

TOWN OF OTSEGO

LOCAL LAW NUMBER 2 OF 2000 Regulation for Telecommunications Towers and Telecommunications Facilities

Section 1: Enactment

The Town Board of the Town of Otsego, County of Otsego, on the 14th day of June, 2000 adopts the Local Law Pursuant to Section 10 of Article 2 of the Municipal Home Rule Law. This Local law shall take effect immediately upon filing with the New York Secretary of State. Any applications currently before the Planning Board not yet deemed complete are subject to the provisions of this law.

Section 2: Title

This Local Law shall be known as the Town of Otsego Telecommunications Towers and Telecommunications Facilities Law.

Section 3: Severability

The invalidity of any words, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law, which can be given effect without such invalid part or parts.

Section 4: Purpose

The purposes of this Law is to:

1. Promote the health, safety and general welfare of the residents of the Town of Otsego
2. Preserve the scenic, historic, natural and man-made character and appearance of the Town, while simultaneously providing standards for the safe provision, monitoring and removal of wireless telecommunications towers and facilities consistent with applicable federal and state regulations.
3. To minimize the total number of telecommunications towers in the community by encouraging shared use of existing and future towers and the use of existing tall buildings and other high structures.
4. To minimize adverse visual effects from telecommunications towers by requiring careful siting and configuration, visual impact, assessment, and appropriate landscaping.
5. To provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify telecommunications towers.

Section 5: Permit Regulations

A. (1) No telecommunications tower, except those approved prior to the effective date of this Law, shall be constructed, maintained or used unless in conformity with this Law. No telecommunications tower shall hereafter be erected, moved, reconstructed, expanded, changed or structurally altered unless in conformity with this Article. The construction, maintenance, use, erection, movement, reconstruction, expansion, change or structural alteration of telecommunications towers shall be governed by this regulation.

(2) New telecommunications tower construction within all Zoning Districts is subject to obtaining a Special Use Permit from the Planning Board pursuant to the Town of Otsego Land Use Law. Such construction and Co-location shall also comply with the requirements set forth in subsections E through R below, as determined by the Planning Board as part of the Special Permit process.

(3) New telecommunications tower construction or the location or co-location of communication equipment on an approved communications tower or tall structure within all Zoning Districts are required to obtain a Special Use Permit from the Planning Board in accordance with the Schedule of Permitted Uses of The Town of Otsego Land Use Law. Such construction and co-location shall also comply with the requirements set forth in the Town of Otsego Land Use Law, as determined by the Planning Board through the Special Permit process.

(4) Applications for construction of telecommunications towers shall comply with the Code of Federal Regulations pertaining to objects affecting navigable airspace as delineated with Federal Aviation Regulation FAR Part 77. Additionally, no application for construction of a telecommunications tower will be approved if the proposed tower violates the criteria for obstructions to air navigation as established by FAR Part 77 Sub-part C-Obstruction Standards.

(5) Pending Applications. Applications to construct or co-locate on a communications tower pending before any Board of the Town at the time of adoption of this regulation shall continue to be processed to minimize delay and expense to the applicant as much as possible. Information already on file with the Planning Board shall be used to the extent applicable to satisfy submission requirements under this regulation. Any additional information required by this regulation shall be specified, upon request of the applicant, by the Planning Board within 45 days after request. All pending applications shall be decided under the provisions of this regulation. If a Public Hearing had already been held on the application, no further Public Hearing shall be required. If a Public Hearing has not been held, then a Public Hearing shall be held as required under the terms of this regulation.

B. Co-location Use of Tall Structures or Communications Towers. At all times, shared use of tall structures and existing or approved communications towers in accordance with section A (3) above shall be preferred to the construction of new telecommunications towers.

(1) Applications pursuant to subsection A(2) shall be made to the Planning Board and shall include the following:

- (a) a completed application for site plan/special permit
- (b) documentation of consent from the owner of the existing facility to allow shared use.
- (c) a site plan in accordance with Town of Otsego Land Use Law. The site plan shall also show all existing and proposed structures and improvements including antennas, roads, buildings, guy wires and anchors, parking and landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility shall be indicated on the site plan.
- (d) an engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the tall structure, and explaining what modifications, if any, will be required in order to certify to the above.
- (e) a completed Environmental Assessment Form (EAF) and a completed visual EAF addendum.
- (f) a copy of applicable Federal Communications Commissions license.

Site Plan approval will be required from the Planning Board accordance with Town of Otsego Land Use Law. Such application will be subject to the terms and conditions specified in subsections E through R below as part of the Site Plan Review process. The Planning Board shall conduct a public hearing and process the application pursuant to this regulation, the New York State Environmental Quality Review Act and other applicable laws. If the Board concludes that the application complies with this regulation, all SEQR requirements and other applicable laws, the Board shall grant Site Plan Approval without further review under this section.

(2) Co-location on an existing communications tower located on State Hwy 28, Fly Creek Hill, in the Town of Otsego shall be subject to the following requirements:

- (a) The applicant shall submit to the Town an inventory of all existing antennas affixed to the tower on which the applicant is seeking to co-locate.□□
- (b) The inventory shall consist of a diagram of a scale not less than 1 inch equals ten feet (1" = 10 '). The diagram shall show each existing antenna located at its correct height.
- (c) Each antenna shall be identified by owner, type of antenna, and RF frequency of use.

Each applicant shall submit a site plan showing the correct location of the tower and all accessory structures, buildings, or communications tower fixed attachments. This site plan shall identify the dimensions of each accessory structure, building or communications tower fixed attachments. The owner of each accessory structure building or communications tower facility fixed attachment shall be identified on the plot plan, including the amount of available space within the structure, building or fixed attachment and whether or not the accessory structure, building or communications tower facility fixed attachment is currently in use.

C. New Telecommunications Towers pursuant to Subsections A-(2) or (3)- The Planning Board may consider a request to locate a new telecommunications tower if the applicant demonstrates that shared use of existing tall structures and existing or approved communications towers or communications tower sites are undesirable due to structural deficiencies, documented evidence that a site is unavailable because the owner is not willing to participate in a lease or ownership agreement, documented evidence the site will not work from a technological aspect, or that the applicant's proposed location or co-location on the site would have an adverse impact on the surrounding area. An applicant shall be required to present an adequate report with an inventory of all existing tall structures and existing or approved communications towers within a three (3) mile radius of the proposed site. The site inventory shall include a map showing the exact location of each site inventoried, including latitude and longitude (degrees, minutes, seconds), ground elevation above sea level, height of the structure and/or tower, and accessory buildings on the site of the inventoried location. The report shall outline opportunities for shared use of these facilities as an alternative to a proposed new communications tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each potential existing tall structure and existing or approved communications tower as well as documentation of the physical, technical and/ or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.

(a) Information establishing the present need for the proposed tower. Special Permits are to be based on actual need and not on speculation of future needs.

(b) Radio frequency (RF) signal coverage plots depicting the anticipated radio frequency coverage for the proposed site.

(c) RF coverage plots depicting evidence the proposed area to be provided coverage by the proposed new tower is currently deficient in radio frequency coverage.

(d) The frequency spectrum (output frequency) to be used at the proposed site (cellular, personal communications systems, broadcast frequency, analog or digital, etc.).

A copy of a current FCC license that authorizes the applicant to provide service is required.

(e) The type, manufacturer, model number of the proposed tower.

(f) The height of the proposed tower, including the height of any antenna structure above the supporting structure of the tower.

(g) The number of proposed antennas, type, manufacturer, model number, db gain, size, and orientation of the proposed tower.

(h) Such other information as may be deemed necessary by the Board so as to make a thorough evaluation of the applicant's proposal.

D. New Tower: Future Shared Use - Applicants shall design proposed new telecommunications towers to accommodate future demand for reception and transmitting facilities. Applications for new telecommunications towers shall include an agreement committing the owner of the proposed new telecommunications tower, and its successors in

the interest, to negotiate in good faith for shared use of said tower by other providers of communications in the future. This agreement shall be filed with the Planning Board prior to issuance of a building permit. Failure to abide by the conditions outlined in the agreement shall be grounds for the revocation of the special use permit. The agreement shall commit the telecommunications tower owner and lessee and its successors in the interest to:

(1) Respond within 45 days to a request for information from a potential shared-use applicant.

(2) Negotiate in good faith concerning future requests of shared use of the telecommunications tower by other providers of communications.

(3) Allow shared use of the telecommunications tower if another provider of communications agrees in writing to pay reasonable charges. The charges may include but not be limited to a pro-rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity and depreciation and all the costs of adapting the tower or equipment to accommodate shared use without causing electromagnetic interference.

E. Site Plan/Special Use Permit Review - Submission Requirements:

(1) Site Plan Applications

(a) Applications to the Planning Board for Site Plan approval shall include a site plan in accordance with Town of Otsego Land Use law. In addition, the site plan shall show all existing and proposed structures and improvements including roads, buildings, tower(s), guy wires and anchors, antennas, parking, landscaping and shall include grading plans and drainage plans for new facilities and roads.

(b) Supporting Documentation - The applicant shall submit a completed long form EAF, a complete Visual Environmental Assessment Form (visual EAF addendum) and documentation on the proposed extent and capacity of use as well as supporting the need for the requested height of any tower and for any clearing required. The applicant shall also submit a copy of its Federal Communications Commission (FCC) license.

(2) Special Use Permit Applications. Applications to the Planning Board for a Special Use Permit shall be made in accordance with Town of Otsego Land Use Law and shall include the following:

(a) Where shared use of tall structures or existing or approved communications towers is found to be impractical, applicants shall also investigate the possibility of constructing a new telecommunications tower on property occupied by an existing communications tower in accordance with subsection C above. In such case the Board may allow more than one tower on a lot. Any proposal for a new telecommunications tower on an existing communications tower site shall also be subject to the requirements of subsections E through R.

(b) The Planning Board may consider a new telecommunications tower on a site not previously developed with a telecommunications tower when the applicant

demonstrates that shared use of existing tall structures and existing or approved towers is impractical, and submits a report as described in subsection C above, and when the Planning Board determines, that shared use of an existing telecommunications tower site for a new telecommunications tower is undesirable based upon the investigation in accordance with (2)-(a) above.□ Any proposal for a new telecommunication's tower shall also be subject to the requirements of subsections E through R below.

(3) The Planning Board may require an applicant to submit information and documentation indicating and identifying areas within the Town where communication coverage by the applicant remains unsatisfactory. Applicants may be required to provide sufficient information to the Town so as to clearly identify and describe the applicant's communications coverage master plan or siting and/or communication coverage plan.

(4) The Planning Board shall require the applicant to submit to the Town a qualified engineer's report regarding non-ionizing electromagnetic radiation for the proposed site. Such report will provide sufficient information to detail the amount of radio frequency radiation expected from the proposed site. Additionally, the engineer's report will comply with FCC reporting criteria, as amended, for a cumulative report, reporting levels of anticipated exposure from all users on the site. The report must indicate whether or not the proposed telecommunications tower will comply with FCC emission standards.

(5) The Planning Board shall require the applicant to perform emission tests every (6) months and report the findings to the Code Enforcement Officer for a period of 2 years. After 2 years the report shall be made annually and at the time of any modifications to the tower or its use. The results of the emission test shall be reported to the Town of Otsego Code Enforcement Officer within thirty (30) days of the test being completed. At the time of the emissions tests, a complete safety inspection of the telecommunications tower shall be conducted. The results of the safety inspection shall also be reported to the Code Enforcement Officer within thirty (3) days of its completion. The safety inspection shall consist of, the tower, its supports, foundations, anchor bolts, coaxial cable, cable supports, ice shields, cable trays, guy wires and antennas affixed to the tower. Other aspects of the inspection shall include inspection for fire, electrical, natural and other man-made hazards that could pose a potential hazard to the telecommunications tower site or the surrounding area. Unsafe conditions shall be corrected immediately by the applicant.

F. Lot Size and Setbacks - Each proposed telecommunications tower and telecommunications facilities structure shall be located on a single lot and shall comply with applicable setback requirements. Adequate measures shall be taken to preserve the privacy of any adjoining residential properties and to contain on site all ice fall or debris from tower failure.

(1) Each lot containing a telecommunications tower shall have the minimum area, shape and frontage requirements generally prevailing for the zoning district where located as specified in the Town of Otsego Land Use Law and such additional land if necessary to meet the setback requirements of this section.

(2) Telecommunications towers shall comply with the following special setback requirements.

Minimum Setbacks for Telecommunications Towers:

All lot lines (side, front, rear) - Height of tower plus fifty feet (50').

G. Visual Impact Assessment - The Planning Board shall require the applicant to undertake a visual impact assessment which shall include:

(1) A "Zone of Visibility Map" shall be provided in order to determine locations where the telecommunications tower may be seen.

(2) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to public, and from any other locations where the telecommunications tower is visible to a large number of visitors, travelers or persons. The approving Board shall determine the appropriate key sites at a pre-submission conference with the applicant.

(3) Assessment of alternative telecommunications tower designs and color schemes, as described in subsection H.

(4) Assessment of the visual impact of the telecommunications tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

H. New Tower Design and Height - Alternative designs shall be considered for new telecommunications towers, including lattice and single pole structures. The design of a proposed new telecommunications tower shall comply with the following:

(1) Any new telecommunications tower shall be designed to accommodate future shared use by other providers of communications.

(2) Unless specifically required by other regulations, a telecommunications tower shall have a finish (either painted or unpainted) that minimizes its degree of visual impact.

(3) Notwithstanding the height restrictions listed elsewhere in this chapter, the maximum height of any new telecommunications tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature.

(4) The maximum height of a telecommunications tower in all zoning districts shall not exceed a height of 180 feet above ground elevation.

(5) The Planning Board shall request a review of the application at the applicant's expense by a qualified engineer and/or consultant in order to evaluate the application. Fees for the review of the application by a qualified engineer and/or consultant are in addition to the application fee, shall be the responsibility of the applicant and shall be deposited in advance with the Town Clerk.

(6) Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings. The use of "camouflage" communications towers may be required by the Planning Board to further blend the communications tower and/or its accessory structures into the natural surroundings. "Camouflage" is defined as the use of materials incorporated into the communications tower design that give communications towers the appearance of tree branches and bark coatings, church steeples and crosses, sign structures, lighting structures or other similar structures.

Accessory structures shall be designed to be architecturally similar and compatible with each other, and shall be no more than 12 feet high. The buildings shall be used only for housing of equipment related to the particular site. Whenever possible, the buildings shall be joined or clustered so as to appear as one building.

(7) No portion of any telecommunications tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to a company name, phone numbers, banners and streamers, except the following: A sign of no greater than two (2) square feet indicating the name of the facility owner(s) and 24 hour emergency telephone shall be posted adjacent to any entry gate. In addition, "No Trespassing" or other warning signs may be posted on the fence. All signs shall conform to the sign requirements of the Town.

(8) Towers must be placed to minimize visual impacts. Applicants shall place towers on the side slope of terrain, so that, as much as possible, the top of the tower does not protrude over the ridge line, as seen from public ways.

I. Existing Vegetation - Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees shall take place on a site connected with an application made under this Law prior to the approval of the special use permit.

J. Screening - Deciduous or evergreen tree plantings may be required to screen portions of the telecommunications tower and accessory structures from nearby residential property as well as from public sites known to include important views or vistas. Where a site adjoins a residential property or public property, including streets, screening suitable in type, size and quantity shall be required by the Planning Board.

(1) The applicant shall demonstrate to the approving Board that adequate measures have been taken to screen and abate site noises such as heating and ventilating units, air conditioners and emergency power generators. Telecommunications towers shall comply with all applicable sections of the Town of Otsego Land Use Law as it pertains to noise control and abatement.

K. Lighting - Telecommunications towers shall not be lighted. Access safety lighting shall be permitted but no exterior lighting shall spill from the site.

L. Access - Adequate emergency and service access shall be provided and maintained. Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times minimize ground disturbance and vegetation cutting to the toe of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential. To the extent feasible, all network interconnections to and from the telecommunications site and all power to the site shall be installed underground. At the initial construction of the access road to the site, sufficient conduit shall be laid to accommodate the maximum possible number of telecommunications providers that might use the facility.

M. Parking - Parking shall be provided to assure adequate emergency and service access. The Planning Board shall determine the number of required spaces, but in no case shall the number of parking spaces be less than two (2) spaces.

N. Fencing - The telecommunications tower and any accessory structures shall be adequately enclosed by a fence, the design of which shall be approved by the Planning Board. This requirement may be waived by the Planning Board if the applicant demonstrates that such measures are unnecessary to ensure the security of the facility.

O. Removal - Telecommunication towers and telecommunications facilities shall be dismantled and removed by the applicant or the owner of the subject premises when they are no longer used or needed for their original purpose. All applications for approval of new telecommunications towers shall be accompanied by a plan covering reclamation of the site after removal of the tower. No approvals shall be given until all owners of the subject premises give the Town of Otsego, in a form suitable to the Town Attorney, a recordable instrument (a) running with the land, (b) granting the Town of Otsego the right to enter upon the premises to dismantle and to remove the tower or facilities in the event of the owners' failure to comply within 3 months with the lawful written directive to do so by the Code Enforcement Officer, and (c) giving the Town the right, after fair notice and opportunity to be heard before the Town Board by the owner of the premises, to charge the actual costs associated with disassembly or demolition, and of removal, including any necessary and reasonable engineering or attorneys fee incurred to carry out its rights hereunder, by adding that charge to and making it a part of the next annual real property assessment roll of the Town of Otsego to be levied and collected in the same manner and at the same time as town assessed real property taxes. The giving of such an agreement to the Town shall not preclude the Town from pursuing the alternative enforcement actions of (a) seeking an injunction from a court of competent jurisdiction to compel removal, or (b) seeking judgment to recover the costs, together with reasonable and necessary engineering and attorneys fees, of dismantling and removal by the Town. The Town may secure removal of towers or facilities hereunder by requiring the applicant and /or the owner(s) of the premises

to provide an undertaking and a continuing letter of credit covering the projected costs of dismantling and removal.

P. Inter-municipal Notification for New Towers - In order to keep neighboring municipalities informed, and to facilitate consideration of an existing tall structure or existing telecommunications tower in a neighboring municipality for shared use, and to assist in the continued development of the county emergency service communications system, the Planning Board shall require that:

(1) An applicant who proposes a new telecommunications tower shall notify in writing the legislative body of each municipality that borders the Town of Otsego and the coordinator of the Office of Emergency Services or Otsego County. Notification shall include the exact location of the proposed tower and general description of the project, including but not limited to, height of the tower and capacity for future use.

Q. Notification of Nearby Landowners - Notice of any public hearing shall be mailed by the Town of Otsego directly to all landowners whose property is located within five hundred (500) feet of the property line of the parcel on which a new telecommunications tower is proposed. Notice shall also be mailed to the administrator of any state or federal park lands from which the proposed tower would be visible if constructed by the applicant. The cost of Public Hearing notice mailing shall be paid by the applicant.

R. Proof of Insurance - The applicant and the owner of the property where the communications tower is to be located shall provide the Town Clerk with proof of liability insurance in the amount not less than \$3,000,000 to cover potential personal injury and property damage associated with construction and operation, with the Town named as an additional insured.

APPENDIX -A Definitions

Co-location - The addition of communications equipment to any existing of approved communications tower or tall structure by any persons, corporations, firms, associations or entities.

Tall structure - A structure which complies with the requirements of this Chapter and is of sufficient height to be used as a communications tower. Such structures include but are not limited to water towers, multi-story buildings, church steeples and farm silos.

Telecommunications facilities - Any structures, buildings, sheds huts, equipment enclosures, emergency generators, emergency or ancillary use to a telecommunications tower.

Telecommunications tower - Any structure owned or operated for commercial purposes which is capable of receiving and/or transmitting signals for the purpose of communication.