

<b>Topic:</b>	Comprehensive Planning; Smart Growth; Communications; Moratoria
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Brookhaven
<b>Year (adopted, written, etc.):</b>	2003
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Brookhaven Moratorium on Telecommunications Facilities
<b>Document Last Updated in Database:</b>	April 28, 2017

### ***Abstract***

Chapter 17 of the Town Code for the Town of Brookhaven places a moratorium on telecommunications facilities (cell phone, mobile phone or wireless phone antenna towers) until a comprehensive plan is developed. The town's purpose is to insure the installation of the towers and facilities in a manner that is expeditious, maximizes services, and benefits the community, while simultaneously minimizing adverse visual impacts and reducing the potential for adverse physical damage to adjacent properties.

### ***Resource***

Town of Brookhaven NY Moratorium on Telecommunications Facilities

Code of the Town of Brookhaven NY

Chapter 17: Moratorium on Telecommunications Facilities

Note: Supersession of Town Law

General Code

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[codes.generalcode.com/codebook\\_frameset.asp?t=tc&p=0012%2D017%2Ehtm&cn=239&n=\[1\]\[1343\]\[1478\]\[2\]\[239\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=0012%2D017%2Ehtm&cn=239&n=[1][1343][1478][2][239])

[HISTORY: Adopted by the Town Board of the Town of Brookhaven 1-2-2003 by L.L. No. 1-2003, effective 1-8-2003. Amendments noted where applicable.]

#### **§ 17-1. Purpose.**

- A. Under the Telecommunications Act of 1996, codified at 47 U.S.C. § 332(c)(7), state and local governments maintain control over the siting and placement of wireless telecommunication facilities subject to those limitations under the Telecommunications Act of 1996. The increasing use and reliance upon the personal wireless service telecommunication facilities has resulted in a significant number of applications seeking special permits from the Town of Brookhaven Board of Zoning Appeals and site plan

approval from the Town of Brookhaven Planning Board for such facilities within the Town's jurisdiction.

- B. The Town of Brookhaven under its authority pursuant to the Telecommunications Act of 1996 and, pursuant to Town Law, is undertaking the completion and adoption of a master plan identifying and designating the most appropriate locations for the siting of these towers and facilities. The Town wishes to insure that the installation of the towers and facilities proceeds in a manner that is most expeditious, maximizes services, and benefits the community, while simultaneously minimizing adverse visual impacts and reducing the potential for adverse physical damage to adjacent properties. The master plan allows for the Town to complete thoughtful analyses. The master plan will address and identify the present and future siting needs of wireless communication carriers and identify locations, parcels, within the Town of Brookhaven that are both the most appropriate locations and addresses the needs of the carriers.
- C. Therefore, the Town Board of the Town of Brookhaven finds it prudent and necessary to enact a moratorium to temporarily halt the construction of new additional towers and facilities during the completion of the master plan to address the present and future siting needs of wireless communication facilities and identify locations within the Town that is both appropriate and addresses the needs of the telecommunication carriers. The moratorium, short-term temporary halting of the construction of new additional towers and facilities within the Town is not intended to prohibit or have the effect of prohibiting wireless services. Rather, the moratorium enables the Town to fully assess existing sites, the carriers' needs, and develop and implement the master plan for the siting of such towers and facilities which serves the best interests of the Town, its citizens and telecommunication carriers.

## **§ 17-2. Definitions.**

For purposes of this chapter, the following definitions shall apply:

**ALTERNATIVE TOWER STRUCTURE** — Man-made trees, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

**ANTENNA** — Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

**COMMISSIONER** — The Commissioner of the Department of Planning, Environment and Development.

PREEXISTING TOWERS and PREEXISTING ANTENNAS — Any tower or antenna for which a building permit or special use permit has been properly issued prior to the effective date of this chapter, including permitted towers or antennas that have not yet been completed or constructed so long as such approved permit(s) is current and unexpired, or any tower which is existing and has a certificate of compliance.

TOWER — Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, Long Island Power Authority (LIPA) transmission poles and similar structures, but not including telephone poles and street light poles. The term includes the structure and any support thereto.

### **§ 17-3. Prohibitions.**

No new applications shall be reviewed and no applications, permits, licenses or approvals shall be granted by any officer, department, board or agency of the Town of Brookhaven with respect to the erection, establishment, siting, location, construction, modification or development of any communication towers, antennas or related wireless telecommunications facilities or structures within the Town of Brookhaven for a period of three months from adoption of this chapter.

### **§ 17-4. Exceptions.**

The prohibitions on wireless communication and tower facilities applications and approvals contained in this chapter shall not apply with respect to renewals for existing facilities or additional antennas for existing towers or antennas; or apply to applications that are subject to administrative approval by the Commissioner of the Department of Planning, Environment and Development.

### **§ 17-5. Waiver.**

- A. During the moratorium period wireless telecommunication carriers may submit to the Commissioner of Planning, Environment and Development information identifying the specific gap area in which the need for a wireless telecommunication facility exists. If the Commissioner of Planning identifies a location within the gap area that is suitable and meets the needs of the wireless telecommunication carrier, and the carrier submits an application for the site as identified by the Commissioner of Planning, the carrier may submit a request to the Town Board for a waiver from the provisions of this moratorium.

B. Procedure. Upon submission of a written application to the Town Clerk seeking relief from this moratorium, the Town Board shall at its next Town Board meeting schedule a public hearing to be held on said application upon five days' written notice in the official newspaper of the Town. At the public hearing, the carrier shall present evidence with regard to the siting of the wireless telecommunication facility on the site, location, as identified by the Commissioner of Planning, Environment and Development. The Town Board shall render its decision either granting or denying the application for relief from the provisions of this moratorium. If the Town Board by resolution determines to grant the request for the waiver, the application may proceed to be reviewed and processed as authorized under Town Code § 85-452 et seq.

**§ 17-6. Term. [Amended 4-1-2003 by L.L. No. 7-2003, effective 4-4-2003; 7-8-2003 by L.L. No. 13-2003, effective 7-14-2003; 11-6-2003 by L.L. No. 39-2003, effective 11-10-2003]**

This chapter shall expire on January 31, 2004.

**§ 17-7. Supersession of Town Law.**

This chapter is hereby adopted pursuant to Municipal Home Rule Law § 10(1)(i) and § 10(1)(ii)(a)(14) and Statute of Local Governments § 10(6) of the State of New York. It is the intent of the Legislature, pursuant to Municipal Home Rule Law § 10(1)(ii)(d)(3), to supersede the provisions of the Town Law Chapter 16, §§ 264(1), 265(1), 267-a(5), (8), (11), 274-a(8), (10), 274-b(6), (8), 276(5), (6), (8) (and specific reference to any local laws incorporated relevant time limits) relating to time limits in connection with zoning and planning determinations.

**§ 17-8. Severability.**

If any part or provision of this chapter or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be limited in its operation to the part or provision or application directly.