

# **Regulating Telecommunications Facilities**

**Town of Berkshire**

## **LOCAL LAW REGULATING TELECOMMUNICATIONS FACILITIES**

**Approved June 12, 2001**

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### **Article I**

#### **Statutory Authority and Legislative Intent**

##### **◆ Section 1.01. Statutory authority**

**Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York and the Municipal Home Rule Law of the State of New York, the Town Board of the Town of Berkshire, County of Tioga and State of New York, has ordained and does hereby enact this local law regulating and restricting the location, size, and use of telecommunications facilities and their accessory structure in the Town of Berkshire.**

##### **◆ Section 1.02 Legislative Intent.**

**The Town of Berkshire recognizes the increased demand for wireless communications transmitting facilities and the need for service they provide. Often these facilities require the construction of a communications tower and/or similar facilities. The intent of this local law is to regulate the location, construction and modification of the telecommunications facilities in accordance with the guidelines of the Telecommunications Act of 1996 and other applicable laws by:**

- A. Accommodating the need for telecommunications towers/antennas while regulating their location and numbers in the community.**
- B. Minimizing adverse visual impacts of these towers/antennas through proper siting, design, and screening.**

- C. Preserving and enhancing the positive aesthetic qualities of the natural environment and current development in the Town of Berkshire.
- D. Providing for the health, safety, and welfare of the community by avoiding potential damage or other negative impact to adjacent properties from power failure, falling ice, etc. through proper siting and engineering.
- E. Requiring the joint use of towers when available and encouraging the placement of antennas on existing structures to minimize the number of such structures in the future.

## Article II

### Definitions

#### ◆ Section 1.03 Words and terms defined.

As used in this local law, the following terms shall have the meanings indicated:

**ACCESSORY STRUCTURE** – A nonhabitable accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility and usually located on the same lot as the communications tower. Examples of such structures include utility or transmission equipment storage sheds or cabinets. All other uses ancillary to the antenna and associated equipment (including a business office, maintenance depot, vehicle storage, etc.) are prohibited from the site unless otherwise permitted in the zoning district in which the facility is located.

**ANTENNA** – A system of electrical conductors that transmit or receive frequency signals. Such signals shall include but not limited to radio, television, cellular, paging, digital and/or data communications, personal wireless communication services (PWS) and microwave communications.

**TELECOMMUNICATIONS FACILITIES** – Towers and/or antennas and accessory structures together used in connection with the provision of cellular telephone service, personal communications services, digital and/or data communication services, paging services, radio and television broadcast services and similar broadcast services. (Also referred to as "facilities" or "equipment.")

**TOWER** – A structure designed to support antennas. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures which do or which do not employ camouflage technology.

## Article III

### Permitted Locations, Approvals, and Bulk Requirements

#### ◆ Section 1.04 Issuance of permits and approvals required.

No telecommunications facility shall be sited, located, constructed, erected or modified without the issuance of a building permit and such other permits or approvals as are prescribed in this local law.

#### ◆ Section 1.05. "Collocated/existing structure antennas" defined.

A “collocated/existing structure antenna” shall be defined as any antenna that will be mounted to an existing communications tower, smokestack, water tower or other existing structure, and extends no more than 15 feet above the height of the existing structure.

◆ **Section 1.06.** Approvals and bulk requirements for collocated/existing structure antennas.

A collocated or existing structure antenna, as defined in Section 1.05 is permitted in all areas without a tower special use permit, upon issuance of a building permit. The building permit application shall include the following:

- A. A structural analysis/report, certified by a professional engineer or architect licensed in New York State, verifying the ability of the structure to handle the antenna.
- B. Certification by a qualified radio frequency engineer (signed and sealed by a professional engineer or architect licensed in the State of New York) that the cumulative emissions from all antennas proposed to be located at the proposed site meet federal guidelines.
- C. The height of the new antenna shall extend no more than 15 feet above the height of the existing structure.
- D. The antenna and any mounting structure and related equipment shall be integrated into said structure in such a manner as to minimize its visual impact to the greatest extent practicable.

◆ **Section 1.07** Approvals and bulk requirements for all other telecommunications facilities.

- A. For all other telecommunications facilities, a tower special use permit shall be required. The tower must also be set back a minimum of 1 and ½ times the height of the tower and antenna from all power lines and any existing buildings. The Town of Berkshire Planning Board and Town Board may require an additional setback area in case of guyed wires, taking into consideration the length of guyed wires and the location of ground anchors.
- B. In all areas of the village, new or relocated towers and antennas must be set back a minimum of 500 feet from all residential dwellings, schools, and historic structures.
- C. All special use permit applications for telecommunications facilities in all areas shall be treated as a Type 1 action under the State Environmental Quality Review Act (SEQRA)

#### Article IV

#### Tower Special Use Permit and Application

◆ **Section 1.08.** Planning Board and Town Board as issuing/lead agency.

The Town of Berkshire Planning Board and Town Board shall be the issuing agency for all tower special use permits and shall also be the lead agency for SEQRA.

◆ **Section 1.09.** Content of application.

**All applicants for a tower special use permit shall make a written application for special use permit to the Town of Berkshire Planning Board and Town Board, through the Town of Berkshire Clerk. Said application shall include:**

- A. A completed tower special use permit application form. The application shall be accompanied by the payment of the tower special use permit application fee as established by the Town Board in the Schedule of Fees.**
- B. Tower special use permit application form, including long form environmental assessment form (EAF). The application shall not be deemed complete unless accompanied by the propagation studies and search ring analysis described in Subsections D and E of this section.**
- C. A site plan in the form and content acceptable to the Town of Berkshire Planning Board and Town Board, prepared to scale and in sufficient detail and accuracy. At minimum, such site plan shall include:**
  - 1. The exact location of the proposed tower, together with guy wires and ground anchors, if applicable and any accessory structures.**
  - 2. The maximum height of the proposed tower and antennas.**
  - 3. A detail of tower type (monopole, guyed, freestanding or other).**
  - 4. The color or colors of the tower and accessory buildings.**
  - 5. The location, type and intensity of any lighting on the tower and antennas.**
  - 6. A survey showing the boundary of the property and a topographical map of the property with contour lines not exceeding five-foot intervals.**
  - 7. Proof of ownership of the land by the applicant or the landowner's consent if the applicant will not own the property. A copy of the final lease agreement, plus any amendments thereto, must also be provided if the applicant will not own the property.**
  - 8. The location of all current and proposed structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of these structures to the tower and antennas and location of any adjacent residential dwellings, schools and historic structures within 500 feet.**
  - 9. Identification of adjacent landowners.**
  - 10. The location, nature and extent of any proposed fencing and landscaping or screening. Existing on site vegetation shall be preserved to the maximum extent possible.**
  - 11. The location and nature of proposed utility easements and access roads, if applicable. The applicant must demonstrate that all private access roads will be maintained in order to ensure access by emergency vehicles on a year-round basis.**
  - 12. Building elevations of accessory structures or immediately adjacent within 50 feet.**

- D. "Before" and "after" propagation studies by a qualified radio frequency engineer (signed and sealed by a professional engineer licensed in the State of New York) demonstrating existing signal coverage resulting from the proposed telecommunications facility.**
- E. A search ring analysis prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer licensed in the State of New York) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Town of Berkshire Planning Board and Town Board how and why it selected the proposed site, discuss the availability (or lack of availability) of a suitable structure within the search ring which would have allowed for collocated antenna(s) and to what extent the applicant explored locating the proposed tower and antennas in a more desirable use area. Proof of correspondence with other telecommunications companies concerning collocation shall be part of this requirement.**
- F. The Town of Berkshire Planning Board and Town Board, upon reviewing the application, may request reasonable additional visual and aesthetic and site information, as it deems appropriate on a case by case basis. Such additional information may include, among other things, visual impact statements, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the Town Planning Board and Town Board.**
- G. For sites in close proximity to significant historical sites or important preservation/conservation areas, the Town of Berkshire Planning Board and Town Board may request additional site plans and tower special use permit requirements. These requirements may include specially designed towers, additional screening, greater setbacks and improved landscaping. Siting in these areas should be avoided to the maximum extent possible.**
- H. The applicant must submit a copy of its policy regarding collocation of other facilities on the proposed tower. Such policy shall allow collocation under the following conditions:**
  - 1. The new antenna(s) and equipment do not exceed structural loading requirements, interfere with tower space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment.**
  - 2. The party desiring to collocate pays the applicant an appropriate and reasonable sum to collocate.**
  - 3. The party desiring to collocate has a similar policy of collocation as the applicant.**
- I. During the application process and after construction of the tower, the applicant shall provide a certification from a qualified professional engineer licensed in New York State, certifying that the tower and antennas meet applicable New York State and American National Standards Institute (ANSI) structural safety standards.**

◆ **Section 1.10. Building permit requirements.**

Upon issuance of a tower special use permit by the Town of Berkshire Planning Board and Town Board, the applicant must obtain a building permit, pursuant to Section 1.04, before the facility may be placed in service.

**Article V**

**Telecommunications Facility Permit Standards**

◆ **Section 1.11. Criteria considered; conditions.**

The following criteria will be considered by the Town of Berkshire Planning Board and Town Board prior to the approval/denial of a request for a tower special use permit. The criteria listed may be used as basis to impose reasonable conditions on the applicant. Tower special use permits run with the land and may not be transferred to a different parcel of land.

◆ **Section 1.12. Siting Preferences.**

- A. The Town of Berkshire Planning Board and Town Board may express a preference for an alternative site(s) and/or that the proposed telecommunications facility be located in a higher-intensity use area or on a higher –intensity use property, provided that there is a technologically feasible and available location. A guideline for the town’s preference, from most desirable to least desirable property, is as follows:
  - 1. Property with an existing structure suitable for collocation
  - 2. Municipal or government-owned property
  - 3. Industrial or Business Areas
  - 4. Residential or Agricultural lands
  - 5. Sites which are in close proximity to significant historic sites and/or important preservation/conservation areas.
- B. Any request by the Town of Berkshire Planning Board and Town Board for information or technical analysis on a preferred alternate site shall be provided by the applicant at its sole cost.

◆ **Section 1.13 Aesthetics**

Telecommunications facilities shall be located and buffered to the maximum extent that is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic affect on neighboring residences to the extent possible, the Town of Berkshire Planning Board and Town Board may impose reasonable conditions on the applicant, including, but not limited to the following:

- A. Tower height, including antennas, and design are matters of primary public concern. The Boards may require a monopole or guyed tower (if sufficient land is available to the applicant) instead of a freestanding tower. Monopoles are a preferred design. The Boards may impose reasonable restrictions and/or conditions on height. For example, the Boards may reasonably determine that

adverse impact upon community will be best mitigated by requiring the applicant to construct multiple towers of lower height at several different locations to meet the applicants demonstrated service coverage requirement(s).

- B. The Boards may require reasonable landscaping consisting of trees or shrubs to screen the base of the tower and antennas and/or to screen the tower and any accessory structure or buildings to the extent possible from adjacent residential property. Existing on site trees and vegetation shall be preserved to the maximum extent possible.
- C. The Town of Berkshire Planning Board and Town Board shall require the applicant to show that it has made good faith efforts to collocate on existing towers or other available and appropriate structures and/or to construct new towers near existing towers in an effort to consolidate visual disturbances.
- D. The type of finish, color, and lighting shall be subject to village and/or Federal Aviation Administration (FAA) approval. The Town of Berkshire Planning Board and Town Board may require lights to be shielded to minimize ground visual impact.
- E. No tower shall contain any signs or advertising devices. Notwithstanding the foregoing, the Boards may require appropriate signage indicating ownership of the facility and phone numbers to call in case of emergency. The emergency sign will be no larger than 4 square feet.

◆ **Section 1.14. Radio Frequency.**

- A. The Town of Berkshire Planning Board and Town Board shall impose a condition on the applicant that the communications antenna will be operated only at frequencies and power levels designated by the Federal Communications Commission (FCC) and/or Environmental Protection Agency (EPA) technical exposure limits, and may periodically require that the applicant provide competent documentation to support the maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.
- B. Unless otherwise preempted by federal or state law, the applicant shall submit to the Code Enforcement Officer, and inspection of the telecommunications facility every two years for radio emissions. A professional engineer licensed in New York State specializing in electrical engineering with expertise in radio communications facilities shall perform radio emission inspections. The radio emission inspection shall describe the power density levels of the electromagnetic energy generated from the facility, including the cumulative effects of collocated antennas. In the event that the radio emission inspection indicates that the electromagnetic energy generated from the facility is above the allowable limits stated with applicable FCC or ANSI standards or other applicable federal or state guidelines in effect at the time of the inspection, the applicant shall cease all use of the facility until such time as it proves to the satisfaction of the Code Enforcement Officer or pertinent town consultant that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.

◆ **Section 1.15.** Traffic, access and safety.

- A. A road turnaround and one parking space (10' by 20') shall be provided to assure adequate year-around emergency and service access. Maximum use of existing roads, public or private, shall be made for access. Tower or antenna(s) accessory structures shall not be sited in public roadways or road right-of-way.
- B. All towers and ground anchors, if applicable, shall be enclosed by a fence not less than eight feet in height and otherwise sufficiently protected from trespassing or vandalism.
- C. The applicant must comply with all applicable state and federal regulations including but not limited to FAA and FCC regulations, and from time to time may be required to provide certification of such compliance.
- D. All towers and antennas shall include anti-climbing devices for a minimum of 25 feet extending above ground level.

◆ **Section 1.16.** Removal of tower.

- A. The applicant shall agree in writing to remove the tower and antenna if the telecommunications facility ceases to be used for its intended purpose for 6 consecutive months. The Town of Berkshire Planning Board and Town Board shall require the applicant to provide an appropriate and adequate demolition bond for the purpose of removing the telecommunications facility and restoration of the land in case the applicant fails to do so as required above.
- B. At least every two years, the applicant shall submit an analysis to confirm the sufficiency of the demolition bond and a report of the cost of removal and property restoration, which are to be performed by a professional engineer licensed in New York State, at the applicant's expense. If the analysis and report determine that the amount of the bond in force is insufficient to cover, the removal, disposal and restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the application's receipt of such report.

◆ **Section 1.17.** Structural safety inspections.

- A. During the application process and after construction of the tower, the applicant shall provide a certification from a qualified professional engineer licensed in New York State, certifying that the tower and antennas meet applicable New York State and ANSI structural safety standards.
- B. Unless otherwise preempted by federal or state law, the telecommunications facility shall be inspected every two years, at the applicant's expense, for structural integrity and a copy of the report shall be promptly delivered to the Code Enforcement Officer. A professional engineer licensed in New York State specializing in structural engineering shall perform the structural inspection. The structural inspection report shall describe the structural integrity of the facility; maintenance issues and repairs needed or made, if any. In the event that the structural inspection indicates structural deficiencies, then the deficiencies must be



remedied within the time reasonably set by the Code Enforcement Officer. Upon the applicant's failure to do so, the bonds for demolition may be exercised.

◆ **Section 1.18.** Maintenance of telecommunications facility.

All communications facilities shall be maintained in good order and repair. The Town of Berkshire Planning Board and Town Board may require reasonable records of such maintenance be kept and available for town review upon request.

ARTICLE VI

Exemptions

◆ **Section 1.19.** Exemptions enumerated.

The following shall be exempt:

- A. The tower and antenna(s) may be repaired and maintained without restriction.
- B. Antennas and satellite antennas used solely for residential household television and radio reception.
- C. Satellite antennas measuring two meters or less in diameter and located in commercial districts, and satellite antennas one meter or less in diameter regardless of location.

Article VII

Procedure

◆ **Section 1.20.** Conflict with other laws.

In the event of any conflicts or inconsistencies between this chapter and any local law, this law shall control telecommunications towers and similar facilities in the town unless otherwise specifically referenced in this law.

ARTICLE VIII

Enforcement; Penalties for Offenses

◆ **Section 1.21.** Enforcement; penalties for offenses.

- A. This law is adopted pursuant to the planning powers granted to the town under applicable law. In the event of any violation of this law or any permit(s) issued hereunder, the Town of Berkshire may seek enforcement under available authority, including but not limited to Town Law 268 of the State of New York and the Municipal Home Rule Law of the State of New York.
- B. Any violation of this law is an offense punishable by a fine and imprisonment. Each week's continued violation shall constitute a separate additional violation. A

first violation shall be deemed to have occurred from the date of written notification of violation issued by the enforcement officer or from such a date as may be designated in such written notice.

- C. Any entity operating under a tower special use permit or site plan approval that fails to comply with the requirements and/or conditions of that permit or approval, or violates the same, shall cease and desist use of the facility upon notice by the Town of Berkshire Enforcement Officer and shall not resume use until brought into compliance. Once the deadline has passed for rectifying the violation, the town may direct the removal of the tower, antennas, and other facilities within 90 days of the notification by the town directing such removal, or the town may remove said facilities and use the demolition bonds posted to pay for such removal.
- D. Failure to comply with a direction to cease and desist or to remove shall constitute a separate violation.

## ARTICLE IX

### Severability

◆ Section 1.22. Severability.

If any part of this law or permit shall be judicially declared to be invalid, void, unconstitutional or unenforceable, all unaffected provisions hereof shall survive such declaration and this law and permit shall remain in full force and effect as if the invalidated portion had not been enacted.

## ARTICLE X

### Effective Date

◆ Section 1.23. Effective Date.

This local law shall become effective upon filing with the Secretary of State.

## ATTACHMENT A

### TOWN OF BERKSHIRE

#### WIRELESS TELECOMMUNICATION FACILITIES LOCAL LAW

Attachment to Article IV, Section 1:09 Content of Application:

The Tower Special Use Permit - non-refundable - application fee is \$5000.00.

The Collocation Special Use permit application fee per antenna is \$2000.00.

## ATTACHMENT B

### TOWN OF BERKSHIRE

**WIRELESS TELECOMMUNICATION FACILITIES LOCAL LAW**

**Attachment to Article VIII, Section 1:21 Enforcement: Penalties for offenses**

**The maximum fine for each violation of this Local Law is \$500.00 and imprisonment not exceeding 15 days or both.**