced by the Board to allow the integration of a tower into an existing or proposed structure such as a church steeple, light pole, power line, or similar structure.

I. Screening and Security of Towers and Accessory Structures.

- (1) Existing on-site vegetation shall be preserved to the maximum extent practicable.
- (2) Towers and accessory structures shall be provided with security fencing to prevent unauthorized entry. Such fencing shall be no less than 6 feet and no greater than 8 feet in height and shall be constructed of either masonry, wrought iron or wire.
- (3) The base of the tower and any accessory structures shall be landscaped to the extent feasible to minimize the impact of the tower, the accessory structures and the security fencing from the adjacent residential community and the public streets.

J. Design of Antennae, Towers, and Accessory Structures.

Towers and Antennae shall be designed to blend into the surrounding environment through the use of color and camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration. Every antenna and tower shall be of neutral colors that are harmonious with, and that blend with, the natural features, buildings and structures surrounding such antenna and structure, provided however, that directional or panel antenna and omni-directional or whip Antennae located on the exterior of a building that will also serve as an antenna tower shall be of colors that match, and cause the antenna to blend with, the exterior of the building. Accessory structures will be designed to be architecturally compatible with principal structures on the site and the aesthetics of the neighboring structures.

Section 6. Compliance with Other Laws.

The operator of every PWS antenna shall submit to the Village Clerk copies of all licenses and permits required by other agencies and governments with jurisdiction over the design, construction, location and operation of such antenna and shall maintain such licenses and permits and provide evidence of renewal or extension thereof when granted. The failure to do so after thirty days' notice, in the discretion of the Board, unless good cause for such failure is shown, shall result in the termination of the special exception permit.

Section 7. Assignment of Permit.

No permit granted under this Article for any antenna or tower, or accessory structure, shall be assigned or transferred without the prior approval of the Board.

Section 8. Review.

All permits granted under this Article shall be subject to review by the Board at ten year intervals, to determine whether the technology in the provision of PWS has changed such that the necessity for the permit at the time of its approval has been eliminated or modified, and whether the permit should be modified or terminated as a result of any such change.

Section 9. Fees.

In addition to the fees set forth in other provisions of the Village Code:

- A. Each owner and operator of a tower shall pay to the Village an annual fee for such tower and for each antenna on such tower in amounts determined from time to time by resolution of the Board of Trustees.
- B. Each owner and operator of an antenna not located on a tower shall pay to the Village an annual fee for such antenna in amounts determined from time to time by resolution of the Board of Trustees.

Section 10. Termination of Permit, Abandoned or Unused Towers.

- A. Upon the termination of the permit granted pursuant to this Article, or upon the abandonment or discontinuance of use of any towers or portions of towers or associated facilities, whichever is the first to occur, such towers or portions of towers or associated facilities shall be removed as follows:
 - (1) All towers and associated facilities for which the permit granted pursuant to this Article has been terminated, and all abandoned or unused towers and associated facilities shall be removed within six months of such termination, abandonment or discontinuance of use, unless a time extension is approved by the Board. A copy of the relevant portions of a signed lease which requires the applicant to remove the tower and associated facilities upon such termination, abandonment or discontinuance of use at the site shall be submitted at the time of application. In the event that a tower is not removed within six months of the such termination, abandonment or discontinuance of use, the tower and associated facilities may be removed by the Village and the costs of removal assessed against the property, in the manner set forth in Article IV, "Unsafe Buildings and Areas," of Chapter 43, "Building Construction."

- (2) Unused portions of towers above a manufactured connection shall be removed within six months of the time of antenna relocation unless a time extension is approved by the Board. The replacement of portions of a tower previously removed requires the issuance of a new special exception permit. In the event that said unused portion of the tower is not removed within said six months, said portion of the tower may be removed by the Village and the costs of removal assessed against the property, in the manner set forth in Article IV, "Unsafe Buildings and Areas," of Chapter 43, "Building Construction."

B. Performance Bond.

- (1) No permit shall be issued pursuant to this Article until the applicant has delivered a performance bond to the Village, in a form satisfactory to the Village Attorney, in a sum equal to the cost of removing the tower and associated facilities, to secure the applicant's responsibility:
 - (a) to remove the tower and associated facilities within six months of the termination of the permit granted pursuant to this Article or the abandonment or discontinuance of use of such tower and associated facilities, unless a time extension is approved by the Board; and
 - (b) to remove the unused portions of towers above a manufactured connection within six months of the time of antenna relocation, unless a time extension is approved by the Board.
- (2) All such bonds shall be issued by insurance companies licensed to do business in the State of New York with A.M. Best ratings of A or better.
- (3) Accompanying such bonds shall be an estimate of the cost of the removal of the tower and associated facilities, certified by a professional engineer.
- (4) All such bonds shall be renewed not less than once every three years, and shall be accompanied by an updated professional engineer's certification of the cost of removal.

Section 11. Effect of Law on Existing Towers and Antennae.

Antennae and towers in existence which do not conform to or comply with this Article are subject to the following provisions:

- A. Antennae and towers may continue in use for the purpose now used and as now existing but may not be replaced or structurally altered without complying in all respects with this Article.

- B. If such Antennae or towers are hereafter damaged or destroyed due to any reason or cause whatsoever, the antenna or tower may be repaired and restored to its former use, location, and physical dimensions without complying with this Article; provided, however, that if the cost of repairing the tower to the former use, physical dimensions, and location would be twenty percent or more of the cost of a new tower of like kind and quality, then the tower may not be repaired or restored except in full compliance with this Article.

Section 12. Procedural Requirements.

The Board shall conduct a public hearing within 62 days from the date a complete application is filed with the Village Clerk with the appropriate application fee and deposit. The Board shall issue a decision within 35 days after the conclusion of the public hearing and the recommendations of the Nassau County Planning Commission, whichever is the later to occur.

Section 13. Variances.

The Board shall have the right to vary the provisions of this Article, to the extent reasonable or necessary, upon a showing of sufficient evidence by qualified experts that an applicant cannot feasibly provide the services for which it is licensed if it is compelled to conform with the all of the provisions of this Article or if it is shown that any of the foregoing provisions of this Article are not enforceable by the Village because of a federal or state preemption.”

Section 2. If any word, phrase, or part of this local law shall be declared unconstitutional, the same shall be severed and separated from the remainder of this local law, and said remainder shall continue in full force and effect.

Section 3. This local law shall take effect immediately.