

Town of Columbus
Telecommunications Towers Law 1-09
(Town Board Approved Version 6-11-09)
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ARTICLE I

Section 1.001 Enactment

The Town Board of the Town of Columbus, New York does hereby ordain and enact Local Law 1-09 Pursuant to the authority and provisions of Articles 274-1 and 274-b of the Town Law of the State of New York.

Section 1.002 Short Title

The local law shall be known as Local Law 1-09. The Town of Columbus is

hereinafter referred to as the “Town”. The Town of Columbus Planning Board is hereinafter referred to as the “Planning Board”.

Section 1.003 Intent and Purpose

It is the intent of Local Law 1-09 to promote the health, safety and general welfare of the residents of the Town of Columbus, to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations, 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; and to minimize adverse visual effects from telecommunications towers by requiring careful siting, consideration of visual impact assessment and appropriate landscaping so as to minimize the impact upon the environment.

ARTICLE II Applicability

Section 2.001 Application of Regulations

- (1) No telecommunications facility, except those approved prior to the effective date of this section, shall be used unless in conformity with these regulations. No telecommunications facility shall hereafter be erected, moved, reconstructed, changed or altered unless in conformity with these regulations. No existing structure shall be modified to serve as a telecommunications facility unless in conformity with these regulations. These regulations shall not, however, apply to emergency services communications systems or to ham-radio and television facilities of less than 100 feet in height.
- (2) Applicants proposing a new telecommunications facility, physical expansions of existing telecommunications facilities or the location of telecommunications facilities within or on other existing structures shall require a Special Use Permit and/or Site Plan Review hereunder.
- (3) Applicants proposing to co-locate new telecommunications arrays on a previously approved telecommunications facilities without extending the height thereof or otherwise physically expanding the facilities except for additional equipment buildings within previously designated fenced-in areas shall not require a Special Use Permit and/or Site Plan Review but shall require Accessory Use permits.
- (4) All applications for Special Use Permits to construct telecommunications facilities shall be accompanied by the following additional information where applicable:
 - (a) Documentation of intent from the owner of any existing facility to allow shared use of the same.
 - (b) A site plan depicting 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 modifications of the existing facility shall also be indicated on the site plan.

(c) A Professional Engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of any existing structure, and explaining what modifications, if any, will be required in order to so certify. A soils report prepared by such Professional Engineer shall also be submitted to support the design specifications of the foundation for any new tower, and anchors for the guy wires, if used.

(d) A completed Visual Environmental Assessment Form addendum. This addendum shall be accompanied by a visual impact assessment which shall include:

[1] A Zone of Visibility Map, which shall be provided in order to determine locations where the tower may be seen.

[2] Visual 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 the public, and from any other location where the site is visible to a large number of visitors or travelers. The Board shall determine the appropriate key sites at a pre-submission conference with the applicant.

[3] Assessment of alternative tower designs and color schemes.

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

[5] Review of those alternative sites determined to be feasible from an engineering perspective to determine which would be in the best interest of preserving the aesthetic and natural character of the neighborhood.

(e) A certified copy of the Federal Communications Commission (FCC) license to operate the telecommunications facility.

(f) If land is leased, documentation of intent from the owner to allow use and affirming intent to remove the tower if abandoned, obsolete or unused for more than twenty-four (24) months.

(g) A letter of intent committing the owner of any proposed new tower and successors in interest to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. Failure to abide by the conditions outlined in the letter may be grounds for revocation of any Special Use Permit granted. The letter shall commit the new tower owner and his/her successors in interest to:

[1] Respond 90 days to a request for information from a potential shared-use applicant.

2] Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.

[3] Allow share use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charge may include but is not limited to a prorata 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 a shared user without causing electromagnetic interference.

(h) Documentation that the proposed tower adequately addresses all aspects of aviation safety in view of known local aviation traffic as well as Federal Aviation Regulations (Code of Federal Regulations - Part 77).

(i) All property owners and adjacent municipalities within five-hundred (500) feet of the outside perimeter of the communications structure, including guy wires, shall be notified by certified mail at least ten (10) days prior to the Planning Board granting Special Use approval for such a structure. This responsibility shall be the applicant's and such applicant shall provide proof of notification as part of their final application.

(j) A site location alternative analysis, describing the locations of other sites considered; the availability of those sites, the extent to which other sites do or do not meet the provider's service or engineering needs, and the reason why the subject site was chosen. The analysis shall address the following issues:

[1] How the proposed location of the wireless telecommunication tower or antennae relates to the objective of providing full wireless communication services within the Town of Columbus.

[2] How the proposed location of the wireless telecommunications tower/facility relates to the location of any existing antennas or towers within or near the Columbus area.

[3] How the proposed location of the wireless telecommunications tower/facility relates to the anticipated need for additional antennae or towers within and near the Town by the applicant, and by other providers of wireless telecommunications services within the area.

[4] How the proposed location of the wireless telecommunications tower/facility relates to the Town's goal of maintaining concealed or reduced tower height with groups of towers within close proximity to one another rather than isolated, taller towers with many users at greater tower heights at random locations throughout the Town.

5. The fee for a new tower application (Special Use Permit) shall be as outlined on the Town Schedule of Fees and Penalties.

6. A collocation application (Accessory Use Permit) must be completed for applicants proposing to collocate on a previously approved telecommunications

tower. The fee for this application shall be per the Town Schedule of Fees and Penalties.

7. The regulations shall apply to all property within the Town of Columbus and the town shall not be responsible for any costs for studies over and above the amount equal to the application fees.

Section 2.002 Relationship of This Law to Other Laws and Regulations

This local law in no way affects the provisions or requirements of any other federal, state, local laws or applicable regulations. This local law shall be considered an initial procedure relative to other local laws and/or regulations. However, where it is determined to be in conflict with any other such law or regulation, the more restrictive shall apply. This includes but is not limited to sub-division regulations, sanitary codes, refuse disposal, junkyard ordinances, Fresh Water Wetlands Act, State Environmental Quality Review Act, and NYS Mined Land Reclamation Law.

Section 2.003 Special Definitions

ANTENNA - A device of thirty-five (35) or more feet in height used to collect or transmit telecommunications or radio signals. Examples are: panels, microwave dishes, and single pole known as whips. This definition is not meant to include home television or amateur radio apparatus.

ARRAY - Telecommunications signal receiving or transmitting device attached to telecommunications tower and not extending the height thereof.

TELECOMMUNICATIONS FACILITY - Consists of the equipment and structures involved in receiving or transmitting telecommunication or radio signals, but limited to those facilities with respect to which the State and Federal governments have not, under public utility laws, strictly pre-empted the Town of Columbus from regulating.

TELECOMMUNICATIONS EQUIPMENT BUILDING - The building in which the electronic receiving and relay equipment for a telecommunications facility is housed.

TOWER - A structure of thirty-five (35) or more feet in height that is intended to support equipment used to transmit and/or receive telecommunications signals. Examples of such structures include monopoles and lattice construction steel structures.

ARTICLE III

Design and Location standards

Section 3.001 Design and Location

The following design and location standards shall apply to all telecommunications facilities:

(1) The location of the tower and equipment building shall comply with all

natural resource protection standards.

(2) An evergreen screen consisting of a row of eight (8) feet high evergreen trees planted ten (10) feet on center maximum, shall be located around the perimeter of the security fence. The Planning Board may, however, modify or waive screening requirements if the site is entirely or partially wooded so as to provide existing screening. Existing on-site vegetation shall be preserved to the maximum extent possible.

(3) An eight (8) foot high security fence shall completely surround the tower (and guy wires if used) and equipment building.

(4) The tower and antenna shall be designed and constructed to all applicable standards of the American National Standards Institute, TAI/EIA-222-F manual, as amended, and withstand wind gusts of up to 100 miles per hour.

(5) An antenna may not be located on a building or structure that is listed on a historic register or within five-hundred (500) feet of such a structure.

(6) Telecommunications facilities shall be permitted as a sole use on any lot subject to Special Use Permit and the following:

- (a) Minimum property lot size Five (5) acres
- (b) Minimum yard setback requirements. Two-hundred (200) feet
- (c) Maximum height. Tower - Two-hundred (200) feet
Equipment building - Thirty (30) feet

(7) A telecommunications facility shall be permitted on a property with an existing use subject to the following conditions:

- (a) The telecommunications facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic maintenance.
- (b) Minimum lot area. The minimum lot area required above shall apply to the area proposed for use as a telecommunications facility and the land remaining for accommodation of the principal use on the lot shall comply with the standard minimum lot area for the town.
- (c) Minimum setbacks. The minimum yards required above shall apply to the area proposed for use as a telecommunications facility and the land remaining for accommodation of the principal use on the lot shall comply with the standard minimum yard provisions of the town.

(d) Access. The vehicular access to the equipment building shall, whenever feasible, be provided along the circulation driveways of the existing use.

- (e) Maximum height: Tower - Two-hundred (200) feet
Equipment building - Thirty (30) feet

(8) Where an antenna for a telecommunications facility is to be attached to an existing structure or building it shall be subject to the following conditions:

- (a) Maximum height. Seventy-five (75) feet above the existing building or structure.

(b) If the applicant proposes to locate the telecommunications equipment in a separate building, the building shall comply with the minimum setback requirements for the town, an eight (8) foot high security fence shall surround the building, a buffer yard shall be planted as required above and vehicular access to the building shall not interfere with the parking or vehicular circulations on the site for the principal use.

(c) Elevations of existing and proposed structures showing width, depth, and height, use statistical data on the antenna and support structure shall be presented.

(d) The antenna or array shall be camouflaged or otherwise designed to be aesthetically compatible with the existing architectural and natural environment.

(9) Notwithstanding minimum setbacks provided for above, any tower shall be setback from all property lines a distance that is at least equal to the height of the tower.

(10) Vehicular access shall be provided and maintained to the facility and be of such passable condition as to be safely accessible by emergency and maintenance vehicles and equipment. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the toe of fill, the edge of cuts or no more than 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. Parking shall be provided to assure adequate emergency and service access in accordance with the Code.

(11) No signs shall be permitted on either the tower or equipment building, except for those signs required by law or containing such information as owner contact information and warnings. These signs shall not exceed 2 square feet in total area. Absolutely no commercial advertising shall be permitted on any wireless telecommunications tower or equipment building.

ARTICLE IV Site Plan Review Criteria

Section 4.001 Site Plan Review

Communications facilities shall be subject to all the ordinary review criteria in the Special Use Permit plus the following:

(1) The Planning Board shall be satisfied that the tower for the communications facility is the minimum height necessary for the service area and that the site chosen is the one that will afford the opportunity to construct the lowest height communications tower possible, taking into consideration all lands available within a reasonable distance including those which may lie within adjoining municipalities.

- (2) The need for additional buffer yard treatment shall be evaluated. Proximity of the communications structure to existing or platted residential properties shall be considered in applying such requirements. Existing trees on the site which serve to provide a natural buffer shall be preserved unless absolutely required to be removed for purposes of access or safety.
- (3) Visual assessment data shall be used to determine how the communications facility will appear once constructed in relation to the surrounding natural environment and from the perspective of adjacent or nearby residents as well as travelers. Camouflaging or relocation of the structure may be required. The Planning Board shall also consider alternative sites in assessing visual impacts and the imposing of conditions as may be required to minimize such impacts including requirements that any tower be of a shape, contour and finish (either painted or unpainted) that minimizes its visual impact. The Planning Board may also require a tower to be in the shape of a tree, flagpole, church steeple or other similar tall structures. Accessory structures shall similarly maximize the use of building materials, colors and textures designed to blend with natural surroundings.
- (4) Free-standing pole-type communications structures shall be given preference over towers supported by guy wires.
- (5) All communications structures shall be lighted for safety in a manner consistent with industry best practices and where lighted additional setbacks may be imposed to shield adjacent properties from the effects of such lighting.
- (6) Should any tower cease to be used as a communications facility, the owner or operator or then owner of the land on which the tower is located, shall be required to remove the same within one (1) year from the abandonment of use. Failure to do so shall authorize the Town of Columbus to remove the facility and charge back the cost of removal to the foregoing parties. The Town of Columbus may also file a lien against the land to recover the costs of removal and attorney's fees.
- (7) Shared use of existing structures (for example, municipal water towers, multistory buildings, church steeples and farm silos) and existing or approved towers shall be given preference over construction of new towers. Where shared use of all existing tall structures and existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with Subsection (11) above. Any proposals for a new telecommunications tower on an existing site shall also be subject to Special Use permit procedures.
- (8) An applicant for approval of a communications structure shall include with the application evidence of written contact with all wireless service providers who supply service within the Town for the purpose of assessing the

feasibility of co-located facilities and co-location shall be mandatory wherever physically feasible. Should co-location not be feasible, the applicant shall demonstrate that a good faith effort has been made to mount the antenna on an existing building or structure, including of proof of contacts, building investigations and similar evidence. Should such efforts fail to result in a suitable site, a new communications tower may be permitted, but shall be constructed to provide available capacity for other providers should there be a future additional need for such facilities, including provision of the necessary tower height to accommodate such other users without adding additional height in the future. Where co-location is proposed, the different companies using the facility shall also work from common maintenance and service buildings, if the same are located on the site.

ARTICLE V Miscellaneous Provisions

Section 5.001 Enforcement Officer

The Town Board shall appoint an Enforcement Officer or designated agency to carry out the duties assigned by this local law or by any additional regulations adopted pursuant to Section 5.002 thereof. If appointed, the Enforcement Officer shall be responsible for the overall compliance with Local Law 1-09 , including cooperation with the Town Board and other officials and agencies as required.

Section 5.002 Further Regulations by Town Board

The Town Board may after a public hearing, adopt such further rules and regulations, as it deems reasonably necessary to carry out the provisions of this local law. Such rules and regulations shall be approved by a resolution of the Town Board prior to taking effect.

Section 5.003 Amendments

1. The Town Board may on its own motion, on petition, after public notice and hearing, amend this local law pursuant to all applicable requirements of law.
2. All proposed amendments originating by petition shall be referred to the Town Board for consideration. The Town Board shall act upon such proposals within thirty (30) days after receiving such referral. Failure of the Town Board to act within the required time shall be deemed to constitute an approval of the proposed amendment.

Section 5.004 Liability Insurance

1. A holder of a Tower Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death and property

damage, and umbrella insurance coverage, for the durations of the Tower Special Use Permit in the minimum amounts set forth below:

2. Commercial General Liability: Limits of Liability; \$1,000,000 per Occurrence/\$2,000,000 Aggregate for Bodily Injury, and Property Damage; Products and Completed Operations, and Personal and Advertising Injury.
3. Commercial Automobile Liability: limits of Liability: \$1,000,000 per occurrence/\$2,000,000 Aggregate.
4. Excess Liability; \$10,000,000 per occurrence/\$10,000,000 Aggregate.
5. Workers Compensation, Employers Liability, and Disability Insurance in accordance with applicable statutory amounts.
6. The Commercial General Liability insurance policy and excess liability policy shall specifically include the Town and its officers, boards, employees, committee members, attorneys, agents, and consultants and experts as additional named insured.
7. The insurance policies shall be issued by an insurance company licensed to do business in the State of New York and with a rating of A- or better by A.M. Best Co.
8. The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least sixty (60) days prior written notice in advance of the cancellation of the insurance.
9. Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance which such policies are to renew or replace.
10. Before construction of a permitted Wireless Telecommunications Facilities is initiated, but in no case later than fifteen (15) after the grant of the Tower Special Use Permit, the holder of the Tower Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.

Section 5.005 Shared Use by County Government Emergency Services

Agency

Any telecommunication tower erected in the Town of Columbus that is subject to this law shall consent to the use of the tower by the Chenango County Emergency Services Agency and the Town of Columbus at no cost.

Section 5.006 Indemnification

Any Tower Special Use Permit issued pursuant to this Law shall contain a provision with respect to indemnification. Such provision shall require the holder of the Tower Special Use Permit, to the extent permitted by law, to at all times, defend, indemnify, protect, save, hold harmless, and exempt the Town and its officers, boards, employees, committee members, attorneys, agents, and

consultants and experts from any and all penalties, damages, costs, or charges, arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there-from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of a Wireless Telecommunications Facilities with the Town. With respect to the penalties, damages or charges referenced herein, reasonable attorney's fees, consultant's or experts fees and expert witness fees are included in those costs that are recoverable by the Town.

Section 5.007 Enforcement

Any person, corporation, partnership or other legal entity that should violate any of the provisions of this local law or any conditions imposed by permit pursuant hereto, shall be guilty of an offense and subject to a fine per the Town Schedule of Fees and Penalties to be recovered by the Town in civil action. Every such person or entity shall be guilty of a separate offense for each week of such violation, disobedience, omission, neglect or refusal , and will be fined an additional weekly fee per the Town Schedule of Fees and Penalties.

Section 5.008 Severability

The provisions of this local law are severable. If any article, section, paragraph or provision of this local law shall be invalid, such invalidity shall apply only to the article, section, paragraph or provision adjudged invalid, and the rest of this local law shall remain valid and effective.