

A Local Law establishing a six month moratorium prohibiting the issuance of building permits, special permits, certificates of occupancy and approval of site plans for wireless telecommunications facilities in the Town of Yorktown

Section I. Statement of Authority.

This Local Law is authorized by the New York State Constitution, the provisions of the New York Municipal Home Rule Law, the provisions of the Statute of Local Governments, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Yorktown and the general police power vested with the Town of Yorktown to promote the health, safety and welfare of all residents and property owners in the Town.

Section II. Purpose.

The purpose of this local law is to enact a temporary moratorium on the issuance of building permits, special permits, certificates of occupancy and site plans by the Town of Yorktown for the approval, construction, establishment and leasing of any wireless telecommunications facilities within the limits of the Town of Yorktown.

Section III. Legislative Findings.

In recent communications from Town residents and in comments from telecommunications industry professionals and residents at numerous public hearings, the Town Board of the Town of Yorktown has become aware of the fact that some provisions in Section 300-59, Wireless Telecommunications Facilities, of the Town Code, adopted 28 years ago, in 1998, may be outdated, and/or do not reflect current practices in the telecommunications industry, and/or do not provide sufficient protections for the health, safety and welfare of the Town of Yorktown and its residents. In order to allow the Town Board time to complete its review of the current law, draft proposed new regulations and enact any new regulations for these types of facilities the Town Board deems it in the best interest of the general health, safety, and welfare of the residents of the Town of Yorktown to enact a moratorium on the issuance of any further building permits, special permits, certificates of occupancy, site plans and leasing agreements by the Town of Yorktown for the construction, establishment and leasing any new wireless telecommunications facilities within the limits of the Town of Yorktown.

Section IV. Moratorium.

No building permits, special permits or site plans permitting the construction, establishment or leasing of any new wireless telecommunications facilities shall be issued by the Town of Yorktown within any zone within the Town of Yorktown, from the effective date of this local law until December 31, 2026. Notwithstanding the foregoing, special permit and site plan applications for wireless telecommunication may be reviewed by the Town of Yorktown if an applicant signs a moratorium acknowledgment, in a form approved by the Town Attorney, that confirms the applicant is aware of the moratorium, is processing its application at the risk of the applicable regulations being changed, and assumes the consequences of such risk.

Section V. Hardship Waiver

- A. Should any owner of property affected by this Local Law or any applicant with an application currently pending before any Board of the Town suffer any unnecessary and extraordinary hardship due to the enactment and application of this Local Law, then the owner of said property may apply to the Town Board of the Town of Yorktown in writing for a variance from strict

compliance with this Local Law upon submission of proof of such unnecessary hardship. For the purposes of this Local Law, unnecessary or extraordinary hardship shall not be: (1) the mere concern that regulations may be changed or adopted, or that the Plan may be amended; or (2) the mere delay in being permitted to make an application or waiting for a decision on the application for a variance, special permit, site plan, subdivision, or other permit during the period of the moratorium imposed by this Local Law.

- B. An application for an exception based upon unnecessary or extraordinary hardship shall be filed with the Town Clerk no earlier than the effective date of this Local Law, including a fee of one thousand and five hundred dollars (\$1,500.00) for each tax map parcel claimed to be subject to unnecessary or extraordinary hardship, by the landowner or the applicant upon the consent of the landowner. The application shall provide a recitation of the specific facts that are alleged to support the claim of unnecessary or extraordinary hardship and shall contain such other information and/or documentation as the Town Board, shall prescribe as necessary for the Town Board to be fully informed with respect to the application.
- C. Procedure. Upon submission of a written application to the Town Clerk by the property owner seeking a hardship waiver from the provisions of this Local Law, the Town Board shall, within forty-five (45) days of receipt of a completed application, schedule a Public Hearing on said application upon five (5) days' written notice in the official newspaper of the Town of Yorktown. At said Public Hearing, the property owner and any other parties wishing to present evidence with regard to the application shall have an opportunity to be heard, and the Town Board shall, within thirty (30) days of the close of said Public Hearing, render its decision either granting, denying, granting in part or denying in part, the application for a hardship waiver from the strict requirements of this Local Law. If the Town Board determines that a property owner will suffer an unnecessary or extraordinary hardship if this Local Law is strictly applied to a particular property, then the Town Board shall vary the application to this Local Law to the minimum extent necessary to provide the property owner relief from strict compliance with this Local Law.
- D. Standard of Review. reviewing an application for an exception based upon a claim of necessary or extraordinary hardship, the Town Board shall consider the following criteria: (1) The extent to which the proposed development activity would cause significant environmental harm, adversely impact surrounding natural resource areas, public health, comfort or safety concerns and/or have a negative impact upon the Town; (2) Whether the moratorium will expose a property owner or applicant to substantial monetary liability to a third person or would leave the property owner or applicable completely unable, after a thorough review of alternative solutions, to have a reasonable alternative use of the property.

## Section VI. Severability

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Yorktown hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

## Section VII. SEQRA

This local law constitutes a Type II Action under the State Environmental Quality Review Act inasmuch as it constitutes the adoption of a moratorium on land development or construction. As such this project is not subject to review under the State Environmental Quality Act.

Section VIII. Repeal.

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed to the extent of such inconsistency,

Section IX. Effective Date.

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.