

# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
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STATE OF NEW YORK  
DEPARTMENT OF STATE  
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MAR 29 2001

~~County~~  
xx ~~City~~ of Smithtown  
~~Town~~  
~~Village~~

MISCELLANEOUS  
& STATE RECORDS

Local Law No. 2 of the year 2001.

A local law entitled Chapter 242 - Telecommunications  
*(Insert Title)*  
Facilities and Structures

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

~~County~~  
xx ~~City~~ of Smithtown as follows:  
~~Town~~

ADOPTED LOCAL LAW #2-2001  
CHAPTER 242  
TELECOMMUNICATIONS FACILITIES AND STRUCTURES

- Section 1. Legislative Intent
- Section 2. Definitions
- Section 3. Purpose and Intent, Applicability
- Section 4. Specification of Land Use Classifications
- Section 5. Standards
- Section 6. Fall Zone and Setback Requirements
- Section 7. Submittal Requirements
- Section 8. Alternatives Analysis and Comparison
- Section 9. Tiered Permit Process
- Section 10. Application Procedures
- Section 11. Staff Reports
- Section 12. Modifications
- Section 13. Co-Locations/Public Sites
- Section 14. Registry, Monitoring, Inspection, Abandonment
- Section 15. Radio Frequency Radiation Emissions
- Section 16. Noise
- Section 17. Lighting and Security
- Section 18. Signs/Identification Plaques
- Section 19. Screening and Landscaping
- Section 20. Access and Parking
- Section 21. Penalties for Offenses; Other Remedies
- Section 22. Severability
- Section 23. Effective Date

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Section 1. Legislative Intent.

The Town Board of the Town of Smithtown, Suffolk County, New York, finds herewith that personal wireless communications services and personal wireless service facilities comprise a rapidly growing segment of the utilities and communications sector and have merit and value for the community as a whole. The U.S. Congress adopted the Telecommunications Act of 1996, including Section 704 which defines personal wireless service and personal wireless service facilities and preserves local zoning authority over decisions regarding the placement, construction, and modification of personal wireless service facilities except for five limitations, to wit:

-a local government shall not unreasonably discriminate among providers of functionally equivalent services; and

-a local government shall not prohibit or have the effect of prohibiting the provision of personal wireless services; and

-a local government shall act on any requests for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is filed; and

-a local government shall put any decision to deny a personal wireless service facility into writing and support such decision by substantial evidence contained in a written record; and

-a local government shall not regulate personal wireless service facilities on the basis of the environmental effects of radio frequency emission to the extent that such facilities comply with the Federal Communications Commission Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation (FCC Guidelines); and

The Town of Smithtown is authorized to adopt laws to provide for the health, safety, and welfare of the citizens of the Town of Smithtown and the regulation of the placement, installation and construction of personal wireless service facilities preserves and protects the health, safety, welfare and general well-being of the citizens of the Town of Smithtown. The Town of Smithtown Planning Department and the Town of Smithtown Town Board have, during the period of a current moratorium, undertaken a deliberative process to establish policy, standards and procedures related to the location, siting and design of mounts and antenna arrays for personal wireless services; and the Town of Smithtown Town Board has conducted workshops during the current moratorium on deployment of wireless communications and has found that alternatives to towers exist for the purpose of deploying personal wireless service facilities; and

The purpose and intent of this law is to establish standards for the location, siting and design of personal wireless service facilities, and the goals of this law are to:

(I) allow for alternative types of personal wireless service facilities in any location subject to standards;

(II) encourage the use of existing structures, including but not limited to, rooftops, utility poles and steeples for deploying personal wireless service facilities;

(III) expedite the review process for those applications choosing the least intrusive alternative of deploying personal wireless service facilities;

(IV) encourage users of guyed and lattice towers, monopoles and antennas to locate, site and design them in a way that minimize the adverse visual impact of the lattice or guyed towers, monopoles and antennas;

(V) enhance the ability of the providers of personal wireless services to provide such services to the community quickly, effectively and efficiently; and

(VI) to promote personal wireless service facilities compatible with surrounding land uses and protect the attractiveness, health, safety, general welfare and property values of the community; and

Therefore, the Town Board of the Town of Smithtown has prepared this local law to revise the Town of Smithtown Zoning Law to more clearly reflect the above facts.

## Section 2. Definitions.

A. Definition of Terms. As used in this chapter, the following terms shall have the meanings indicated:

### ABBREVIATIONS:

AGL:	Above Ground Level
AMSL:	Above Mean Sea Level
CMRS:	Commercial Mobile Radio Services
FCC:	Federal Communications Commission
PWSF:	Personal Wireless Service Facility
RF:	Radio Frequency
RFER:	Radio Frequency Radiation
SMR:	Specialized Mobile Radio

ANTENNA: A whip (omni-directional antenna), panel (directional antenna), disc (parabolic antenna) or similar device used for transmission and/or reception of radio frequency signals.

**ANTENNA ARRAY:** An antenna array is one or more whips, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, which may include omni-directional antennas (whips), directional antennas (panels), and parabolic antennas (discs). The antenna array does not include the mount as defined herein.

**APPLICANT:** A person or entity with an application before the Town for a permit for a personal wireless service facility (PWSF).

**AGL:** (above ground level). The actual height of the PWSF from the ground to the highest part of the mount or the antenna, whichever is higher.

**CAMOUFLAGE:** A way of painting and mounting a PWSF that requires minimal exterior changes to the host structure in order to accommodate the facility.

**CARRIER:** A company licensed by the Federal Communications Commission (FCC) that provides wireless services. A tower builder is not automatically a carrier.

**CELLULAR:** A mobile telephone service operating in the 800 MHz spectrum.

**CO-APPLICANT:** Any person and/or entity joining with an applicant in an application for a permit for a PWSF, including the owner(s) of the PWSF, owner(s) of the subject property and any proposed tenant(s) for the PWSF.

**CO-LOCATION:** The use of a common PWSF or common site by two or more wireless license holders or by one wireless license holder for more than one type of communications technology and/or placement or two or more PWSFs on adjacent properties.

**COMMERCIAL MOBILE RADIO SERVICES (CMRS).** Any of several technologies using radio signals at various frequencies to send and receive voice, data and video as per Section 704 of the Telecommunications Act of 1996. According to the FCC, these services are "Functionally Equivalent Services". Section 704 of the Telecommunications Act prohibits unreasonable discrimination among functionally equivalent services.

**CONCEAL:** To enclose a PWSF with a natural or manmade feature resulting in the facility being either invisible or made part of the feature enclosing it.

**DESIGN:** The appearance of PWSFs such as their materials, colors and shape.

**DISGUISE:** To design a PWSF to appear to be something other than a PWSF.

**ELEVATION:** The measurement of height above sea level. Also AMSL, or above mean sea level.

**ENHANCED SPECIALIZED MOBILE RADIO (ESMR):** Private land mobile radio with telephone services.

**EQUIPMENT CABINET/EQUIPMENT SHELTER:** An enclosed structure at the base of the mount within which are housed the equipment for the PWSF such as batteries and electrical equipment.

**FALL ZONE:** The area on the ground within a prescribed radius from the base of a PWSF. The fall zone is the area within which there might be a potential hazard from falling debris or collapsing material.

**FEDERAL COMMUNICATIONS COMMISSION (FCC):** An independent federal agency charged with licensing and regulating wireless communications at the national level.

**FUNCTIONALLY EQUIVALENT SERVICES:** Cellular, PCS, Enhanced Specialized Mobile Radio, Specialized Mobile Radio and Paging. Section 704 of the Telecommunications Act prohibits unreasonable discrimination among functionally equivalent services.

**GUYED TOWER:** A monopole or lattice tower that is anchored to the ground or to another surface by diagonal cables.

**HEIGHT:** The distance measured from above ground level (AGL) to the highest point of a PWSF, including the antenna array. For purposes of measuring height, all antennas or other attachments mounted on a structure shall be included in the measurements to determine overall (i.e. combined) height.

**LATTICE TOWER:** A type of mount that is usually ground-mounted and self supporting with multiple legs and cross-bracing of structural steel.

**LICENSED CARRIER:** A company authorized by the FCC to construct and operate a commercial mobile radio services system. A licensed carrier must be identified for every PWSF application.

**LOCATION:** The area where a PWSF is located or proposed to be located.

**MICROCELL:** Any PWSF that is designed and limited to generate lower power density than that limited by the FCC Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation.

**MITIGATION:** The reduction or elimination of visual impacts by the use of one or more methods, including but not limited to CONCEALMENT, CAMOUFLAGE and DISGUISE.

**MODIFICATION:** The changing of any portion of a PWSF from its description in a previously approved permit. The FCC definitions for "MODIFICATION" are different than local government rules.

**MONOPOLE:** The shape of mount that is self-supporting with a single shaft of wood, steel or concrete and antennas at the top and/or along the shaft.

**MOUNT:** The structure or surface upon which antennas are mounted, e.g:

1. Roof-mounted. Mounted on the roof of a building.
2. Side-mounted. Mounted on the side of a building.
3. Ground-mounted. Mounted on the ground.
4. Structure-mounted. Mounted on a structure other than a building.
5. Interior-mounted. Mounted within a building.

**PERSONAL WIRELESS SERVICE FACILITY (PWSF):** Facility for the provision of Personal Wireless Services, as defined by Section 704 of the Telecommunications Act of 1996. A PWSF is any facility for the transmission and/or reception of personal wireless services, usually consisting of an antenna array, transmission cables, equipment shelter and a mount.

**PERSONAL WIRELESS SERVICES:** Any personal wireless service defined in the Federal Telecommunications Act which includes Federal Communications Commission (FCC) licensed commercial wireless telecommunications services including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging as well as unlicensed wireless services, and common carrier wireless exchange access services.

**RADIO FREQUENCY (RF) ENGINEER:** Someone with a background in electrical engineering or microwave engineering who specializes in the study of radio frequencies.

**RADIO FREQUENCY RADIATION (RFR):** The emissions from PWSFs which are byproducts of the RF signal.

**RADIO FREQUENCY (RF) SIGNAL:** The actual beam or radio waves sent and received by a PWSF. A signal is the deliberate product of a PWSF. The RF radiation is the byproduct.

**SECURITY BARRIER:** A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

**SEPARATION:** The distance between one carrier's antenna array and another carrier's antenna array.

**SHORT MOUNTS:** Alternatives to monopoles or guyed and lattice towers, such as masts or poles. For example, two short poles or three short masts might be an alternative to one tall lattice tower.

**SITE:** That portion of a subject property where a PWSF is to be placed. Any acceptable location may have several potential sites within it.

**SITING:** The method and form of placement of PWSFs on a specific area of a subject property.

**SPECIALIZED MOBILE RADIO (SMR):** A form of dispatch or two-way communication used by companies that rent space or time from an SMR carrier. Used primarily for data, delivery vans, truckers or taxis within a small, definable geographic area.

**STANDARDS.** Rules or measures by which acceptability is determined. Personal wireless service facilities are measured by standards measuring visibility or safety. Wireless planning tends to regulate PWSFs on three levels: location (or where the PWSF site can go), siting (or how the PWSF is placed within its setting) and design (or what the PWSF looks like).

**TOWER:** A term used as a modifier (e.g., tower builder) or when modified (e.g., lattice tower). A monopole is not a tower.

**UNLICENSED WIRELESS SERVICES:** Commercial mobile services that can operate on public domain frequencies and therefore need no FCC license for their sites.

**WIRELESS COMMUNICATIONS.** Any form of signaling by wireless, including personal wireless services, that require a transmitter, a receiver and a path-sometimes straight, sometimes indirect-between them.

### Section 3. Purpose and Intent, Applicability.

- A. Purpose and Intent. The purpose and intent of this local law is to establish standards for the location, siting and design of PWSFs and the goals of this local law are to:
- (1) Allow for alternative types of PWSFs in any location subject to standards;
  - (2) Encourage the use of existing structures, including but not limited to rooftops, utility poles and church steeples, for deploying PWSFs;
  - (3) Expedite the review process for those applications choosing the least intrusive alternative of deploying PWSFs;

- (4) Encourage users of guyed and lattice towers, monopoles and antennas to locate, site and design them in a way that minimizes the adverse visual impact of the lattice or guyed towers, monopoles and antennas;
- (5) Enhance the ability of the providers of personal wireless services to provide such services to the community quickly, effectively and efficiently; and
- (6) To promote PWSFs' compatibility with surrounding land uses, and protect the attractiveness, health, safety, general welfare and property values of the community.

B. Pre-existing Personal Wireless Service Facilities.

- (1) A PWSF for which a building permit has been issued prior to the effective date of this law shall be deemed a permitted use, subject to the conditions of that permit. When an un-permitted PWSF is identified by the Town of Smithtown to be attached to a mount approved for another use or PWSF a separate permit must be applied for it, even when:
  - (a) Sharing a legal mount;
  - (b) Already in operation, and
  - (c) Duly licensed by the Federal Communications Commission.

The issuance of permit renewals or other new permits for such facilities shall be in accordance with the provisions of this local law. Un-permitted PWSFs will be considered out of compliance with this local law.

- (2) Placement of any attached array, microcell or any other portions of a PWSF on an existing structure, whether legally non-conforming or in, as well as out of, compliance, shall require a permit to be obtained for the PWSF under the terms of this local law.
- (3) Any carrier with at least one pre-existing PWSF in the Town of Smithtown that is out of compliance with the Town of Smithtown building or zoning requirements shall not be eligible for any new approvals of personal wireless service facilities by the Town until the pre-existing PWSF or PWSFs are brought into compliance with this local law.

- C. Exclusions for Amateur Radio Facilities. This local law shall not govern the installation of any amateur radio facility that is owned and operated by a federally-licensed amateur radio station operator or is used exclusively for non-commercial, receive-only antennas.
- D. Un-permitted Facilities, Mounts or Equipment Ineligible for Co-location.
  - (1) No permit shall be issued under this local law for a request to co-locate, attach or share an existing PWSF site, mount, or facility, when such existing site, mount, or facility is found to have one or more PWSFs without permits and/or any structure, mount, or facility is found to lack one or more building permits, electrical permits, or any other permits required by the Town of Smithtown.
  - (2) Any application by a wireless carrier or other entity shall not be approved by the Town of Smithtown if that wireless carrier has a pre-existing PWSF on, or the other entity owns, a mount, rooftop or tower, on which there is any un-permitted PWSF until that PWSF is brought into compliance with this local law.
- E. Relationship to Other Laws.

This local law shall supersede conflicting requirements contained in the Town of Smithtown Building Zone Ordinance regarding the siting and permitting of PWSFs.

#### Section 4. Specification of Land Use Classifications.

- A. No PWSF shall be permitted except in accordance with the provisions of this Chapter and Section 322-8 of the Building Zone Ordinance.
- B. All PWSFs shall be classified as follows:
  - (1) Tier One. This tier is limited to applications that:
    - (a) Place PWSFs on existing utility poles (telephone poles, utility distribution poles, streetlights and traffic signal stanchions), or
    - (b) Place PWSFs on new utility poles when the carrier specifies a utility pole that meets the Town of Smithtown specifications, and

- (c) Meet all Location Standards, Design Standards and Safety Standards in this local law. In the event any of the standards in the local law are in conflict for a particular application, one or the other conflicting standard shall be met. The decision of which standard shall be met shall be subject to the approval of the Town of Smithtown.
- (2) Tier Two. This tier is limited to applications that:
- (a) Do not qualify for Tier One status, and
  - (b) Proposes to place PWSFs on or in buildings or proposes to conceal PWSF in natural or man-made features approved by the Smithtown Planning Board, and
  - (c) Meet all Location Standards, Design Standards and Safety Standards in this local law. In the event any of the standards in the local law are in conflict for a particular application, one or the other conflicting standard shall be met. The decision of which standard shall be met shall be subject to the approval of the Town of Smithtown.
- (3) Tier Three. This tier is limited to applications that:
- (a) Do not qualify as either Tier One or Tier Two status, and
  - (b) Require the erection, establishment, siting, location, construction, modification or development of a Guyed Tower, monopole, lattice tower, or similar structure as determined by the Town Board, and
  - (c) Meet all Location Standards, Design Standards and Safety Standards in this local law. In the event any of the standards in the local law are in conflict for a particular application, one or the other conflicting standard shall be met. The decision of which standard shall be met shall be subject to the approval of the Town of Smithtown.
- C. All PWSFs require final approval pursuant to Section 322, Article XIII, Site Plan Review and issuance of a Building Permit and Certificate of Occupancy or Compliance from the Chief Building Official.

Section 5. Standards.

The approval of PWSFs shall be subject to meeting or exceeding the following standards:

A. Location Standards

- (1) Opportunity Sites. A PWSF shall be located at one of the following Opportunity Sites:
  - (a) LIPA transmission towers.
  - (b) Public water tanks.
  - (c) Inside or concealed around steeples or similar architectural features.
  - (d) Rooftops.
  - (e) Utility poles in publicly-owned rights-of-way or similar public properties as identified by the Town of Smithtown.
- (2) Avoidance areas. A Tier 2 or Tier 3 PWSF shall not be located in the following Avoidance Areas:
  - (a) Flood Hazard Zones.
  - (b) Historically and culturally significant resources.
  - (c) Designated conservation areas.
  - (d) Parklands including common areas of clustered subdivisions.
  - (e) Parkways.
  - (f) Nissequogue River Corridor.
  - (g) Scenic or Visual corridors as defined by the Town.
  - (h) Wetlands, both tidal and freshwater.
- (3) Interpretation of Opportunity Sites and Avoidance Areas shall be based on maps or aerial photographs provided by the Town of Smithtown Department of Planning and Community Development and/or the applicant.

- (4) Personal wireless service facilities may also be permitted in areas that are not Opportunity Sites subject to the following Siting, Design and Safety Standards and permitted in Avoidance Areas subject to the following Siting, Design and Safety Standards.
- (5) These standards apply regardless of radio frequency (RF) engineering considerations.

#### B. Siting Standards

Personal wireless service facilities shall meet the following siting standards:

- (1) To the greatest extent possible, PWSFs shall be concealed within existing structures or where camouflaged conditions surround them, or on inconspicuous mounts.
- (2) Placement within trees shall be encouraged, but no antennas shall extend higher than ten (10) feet above the average tree height.
- (3) Placement on existing roofs or non-wireless structures shall be favored over ground-mounted PWSFs.
- (4) Roof-mounted PWSFs shall not project more than ten (10) additional feet above the height of a building. If the roof mounted PWSFs project above the height limit, it shall be screened pursuant to Section 322-20F.
- (5) Side-mounted PWSFs shall not project more than twenty (20) inches from the face of the mounting structure.
- (6) These standards shall apply regardless of RF engineering considerations.

#### C. Design Standards.

Personal wireless service facilities shall meet the following design standards:

- (1) Color. All PWSFs shall be painted or complemented with natural tones (including trees and sky).
- (2) Size. The silhouette of the PWSF shall be reduced to the minimum visual impact.

- (3) Personal wireless service facilities near or within view of residences shall either:
  - (a) Provide underground vaults for equipment shelters, or
  - (b) Place equipment shelters within enclosed structures approved by the Town of Smithtown
- (4) Equipment. The following types of equipment shall be discouraged:
  - (a) Roof-mounted monopoles, lattice towers or guyed towers.
  - (b) Ground-mounted lattice towers.
  - (c) Ground-mounted guyed towers.
- (5) Height shall be kept to a minimum.
  - (a) Heights of PWSFs shall be no higher than the height of the uppermost height of nearby structures ( within 300 horizontal feet when measured along the ground) of the proposed PWSF, regardless of prevailing height limits in the zoning district.
  - (b) In the event there are no nearby buildings (within 300 horizontal feet when measured on the ground) of the proposed site of the PWSF the following shall apply:
    - 1. All ground-mounted PWSFs (including the security barrier) shall be surrounded by nearby dense tree growth for a radius of 20 horizontal feet (when trunk center lines are measured on the ground) from the PWSF in any direction. These trees can be existing on the subject property or installed to meet the twenty (20) foot requirement as part of the proposed PWSF or they can be a combination of both.
    - 2. Ground-mounted PWSFs shall not project more than ten (10) feet above the average tree height.

- (c) These standards apply regardless of RF engineering considerations.

D. Safety Standards.

Personal wireless service facilities shall meet the following safety standards:

- (1) Hurricane and tornado design standards shall be those of the local building codes used in the Town of Smithtown or EIA-TIA 22 (latest version), whichever is stricter.
- (2) Roof mounts on buildings shall have railings to protect workers. Notices shall be posted, as directed by the Chief Building Official to warn of radio frequency radiation.

Section 6. Fall Zone and Setback Requirements.

Tier three applications shall meet the following standards:

A. Fall Zone.

- (1) No habitable structure or outdoor area where people congregate shall be within a fall zone of two times the height of the PWSF or its mount.
- (2) No adjoining property line shall be within the fall zone of a radius equal to the height of the PWSF.

B. Setback.

- (1) All PWSFs including mounts and equipment shelters shall comply with the minimum setback requirements of the applicable zoning district as set forth in the Town of Smithtown Building Zone Ordinance, depending upon whether any structure is considered a principal use or an accessory use.
- (2) The antenna array for an attached PWSF, with the exception of a side-mounted PWSF, is exempt from the setback requirements of this local law and from the setback for the zoning district in which they are located, provided that no such antenna array shall project more than five (5) feet horizontally from the attachment structure at the point of attachment.

- (3) No portion of any PWSF shall project into a required setback more than the maximum projection permitted in the zoning district in which the facilities are located, except as otherwise provided in this local law.
- (4) On parcels with a principal building housing a principal use, all components of the PWSF shall be located behind the building line.

#### Section 7. Submittal Requirements.

An applicant shall submit the following information as part of an application for a PWSF:

##### A. Application Information

- (1) Name, address and telephone number of applicant and all co-applicants as well as any agents for the applicant or co-applicants.
- (2) Co-applicants shall include the landowner(s) of the subject property, licensed carrier(s) and tenant(s) for the PWSF.
- (3) A licensed carrier shall either be an applicant or a co-applicant.
- (4) The applicant shall provide a copy of the lease between the applicant and co-applicant(s) and shall provide a description which shall include the following:
  - (a) Whether landowner can enter into leases with other carriers for co-location and that the landowner is aware that any future co-location will be subject to a new application.
  - (b) How the landowner will remove the PWSF in the event the licensed carrier fails to remove it upon abandonment.
- (5) Original signatures for the applicant and all co-applicants applying for Special Exception Permit and/or Site Plan Review. If the applicant or co-applicant will be represented by an agent, original signature authorizing the agent to represent the applicant and/or co-applicant. Photo reproductions of signatures will not be accepted.

## B. Location Information.

The following information is required for all applications:

- (1) Identify the subject property by including the name of the nearest road or roads, and street address, if any.
- (2) Tax parcel number of subject property.
- (3) Zoning district designation for the subject parcel and for all parcels within 1,000 feet of the property lines of the subject parcel.
- (4) A line map to scale showing the subject property and all properties within 1,000 feet and the location of all buildings, including accessory structures, on all properties shown.
- (5) A Town-wide map showing the other existing PWSFs in the Town and outside the Town within one mile of its corporate limits.
- (6) The specific locations for this carrier of all existing and future PWSFs in the Town on a Town-wide map.

## C. Siting Information

- (1) A one (1) inch-equals-two hundred (200) feet vicinity plan showing the following:
  - (a) Property lines for the subject property.
  - (b) Property lines of all properties adjacent to the subject property.
  - (c) Tree cover on the subject property and all properties adjacent to the subject property, by species and average height, as measured by or available from a verifiable source.
  - (d) Outline of all existing buildings, including purpose (e.g., residential buildings, garages, accessory structures, etc.) on subject property and all properties adjacent to the subject property.
  - (e) Proposed location of antenna, mount and equipment shelter(s).

- (f) Location of all roads, public and private, on the subject property and on all properties adjacent to the subject property including driveways proposed to serve the PWSF.
  - (g) Distances, at grade, from the proposed PWSF to each building on the vicinity plan.
  - (h) Contour lines.
  - (i) Lines representing the sight line showing viewpoint (point from which view is taken) and visible point (point being viewed) from "Sight Lines" subsection below.
- (2) Sight lines and photographs as described below:
- (a) Sight line representation. A sight line representation shall be drawn from the closest facade of each residential building (viewpoint) included on the vicinity plan to the highest point (visible point) of the PWSF. Each sight line shall be depicted in profile, drawn at one (1) inch-equals-forty (40) feet. The profiles shall show all intervening trees and buildings. In the event there is only one (or more) residential building on the vicinity plan, there shall be at least two (2) sight lines from the closest habitable structures, if any.
  - (b) Existing (before condition) photographs. Each sight line shall be illustrated by one four (4) inch-by-six (6) inch color photograph of what can currently be seen from the residential building.
  - (c) Proposed (after condition). Each of the existing condition photographs shall have the proposed PWSF superimposed on it to show what will be seen from residential buildings if the proposed PWSF is built.
- (3) A one (1) inch-equals-forty (40) feet site plan showing the following:
- (a) The entire subject property, including all lands held in effective common ownership, property lines, and roads (public and private) adjacent to the subject property.
  - (b) All existing buildings, including accessory structures.

- (c) All existing vegetation, by mass or individually by diameter (four [4] feet from the ground) of each stand-alone tree or shrub. Tree masses or individual stand-alone trees shall be identified by specie(s).
  - (d) Proposed security barrier, indicating type and extent as well as point of controlled entry.
  - (e) All proposed changes to the existing property, including grading, vegetation removal and temporary or permanent roads and driveways.
  - (f) Representations, dimensioned and to scale, of the proposed mount, antennas, equipment shelters, cable runs, parking areas and any other construction or development attendant to the PWSF.
- (4) Siting elevations, or views at-grade from the north, south, east and west for a fifty (50) foot radius around the proposed PWSF plus from all existing public and private roads that serve the subject property. Elevations shall be at either one-quarter (1/4) inch-equals-one (1) foot or one-eighth (1/8) inch-equals-one (1) foot scale and show the following:
- (a) Antennas, mounts and equipment shelter(s), with total elevation dimensions and AGL of the highest point.
  - (b) Security barrier. If the security barrier will block the views of the PWSF, the barrier drawing shall be cut away to show the view behind the barrier.
  - (c) Any and all structures on the subject property.
  - (d) Existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation, with approximate elevations dimensioned.
  - (e) Grade changes, or cuts and fills, to be shown as original grade and new grade line, with two (2) foot contours AMSL.

D. Design Information.

- (1) Equipment brochures for the proposed PWSF such as manufacturer's specifications or trade journal reprints. These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- (2) Materials of the proposed PWSF specified by generic type and specific treatment (e.g. anodized aluminum, stained wood, painted fiberglass etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- (3) Colors of the proposed PWSF represented by a color board showing actual colors proposed. Colors shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- (4) Dimensions of the PWSF specified for all three directions; height, width and breadth. These shall be provided for the antennas, mounts, equipment shelters and security barrier, if any.
- (5) Appearance shown by at least two scaled cross sections of the PWSF within the subject property. The cross sections shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.
- (6) Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species.

E. Narrative Information.

- (1) Carrier shall provide:
  - (a) Certified copy of Form 6000 on file with the FCC.
  - (b) Certified copy of FCC license (Radio Authorization Form).

- (2) Carrier shall identify:
  - (a) Site latitude.
  - (b) Site longitude.
  - (c) AGL to the radiation center and the top of highest projection (e.g., lightning rod).
- (3) Applicants should provide:
  - (a) Two (2) alternatives to the proposed PWSF.
  - (b) Alternatives should comply with criteria in Section 8 of this local law for differences between the proposed PWSF and the alternatives.
  - (c) Failure of the applicant to provide two alternatives shall constitute an incomplete application.

F. Geographic Information.

- (1) Area to be served by the proposed PWSF.
  - (a) Within the Town of Smithtown
  - (b) Outside the Town of Smithtown
- (2) Tax map showing adjoining (abutting) properties.
- (3) Land use map showing existing land use.
- (4) Zoning map showing existing zoning.
- (5) Relationship to other PWSFs.
  - (a) Existing and/or proposed by the carrier.
  - (b) Existing for other carriers.
  - (c) Proposed by other carriers.

## G. Fees.

The Town shall have the right to properly plan for and evaluate applications for PWSFs and to charge reasonable fees for such services to the applicant. The Town has retained independent consultants and experts on wireless planning and may retain future independent consultants and experts to assist Town staff with proper planning for PWSFs. The fee for applications shall include, but shall not be limited to, the pro-rated share for each applicant of such costs for the independent consultants and experts and for Town staff. The fee shall be pro-rated among all applications on an equal basis. Such fees shall include, but shall not be limited to, the following:

- (1) Site plan or Site Plan exemption applications.
- (2) Special Exception applications.
- (3) Building permit applications.
- (4) Other review fees: the Town shall have the right to retain independent technical consultants and experts that it deems necessary to properly evaluate applications for PWSFs. This fee will be assigned to the applicant and shall not exceed ten thousand dollars (\$10,000.00).

## Section 8. Alternatives Analysis and Comparison

Each application for a PWSF should also contain at least two (2) alternatives that differ from the PWSF proposed in the application.

A. Differences. The alternatives need not be totally different from the proposed PWSF however the alternatives should contain measurable differences, such as:

- (1) Height. An alternative can be identical to the proposed PWSF except to be for a shorter height.
- (2) Number. An alternative could be for two (2) or more PWSFs that are shorter than the proposed PWSF.
- (3) Location. An alternative could be located on a different property than the proposed PWSF.
- (4) Siting. An alternative could be in a different place on the same property as the proposed PWSF.

- (5) Design. An alternative could be of the same height, location and siting as the proposed PWSF, but be designed to appear differently.
- B. Submittal Requirements for alternatives. The materials submitted for each alternative should show only the differences between each of the alternatives and the proposed PWSF.
- (1) If the applicant has not submitted two (2) alternatives, the Town of Smithtown Department of Planning and Community Development staff shall prepare at least two alternatives.
  - (2) If the applicant has submitted two (2) or more alternatives, the Town of Smithtown Department of Planning and Community Development staff shall prepare at least one alternative.
- C. Comparison of Proposed Personal Wireless Service Facility and Alternatives. The Town of Smithtown Department of Planning and Community Development staff shall compare the proposed PWSF to the alternatives on the basis of the following:
- (1) Change community scale, as exhibited in relative height, mass or proportion of the PWSF within its proposed surroundings.
  - (2) New visible elements proposed on a contrasting background.
  - (3) Different colors and textures proposed against a contrasting background.
  - (4) Use of materials that are foreign to the existing built environment.
  - (5) Conservation of opportunities to maintain community scale, not compromising buffering areas and low-lying buildings so as to start a trend away from the existing community scale.
  - (6) Amount and diversity of landscaping and/or natural vegetation.
  - (7) Preservation of view corridors, vistas, and view sheds.
  - (8) Continuation of existing colors, textures and materials.

- D. Ranking of Proposed Personal Wireless Service Facility and Alternatives. The Town of Smithtown Department of Planning and Community Development staff shall rank the proposed PWSF and each alternative based on the above criteria. The ranking of the proposed PWSF and each alternative shall be submitted to the appropriate Board along with each application. The reviewing Board shall consider the alternatives along with the proposed PWSF.

#### Section 9. Tiered Permit Process.

- A. Department of Planning and Community Development. After assigning each application to a tier, the Town of Smithtown Department of Planning and Community Development shall:
- (1) Prepare an alternative analysis for each application according to Section 8 of this local law.
  - (2) Prepare a staff report for each application based on Section 11 of this local law.
  - (3) Forward the application, alternative analysis and staff report to the reviewing Board.
- B. Findings. All decisions resulting in approvals or denials by the reviewing Board shall be in writing and supported by findings of fact and conclusions of law based upon competent substantial evidence in the record.

#### Section 10. Application Procedures.

Applicants shall use the following procedure when applying for PWSFs, although Town staff may waive some steps if they are redundant.

- A. Pre-Application Conference. Applicants shall meet with Town staff prior to submitting an application for PWSF. At the pre-application conference:
- (1) The applicant shall inform Town staff of the location of the proposed facility, as well as its scale and design.
  - (2) Town staff shall inform the applicant about the classification of the application and the appropriate procedures to be followed.
  - (3) If the applicant disagrees with the classification or procedures, the applicant may appeal to the Board of Site Plan Review for a determination.

- B. Application Form. The applicant shall submit the Town's application form and all required items as specified in Chapter 322 and in Section 7 above when applying for PWSFs.
- C. Initial Review by the Department of Planning and Community Development. The Town of Smithtown Department of Planning and Community Development shall:
  - (1) Perform an alternatives analysis in accordance with Section 8 above.
  - (2) Forward the application to the appropriate Board for review and action.

Section 11. Staff Reports.

- A. Tier One Applications. Tier One applications do not need staff reports.
- B. Tier Two and Tier Three Applications. The Town of Smithtown Department of Planning and Community Development shall prepare staff reports for Tier Two and Three applications. The staff report shall contain the following:
  - (1) Description of the proposed PWSF.
    - (a) Other PWSFs in the area.
    - (b) Nearest three PWSF sites for the same carrier to the proposed PWSF.
  - (2) Location.
    - (a) Identification of whether the proposed PWSF is an Avoidance Area.
    - (b) Identification of whether the proposed PWSF is at an Opportunity Site.
    - (c) Determination of whether location standards have been met.
  - (3) Siting.
    - (a) Determination of whether siting standards have been met.
    - (b) Identification of any necessary practical measures to avoid minimize, and/or mitigate (in that order of preference ) for adverse impacts of the proposed PWSF.

- (4) Design.
  - (a) Type of mount.
  - (b) Type of antenna(s).
  - (c) Treatment of equipment cabinet or shelter.
  - (d) Determination of whether design standards have been met.
- (5) Alternatives analysis.
  - (a) Alternatives provided by the applicant.
  - (b) Alternatives studied by Town staff.
  - (c) Comparison and ranking of the proposed PWSF and the alternatives as provided in Section 8.
- (6) Description of narrative attachments.
- (7) Recommended decision.
  - (a) Findings of fact.
  - (b) Approve or deny.

#### Section 12. Modifications.

The Town of Smithtown shall require the review and approval of all modifications to PWSFs.

- A. Types of Modification. A modification of a PWSF is any of the following:
  - (1) Change in technology used for the PWSF, such as an "overlay".
  - (2) Addition or replacement of any equipment in the PWSF, excluding direct, like-for-like substitutions.
  - (3) Change in design of the PWSF.
  - (4) Addition to any PWSF for the purpose of co-location.
- B. Applications for Modification. Applicants for modifications shall submit an application to the Town for a modified PWSF. The application shall include all materials required in Section 7 that would change due to the modification.

- C. Subsequent Ownership. Any permit issued pursuant to this ordinance shall not be transferable in any way. Any subsequent owner of the PWSF or the subject property shall be required to obtain a permit in accordance with this ordinance.

Section 13. Co-Locations/Public Sites.

- A. Tall Mounts Discouraged. Tall mounts are discouraged in the Town of Smithtown and proliferation of short mounts is considered preferable to co-location.
- B. Co-location Discouraged. Co-location shall be discouraged for all PWSF applications.
- C. Worst-Case Review. The Town of Smithtown shall review applications for co-locations on the basis of all positions on the mount, i.e., the cumulative, worst-case condition.
- D. Co-location Review Includes Entire Facility. Applications for co-locations on mounts, when they are constructed prior to the effective date of this local law, require review of the existing mount as well as co-location under the requirements of this local law.
- E. Co-locations Not Previously Reported. Applications for co-locations on mounts constructed after the effective date of this local law when they did not previously show the proposed co-location, require review of the existing mount as well as co-location under the requirements of this local law.
- F. Public Sites. The Town of Smithtown shall work with carriers to facilitate the siting of PWSFs on Town-owned or other publicly-owned property, by identifying existing structures, the appropriate contact persons, and the appropriate leasing procedures.

Section 14. Registry, Monitoring, Inspection, Abandonment and Obsolescence.

- A. Registry. Each carrier shall file the following information with the Town on an annual basis, beginning with the date of approval.
  - (1) Owner/lessee/intermediary/agent and carrier(s) at the site.

- (2) Location by latitude and longitude, addresses and parcel numbers.
- (3) Height, AGL.
- (4) Co-location status and capability (including if a former co-location has been removed).
- (5) Last date at which site was modified and the nature of the modification.
- (6) A list of toxic/hazardous materials at the PWSF (including in the equipment shelter).
- (7) Instructions for emergency personnel on the approach action to be taken in case of an emergency involving any toxic/hazardous substances.
- (8) The name and telephone number of a representative of the carrier to be contacted in the event of any emergency at the PWSF site. The contact representative is to be available on a 24-hour a day, seven days a week basis.

B. Inspection.

- (1) The owner or operator of PWSF shall provide for and conduct an inspection of mounts at least once every five (5) years. A report shall be provided to the Town of Smithtown Chief Building Official verifying compliance with previous approvals and the Town Code.
- (2) The owner or operator of PWSF shall provide for and conduct an inspection of radio frequency radiation at least once every two (2) years by a licensed radio frequency engineer. Three copies of a report shall be provided to the Town of Smithtown Chief Building Official, who shall forward one (1) copy to the Director of the Department of Environment and Waterways and one (1) copy to the Director of Planning and Community Development, verifying that the radio frequency radiation is in compliance with FCC guidelines.

C. Abandonment and Removal. Any PWSF that is not operated for a continuous period of twelve (12) months shall be considered abandoned, and the owner of such PWSF shall remove same within ninety (90) days of notice from the Town of Smithtown Department of Public Safety that the PWSF is abandoned. If such PWSF is not removed within said ninety (90) days, the Town of Smithtown may have the PWSF removed at the PWSF owner's expense.

- D. Hazardous Materials. PWSF shall be registered as a hazardous facility if petroleum products are used to fuel power supplies or any toxins are contained in equipment cabinets or shelters or alternative power sources.

Section 15. Radio Frequency Radiation Emissions.

- A. FCC Guidelines. A statement certifying that as proposed, the PWSF complies with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines) concerning radio frequency radiation and emissions shall be provided at the time of final site plan review, or building permit application for facilities not requiring site plan review.
- B. No Contravention of FCC Guidelines. A PWSF that meets the FCC guidelines shall not be conditioned or denied on the basis of radio frequency impacts.

Section 16. Noise.

No equipment shall be operated at a PWSF so as to produce noise in excess of the applicable noise standards under the Town of Smithtown Noise Ordinance.

Section 17. Lighting and Security.

- A. A PWSF shall not be artificially lighted, except for:
  - (1) Security and safety lighting of equipment buildings if such lighting is shielded and directed downward to keep light within the boundaries of the site; and
  - (2) Such lighting of the PWSF as may be required by the Federal Communications Commission, Federal Aviation Administration (FAA) or other applicable authority installed in a manner to minimize impacts on adjacent residences. Only red lighting shall be utilized unless otherwise recommended by FAA guidelines.
- B. Security Barriers. A security barrier, conforming to the Town of Smithtown Building Zone Ordinance, shall be required around the perimeter of mounts(s) or equipment structure, and any anchor points. In the case of a roof-mounted PWSF, the security barrier need only be around the antenna. The security barrier shall be maintained by the operator of the PWSF or mount for the life of the installation. No security barrier is needed around side-mounted PWSFs, but distances from windows and balconies should conform to Sub-section 17.C.2 below.

C. Security Barriers for Certain Populations. The security barriers around all PWSFs shall be reviewed by the Town Board and found to be acceptable for:

- (1) Controlled Population. Those persons who are trained in procedures for working near or around radio frequency radiation.
- (2) General Population. All other persons, some of whom have no concept of what radio frequency radiation is or how it can cause harm. Members of the General Population should not be allowed within ten (10) meters of any antenna.

#### Section 18. Signs/Identification Plaques.

No signage shall be permitted on any PWSF other than that required for public safety purposes or by the FCC or FAA, except that each PWSF shall have a weather-proof plaque mounted at eye level identifying the carrier, frequency and date of permit approval.

#### Section 19. Screening and Landscaping.

- A. Natural Vegetation. Existing natural vegetation shall be undisturbed to the greatest extent practicable.
- B. Landscaping. Landscaping of disturbed areas of the PWSF site and security barriers shall be required as follows:
  - (1) At least one (1) row of evergreen shrubs capable of forming a continuous hedge at least five (5) feet in height within two (2) years of planting shall be spaced not more than five (5) feet apart within fifteen (15) feet of the site boundary; and
  - (2) At least one (1) row of evergreen trees or shrubs, at least four (4) feet in height when planted and spaced not more than fifteen (15) feet apart, located interior to the perimeter of the shrubs required in Sub-section 19.B 1 above; and
  - (3) For ground mounts greater than two hundred (200) feet tall, at least one row of deciduous trees, not less than one and one half (1 ½) inches diameter measured three (3) feet above grade and spaced not more than twenty (20) feet apart, and located within the perimeter of the evergreen trees or shrubs required in Sub-section B.2 above.

- (4) All security barriers for guy wire anchor points shall be screened from view by at least one row of evergreen shrubs spaced not more than five (5) feet apart and capable of forming a continuous hedge at least five (5) feet in height within two (2) years of planting.
- (5) Existing vegetation, topography, walls and fences combined with shrubs or other features may be substituted for the required buffers if the Town Board finds they:
  - (a) Achieve the same degree of screening as the required buffer; or
  - (b) Affect the stability, security, or maintenance of guy wires.
- (6) Landscaping materials shall consist of xeric or drought-resistant native species and shall be maintained by the operator of the PWSF for the life of the installation.

Section 20. Access and Parking.

- A. Parking. Areas sufficient for the temporary off-street parking of at least two vehicles shall be provided for mounts. The type and configuration of parking shall be subject to approval by the Town Board.
- B. Private Access. A copy shall be provided to the Town of Smithtown Department of Planning and Community Development of any road maintenance agreement for any site accessed by private easement.

Section 21. Penalties for offenses; other remedies.

- A. Each violation of this chapter, any regulation, order or ruling promulgated hereunder or any permit issued hereunder shall be punishable by a fine of not more than \$2,500 or imprisonment not exceeding 15 days, or both; a separate offense shall be deemed committed on each day during which a violation occurs or continues. In addition to such a fine, the defendant shall pay all costs and expenses incurred by the Town in determining such violation. The foregoing shall be in addition to all other remedies available under the law to the Town or the Town Board.

- B. In the event of any actual or impending violation of this chapter, the Town Board in addition to other remedies, may institute any appropriate action or proceedings to prevent, restrain, correct, or abate such violation.
- C. In addition to other remedies by law, any appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use to restrain, correct, or abate such violation, to prevent the use of said structure or land or to prevent any illegal act, conduct, business or use in or about such premises.

Section 22. Severability.

It is the declared intent of the Town of Smithtown Town Board that, if any section, clause, phrase, or provision of this law is held invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be so construed as to render invalid or unconstitutional the remaining provisions of this local law.

Section 23. Effective Date.

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

Dated: March 27, 2001

BY ORDER OF THE TOWN BOARD  
OF THE TOWN OF SMITHTOWN  
DONNA M. HILL  
TOWN CLERK

(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. 2 of 2001 of the ~~(County)~~(City)(Town)(Village) of Smithtown was duly passed by the Town Board on March 27 2001, in accordance with the applicable provisions of law.  
*(Name of Legislative Body)*

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

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)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. 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.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

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)(repassed after disapproval) by the \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_. Such local 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.  
*(Name of Legislative Body)*  
*(Elective Chief Executive Officer\*)*

\* 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 at 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 \_\_\_\_\_, above.

*Donna M Hill*

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

DONNA M. HILL - TOWN CLERK

Date: March 27, 2001

(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 Suffolk

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.

*John B. Zollo*

Signature

John B. Zollo - Town Attorney

Title

~~County~~  
~~City~~ of Smithtown  
Town  
~~Village~~

Date: March 27, 2001