

**LOCAL LAW NO 2 OF 2001  
OF THE TOWN OF SHELDON**

A Local Law of the Town of Sheldon regulating the location, construction and modification of Telecommunication Facilities in accordance with the guidelines of the Telecommunications Act of 1996 and other applicable Federal and New York State Law.

Be it enacted by the Town Board of the Town Sheldon as follows:

**1. TITLE**

This Local Law shall be known as the Telecommunication Facilities Law of the Town of Sheldon.

**2. LEGISLATION**

This Local Law shall read as follows:

**Chapter 100**

**TELECOMMUNICATIONS FACILITIES**

Section 100-1	Statutory authority; legislative intent.
Section 100-2	Definitions
Section 100-3	Permitted locations, approvals and bulk requirements
Section 100-4	Tower special permit and application.
Section 100-5	Telecommunications facility permit standards
Section 100-6	Exemptions
Section 100-7	Procedure
Section 100-8	Violations; penalties for offenses.

## General References

### Section 100-1. Statutory authority; legislative intent.

- A. 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 Sheldon, County of Wyo. and State of New York, has ordained and does hereby enact this chapter regulating and restricting the location, size and use of telecommunications facilities and their accessory structures in the Town of Sheldon.
- B. Legislative intent. The Town of Sheldon recognizes the increased demand for wireless communications transmitting facilities and the need for the services they provide. Often, these facilities require the construction of a communication tower and/or similar facilities. The intent of this chapter 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:
  - (1) Accommodating the need for telecommunications towers/antennas while regulating their location and number in the community.
  - (2) Minimizing adverse visual impacts of these towers/antennas through proper siting, design and screening.
  - (3) Preserving and enhancing the positive aesthetic qualities of the natural environment and current development in the Town of Sheldon.
  - (4) Providing for the health, safety and welfare of the community by avoiding potential damage or other negative impact to the adjacent properties from power failure, falling ice, etc. through proper siting and engineering.
  - (5) 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.

### Section 100-2 Definitions.

As used in this chapter, 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.

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

**TELECOMMUNICATIONS FACILITIES** – Towers and/or antennas and accessory structures together used in connection with the provisions 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, monopole and similar structures which do or which do not employ camouflage technology.

#### Section 100-3. Permitted locations, approvals and bulk requirements.

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

##### A. Collocated/existing structure antennas.

- (1) "Collocated/existing structure antennas" shall be defined as any antenna that is attached to an existing communications tower, smokestack, water tower or other existing structure, and shall be permitted in all zoning districts.
- (2) Approvals and bulk requirements. A collocated or existing structure antenna is permitted as a right 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 by 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 registered 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 not extend 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.

**B. Noncollocated/new structure antennas:**

- (1) A "noncollocated/new structure antenna shall be defined as an antenna that will not be mounted on an existing structure as defined above, or is higher than the existing structure on which it is mounted. Such is permitted in accordance with the requirements set forth in Section 100-3B(2) of this chapter.
- (2) Approvals and bulk requirements. No application for a noncollocated or new structure antenna shall be considered complete unless and until the applicant shall have submitted a report which establishes to the satisfaction of the Town Board the following:
  - (a) That the applicant is required to provide service to locations which it is not able to serve through existing facilities which are located either within or outside the town, showing the specific locations and/or areas the applicant is seeking to serve.
  - (b) The report shall set forth an inventory of existing facilities and/or structures, within or outside of the town, which might be utilized or modified in order to provide coverage to the locations the applicant is seeking to serve and include a report on the possibilities and opportunities for collocation as an alternative to a new site.

TOWN OF SHELDON

Schedule of fees for Telecommunication Facilities

Special Use Permit Pre-Application fee \_\_\_\_\_ \$50.00

Special Use Permit Completion fee \_\_\_\_\_ \$150.00

Tower Special Use Permit fee \_\_\_\_\_ \$2,000.00

Building Permit Fee:

First 100 ft. \$1,000.00

Next 100 ft.

(or part of) 600.00

Each 100 ft.

thereafter or

part of 400.00

Co-Location Application Fee \$1,000.00

Co-Location Building Permit fee \$1,000.00

The above fees were adopted by a separate motion January 8, 2001

- (c) The applicant must demonstrate that the proposed facility cannot be accommodated on any such existing facility or structure either within or outside of the Town due to one or more of the following reasons:
  - (1) The proposed equipment would not exceed the existing and reasonably potential structural capacity of existing facilities or structures within or outside of the town considering existing and planned use for those facilities or structures.
  - (2) The existing or proposed equipment would cause interference with other existing or proposed equipment which could not reasonably be mitigated or prevented.
  - (3) Said existing facilities or structures do not have space on which the proposed equipment can be placed so it can function effectively and reasonably, and/or the applicant has not been able, following good faith efforts, to reach an agreement with the owner(s) of such facilities or structures.
  - (4) Other reasons which make it impracticable to locate or place the proposed equipment on said facilities or structures.
- C. All other telecommunications facilities.
  - (1) In all zoning districts, new towers must be set back a minimum of 500 feet from all residential dwellings, schools and historic structures.
  - (2) Approvals and bulk requirements. For all new or replacement towers, a tower special permit shall be required. The tower must also be set back a minimum of 1 ½ times the height of the tower from all property lines and any existing buildings, except as set forth above. The Town Board may require an additional setback area in the case of guyed wires, taking into consideration the length of guyed wires and the location of ground anchors.
- D. All applications for telecommunications facilities in all zoning

districts shall be treated as a Type I action under the State Environmental Quality Review Act (SEQRA)

Section 100-4. Tower special permit and application.

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

- A. Content of application. All applicants for a tower special permit shall file a building permit application with Wyoming County and make a written application for special permit to the Town Board. Said application shall include:
- (1) A copy of the building permit application form and a letter from the applicant to be used as a tower permit application form. In addition to the requirements set forth herein, all applications shall be processed in accordance with requirements of Article VII of the Town Zoning Code generally applicable to special use permits other than the fact that the same shall be handled by the Town Board of the Town of Sheldon and not the Zoning Board of Appeals nor limited in duration, and in addition Section 274-b of the Town Law of the State of New York except that the Town Board shall be the authorized Lead Agency to process the Special Use Permit application. The application shall be accompanied by the payment of the tower special permit application fee, as established by the Town Board in the schedule of fees by Resolution and amended from time to time by the Town Board by Resolution. In addition to the tower special permit application fee, the applicant shall also be responsible for all reasonable costs incurred by the town in reviewing and analyzing any engineering or technical reports or studies submitted by the applicant relative to its application.
  - (2) A special permit application form, including a 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 A(4) and (5) of this section.
  - (3) A site plan in the form and content acceptable to the town, prepared to scale and in sufficient detail and accuracy. At a minimum, such site plan shall include:

- (a) The exact location of the proposed tower, together with guy wires and ground anchors, if applicable, and any accessory structures.
- (b) The maximum height of the proposed tower.
- (c) A detail of tower type (monopole, guyed, freestanding or other).
- (d) The color or colors of the tower.
- (e) The location, type and intensity of any lighting on the tower.
- (f) A survey showing the boundary of the property and a topographical map of the property with contour lines not exceeding five-foot intervals.
- (g) Proof of ownership of the land by the applicant or the landowners 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.)
- (h) 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.
- (i) Identification of adjacent landowners (for example a copy of the current tax map and printout from the Assessor's office).
- (j) 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.
- (k) The location and nature of proposed utility easements and access road, 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.



- (l) Building elevations of accessory structures or immediately adjacent buildings.
- (4) "Before" and "After" propagation studies prepared by a qualified Radio Frequency Engineer (signed and sealed by a Professional Engineer registered in the State of New York) demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.
- (5) Search ring analysis.
  - (a) A search ring analysis prepared by a qualified Radio Frequency Engineer (signed and sealed by a Professional Engineer registered 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.
  - (b) The applicant must be prepared to explain to the Planning Board and/or the Town Board how and why it selected the proposed site, discuss the availability (or lack of availability) of a suitable structure with the search ring which would have allowed for collocated antenna(s) and to what extent the applicant explored locating the proposed tower in a more desirable use district. Proof of correspondence with other telecommunications companies concerning collocation shall be part of this requirement.
- (6) The Planning Board and/or the 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 staff/advisory committees. Visual impact statements, line of sight drawings and visual simulations are mandatory for applications in residential and local business zoning districts.
- (7) For sites in close proximity to significant historical sites or important preservation/conservation areas, the town will require

additional site plan and tower special permit requirements. These requirements can include speciality designed towers, additional screening, greater set backs and improved landscaping. Sitting in these areas should be avoided to the maximum extent possible.

#### Section 100-5 Telecommunications facility permit standards.

The following criteria will be considered by the Town prior to the approval/denial of a request for a tower special permit. The criteria listed may be used as a basis to impose reasonable conditions on the applicant. All denials shall be in writing and supported by substantial evidence contained in a written record. Tower special permits are nonassignable and nontransferable.

##### A. Siting preferences.

(1) The town may express a preference for an alternative site(s) and/or that the proposed telecommunications facility be located in a higher-intensity use district or on 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 zoning districts/property, is as follows:

- (a) Property with an existing structure suitable for collocation.
  - (b) Municipal or government owned property.
  - (c) Business or Industrial Use Zoning Districts of the Town and preferably which are located in the area of the Maxon Road with the boundary of Humphrey Road; south boundary of Centerline and north to the Bennington Town Line and Minkle Road at Route 77.
  - (d) Sites which are in close proximity to significant historic sites and/or important preservation/conservation areas.
- (2) Any request by the town for information or technical analysis on a preferred alternate site shall be provided by the applicant at its sole cost and shall not unreasonably delay the application.

##### B. Aesthetics. Telecommunications facilities shall be located and buffered to the maximum extent which is practical and technology feasible to help ensure compatibility with the surrounding land uses. In order to

minimize any adverse aesthetic effect on neighboring residences to the extent possible, the Planning Board and/or the Town Board may impose reasonable conditions on the applicant, including but not limited to the following:

- (1) Tower height and design are matters of primary public concern. The Board 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 Board may impose reasonable restrictions and/or conditions on height. For example, the Board may reasonably determine that adverse impact upon the community will be best mitigated by requiring the applicant to construct multiple towers of lower height at several different locations to meet the applicant's demonstrated service coverage requirements or that the tower height is reduced in the future if the applicant is unable to demonstrate a continuing need for the approved height in light of changes in the applicant's service coverage needs or technological advances.
- (2) The Board may require reasonable landscaping consisting of trees or shrubs to screen the base of the tower and/or 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.
- (3) The Board may 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 disturbance. However, such request shall not unreasonably delay the application.
- (4) The type of finish, color and lighting shall be subject to town and/or Federal Aviation Administration (FAA) approval. The town may require lights to be shielded to minimize ground visual impact.
- (5) No tower shall contain any signs or advertising devices. Notwithstanding the foregoing, the Board may require appropriate signage indicating ownership of the facility and phone numbers to call in case of emergency.

- (6) The applicant must submit a copy of its policy regarding collocation on the proposed tower with other potential future applicants. Such policy should allow collocation under the following conditions:
  - (a) The new antenna(s) and equipment do not exceed structural loading requirements, interfere with town space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment.
  - (b) The party desiring to collocate has a similar policy of collocation for the applicant.
  - (c) The party desiring to collocate has a similar policy of collocation for the applicant.
- (7) 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.

C. Radio Frequency effect.

- (1) The Planning Board and/or the Town Board shall impose a condition on the applicant that the communication 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 that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.
- (2) Unless otherwise preempted by federal or state law, the telecommunications facility shall be inspected every two years at the applicant's expense for radio emissions, and a copy of the report shall be promptly delivered to the Building Inspector. Radio emission inspection shall be performed by a professional engineer licensed in New York State specializing in electrical engineering with expertise in radio communication facilities. 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 within 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 Building Inspector or pertinent town consultant that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.

D. Traffic, access and safety.

- (1) A road turnaround and one parking space shall be provided to assure adequate year-round emergency and service access. Maximum use of existing roads, public or private shall be made, the Use of public roadways or road rights-of way for the siting of a tower or antenna(s) accessory structures is prohibited.
- (2) 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.
- (3) 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.
- (4) All towers shall include anticlimbing devised for a minimum of 25 feet extending above ground level.

E. Removal of Tower.

- (1) The applicant shall agree to remove the tower if the telecommunications facility becomes obsolete or ceases to be used for its intended purpose for 12 consecutive months. The Planning Board and/or the Town Board shall require the applicant to provide an appropriate and adequate demolition bond for purposes of removing the telecommunications facility in case the applicant fails to do so as required above.
- (2) The sufficiency of the demolition bond shall be confirmed at least every five years by an analysis and report of the cost of removal

and property restoration to be performed by a professional engineer licensed by New York State, the cost of the same to be borne by the applicant. If said 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 applicant's receipt of such report.

F. Structural Safety.

- (1) During the application process and after construction of the tower, the applicant shall provide a certification from a qualified Professional Engineer licensed in the New York State certifying that the tower meets applicable New York State and ANSI Structural safety standards.
- (2) 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 Building Inspector. The structural inspection shall be performed by a Professional Engineer licensed by New York State specializing in structural engineering. The structural inspection report shall describe the structural integrity of the facility, maintenance issue and repairs need 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 Building Inspector. Upon the applicant's failure to do so, the permit may be revoked.

- G. Maintenance of telecommunication facility. All telecommunication facilities shall be maintained in good order and repair. The town may require reasonable records of such maintenance by kept and available for town review upon request.

Section 100-6 Exemptions.

- A. 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 shall be exempt.

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- C. Satellite antennas measuring two meters or less in diameter and located in commercial district and satellite antennas one meter or less in diameter regardless of location shall be except

#### Section 100-7 Procedure.

- A. In the event of any conflicts or inconsistencies between this chapter and any other local law, including the Zoning Law, this chapter is meant to control for telecommunication towers and similar facilities in the town unless otherwise specifically referenced in this chapter.
- B. In the event that there is a change in technology that alters the use of the telecommunication facilities sited pursuant to this chapter, the town reserves the right to require a new application to be submitted, which complies with the above requisites, from all owners of such telecommunication facilities.

#### Section 100-8 Violations; penalties for offenses.

- A. This chapter is adopted pursuant to the zoning and planning powers granted to the town under applicable law. In the event of any violation of this chapter or any permits issued hereunder, the town may seek enforcement under any available authority, including but not limited to Town Law Section 268.
- B. Any facility receiving a tower special permit or site plan approval that subsequently does not meet the requirements and/or conditions of that permit or approval shall have its permit or approval revoked, and the tower and other facilities shall be removed within 90 days of notification by the town.

#### 3. MISCELLANEOUS

- A. This Local Law shall be deemed to supersede any other ordinances and local laws to the extent inconsistent therewith.
- B. If any part of this Local Law shall be judicially declared to be invalid, void, unconstitutional, or unenforceable, all unaffected provisions hereof shall survive such declarations and this Local Law shall remain in full force and effect as if the invalidated portions had not been enacted.

- C. Nothing herein shall be deemed to be a waiver of restriction upon any rights and powers available to the Town of Sheldon to further regulate the subject matter of this Local Law.



TOWN OF SHELDON

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