

TOWN OF CLARKSTOWN  
LOCAL LAW NO. - 2009

Be it enacted by the Town Board of the Town of Clarkstown as follows:

**Section 1. Title**

A Local Law Amending Chapter 251 of the Town Code of the Town of Clarkstown with respect to "Wireless Telecommunications Facilities."

**Section 2. Legislative Intent**

A local law that will conform to the U.S. District Court's March 26, 2009 Order in the matter entitled New York SMA Limited Partnership d/b/a Verizon Wireless, et al v. Town of Clarkstown, et al, E.D.N.Y. Docket No. 07 CV 7637.

**Section 3. Amend Section 250.10. Background; legislative intent, to read as follows:**

**§251.10E** - "In general, consolidations, shared use and co-location of antenna and antenna-mounting structures is preferred to the construction of new facilities."

**§251-10.U.1** - Amend this section by capitalizing the words, "Antenna Advisory."

**§251.10.U.5** - "To promote and encourage comprehensive consideration and understanding of the potential impacts associated with each WTF application, including at a pre-application stage and potential mitigation measures that could be implemented to minimize adverse effects on the community. Proposed mitigation would include the use of stealth technology and/or landscaping and other approaches such as co-location."

**"§251.10. - Add Item W as follows:**

"W. - By order dated March 26, 2009, in the matter entitled New York SMA Limited Partnership d/b/a Verizon Wireless et al v Town of Clarkstown et ano, E.D.N.Y. Docket No. 07 CV 7637, the United States District Court determined that an alleged "preference for alternative technologies" is preempted by the FCC's occupation of

the field of wireless transmission antenna technology and that the Town is required to amend its Wireless Law. The Town has appealed from the order. Pending the outcome of the appeal or further court order, the Town is required to amend its Wireless Law. Accordingly, the Town is hereby amending its Wireless Law to comply with the court's directive, subject to the outcome of the pending appeal or further court order, and subject to the Town's reservation of rights in connection therewith. In addition, the Town is voluntarily amending its Wireless Law to clarify that the Town is not imposing any regulation with regard to RFI (radio frequency interference)."

**§251.15.A(1)** - Amend as follows:

"A: Location on existing O&R tower/substation with screening value greater than 90; location on existing water tower with screening value greater than 90; proposed co-location at existing WTF or rooftop site with screening value greater than 105."

**§251.19.F.24** - Delete the following paragraph:

"Certification that the proposed antenna(s) will not cause interference with existing telecommunications devices."

Reserve this section number in the Town Code.

**§251.19.G.9** - Delete the following paragraph:

"For Category D sites, the applicant shall submit a report demonstrating the applicant's review of alternate technologies such as the use of microcells or distributed antenna systems (DAS), demonstrating in detail the technological reason to justify why alternate technologies cannot be utilized. A detailed explanation must be provided as to why the use of such alternative technologies that would achieve a higher site category score or assignment cannot be used. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why such a permit should be granted for the proposed technology and the hardship (financial or otherwise) that would be incurred by the applicant if the permit were not granted for the proposed technology. An applicant may not satisfy its obligations on the basis of generalized claims or concerning whether such technologies are generally utilized, and must provide site-specific evidence that such technologies are not feasible or impractical on a site-specific basis."

Reserve this section number in the Town Code.

**§251.22.A(3)** - Delete the following paragraph:

"The radio, television, telephone or reception of similar signals for nearby properties will not be disturbed or diminished."

Reserve this section number in the Town Code.

**§251.42** - Delete the definition of "Best Available Technology"

**Amend §251, Attachment 1, Table 1 - Wireless Siting Plan, by deleting the Matrix Table and replacing it with the attached Table 1.**

**Section 4. Effective Date**

This Local Law shall become effective immediately upon filing with the Secretary of State.