

Local Law Filing

www.dos.state.ny.us/corps

(Use this form to file a local law with the Secretary of State.)

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 City Town Village
(select one)

of East Rockaway

Local Law No. 11 of the year 2022

A local adopting Amending Chapter 288 of the code of the Incorporated Village of East Rockaway to add Article Entitled "Wireless Communications Towers and Facilities."
(insert Title)

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

County City Town Village
(Select One:)

of East Rockaway as follows:

Section 1. Legislative Intent

This Local Law amends the Zoning Code so as to provide rules and regulations for wireless telecommunications towers and facilities with the Village consistent with the United States Telecommunications Act of 1996.

Section 2. Article XIX of Chapter 288 as Adopted:

Article XIX **Regulation of Wireless Telecommunications Towers and Facilities**

- §288-142.1 Title.
- §288-142.2 Purpose and Intent.
- §288-142.3 Definitions.
- §288-142-4 Review Authority; Permit Required; Term.
- §288-142-5 Procedural Requirements.
- §288-142-6 Development of towers; Permit; Application.
- §288-142-7 Collocation requirements.
- §288-142-8 Setbacks.
- §288-142-9 Structural Requirements.
- §288-142-10 Separation or buffer requirements.
- §288-142-11 Method of determining tower height.

- §288-142-12 Illumination.
- §288-142-13 Design of antennas, towers and accessory structures.
- §288-142-14 Landscaping and security of structures.
- §288-142-15 Access.
- §288-142-16 Stealth design.
- §288-142-17 Telecommunications facilities on antenna support structures.
- §288-142-18 Modification of towers.
- §288-142-19 Certification and inspections.
- §288-142-20 Maintenance.
- §288-142-21 Criteria for site plan development modifications.
- §288-142-22 Abandonment.
- §288-142-23 Severability.
- §288-142-24 Conflicts (Repeal of Local Laws).
- §288-142-25 Signs and advertising on towers.
- §288-142-26 Compliance with other laws.
- §288-142-27 Assignment of permit.
- §288-142-28 Review of special use permit.
- §288-142-29 Fees.

§288-142.1 Title.

This article shall be known and may be cited as the “Regulation of Wireless Telecommunications Towers and Facilities.”

§288-142.2 Purpose and Intent.

- A. On February 8, 1996, the United States Congress enacted the Telecommunications Act of 1996 (hereinafter referred to as the “Act”). The purpose of the Act is to provide a more competitive environment for wired and wireless communication services in the United States by deregulating the telecommunications industry. The Act preserves the authority of local government to regulate the placement, construction, and modification of personal wireless services antennas, towers and accessory structures in order to protect the health, safety and welfare of the public.
- B. The purpose of this local law is to establish predictable and balanced regulations for the siting and screening of personal services antennas, towers, and accessory structures. The establishment of such regulations is to accommodate the growth of such systems within the Incorporated Village of Floral Park (hereinafter referred to as the “Village”). Such regulations will further serve to protect the public against any adverse impacts on aesthetic resources. Additionally, the regulations will eliminate potential damage to adjacent properties from tower failure through structural standards and setback requirements. Finally, the regulations set forth in this local law will reduce the number of towers needed to service the community by maximizing the use of existing towers and structures.
- C. The local law is intended to regulate the placement, construction, and modification of towers and telecommunications facilities in order to protect the health, safety, and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the Village. Specifically, this local law is intended to:
 - (1) Regulate the location of the towers and telecommunications facilities in the Village;

- (2) Protect residential areas and land uses from potential adverse impacts of towers and telecommunications facilities;
 - (3) Minimize adverse visual impacts of towers and telecommunications facilities through careful design, siting, landscaping, and innovative camouflaging techniques;
 - (4) Promote and encourage shared use/collocation of towers and antenna support structures as a primary option rather than construction of additional single-use towers;
 - (5) Promote and encourage utilization of technological designs that will either eliminate or reduce the need for erection of new tower structures to support antenna and telecommunications facilities;
 - (6) Avoid potential damage to property caused by towers and telecommunications facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained, and removed when no longer used or determined to be structurally unsound; and
 - (7) Ensure that towers and telecommunications facilities are compatible with surrounding land uses.
- D. The Communications Act of 1934, as amended by the Act, grants the Federal Communications Commission (FCC) exclusive jurisdiction over:
- (1) The regulation of the environmental effects of radio frequency (RF) emissions from telecommunications facilities; and
 - (2) The regulation of radio signal interference among users of the RF spectrum.
- E. The Village’s regulation of towers and telecommunications facilities in the Village will not have the effect of prohibiting any person from providing wireless telecommunications services in violation of the Act.

§ 288-142.3 Definitions.

The following words, terms, and phrases, when used in this local law, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning.

ANTENNA

The actual device which transmits and/or receives radio or electromagnetic waves.

ANTENNA SUPPORT STRUCTURE

Any building or structure other than a tower which can be used for location of telecommunications facilities.

APPLICANT

Any person that applies for a tower development permit.

APPLICATION

The process by which the owner of a parcel of land within the Village submits a request to develop, construct, build, modify or erect a tower upon such parcel of land. “Application”

includes all written documentation, verbal statements, and representations, in whatever form or forum, made by an applicant to the Village concerning such a request.

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.

ENGINEER

Any engineer licensed by the State of New York.

OWNER

Any person with fee title or long-term (exceeding 10 years) leasehold to any parcel of land within the Village who desires to develop, or construct, build, modify or erect a tower upon such parcel of land.

PERSON

Any natural person, firm, partnership, association, corporation, company, or other legal entity, private or public, whether for profit or not for profit.

PERSONAL WIRELESS SERVICES

Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services as defined by Section 704 of the Federal Telecommunications Act.

STEALTH

Any tower or telecommunications facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower such as light poles, power poles, and trees. The term “stealth” does not necessarily exclude the use of uncamouflaged lattice or monopole tower designs.

TELECOMMUNICATIONS FACILITIES

Any cables, wire, lines, wave guides, antennas, and any other equipment of facilities associated with the transmission or reception of communications which a person seeks to locate or has installed upon or near a tower or antenna support structure. However, telecommunications facilities shall not include:

- A. Any satellite earth station antenna two meters in diameter or less which is located in an area zoned industrial or commercial; or
- B. Any satellite earth station antenna one meter or less in diameter, regardless of zoning category.

TOWER

A self-supporting lattice or monopole structure constructed from grate which supports telecommunications facilities. The term “tower” shall not include amateur radio operators’ equipment, as licensed by the FCC.

§288-142.4 Review Authority; Permit Required; Term.

- A. No antenna or tower shall hereafter be used, erected, changed or altered except after obtaining a special use permit in conformity with this local law.

- B. The Board of Trustees is hereby authorized to review and approve, approve with modifications, or disapprove special use permits pursuant to this local law. The Board of Trustees 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.
- C. A special use permit issued by the Board of Trustees shall be effective for a period of two years, which shall be renewed thereafter upon reapplication by the applicant and the payment of the fee referenced here in §288-142.29.

§288-142.5 Procedural Requirements.

The Board of Trustees shall conduct a public hearing within 60 days from the day an application is received. The Board of Trustees shall issue a decision within 40 days after the hearing. A hearing shall not be deemed complete until all compliance with the State Environmental Quality Review Act (SEQRA), General Municipal Law §239-m and all other applicable laws shall have been fulfilled. Any denial for a permit under this law shall be in writing and shall be supported by substantial evidence.

§288-142.6 Development of Towers; Permit Application.

No person shall build, erect, or construct a tower upon any parcel of land within any zoning district within the Village unless a special use permit shall have been issued by the Board of Trustees after approval by the Board of Trustees.

- A. Towers are exempt from the maximum height restrictions of the districts where located. Towers shall be permitted to a height of 150 feet above the ground upon which the antenna is placed. Towers may be permitted in excess of 150 feet in accordance with §288-142.21, "Criteria for site plan development modifications."
- B. No new tower shall be built, constructed, or erected in the Village unless the tower is capable of supporting another person's operating telecommunications facilities comparable in weight, size and surface area to the telecommunications facilities installed by the applicant on the tower within six months of the completion of the tower construction.
- C. An application to develop a tower shall include:
 - (1) The name, address, and telephone number of the owner and lessee of the parcel of land upon which the tower is to be situated. If the applicant is not the owner of the parcel of land upon which the tower is to be situated, the written consent of the owner shall be evidenced in the application.
 - (2) The legal description and address of the parcel of land upon which the tower is to be situated.
 - (3) The names, addresses, and telephone numbers of all owners of other towers or usable antenna support structures within a ½ mile radius of the proposed new tower site, including Village-owned property.
 - (4) A description of the design plan proposed by the applicant in the Village. Applicant must identify its utilization of the more recent technology design, including microcell design, as part of the design plan. The applicant must demonstrate the need for towers and why design alternatives, such as the use of microcell, cannot be utilized to accomplish the provision of the applicant's telecommunications services.

- (5) An affidavit attesting to the fact that the applicant made diligent, but unsuccessful, efforts to obtain permission to install or collocate the applicant's telecommunications facilities on Village-owned towers or usable antenna support structures located within a one-half-mile radius of the proposed tower site.
- (6) An affidavit attesting to the fact that the applicant made diligent, but unsuccessful, efforts to install or collocate the applicant's telecommunications facilities on towers or usable antenna support structures owned by other persons located within the ½ mile radius of the proposed tower site.
- (7) Written technical evidence from an engineer that the proposed tower or telecommunications facilities cannot be installed or collocated on another person's tower or usable antenna support structures owned by other persons located with a ½ mile radius of the proposed tower site.
- (8) A written statement from an engineer that the construction and placement of the tower will not interfere with public safety communications and the usual and customary transmission or reception of radio, television, or other communications services enjoyed by adjacent residential and nonresidential properties.
- (9) Written technical evidence from an engineer that the proposed structure meets the standards set forth in §288-142.9, Structural requirements, of this local law.
- (10) Written technical evidence from a qualified engineer acceptable to the Fire Marshall and the Building Inspector that the proposed site of the tower or telecommunications facilities does not pose a risk of explosion, fire, or other danger to life or property due to its proximity to volatile, flammable, explosive, or hazardous materials such as LP gas, propane, gasoline, natural gas, or corrosive or other dangerous chemicals.
- (11) In order to assist Village staff and the Board of Trustees in evaluating visual impact, the applicant shall submit color photo simulations showing the proposed site of the tower with a photo-realistic representation of the proposed tower as it would appear viewed from the closest residential property and from adjacent roadways.
- (12) The Act gives the FCC sole jurisdiction of the field of regulation of RF emissions and does not allow the Village to condition or deny on the basis of RF impacts the approval of any telecommunications facilities (whether mounted on towers or antenna support structures) which meet FCC standards. Antennas and towers shall be subject to state and federal regulations pertaining to nonionizing radiation and other health hazards related to such facilities. In order to provide information to its citizens, the Village shall make available, upon request, copies of ongoing FCC information and RF emission standards for telecommunications facilities transmitting from towers or antenna support structures. Applicants shall be required to submit information on the proposed power density of their proposed telecommunications facilities and demonstrate how this meets FCC standards on a yearly basis to the Village. If new, more restrictive standards are adopted, the antennas shall be made to comply or continued operations may be restricted by the Board of Trustees. The cost of verification of compliance shall be borne by the owner and operator of the tower.

D. The use of guyed towers is prohibited. Towers must be self-supporting without the use of wires, cable, beams or other means. The design should utilize an open framework or monopole

configuration. Permanent platforms or structures, exclusive of antennas, that serve to increase off-site visibility are prohibited.

- E. The base of the tower shall occupy not more than 500 square feet, and the top of the tower shall be no longer than the base.
- F. Minimum spacing between tower locations is $\frac{1}{4}$ of a mile.
- G. The Board of Trustees may require an applicant to supplement any information that the Board of Trustees considers inadequate or that the applicant has failed to supply. The Board of Trustees may deny an application on the basis that the applicant has not satisfactorily supplied the information required in this section.

§288-142.7 Collocation Requirements.

All towers erected, or located with the Village, shall comply with the following requirements:

- A. A proposal for a tower shall not be approved unless the Board of Trustees finds that the antenna planned for the proposed tower cannot be accommodated on an existing or approved tower or building with a one-mile search radius (one-half-mile search radius for towers under 120 feet in height, one-quarter-mile search radius for towers under 80 feet in height) of the proposed tower due to one or more of the following reasons:
 - (1) 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.
 - (2) 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.
 - (3) 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.
 - (4) Other foreseen reasons that make it unfeasible to locate the antenna upon an existing or approved tower or building.
- B. Design; letter of intent.
 - (1) Any proposed tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least two additional users if the tower is over 100 feet in height or for at least one additional user if the tower is over 60 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
 - (2) The applicant shall submit to the Board of Trustees a letter of intent committing the applicant, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other personal wireless service providers in the future. The

issuance of a special use permit (assuming the tower is approved according to this section) shall commit the new tower owner and his/her successors in interest to:

- (a) Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
 - (b) Negotiate in good faith concerning future requests for shared use of the new tower by other personal wireless service providers.
 - (c) Allow shared use of new tower if another personal wireless service provider agrees in writing to pay charges.
 - (d) Impose 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-rate share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the cost of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- C. 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, the Board of Trustees shall require that:
- (1) An applicant who proposes a new tower shall notify in writing the legislative body of each municipality that borders the Village and the County Planning Commission. 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.
 - (2) Documentation of this modification shall be submitted to the Board of Trustees at the time of application.

§288-142.8 Setbacks.

Towers and all accessor structures shall conform with each of the following minimum setback requirements.

- A. All towers up to 100 feet in height shall be on all sides a distance equal to the underlying setback requirement in the applicable zoning district. Towers in excess of 100 feet in height shall be set back one additional foot per each foot of tower height in excess of 100 feet.
- B. Setback requirements for towers shall be measured from the base of the tower to the property line of the parcel of land on which it is located.
- C. Setback requirements may be modified, as provided in §99-28.21B(1), when placement of a tower in a location which will reduce the visual impact can be accomplished; for example, adjacent to trees which may visually hide the tower.
- D. The minimum setbacks of the underlying zoning district shall be met, with the exception of industrial zoning districts, where towers and accessory structures may encroach into the rear setback area, provided that the real property line abuts another industrially zoned property and the tower does not encroach upon any easements.

- E. Towers and accessory structures shall be set back from the planned public rights of way as shown on the most recently adopted plan or map of the Village showing such rights-of-way, by a minimum distance equal to one half of the height of the tower including all antennas and attachments.
- F. A tower's setback may be reduced in the sole discretion of the Board of Trustees 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.

§288-142.9 Structural Requirements.

All towers must be designed and certified by an engineer to be structurally sound and, at minimum, in conformance with the Village Code, and any other standards outlined in this local law. All towers in operation shall be affixed to land.

§288-142.10 Separation or Buffer Requirements.

For the purpose of this local law, the separation distances between towers shall be measured by drawing or following a straight line between the base of the existing or approved structure and the proposed base, pursuant to a site plan, of the proposed tower. Tower separation distances from residentially zoned lands shall be measured from the base of a tower to the closest point of residentially zoned property. The minimum tower separation distances from residentially zoned land and from other towers shall be calculated and applied irrespective of Village jurisdictional boundaries.

- A. Towers shall be separated from all residentially zoned lands by a minimum of 200 feet or 200 percent of the height of the proposed tower, whichever is greater.
- B. Proposed towers must meet the following minimum separation requirements from existing towers or towers which have a special use permit but are not yet constructed at the time a special use permit is granted pursuant to this local law:
 - (1) Monopole tower structures shall be separated from all other towers, whether monopole or self-supporting lattice, by a minimum of 750 feet
 - (2) Self-supporting lattice towers by a minimum of 1,500 feet.
 - (3) Self-supporting lattice tower structures shall be separated from all monopole towers by a minimum of 750 feet.

§288-142.11 Method of Determining Tower Height.

Measurement of tower height for the purpose of determining compliance with all requirements of this local law shall include the tower structure itself, the base pad, and any other telecommunications facilities attached thereto which extend more than 20 feet over the top of the tower structure itself. Tower height shall be measured from grade.

§288-142.12 Illumination.

Towers shall not be artificially lighted except as required by the Federal Aviation Administration or other federal or state authority for a particular tower. Upon commencement of construction of a tower, in cases where there are residential uses located within a distance which is 300% of the height of the tower from the tower and when required by federal law, dual-mode lighting shall be requested from the Federal Aviation Administration.

§288-142.13 Design of Antennas, Towers and Accessory Structures.

Antennas, towers and accessory structures 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 indicated by federal or state authorities such as the Federal Aviation Administration. Every antenna, tower and accessory structure shall be of neutral colors that are harmonious with, and the blend with, the natural features, building and structures surrounding such antenna and structure, provided that directional or panel antennas and omnidirectional or whip antennas 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.

§288-142.14 Landscaping and Security of Structures.

All landscaping on a parcel of land containing towers, antenna support structures, or telecommunications facilities shall be in accordance with the applicable landscaping requirements in the zoning district where the tower, antenna support structure, or telecommunications facilities are located. The Village may require landscaping in excess of the requirements of the Village Code in order to enhance compatibility with adjacent land uses. Landscaping shall be installed on the outside of any fencing. Existing on-site vegetation shall be preserved to the maximum extent practicable. The base of the tower and any accessory structures shall be landscaped. Towers and accessory structures shall be provided with security fencing to present unauthorized entry.

§288-142.15 Access.

A parcel of land upon which a tower is located must provide access to at least one paved vehicle parking space on site. A road and parking will be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made.

§288-142.16 Stealth Design.

All towers shall be of stealth design.

§288-142.17 Telecommunications Facilities on Antenna Support Structures.

Any telecommunications facilities which are not attached to a tower may be permitted on any antenna support structure at least 50 feet tall, regardless of the zoning restrictions applicable to the zoning district where the structure is located. Telecommunications facilities are prohibited on all other structures. The owner of such structure shall, by written certification to the Board of Trustees, establish the following at the time plans are submitted for a special use permit.

- A. That the height from grade of the telecommunications facilities shall not exceed the height from grade of the antenna support structure by more than 20 feet;
- B. That any telecommunications facilities and their appurtenances, located above the primary roof of an antenna support structure, are set back one foot from the edge of the primary roof of the telecommunications facilities. This setback requirement shall not apply to telecommunications facilities and their appurtenances located above the primary roof of an antenna support structure, if such facilities are appropriately screened from view through the use of panels, walls, fences, or other screening techniques approved by the Village. Setback requirements shall not apply to stealth antennas which are mounted to the exterior of antenna support structures below the primary roof, but which do not protrude more than 18 inches from the side of such an antenna support structure.

§288-142.18 Modification of Towers.

- A. A tower existing prior to the effective date of this local law, which was in compliance with the Village's Code immediately prior to the effective date of this local law, may continue in existence as a nonconforming structure. Such nonconforming structure may be modified or demolished and rebuilt without complying with any of the additional requirements of this local law, except for §§99-28.10, Separation or buffer requirements, 99-28.19, Certification and inspections, and 99-28.20, Maintenance, provided:
- (1) The tower is being modified or demolished and rebuilt for the sole purpose of accommodating, within six months of the completion of the modification or rebuild, additional telecommunications facilities comparable in weight, size, and surface area to the discrete operating telecommunications facilities of any person currently installed on the tower.
 - (2) An application for a special use permit is made to the Board of Trustees, which shall have the authority to issue a special use permit without further approval. The grant of a special use permit pursuant to the section allowing the modification or demolition and rebuild of an existing nonconforming tower shall not be considered a determination that the modified or demolished tower is conforming.
 - (3) The height of the modified or rebuilt tower and telecommunications facilities attached thereto do not exceed the maximum height allowed under this local law.
- B. Except as provided in this local law, a non-conforming structure or use may not be enlarged, increased in size, or discontinued in use for a period of more than 180 days. This local law shall not be interpreted to legalize any structure or use existing at the time this local law is adopted, which structure or use is in violation of the Village Code prior to enactment of this local law.

§288-142.19 Certification and Inspections.

- A. All towers shall be certified by an engineer to be structurally sound and in conformance with the requirements of the Building Code and all other construction standards set forth by the Village's Code and federal and state law. For new monopole towers, such certification shall be submitted with an application pursuant to §99-28.4 of this local law and every five years thereafter. For existing monopole towers, certification shall be submitted within 60 days of the effective date of this local law and then every two years thereafter. The tower owner may be required by the Village to submit more frequent certifications should there be reason to believe that the structural and electrical integrity of the tower is jeopardized.
- B. The Village or its agents shall have authority to enter onto the property upon which a tower is located, between the inspections and certifications required above, to inspect the tower for the purpose of determining whether it complies with the Village Code and all other construction standards provided by the Village Code and federal and state law.
- C. The Village reserved the right to conduct such inspections at any time, upon reasonable notice to the tower owner. All expenses related to such inspections by the Village shall be borne by the tower owner.

§288-42.20 Maintenance.

- A. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public.

- B. Tower owners shall install and maintain towers, telecommunications facilities, wires, cable, fixtures and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state and local regulations, and in such manner that will not interfere with the use of other property.
- C. All towers, telecommunications facilities and antenna support structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
- D. All maintenance of construction of towers, telecommunications facilities, or antenna support structures shall be performed by licensed maintenance and construction personnel.
- E. All towers shall maintain compliance with current RF emission standards of the FCC.
- F. In the event that the use of a tower is discontinued by the tower owner, the tower owner shall provide written notice to the Village of its intent to discontinue use and the date when the use shall be discontinued.

§288-142.21 Criteria for Site Plan Development Modifications.

- A. Notwithstanding the tower requirements provided in this local law, a modification to the requirements may be approved by the Board of Trustees as a conditional use in accordance with the following:
 - (1) In addition to the requirement for a tower application, the application for modification shall include the following:
 - (a) A description of how the plan addresses any adverse impact that might occur as a result of approving the modification.
 - (b) A description of off-site factors which mitigate any adverse impacts which might occur as a result of the modification.
 - (c) A technical study that documents and supports the criteria submitted by the applicant upon which the request for modification is based. The technical study shall be certified by an engineer and shall document the existence of the facts related to the proposed modifications and its relationship to surrounding rights-of-way and properties.
 - (d) For a modification of the setback requirement, the application shall identify all parcels of land where the proposed tower could be located, attempts by the applicant to contract and negotiate and agreement for collocation, and the result of such attempts.
 - (e) The Board of Trustees may require the application to be reviewed by an independent engineer under contract to the Village to determine whether the antenna study supports the basis for the modification requested. The costs of the review by the Village's engineer shall be reimbursed to the Village by the applicant.
 - (2) The Board of Trustees shall consider the application for modification based on the following criteria:
 - (a) That the tower as modified will be compatible with and not adversely impact the character and integrity of surrounding properties.

- (b) Off-site or on-site conditions exist which mitigate the adverse impacts, if any, created by the modification.
 - (c) In addition, the Board of Trustees may include conditions on the site where the tower is to be located if such conditions are necessary to preserve the character and integrity of the neighborhoods affected by the proposed tower and mitigate any adverse impacts which arise in connection with the approval of the modification.
- B. In addition to the requirements of Subsection A of this section, in the following cases, the applicant must also demonstrate, with written evidence the following:
- (1) In the case of a requested modification to the setback requirements, §288-142.18, that the setback requirement cannot be met on the parcel of land upon which the tower is proposed to be located and the alternative for the applicant is to locate the tower at another site which is closer in proximity to a residentially zoned land.
 - (2) In the case of a requested modification to the separation and buffer requirements from other towers of §288-142.10, that the proposed site is zoned “Industrial” or “Heavy Industrial” and the proposed site is at least double the minimum standard from residentially zoned lands as provided for in §288-142.10.
 - (3) In the case of requested modification of the separation and buffer requirements from residentially zoned land of §288-142.10, if the person provides written technical evidence from an engineer that the proposed tower and telecommunications facilities must be located at the proposed site in order to meet the coverage requirements of the applicant’s wireless communications system and if the person is willing to create approved landscaping and other buffers to screen the tower from being visible to residentially zoned property.
 - (4) In the case of a request for modification of the height limit for towers and telecommunications facilities or to the minimum height requirements for antenna support structures, that the modification is necessary to: facilitate collocation of telecommunications facilities in order to avoid construction of a new tower; to meet the coverage requirements of the applicant’s wireless communications system, which requirements must be documented with written technical evidence from an engineer that demonstrates that the height of the proposed tower is the minimum height required to function satisfactorily, and no tower that is taller than such minimum height shall be approved.

§ 288-142.22 Abandonment.

- A. If any tower shall cease to be used for a period of 365 consecutive days, the Board of Trustees shall notify the owner, with a copy to the applicant, that the site will be subject to a determination by the Board of Trustees that such site has been abandoned. The owner shall have 30 days from receipt of said notice to show, by a preponderance of the evidence, that the tower has been in use or under repair during the period; the Board of Trustees shall issue a final determination of abandonment for the site. Upon issuance of the final determination of abandonment, the owner shall, within 75 days, dismantle and remove the tower.
- B. In the event a tower is not removed within the relevant time period, the tower and associated facilities may be removed by the Village and the costs of removal assessed against the owner.

- C. Unused portions of towers above a manufactured connection shall be removed within six months of the time of antenna relocation. The replacement of portions of a tower previously removed requires the issuance of a new special permit.

§ 288-142.23 Severability.

If any clause, section, or other part of this local law shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this local law shall not be affected thereby, but shall remain in full force and effect.

§ 288-142.24 Conflicts (repeal of local laws).

All local laws or parts of local laws in conflict herewith are hereby repealed.

§ 288-142.25 Signs and advertising on towers.

The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.

§ 288-142.26 Compliance with other laws.

The operator of every tower, antenna and accessory structure 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 tower, antenna and accessory structure and shall maintain such licenses and permits and provide evidence of renewal or extension thereof when granted.

§ 288-142.27 Assignment of permit.

Every special use permit granting approval of an antenna, tower or accessory structure shall state that any assignment or transfer of the special use permit or of any rights thereunder may be made only with the written approval of the Village.

§ 288-142.28 Review of special use permit.

The special use permit shall be subject to review by the Board of Trustees at five-year intervals to determine the following:

- A. Whether the technology in the provision of personal wireless services has changed such that the necessity for the special use permit at the time of its approval has been eliminated or modified; and
- B. Whether the special use permit should be modified or terminated as a result of any such change.

§ 288-142.29 Fees.

Upon initial application for a special use permit for the maintenance of a tower, antenna or accessory structure pursuant to this local law, and upon subsequent renewals of such special use permit, the applicant shall pay a fee to the Village as shall be set from time to time by resolution of the Board of Trustees.

Section 3. Severability

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court's order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 4. Effective Date

This local law shall take effect immediately upon filing with the Secretary of State.

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

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

I hereby certify that the local law annexed hereto, designated as local law No. 11 of 2022 of the ~~(County)(City)(Town)~~(Village) of East Rockaway was duly passed by the Board of Trustees on September 12, 2022 in accordance with the applicable provisions of law.

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)

(Name of Legislative Body)

(repassed after disapproval) by the _____ and was deemed duly adopted
(Elective Chief Executive Officer*)
on _____ 20____, in accordance with the applicable provisions of law.

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)

(Name of Legislative Body)

(repassed after disapproval) by the _____ on _____ 20____.
(Elective Chief Executive Officer*)

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20____, and was (approved)(not approved)

(Name of Legislative Body)

(repassed after disapproval) by the _____ on _____ 20____. Such local
(Elective Chief Executive Officer*)
law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20__ of the County of _____ State of New York, having been submitted to the electors as the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____ 1_____ above.

Clerk of the county legislature body, City, Town or Village Clerk or officer designated by local legislative body

Date: September 12, 2022

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF NASSAU

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

Signature John E. Ryan

Title Village Attorney

County
City
Town of East Rockaway
Village

Date: September 12, 2022