

PUBLIC HEARING NOTICE
RE: PROPOSED AMENDMENT TO CHAPTER 331,
ZONING CODE,
WIRELESS TELECOMMUNICATIONS FACILITIES

NOTICE is hereby given that the Council of the City of New Rochelle, New York, will hold a Public Hearing pursuant to Chapter 331 of the Code of the City of New Rochelle, Section 239-m of the General Municipal Law of the State of New York, and Sections 277.61 and 277.71 of the County Administrative Code, on *Tuesday, January 14, 2020*, at 7:00 P. M., in the Council Chamber, City Hall, 515 North Avenue, New Rochelle, New York, on the proposed amendment, as follows:

ORDINANCE AMENDING SECTION 331-99, WIRELESS TELECOMMUNICATION FACILITIES, OF CHAPTER 331, ZONING, OF THE CODE OF THE CITY OF NEW ROCHELLE.

SECTION I. Purposes and Findings of Fact

A. Purposes and Findings of Fact.

- (1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of Small Wireless Telecommunications Facilities in the City of New Rochelle. While the City recognizes the importance of Wireless Telecommunications Facilities in providing high quality communications service to its residents and businesses, the City also recognizes that it has an obligation to promote public safety and to minimize the adverse visual effects of such facilities, especially in historic and residential areas.
- (2) By enacting these provisions, the City intends to:
 - a. Accommodate the need for Small Wireless Telecommunications Facilities while regulating their location and number so as to ensure the provision of necessary services;
 - b. Provide for the managed development of Small Wireless Telecommunications Facilities in a manner that enhances the benefits of wireless telecommunications and accommodates the needs of both City residents and wireless carriers in accordance with federal and state laws and regulations;
 - c. Establish procedures for the design, siting, construction, installation, maintenance and removal of Small Wireless Telecommunications Facilities in the City, including facilities both inside and outside the public rights-of-way;
 - d. Address new wireless technologies, including but not limited to, distributed antenna systems, data collection units, small cells, and other Wireless Telecommunications Facilities;

- e. Minimize the adverse visual effects and the number of such facilities through proper design, siting, screening, material, color and finish, and by requiring that competing providers of communications services co-locate their Small Wireless Telecommunications Facilities on existing towers or infrastructure;
- f. Protect and preserve historically significant structures and properties located in the City; and
- g. Promote the health, safety and welfare of the City's residents.

SECTION II. Amendment of Certain Wireless Telecommunications Facilities Provisions

Section 331-99(B) is hereby amended as follows:

ANTENNA

[A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to, radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the City's siting, building and permitting authority.] An apparatus designed for the purpose of emitting or receiving radiofrequency (RF) radiation, to be operated or operating from a fixed location pursuant to Federal Communications Commission authorization, for the provision of wireless service and any commingled information services. This definition does not include antennas designed for amateur or household use.

APPLICANT

Any person [wireless service provider] submitting an application for a special permit for wireless telecommunications facilities.

BASE STATION

The same as defined by the FCC at 47 C.F.R. § 1.6100(b), as it may be amended from time to time. For the purpose of convenience only, this definition is stated as follows: a structure or equipment at a fixed location that enables FCC licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein or any equipment associated with a tower. Base Station includes, without limitation:

- a. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
- b. Radio transceivers, antennas, coaxial or fiberoptic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems ("DAS") and small cell networks).

c. Any structure other than a tower that, at the time the relevant application is filed with the City under this section, supports or houses equipment described in paragraphs (i)(ii) above and has been previously reviewed and approved by the city.

COLLOCATION

[The use of a tower or structure to support antennas for the provision of wireless services without increasing the height of the Tower or structure.] The mounting of one or more wireless telecommunications facilities on a pre-existing structure, or modifying a structure for the purpose of mounting or installing a wireless telecommunications facility on that structure.

[MODIFICATION or MODIFY

The addition, removal or change of any of the physically, visually, and auditorily discernible components or aspects of a wireless facility, such as antennas, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernible components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is identical to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility without adding, removing or changing anything.]

MODIFICATION; SUBSTANTIALLY CHANGE or SUBSTANTIAL CHANGE

A modification to an existing wireless telecommunications facility substantially changes the physical dimensions of a tower or *base station* if it meets any of the following criteria: (1) for communications towers or base stations outside the public rights-of-way, it increases the height of the facility by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna, not to exceed 20 feet, whichever is greater; for small wireless telecommunications facilities in the rights-of-way, it increases the height of the facility by more than 10% or 10 feet, whichever is greater; (2) for communications towers or base stations outside the public rights-of-way, it protrudes from the edge of the communication tower or base station by more than 20 feet, or more than the width of the Tower structures at the level of the appurtenance, whichever is greater; for those Small Wireless Facilities in the public rights-of-way, it protrudes from the edge of the structure by more than 6 feet; (3) it involves the installation of more than two (2) new equipment cabinets for the technology involved, not to exceed 4 cabinets; (4) it entails any excavation of deployment outside the current site of the small wireless telecommunications facility, communications tower, or base station; or (5) it does not comply with conditions associated with prior approval of construction or modification of the small wireless telecommunications facility, communications tower, or base station unless the non-compliance is due to an increase in height, increase in width, or addition of cabinets.

SMALL WIRELESS TELECOMMUNICATIONS FACILITY

A telecommunications facility, installed within the city's right of way, that meets the following criteria:

- (1) The structure on which antenna facilities are mounted
 - (i) is 50 feet or less in height, or
 - (ii) is no more than 10 percent taller than other adjacent structures, or
 - (iii) is not extended to a height of more than 50 feet or by more than 10 percent above its preexisting height as a result of the collocation of new antenna facilities;and
- (2) Each antenna associated with the deployment (excluding the associated equipment) is no more than 3 cubic feet in volume;
- (3) All antenna equipment associated with the facility (excluding antennas) are cumulatively no more than 9 cubic feet in volume.
- (4) The facilities do not require antenna structure registration under 47 CFR Part 17;
- (5) The facilities shall involve no more than one (2) standard equipment cabinets for the technology; and
- (6) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards specified in 47 CFR 1.1307(b).

SECTION III. Amendment of Certain Wireless Telecommunications Facilities Provisions

Section 331-99(C) of the Code of the City of New Rochelle is hereby amended as follows:

(27) Small Wireless Telecommunications Facilities shall obtain a special permit from the City Commissioner of Development solely in accordance with the requirements of Section 331-99(CC).

SECTION IV. Amendment of Certain Wireless Telecommunications Facilities Provisions

Section 331-99 of the Code of the City of New Rochelle is hereby amended as follows:

AA. Small Wireless Telecommunications Facilities. The following regulations shall apply to all Small Wireless Telecommunications Facilities:

- (1) Location of Small Wireless Telecommunications Facilities. Small Wireless Telecommunications Facilities are permitted in all zoning districts and are subject to the requirements of Section 331-99.
 - (a) No Small Wireless Telecommunications Facility shall be located closer than 500 feet horizontally to any property line of any public, private and/or state-chartered preschool, elementary school, or secondary school.
 - (b) No Small Wireless Telecommunications Facility shall be located closer than 500 feet horizontally to any property line of any nursing home.

- (c) No Small Wireless Telecommunications Facilities shall be located in front of a residential structure or use but rather, if required, such facilities shall be located at the intersecting point of the front and side property lines. When located within 250 feet of a residential use or structure, the applicant shall notify the owners of property located within such 250 feet of the proposed facility. Such notice shall be sent by certified mail at least ten (10) days prior to filing for approval from the City.
 - (d) Where possible, Small Wireless Telecommunications Facilities shall be installed with stealth technology and or installed behind existing traffic or other municipal signage or other such camouflaging methods as defined in “The City of New Rochelle Small Telecommunications Facility Design Manual”.
- (2) Franchise Required. Prior to the consideration of any application for a special permit for a Small Wireless Telecommunications Facility, the applicant shall obtain a Telecommunications Franchise from the City Council in accordance with Chapter 292 of the City Code.
- (3) Special Use Permit Required. All applicants for a proposed Small Wireless Telecommunications Facility shall be required to obtain a special permit from the City Commissioner of Development, subject to the requirements of this Section 331-99(CC). Prior to filing an application for a special use permit, all applicants for a Small Wireless Telecommunications Facilities shall hold a pre-application meeting with the City Commissioner of Development and Commissioner of Public Works in order to address any concerns the City may have specific to the proposed site. This pre-application meeting may be conducted in person or via teleconference at the discretion of the City.
- (4) All applications for the construction or installation of new Small Wireless Telecommunications Facilities shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the applicant. The application shall include the following information:
- (a) The name, address and phone number of the person preparing the report;
 - (b) The name, address, and phone number of the property owner, operator, and applicant, and to include the legal form of the applicant;
 - (c) The coordinates and street address/intersection of the proposed Small Wireless Telecommunications Facility;
 - (d) The Zoning District or designation in which the property is situated;
 - (e) A diagram showing the location of all lot lines, prepared by a licensed land surveyor;
 - (f) The location of all residential structures within a 250-foot radius and the location of schools and nursing homes within a 500-foot radius;

- (g) The location, size and height of all structures on the property which is the subject of the application;
- (h) The location, size and height of all proposed and existing antennas and all appurtenant structures;
- (i) The type, locations and dimensions of all proposed and existing landscaping, and fencing for a Small Wireless Telecommunications Facility requiring a new utility pole, if applicable;
- (j) The number, type and design of the Small Wireless Telecommunications Facilities proposed and, if a utility pole is installed, the basis for the calculations of the utility pole's capacity to accommodate multiple users;
- (k) The make, model and manufacturer of the utility pole and Antenna(s);
- (l) A description of the utility pole and Antenna(s) and all related fixtures, structures, appurtenances and apparatus, including height above preexisting grade, materials, color and lighting;
- (m) The frequency, modulation and class of service of radio or other transmitting equipment;
- (n) The actual intended transmission and the maximum effective radiated power of the antenna(s);
- (o) Direction of maximum lobes and associated radiation of the antenna(s);
- (p) Certification that the NIER levels at the proposed site are within the threshold levels adopted by the FCC. Information will include but not be limited to requirements under OET-65 or other pertinent information;
- (q) A copy of the FCC license applicable for the intended use of the wireless telecommunications facilities;
- (r) Any other documentation required by the Commissioner of Development and/or any third-party expert necessary to review the application;
- (s) Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the state; and
- (t) Proof that the applicant has notified the property owners of residence within the 250-foot radius.

- (5) Preapplication Meeting. There shall be a preapplication meeting. The purpose of the preapplication meeting will be to address issues which will help to expedite the review and permitting process and ensure compliance with the applicable federal timeframe for review. A preapplication meeting shall also include a site visit if there has not been a prior site visit for the requested site.
- (6) Rejection. Applications not meeting the requirements stated herein or which are otherwise incomplete may be rejected by the City Commissioner of Development.
- (7) General Permitting. A holder of a special permit granted under this section shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the City or other governmental entity or agency having jurisdiction over the applicant.
- (8) Standard of care. Any Small Wireless Telecommunications Facility shall be designed, constructed, operated, maintained, repaired, modified and removed in strict compliance with all current applicable technical, safety and safety-related codes, including but not limited to the most recent editions of the American National Standards Institute (ANSI) Code, National Electrical Safety Code, National Electrical Code, as per the New York State Building Code, current edition. Any Small Wireless Telecommunications Facility shall at all times be kept and maintained in good condition, order and repair by qualified maintenance and construction personnel, so that the same shall not endanger the life of any Person or damage any property in the City.
- (9) Wind and ice. The applicant shall certify that the Small Wireless Telecommunications Facility, foundation and attachments are designed and will be constructed to meet all local, City, state and federal structural requirements for loads, including wind and ice loads.
- (10) NIER Levels. A Small Wireless Telecommunications Facility shall not, by itself or in conjunction with other Wireless Telecommunications Facilities, generate radiofrequency emissions in excess of the standards and regulations of the Federal Communications Commission, including but not limited to, the Federal Communications Commission Office of Engineering Technology Bulletin 65 entitled "Evaluating Compliance with Federal Communications Commission Guidelines for Human Exposure to Radio Frequency Electromagnetic Fields," as amended. The owner of a Small Wireless Telecommunications Facility shall provide certification of the Small Wireless Telecommunications Facility's compliance with the NIER standards and regulations of the Federal Communications Commission to the City's Commissioner of Development upon initial construction of the Small Wireless Telecommunications Facility and once every three (3) years thereafter. If the Small Wireless Telecommunications Facility is modified at any time following issuance of the initial permits by the City, the owners of the Small Wireless Telecommunications Facility shall submit recertification of compliance with the standards and regulations of the Federal Communications Commission to the City Commissioner of Development following such modification.

- (11) Grounding. The applicant shall certify that the Small Wireless Telecommunications Facility will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- (12) State Environmental Quality Review Act Assessment. To the extent required by New York State law, an applicant shall be required to submit a long-form environmental assessment form and a visual addendum in compliance with the State Environmental Quality Review Act. Based on the results of the analysis, including the visual addendum, the City may require submission of a more detailed analysis. The scope of the required environmental and visual assessment will be reviewed at the preapplication meeting.
- (13) Supplemental Statements. Any and all representations made by the applicant to the City Commissioner of Development on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the City Commissioner of Development.
- (14) Time, Place and Manner. The City Commissioner of Development shall determine the time, place and manner of construction, maintenance, repair and/or removal of all Small Wireless Telecommunications Facilities in the Right of Way (“ROW”) based on public safety, traffic management, physical burden on the ROW and related considerations.
- (15) Accessory Equipment.
- (a) Small Wireless Telecommunications Facilities and Accessory Equipment shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, create safety hazards to pedestrians and/or motorists, or to otherwise inconvenience public use of the ROW as determined by the City.
 - (b) All utilities at a Small Wireless Telecommunications Facility site shall be installed underground in compliance with all laws, ordinances, rules and regulations of the City, including specifically, but not limited to, the National Electrical Safety Code and the National Electrical Code where appropriate.
 - (c) The owner of a Small Wireless Telecommunications Facility shall repair any damaged Accessory Equipment within ten (10) days of receipt of notice from the City.
- (16) Collocation Efforts. An applicant for a Small Wireless Telecommunications Facility requiring the installation of a new utility pole shall be required to submit a written report demonstrating the Applicant’s meaningful efforts to secure shared use of existing utility poles or the use of alternative buildings or other structures within the City. Copies of written requests and responses for shared use shall be provided to the Commissioner of Development in the application, along with any letters of rejection stating the reason for rejection.

- (17) Graffiti. Any graffiti on the Small Wireless Telecommunications Facility or on any Accessory Equipment shall be removed at the sole expense of the owner within thirty (30) days of notification by the City.
- (18) Modification. The holder of a special permit shall notify the City of any intended initial modification of a Small Wireless Telecommunications Facility and shall apply to the City to modify, relocate or rebuild a Small Wireless Telecommunications Facility. Substantial modification as defined herein shall require a special permit.
- (19) Design regulations. All Small Wireless Telecommunications Facilities shall be designed to meet the requirements of the City "Small Wireless Telecommunications Facility Design Manual," a copy of which is kept on file at the City Bureau of Buildings. All Small Wireless Telecommunications Facilities shall be maintained in compliance with such requirements for the duration of their operation.
- (20) Timing of Approval.
- (a) Within sixty (60) days of receipt of a complete application for Collocation of a Small Wireless Telecommunications Facility on a preexisting utility pole, the City Commissioner of Development shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.
 - (b) Within ninety (90) days of receipt of an application for a Small Wireless Telecommunications Facility requiring the installation of a new utility pole, the City Commissioner of Development shall make a final decision on whether to approve the application and shall notify the Applicant in writing of such decision.
 - (c) Within ten (10) calendar days of the date that an application for a Small Wireless Telecommunications Facility is filed with the City Commissioner of Development, the Commissioner of Development shall notify the Applicant in writing of any information that may be required to complete such application.
- (21) Relocation or Removal of Facilities. Within ninety (90) days following written notice from the City, or such longer period as the City determines is reasonably necessary or such shorter period in the case of an emergency, an owner of a Small Wireless Telecommunications Facility in the ROW shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Small Wireless Telecommunications Facility when the City, consistent with its police powers, shall determine that such removal, relocation, change or alteration is reasonably necessary under the following circumstances:
- (a) The construction, repair, maintenance or installation of any City or other public improvement in the right-of-way;

- (b) The operations of the City or other governmental entity in the Right-of-Way;
 - (c) Vacation of a street or road or the release of a utility easement; or
 - (d) An emergency as determined by the City
- (22) Removal. In the event that use of a Small Wireless Telecommunications Facility is to be discontinued, the owner shall provide written notice to the City of its intent to discontinue use and the date when the use shall be discontinued. Unused or abandoned Wireless Telecommunications Facilities, or portions of Wireless Telecommunications Facilities, shall be removed as follows:
- (a) All abandoned or unused Wireless Telecommunications Facilities and Accessory Equipment shall be removed within sixty (60) days of the cessation of operations at the site unless a time extension is approved by the City.
 - (b) If the Wireless Telecommunications Facility or Accessory Equipment is not removed within sixty (60) days of the cessation of operations at a site, or within any longer period approved by the City, the Wireless Telecommunications Facility and/or associated facilities and equipment may be removed by the City and the cost of removal assessed against the owner of the Wireless Telecommunications Facility.
- (23) Reimbursement for Right of Way Use. In addition to permit fees as described in this section, every Small Wireless Telecommunications Facility in the Right of Way is subject to the City's right to fix annually a fair and reasonable fee to be paid for use and occupancy of the Right of Way. Such compensation for Right of Way use shall be directly related to the City's actual Right of Way management costs including, but not limited to, the costs of the administration and performance of all reviewing, inspecting, permitting, supervising and other Right of Way management activities by the City. The owner of each Small Wireless Telecommunications Facility shall pay an annual fee to the City to compensate the City for the City's costs incurred in connection with the activities described above.

SECTION V. Miscellaneous

- A. Police powers. The City, by granting any permit or taking any other action pursuant to this chapter, does not waive, reduce, lessen or impair the lawful police powers vested in the City under applicable federal, state and local laws and regulations.
- B. Severability. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held illegal or invalid by any court of competent jurisdiction, such provision shall be deemed a separate, distinct and independent provision, and such holding shall not render the remainder of this Chapter invalid.

C. Effective Date. This Ordinance shall become effective thirty (30) days after enactment by the City of New Rochelle.

[AA.] BB. Adherence to state and/or federal rules and regulations.

(1) To the extent that the holder of a special permit for wireless telecommunications facilities has not received relief, or is otherwise exempt, from appropriate state and/or federal agency rules or regulations, then the holder of such a special permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.

(2) To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special permit for wireless telecommunications facilities, then the holder of such a special permit shall conform the permitted wireless telecommunications facilities to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

[BB.] CC. Conflict with other laws. Where this section differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the City, state or federal government, this section shall control.

All persons interested are invited to attend said Public Hearing or submit written communications to the City Clerk at or before the Public Hearing.

By order of the City Council dated December 16, 2019, pursuant to Resolution No. 273.

Michelle Oliveros, City Clerk