



# Long Island Land Use and Zoning

## Town of Huntington is the Latest Long Island Community to Regulate Small Cells in the Public Right-of-Way



By Anthony S. Guardino on June 1, 2021



In 2018, the Federal Communications Commission (“FCC”) issued an **Order** governing the installation of small cell nodes and other telecommunications facilities in an effort to speed up the deployment of the newest generation of wireless technology known as 5G. A small cell node typically consists of a single small antenna and related accessory equipment placed on existing utility poles or street lights within public rights-of-way. The FCC Order was intended to remove state and local government barriers to 5G deployment by, among other things, providing providers with easier access to existing infrastructure in public rights-of-way. It also limits the amount of fees that can be imposed for use of public rights-of-way and requires municipalities to adhere to the shorter timelines or “shot clocks” for the

processing of applications. However, the Order preserves a local community's ability to manage and protect local land-use interests by allowing objective and reasonable aesthetic regulations that are no more burdensome than those applied to other types of infrastructure deployments.

While some municipalities have laws that regulate telecommunications facilities, most apply only to antenna towers and other macro cell sites – not small cells. As service providers seek to install the small cells needed to support their new 5G networks, local governments are reacting by adopting new laws to regulate small cells. Several Long Island communities recently enacted legislation seeking to regulate small cells and related wireless telecommunications equipment in public rights-of-way to the maximum extent permitted by law. The Town of Huntington is among the latest communities to do so.

In March 2021, the Huntington Town Board adopted **Local Law No. 15 of 2021**, upon a determination that it was in the best interests of town residents to establish standards for the location of wireless telecommunications facilities that are consistent with the latest federal and state laws, statutes, rules and regulations in order to protect the health, safety and welfare of the Town. The new law recognizes that it is in the best interests of residents to provide them with access to wireless telecommunications technologies, while at the same time protecting natural features, aesthetics and the character of residential neighborhoods.

The law creates standards for the design of telecommunications facilities and a priority list for their placement. The highest preference is given to facilities placed on existing towers and structures on municipal properties and facilities, and in public rights-of-way adjacent to commercially- and industrially-zoned areas. The next highest preference is given to existing privately-owned structures on commercially- and industrially-zoned properties, and then to existing privately-owned structures on residentially-zoned properties. Facilities located in public rights-of-way adjacent to residentially-zoned areas are less desirable, with facilities located on new towers in residential areas being the least desirable. To minimize the number of new facilities, the law also mandates collocation of equipment whenever possible. It requires an applicant to demonstrate that no suitable existing structures or facilities are available for collocation within the same geographic area as the proposed facility.

In an effort to mitigate the visual impact that telecommunications facilities can have on surrounding areas, the Town's new telecommunications law requires that all facilities adhere to certain general aesthetic requirements. For instance, all new facilities, including

supporting electrical and mechanical components, must be of a neutral color or such other color as the reviewing board may require. They must be constructed, to the extent practicable, using materials, colors, and textures, so that they blend into the natural setting and surrounding buildings. Any ground-mounted equipment must be screened with a suitable fence and/or landscaping to maintain the aesthetic quality of the surrounding community.

The law also contains requirements that are specific to small cell nodes that are to be placed on utility poles located in, or within 100 feet of, a residential zoning district to minimize their visual and noise impacts on the surrounding area. All equipment attached to utility poles, must be painted a solid, flat color to match the color of the pole. In the event there is no existing utility pole or alternative structure in the area, the applicant must install the equipment within a stealth pole. A stealth pole is a structure that allows all antennas and related equipment to be fully contained so that they are not visible.

Areas within the Town that are designated as “Hamlet Centers” and “Sensitive Locations” also have specific locational aesthetic requirements. For instance, in Hamlet Centers, the law requires that all facilities be constructed and installed on either an existing tower or the rooftop of a commercial building setback so that they are not visible from street level. Moreover, whenever technologically feasible, the facilities must be placed within existing architectural features, such as steeples, cupolas, bell towers or similar structures. Where equipment is proposed to be installed in or adjacent to a Sensitive Location, the reviewing board may direct that it be installed within a stealth pole.

Huntington’s new law is not limited to the regulation of small cell nodes. It also updates and replaces the Town’s previous telecommunications law that focused on the regulation of conventional towers and other macro sites.

As wireless service providers seek to rapidly expand their 5G networks, unduly burdensome regulations that interfere with their ability to provide upgraded technologies are likely to be met with legal challenges. With limited application to date, only time will tell whether Huntington’s new law complies with the FCC Order. Many Long Island communities will be watching closely to see how the local telecommunications industry reacts to the law.