

Town of Otego

A Local Law Regulating Telecommunications Facilities

LOCAL LAW #2 OF 2000

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A. LEGISLATIVE INTENT

The Town of Otego recognizes the increased demand for wireless communications transmitting facilities and the need for services they provide. Often these facilities require the construction of a communications tower. The intent of this Local law is to regulate telecommunications facilities, as herein defined, in order to achieve the following:

1. Promote the health, safety, and general welfare of the residents of the Town of Otego.
2. Protect the natural features and aesthetic character of the Town of Otego.
3. Provide standards for the safe provision of Telecommunication facilities consistent with applicable Federal and State regulations.
4. Protect the Town's interest in properly siting towers in a manner consistent with sound land use planning, while also allowing wireless services providers to meet their technological and service objectives.

B. DEFINITIONS

ACCESSORY STRUCTURE - An accessory facility or structure serving or being used in conjunction with a Telecommunication Facility or Tower and located on the same lot as Telecommunications facility or Tower. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.

ANTENNA - A system of electrical conductors that transmit or receive radio frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, PCSA and microwave communications.

CAMOUFLAGING - The construction of facilities to house or support telecommunications towers so that the towers blend readily with the landscape, neighborhood, and adjacent architectural features. Examples of camouflaging that could be used are: silo and barn, windmill, and simulated tree.

CO-LOCATED ANTENNAS - Telecommunications Facilities which utilize existing Towers, building or other structures for place of Antenna(s) and which do not require construction of a new Tower.

TELECOMMUNICATIONS FACILITIES - Towers and/or Antennas and Accessory Structures used in connection with the provision of cellular telephone service, personal communications services (PCS), paging services, radio and television broadcast services and similar broadcast services.

The following types of Telecommunication Facilities are not subject to the provisions of this Section:

1. Antennas used solely for residential household television and radio reception.
2. Satellite antennas measuring two (2) meters or less in diameter and located in commercial districts and satellite antennas one (1) meter or less in diameter, regardless of location.

TOWER - A structure designed to support Antennas. It includes, without limit, freestanding towers, guide towers, monopoles and similar structures which employ camouflage technology.

C. APPLICATION

1. No telecommunication facility shall hereafter be used, erected, moved, reconstructed, changed or altered except in conformity with these regulations.
2. No existing structure shall be modified to serve as a transmission, tower, communication tower, satellite dish, antenna, pole or other similar use unless in conformity with these regulations.
3. Where these regulations conflict with other laws and regulations of the town of Otego, the more restrictive shall apply.

D. APPROVALS REQUIRED FOR TELECOMMUNICATIONS FACILITIES

1. Communication Towers

New communication towers and accessory facilities/structures shall be permitted upon issuance of a special use permit by the Town Planning Board and in conformance with this local law.

2. Location Preferences for Higher-Intensity Use Districts

It is preferred by the Town of Otego that telecommunication facilities and accessory uses locate on higher intensity use property, provided there is a technologically feasible and available location.

Telecommunication facilities will be discouraged from locating in close proximity to residential land uses. The Town Planning Board is authorized to review, evaluate and determine the appropriateness of the location of a telecommunication facility, based upon a reasonable evaluation of its impact or effect upon the aesthetic character of the area immediately surrounding the facility site. In the event that the Planning Board determines that the location of the telecommunication facility will irreparably damage the surrounding neighborhood or area, the Board may choose, in its sole discretion, to request that the applicant investigate one or more alternate locations in order to avoid an irreparable damage or effect upon the adjacent area. In such event, the board may direct the applicant to investigate facility placement in another use classification area, even if such use classification

is ordinarily deemed to be a less preferred location or site for a telecommunication facility.

3. Co-located Antennas. Telecommunications Facilities comprised of Co-located Antennas utilizing existing buildings or structures other than Towers shall be permitted upon the Planning Board granting a special use permit and in accordance with the standards set forth in this local law.

4. Public Hearings. All applications for Telecommunications Facilities submitted to the Planning Board shall be considered at public noticed hearings.

E. GENERAL CRITERIA

No special use permit or renewal thereof or modification of a current Special Use Permit relating to a telecommunication facility shall be authorized by the Planning Board unless it finds that such Telecommunication Facility:

1. Is necessary to meet current or expected demands for services;
2. Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, and other federal agencies;
3. Is considered a public utility in the State of New York;
4. Is designed and constructed in a manner which minimizes visual impact to the extent practical.
5. Complies with all other requirements of this local law, unless expressly superceded herein;
6. Is the most appropriate site among those available within the technologically feasible area for the location of a Telecommunications Facility;

F. APPLICATION MATERIALS AND SUPPORTING DOCUMENTATION

1. All applications for a special use permit shall be by written application on forms provided by the Town of Otego.
2. Each application for a Telecommunications Facility shall submit an Environmental Assessment Form (Long Form) with Visual Addendum, and an analysis demonstrating that location of the Telecommunications Facility as proposed is necessary to meet the frequency use and spacing needs of the applicant's telecommunications system and to provide adequate service and coverage to the intended area. The Planning Board may require submission of a more detailed visual analysis based on the results of the visual EAF.

3. Each applicant shall submit a site plan prepared to scale and in sufficient detail and accuracy showing at a minimum:
 - (a) The exact location of the proposed Telecommunication Facility and/or Tower together with any guy wires and anchors, if applicable;
 - (b) The maximum height of the proposed Telecommunication Facility and/or Tower;
 - (c) Detail of Tower type (monopole, guyed free-standing or other);
 - (d) The location, type and intensity of any lighting on the Tower;
 - (e) Property boundaries and names of adjacent land owners within 500 feet of the parcel on which the tower is located.
 - (f) Proof of the landowners consent if the applicant does not own the property;
 - (g) The location of all structures on the property and all structures on any adjacent property within ten (10) feet of the property lines, together with the distance of these structures to the communications tower.
 - (h) The location, nature and extent of any proposed fencing, landscaping and/or screen; and
 - (i) The location and nature of proposed utility easements and access road, if applicable.
4. The applicant shall in writing identify the location of any additional sites that they are or will be considering or reviewing for Telecommunication Facilities and/or Towers in the Town of Otego and all adjacent Towns, for a period of two (2) years from date of application and must be updated annually.
5. Each applicant shall provide an inventory report as described in the following Section G (2)(a).
6. All applicants applying for Telecommunications Facilities agree to reimburse the Town for consultants and/or Specialists to assist in the applications.
7. All applicants must certify that transmission from their Telecommunication Facility will not interfere with existing signals such as household television and radio, etc.

G. ADDITIONAL REQUIREMENTS AND STANDARDS

The following criteria and additional requirements shall apply to each application for a Telecommunications Facility:

1. Dimensional Standards

- a. **Setbacks.** All new towers shall be set back from all adjacent property lines a sufficient distance to safeguard the general public and/or adjacent property. In the absence of any evidence supporting a greater or lesser setback distance, a setback of the Tower

from any adjacent property line equal to the height of the tower plus fifty (50) feet shall be deemed adequate. In no case shall a tower be located closer than 1000 feet to a residential dwelling located upon any other parcel.

Accessory structures and guy anchors must comply with the minimum set back requirements of the underlying district.

- b. All telecommunication facilities shall be located on a single parcel. A lot leased or owned for the purpose of construction of a tower as part of a telecommunications facility shall not result in the creation of a non-conforming lot.

2. Co-location

- a. The shared use of existing Telecommunications Facilities shall be preferred to the construction of new Facilities. Additionally, where such shared use is unavailable, location of an antenna on pre-existing structures shall be considered. Any special permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate within (share) an existing Telecommunication Facility or upon an existing structure. Copies of written requests and responses for shared use shall be provided. The application shall also include an adequate inventory report specifying existing Telecommunication Facility sites and structures exceeding seventy-five percent (75%) of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to new construction.
- b. The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on existing Telecommunications Facilities sites or other structures in the inventory due to one (1) or more of the following reasons:
 - (1) The planning equipment would exceed the structural capacity of existing and approved Telecommunication Facilities or other structures, considering existing and planned use for those facilities;
 - (2) The planned equipment would cause radio frequency interference with other existing or planned equipment which cannot be reasonably prevented;
 - (3) Existing or approved Telecommunications Facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
 - (4) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structure;
 - (5) The property owner or owner of the existing Telecommunication Facility or other structure refuses to allow such co-location.
- c. The applicant must examine the feasibility of designing a proposed commercial communication tower to accommodate future demand for commercial broadcasting and reception facilities. The scope of this analysis shall be determined by the Town

Planning Board for special use permit approvals. This requirement may be waived, provided that the applicant demonstrates that the provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon:

- (1) The number of FCC licenses foreseeably available for the area;
- (2) The kind of tower site and structure proposed,
- (3) The number of existing and potential licenses without tower spaces/sites;
- (4) Available spaces on existing and approved towers, and;
- (5) Potential adverse visual impact by a tower designed for shared usage.

3. Lighting and Markings

- a. Towers shall not be artificially lighted and marked beyond the requirements of the Federal Aviation Administration (FAA).
- b. Notwithstanding the preceding paragraph, an applicant may be compelled to add FAA-style lighting and marking, if in the judgment of the Planning Board, such a requirement would be of direct benefit to public safety.

4. Appearance and Buffering

- a. The use of any portion of a telecommunications facility for signs, promotional or advertising purposes, including but not limited to company name, phone numbers, banners, streamers, and balloons is prohibited.
- b. The facility shall have the least practical visual effect on the environment, as determined by the Planning Board. Any tower that is not subject to FAA-markings shall otherwise;
 1. have a galvanized finish, or shall be painted gray or green below the tree line, as deemed appropriate by the Town Planning board, or;
 2. be disguised or camouflaged to blend in with the surroundings, to the extent that such alteration does not impair the ability of the facility to perform its designed function.
- c. Accessory structures shall maximize the use of building materials, colors, and textures designed to blend in with the natural surroundings.
- d. The Town Planning Board shall require that the facility have appropriate vegetative buffering around the fences of the tower base area, accessory structure and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, or public roads. Such screening shall include the maximum feasible retention of

existing vegetation.

5. Traffic Access and Safety

- a. A gated and locked road turnaround and two (2) parking spaces shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall at all times minimize ground disturbance and vegetation cutting and road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.
- b. All towers and guy anchors, if applicable, shall be enclosed by a fence not less than eight (8) feet in height or otherwise sufficiently secured to protect them from trespassing or vandalism. All such fenced areas shall be screened as provided in subsection C above.
- c. The applicant must comply with all applicable state and federal regulations including, but not limited to FAA and FCC regulations, and must submit written evidence of such compliance.
- d. Applicant shall in each instance provide a certification from a qualified, licensed engineer, certifying that the Tower or Telecommunications Facility meets structural safety standards.

6. Height

The applicant shall submit sufficient information to justify the proposed height of a tower as the minimum necessary to achieve its coverage objectives. In no event, however, shall any tower exceed a height of 199 feet above existing adjoining grade level. The applicant must also submit documentation justifying the height of any telecommunication tower and/or antenna. The maximum height of any tower with antenna shall not exceed a height which will require artificial lighting of any kind and nature in accordance with any town, county, state, and federal laws or regulations without first obtaining an area variance from the Zoning Board of Appeals.

H. REMOVAL OF OBSOLETE/UNUSED FACILITIES

The applicant shall agree, in writing, to remove the Tower or Antennas if the Telecommunications Facility becomes obsolete or ceases to be used for its intended purpose for six (6) months. Removal of such obsolete and/or unused Towers shall take place after six (6) months of cessation of use. Such agreement shall also include a commitment by the applicant to impose a similar obligation to remove any unused and/or obsolete Tower or Antennas upon any person subsequently securing rights to co-locate on the Tower or Telecommunication Facility.

I. EFFECTIVE DATE

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