

LOCAL LAW NO.: ___ OF 2019

**A LOCAL LAW REPEALING AND REPLACING
SECTION 179-5-130 OF TOWN OF QUEENSBURY
CHAPTER 179 “ZONING” REGARDING WIRELESS
TELECOMMUNICATION FACILITIES AND
INFRASTRUCTURE**

BE IT ENACTED BY THE QUEENSBURY TOWN BOARD AS FOLLOWS:

Section 1. Authority – This Local Law is adopted in accordance with New York Town Law Article 16 and the Municipal Home Rule Law.

Section 2. Amendment of Chapter 179 “Zoning” – Chapter 179 of the Queensbury Town Code, entitled “Zoning,” Section 179-5-130 entitled “Wireless Telecommunication Facilities and Infrastructure” is hereby repealed in its entirety and replaced by a new Section 179-5-130 entitled, “Wireless Telecommunication Facilities and Infrastructure” as set forth below. The provisions of this Chapter are severable. If any Article, section, subdivision or provision of this Chapter shall be invalid, such invalidity shall apply only to the Article, section, subdivision or provision adjudged invalid, and the rest of this Chapter shall remain valid and effective.

179-5-130 Wireless Telecommunication Facilities and Infrastructure

A. Enabling authority. The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove site plans consistent with Town Law §274-a which concern the placement and operation of wireless telecommunications facilities.

Wireless Telecommunication Facilities includes, among others things: antennas, towers, macrocells and small cells or small wireless facilities (also known as: 5G, next-generation wireless, nodes, femtocells, picocells and microcells and Distributed Antenna Systems (DAS) and related infrastructures).

B. Purpose.

- (1) The purpose of this section is to establish uniform standards for the siting, design, permitting, maintenance, and use of wireless telecommunication facilities and infrastructure in the Town of Queensbury. While the Town recognizes the importance of wireless communication facilities in providing high quality communication service to its residents and business, the Town also recognizes that it has an obligation to protect and promote health, safety and general welfare of its residents and to minimize the adverse effects of such facilities.
- (2) These regulations are to provide for the managed development of wireless telecommunication facilities and are not intended to prohibit or have the effect of prohibiting the provision of personal wireless services nor shall they be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

C. Placement of telecommunications facilities:

- (1) Tower facilities are restricted to Commercial Light Industrial (CLI) and Heavy Industrial (HI) Zoning District or co-located on any property where a telecommunications tower or other tall structure (structures over 50 feet in height) exists.
- (2) Small cell facilities in areas where underground utilities are required or where existing utility infrastructure is already buried are restricted in the following ways:
 - a. Adding poles or using streetlights or existing poles is prohibited.
 - b. Must be located in a public right-of-way.
 - c. Must locate in the immediate common area of the current utility cluster location (i.e. electric, cable, telephone).
 - d. May not exceed five (5) feet in height.

- e. All wiring and accessory equipment shall be installed underground.
- f. Prohibited in town parks and recreational areas.

(3) Small cell facilities restrictions in other areas:

- a. Up to three (3) small cells will be allowed per utility pole if technically feasible and if in the determination of the Planning Board there are no safety or aesthetic concerns.
- b. Not allowed on ornamental street lighting poles.
- c. New poles may not exceed fifty (35) feet and a pole may be required to be of a smaller height if the initial proposal is deemed out of character with the neighborhood as determined by the Planning Board.
- d. In commercial zones only, may be permitted on buildings, signs or other existing structures once the Planning Board has reviewed for visual impacts and approved.
- e. Placement on town-owned streetlights, other than ornamental, is allowed after receiving review and approval for a Special Use Permit.
- f. All lighting on small cell facilities is not allowed unless required by law.
- g. Not permitted within 200 feet of a residence.
- h. No part of the facility may project into areas that pedestrians use and may inhibit their use or jeopardize their safety, like sidewalks and other designated pedestrian designated areas.
- i. The Planning Board is empowered to condition the issuance of a Special Use Permit, such as the use of stealth technologies or other measure which mitigate visual effect.

D. Any and all telecommunication facilities must be permitted. Special use permits will be

issued only after receiving permission from the Town Planning Board and paying of applicable fees.

E. By enacting this chapter, the Town intends to:

- (1) Provide for the managed development of wireless telecommunication facilities in a manner that enhances the benefits of wireless communication and accommodates the needs of Town residents and wireless carriers in accordance with federal, state and local laws and regulations;
- (2) Establish fair and efficient processes for review and approval of applications;
- (3) Establish procedures for the design, siting, construction, installation, maintenance and removal of wireless telecommunication facilities in the Town;
- (4) Address and provide for new wireless technologies, including but not limited to micro cell and distributed antenna systems ("DAS") technologies;
- (5) Encourage the collocation of wireless communication facilities, on existing structures rather than the construction of a new support structures; and
- (6) Protect Town residents and businesses from potential adverse impacts of wireless communication facilities, to the extent permitted under law, and to attempt to preserve the visual character of established communities and the natural beauty of the landscape.
- (7) Minimize safety hazards and avoid potential damage to adjacent properties through proper locational, engineering and operational requirements.
- (8) Minimize adverse visual and aesthetic impacts of wireless telecommunication facilities to the maximum extent practicable through careful design, siting, landscaping, screening and innovative camouflaging techniques.
- (9) Protect the physical appearance of the Town and preserve its scenic and natural beauty.
- (10) Protect the public health, safety and welfare.
- (11) Protect property values of the community.
- (12) Minimize the impact of such facilities on residential properties.

- (13) Encourage the siting of wireless telecommunication services facilities on properties and areas which are not used exclusively for residential purposes.
- (14) Protect, to the maximum extent practicable, aesthetic qualities, the open space character of the Town of Bedford, the property values of the community, the health and safety of citizens and a citizen's ability to receive communication signals without interference from other communication providers, while not unreasonably limiting competition among communication providers.

F. Fees

As per FCC 18-133: The local law cannot operate as a prohibition or effective prohibition within the meaning of Sections 253 and 332. The particular standard that governs the fees and charges that violate Sections 253 and 332 when it comes to the Small Wireless Facilities, fees are only permitted to the extent that they are nondiscriminatory and represent a reasonable approximation of the locality's reasonable costs.

1. Single up-front/non-recurring application fee for up to five Small Wireless Facilities: \$500 and \$100 for each additional wireless facility in a single application.
2. Co-location on a permitted wireless facility:\$200
3. New pole, not a collocation: \$1,000
4. Small Wireless Facility: \$270 per year
5. ROW access fee: \$270 per year
6. Attachment to municipally-owned structure (not streetlights) in the ROW: \$270 per year
7. Placement on town-owned streetlights, other than ornamental. The maximum contract is ten (10) years and the annual fee is \$500 per small cell per pole.

G. Applicability of regulations.

- (1) No telecommunications facility shall hereafter be used, erected, moved, reconstructed, changed or altered, and no existing structure shall be modified to serve as a telecommunications facility, except after demonstration of conformity with these regulations and issuance of a zoning permit and/or site plan approval pursuant to this chapter.
- (2) Where these regulations conflict with other laws and regulations of the Town of Queensbury, the more restrictive shall apply, except for telecommunication facility height restrictions, which are governed by these standards.

H. Administrative review of applications for shared use of existing towers.

At all times, co-location or use of existing telecommunication facilities shall be preferred to shared use of other existing tall structures or construction of new telecommunication facilities. Applications involving only erection of additional antennas and related equipment on an existing telecommunications facility shall not be subject to site plan review or a public hearing, provided that the application complies with the terms and conditions described below. For purposes of this Subsection E, "existing telecommunications facility" or "existing telecommunication facility" shall mean a telecommunications facility in existence at the time an application for co-location is submitted to the Zoning Administrator.

- (1) Application. An applicant proposing to share use of an existing telecommunications telecommunication facility shall submit the following to the Zoning Administrator:
 - (a) A complete site plan review application.
 - (b) A completed visual environmental assessment form addendum (6 NYCRR 617.20, Appendix B).
 - (c) Documentation of intent from the owner of the existing telecommunication facility to allow shared use.
 - (d) An engineer's report certifying that the proposed collocation will not

diminish the structural integrity and safety of the existing tower or explaining what modifications, if any, would be required in order to certify to the above.

- (e) A copy of the Federal Communications Commission (FCC) license for operation of the new equipment.
 - (f) Propagation mapping.
 - (g) Photosimulation figures.
 - (h) An application fee in the amount of \$500.
- (2) Review. Upon receipt of a complete application, the Zoning Administrator shall promptly forward a copy of the engineer's report to the Town consulting engineer and shall review the application to determine if the proposal complies with the following terms and conditions:
- (a) The existing telecommunication facility shall be in compliance with any and all approvals previously granted.
 - (b) The proposed collocation shall not increase the height of the existing telecommunication facility.
 - (c) The proposed collocation shall not cause any portion of the resulting structure to extend into a required setback.
 - (d) If the engineer's report submitted as part of the application found that the proposed collocation could diminish the structural safety of the existing telecommunication facility, the applicant shall submit a revised proposal which includes the modifications described in the engineer's report.
 - (e) The proposed collocation shall not involve construction of any additional roads or parking, widening of existing roads or expansion of existing parking.

(3) If the Zoning Administrator finds that the application demonstrates compliance with the standards listed above and the Town consulting engineer either agrees with the finding of the engineer's report that the proposed collocation will not diminish the safety of the existing telecommunication facility or determines that the revised proposal includes the required modifications described by the engineer's report, then the Zoning Administrator shall approve the proposal and issue a zoning permit. If the Zoning Administrator finds that the application does not demonstrate compliance or if the Town consulting engineer disagrees with the finding of the engineer's report or determines that the modifications described in the engineer's report are not included in the revised proposal, then the Zoning Administrator shall notify the applicant of the deficiency. The applicant may then submit a revised proposal or submit the proposal to the Planning Board for site plan review as described in Subsections **F** and **G** below for shared use of an existing tall structure.

I. Site plan review. Site plan review pursuant to Article 9, Site Plan Review, of this chapter shall be required for placement of any telecommunication facility in or on an existing tall structure other than an existing telecommunications tower and for any construction of a new tower.

(1) Site plan. In addition to the requirements of Article 9, Site Plan Review, the following shall apply:

(a) General requirements. All site plan applications shall show all existing and proposed structures and improvements, including roads, and shall include grading plans for new facilities and roads. The site plan shall also include documentation of the proposed intent and capacity of use as well as a justification for the height of any telecommunication facility or antenna and justification for any land or vegetation clearing required.

(b) Visual impact assessment. All site plan applications, whether involving location on an existing tall structure or construction of a new telecommunication facility, shall include a visual impact assessment. This

assessment shall include:

- [1] 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 and state and local parks.
- [2] Assessment of visual impact of the facility/structure designs and color schemes.
- [3] Assessment of visual impact of the facility/structure, accessory buildings and overhead utility lines from abutting properties and streets.
- [4] A completed visual environmental assessment form addendum (6 NYCRR 617.20, Appendix B).

(c) Landscaping plan.

- [1] All site plan applications shall include a plan illustrating the size, type, placement and quantity of existing vegetation to remain as well as vegetation to be added. The final landscaping plan will become part of the approved site plan. All new plantings shall be planted by a date specified by the Planning Board.
- [2] Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to site plan approval. Clear-cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- [3] The landscaping plan shall include deciduous or evergreen tree plantings which may be required to screen portions of the tower from nearby residential property as well as from public sites

known to include important views or vistas. Where the site abuts residential or public property, including streets, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

- (2) In addition to any fees provided for by §179-9-060 of this chapter, the applicant shall be required to pay any fees or costs incurred by the Planning Board for legal, engineering and/or technical review, provided that the fees or costs reflect the actual costs to the Planning Board.

J. Standards for placement. New or modified antennas or telecommunications facilities shall be placed according to the following priority: first, collocation on an existing telecommunication facility; second, placement of antennas or other telecommunications equipment in or on an existing tall structure located on a lot within the areas listed in Subsection C above; third, placement in or on an existing tall structure not located within the areas listed in Subsection C above; fourth, placement of a new telecommunication facility on a lot where a telecommunications facility already exists; and fifth, placement of a new telecommunication facility on a lot within the areas listed in Subsection C above. Where shared use of existing telecommunication facilities or structures is not proposed, the applicant must provide documentation of the inability to utilize an existing telecommunication facility or structure.

- (1) Co-location on existing telecommunications facilities. Co-location of telecommunications equipment on existing telecommunications facilities shall be the preferred placement mode and may be reviewed pursuant to the administrative review procedure set forth in Subsection F above. At the option of the applicant, an application for co-location on an existing telecommunications facility may be reviewed as a shared use of an existing tall structure as provided in Subsection

G(2) below.

- (2) Shared use of existing tall structures. At all times, shared use of existing tall structures (for example, municipal water towers, multistory buildings) shall be preferred to the construction of new telecommunication facilities. In addition to the requirements of Subsection **G** above, an applicant proposing to share use of an existing tall structure shall be required to submit:
 - (a) A complete site plan review application.
 - (b) Documentation of intent from the owner of the existing facility to allow shared use.
 - (c) An engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure or explaining what modifications, if any, would be required in order to certify to the above.
 - (d) A copy of the Federal Communications Commission (FCC) license for operation of the new equipment.
- (3) New telecommunications facilities on lots already containing a telecommunication facility. Construction of a new telecommunications facility on a lot already containing a telecommunications facility shall be given third priority after co-location on an existing telecommunication facility and shared use of an existing tall structure. The Planning Board may consider a new telecommunications facility on a lot already containing a telecommunications facility when:
 - (a) The applicant documents that co-location on an existing telecommunications facility or shared use of an existing tall structure is not practical.

[1] The applicant shall submit a report locating and inventorying all existing tall structures and existing or approved

telecommunications facilities within a reasonable distance of the proposed site. This distance shall be determined by the Planning Board in consultation with the applicant.

[2] The applicant shall document good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved telecommunications facility. Such documentation shall include written requests for shared use, expenses for shared use and an explanation of the physical, technical and/or financial reasons why shared usage is not practical in each case.

(b) The applicant submits a copy of the Federal Communications Commission (FCC) license for operation of the new equipment.

(4) New telecommunications facilities on lots not already containing a facility. Construction of a new telecommunications facility on a lot not already containing a telecommunications facility shall be given fourth priority after co-location on existing facilities, shared use of existing tall structures and construction of a facility on a lot already containing a facility. The Planning Board may consider a new telecommunications facility on a lot not already containing a telecommunications facility when:

(a) The applicant documents that co-location on an existing telecommunications facility, shared use of an existing tall structure and locating the facility on a lot already having a telecommunications facility are not practical.

[1] The applicant shall submit a report locating and inventorying all existing tall structures and existing or approved telecommunications facilities within a reasonable distance of the proposed site. This distance shall be determined by the Planning Board in consultation with the applicant.

[2] The applicant shall document good faith efforts to secure shared

use from the owner of each existing tall structure, existing or approved telecommunications facility and lot already containing a telecommunications facility. Such documentation shall include written requests to each owner, estimated expenses and an explanation of the physical, technical and/or financial reasons why co-location on an existing telecommunications facility, shared use of an existing tall structure or location on a lot already containing a facility is not practical in each case.

- (b) The applicant submits a copy of the Federal Communications Commission (FCC) license for operation of the new equipment.

K. Setbacks. Telecommunications facilities and antennas shall comply with all existing setbacks within the affected zone. Additional setbacks may be required by the Planning Board to contain on-site substantially all ice-fall or debris from tower failure and/or to preserve the privacy of adjoining residential and public property. Setbacks shall apply to all telecommunication facility parts, including guy wire anchors, and to any accessory facilities.

L. Access and parking. A road and parking shall be provided to assure adequate emergency and services access. Maximum use of existing roads, public or private, shall be made. Road construction shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top 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.

M. New telecommunications facility design. Alternative designs shall be considered for all new telecommunications facilities, including lattice and single-pole structures. The design of all proposed new telecommunications facilities shall comply with the following:

- (1) Any new telecommunication facility shall be designed to accommodate future shared use by other telecommunications providers.

- (2) The maximum height of any new facility shall not exceed that which is necessary to provide service.
 - (3) The Board may request a review of the application by a qualified engineer in order to evaluate the need for and the design of any new telecommunication facility.
 - (4) Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.
 - (5) No portion of any telecommunication facility or accessory structure shall be used for a sign or other advertising purpose, including but not limited to company name, phone numbers, banners and streamers.
 - (6) Telecommunication facilities shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green, black or similar colors designed to blend into the natural surroundings below the surrounding treeline unless other standards are required by the FAA. Telecommunication facilities should be designed and sited so as to avoid application of FAA lighting and painting requirements whenever possible.
- N. All telecommunication facilities and accessory facilities shall be sited to have the least practical adverse visual effect on the environment.
- O. Authority to impose conditions. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunications telecommunication facility site plan.
- P. Removal upon abandonment. The applicant shall submit to the Planning Board a letter of intent committing the owner of a telecommunications facility and his/her successors in interest to notify the Zoning Administrator within 30 days of the discontinuance of use of the telecommunication facility affixed to a tower, facility or other structure. This letter shall be filed with the Zoning Administrator prior to issuance of a building permit

(assuming the application is approved according to this section). Obsolete or unused telecommunication facilities and accessory structures shall be removed from any site within four months of such notification. Failure to notify and/or to remove the obsolete telecommunication facilities accessory structure in accordance with these regulations shall be a violation of this chapter and shall be punishable according to Article 17, Enforcement.

Q. Intermunicipal notification for new telecommunication facilities. In order to keep neighboring municipalities informed and to facilitate the possibility of directing that an existing telecommunications-facility or existing tall structure or lot containing an existing telecommunications facility in a neighboring municipality be considered for shared use and to assist in the continued development of County 911 services, the Board shall require that:

- (1) An applicant who proposes a new telecommunications facilities shall notify in writing the legislative body of each municipality that borders the Town of Queensbury and the Director of Warren County Emergency Services. Notification shall include the exact location of the proposed tower and a general description of the project, including but not limited to the height of the tower and its capacity for future shared use.
- (2) An applicant who proposes a new telecommunications tower within the Adirondack Park shall notify in writing the Adirondack Park Agency. Notification shall include the exact location of the proposed telecommunication facilities and a general description of the project, including but not limited to the height of the telecommunication facility and its capacity for future shared use.
- (3) Documentation of this notification shall be submitted to the Planning Board at the time of application.

R. Public hearing and notification of nearby landowners. Except for applications for co-location on an existing telecommunications tower reviewed pursuant to Subsection **F** above, a public hearing shall be held for all applications for location of a

telecommunications facilities. The Town shall be required to mail notice of the public hearing directly to all landowners whose property is located within 500 feet of the property line of the parcel on which a tower or antenna is proposed. Notice shall also be mailed to the administrator of any state or federal parklands from which the proposed tower or antenna would be visible if constructed. Notification, in all cases, shall be made by certified mail. Documentation of this notification shall be submitted to the Board prior to the public hearing.

- S. Maintenance and/or escrow account. Prior to approval of any application, the Planning Board, at its sole discretion, may require the applicant and/or the owner to establish a maintenance and/or escrow account or bond in an amount sufficient to cover the technical review, installation, maintenance, construction and removal of the proposed telecommunications facility or antenna during its lifetime. The amount required shall be determined at the sole discretion of the Board, based upon the unique characteristics of the telecommunications facilities and the site. The applicant and/or owner shall cooperate with the Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application. Cost estimates may be reviewed by the Town consulting engineer at the Planning Board's discretion.

Section 3. Severability – The invalidity of any clause, sentence, paragraph or provision of this Local Law shall not invalidate any other clause, sentence, paragraph or part thereof.

Section 4. Repealer – All Local Laws or Ordinances or parts of Local Laws or Ordinances in conflict with any part of this Local Law are hereby repealed. As stated in Section 2, this Local Law is specifically intended to supersede the provisions of the current Town of Queensbury Chapter 140.

Section 5. Effective Date – This Local Law shall take effect upon filing in the office of the New York State Secretary of State or as otherwise provided by law.