

**VILLAGE OF HIGHLAND FALLS
INTRODUCTORY LOCAL LAW NO. 3 OF 2020
AMENDING ARTICLE VI OF THE ZONING LAW
MODIFYING APPLICABILITY OF SPECIAL EXCEPTION REGULATIONS TO
WIRELESS COMMUNICATION FACILITIES LOCATED ON VILLAGE PROPERTY**

BE IT ENACTED by the Village Board of Trustees of the Village of Highland Falls, County of Orange, State of New York, as follows:

Section 1. Legislative Findings, Purpose and Intent.

The Board of Trustees of the Village of Highland Falls hereby finds and determines that the current inability of the Village to achieve reliable wireless communications within the Village is a danger to public health and safety. The risk to people's lives was underscored when a health emergency arose during a Board of Trustees meetings within Village Hall and cellular telephone service was not available to call first responders. The Board of Trustees determined that expanding wireless capabilities throughout the Village, and especially on those properties owned by the Village, must be undertaken without delay by exempting Village property from the requirements normally associated with commercial wireless expansion.

Section 2. Authority.

This local law is enacted by the Village Board of Trustees of the Village of Highland Falls pursuant to its authority to adopt local laws pursuant to the New York State Constitution and Section 10 of the Municipal Home Rule Law.

Section 3.

Chapter 240, titled, "Zoning," of the Village of Highland Falls is hereby amended as follows:

Subsection "V," titled "Wireless communications facilities," of Section 240-29, titled, "Special conditions and safeguards for certain special exception uses," of Article VI, titled, "Special Exception Uses," is amended as follows:

Paragraph 1, titled, "Definitions," is amended by adding the following new definition in alphabetical order to read as follows:

MUNICIPAL CORPORATION

The term "municipal corporation," as used in this subsection, includes a county, town, city, village, board of cooperative educational services, fire district or school district.

Subsection 2 of § 240-29V, titled, "Compliance with State Environmental Quality Review Act," is deleted in its entirety and replaced by a new subsection 2 as follows:

Compliance with State Environmental Quality Review Act. The Board responsible for

reviewing wireless communication facility applications shall comply with the provisions of the State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law) and its' implementing regulations.

A new paragraph 2.1, titled, "Applicability," is added as follows:

A. All applicants that seek approval to place a wireless communication facility in the Village of Highlands Falls shall be subject to the Village of Highland Falls zoning law and the provisions contained in this subsection, with the specific exception of:

- (1) The Village of Highland Falls as applicant.
- (2) An applicant seeking approval to locate a facility on property owned by the Village of Highland Falls.
- (3) An applicant seeking approval to locate a wireless communication facility expressly exempted by federal law.
- (4) An applicant seeking to repair and maintain a lawfully existing facility.

The above exemption shall not apply to parks, playgrounds and similar properties owned by the Village of Highland Falls and used by the public for recreational purposes. Nor shall these exemptions apply to cemeteries. Any applicant wishing to place a wireless communication facility upon such properties shall be subject to the regulations set forth in the zoning law and the provisions contained in this this subsection.

B. Where applicants are specifically exempted from the zoning law and the provisions of this subsection pursuant to subsection A(1) or (2) above, the Village Board of Trustees shall have the sole responsibility to review said application. The Board of Trustees may engage such consultants as it deems necessary, in its sole discretion, to advise it during its deliberations. The cost of all such consultants shall be borne by the applicant.

C. Any municipal corporation seeking approval to place a wireless communications facility within the municipal boundaries of the Village of Highland Falls shall be subject to review by the Planning Board and full compliance with these regulations unless exempted by resolution of the Village of Highland Falls Board of Trustees after conducting a "balancing of the interest" analysis as set forth in *Matter of County of Monroe v City of Rochester*, 72 N.Y.2d 338 [1988].

D. Nothing in this subsection shall eliminate the requirement to obtain a building permit from the Building Department for the construction of a wireless communications facility in the Village of Highland Falls.

Subsection (a) of paragraph 4 of § 240-29V, is deleted in its entirety and the following subsections are re-alphabetized accordingly.

Section 4. Supersession, of Inconsistent Laws, if any.

The Village Board of Trustees hereby declares its legislative intent to supersede any

provision of any local law, rule, or regulation and any provision of the state Village Law or other special law that may be declared inconsistent or in conflict with this local law. The courts are specifically requested to take notice of this legislative intent and apply such intent in the event the Village has failed to specify any provision of law that may require supersession. The Village Board hereby declares that it would have enacted this local law and superseded such provision had it been apparent.

Section 5. Severability.

If any section, part or provision of this local law or the application thereof to any person, property or circumstance is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the section, part, provision or application directly and expressly adjudged invalid and shall not affect or impair the validity of the remainder of this local law or the application thereof.

Section 6. Effective Date.

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