

**TOWN OF LANSING COMMUNICATIONS TOWER LOCAL LAW**  
**TOWN OF LANSING, TOMPKINS COUNTY, NEW YORK**  
**LOCAL LAW NUMBER 7 of 2015**

The Town Board of the Town of Lansing, Tompkins County, New York, pursuant to a Resolution dated October 21, 2015, does hereby adopt and enact Local Law No. 7 of 2015, and thus be it enacted by the Town Board of the Town of Lansing as follows:

**ARTICLE I - LEGISLATIVE INTENT; PURPOSES; EFFECT.**

A. The Town of Lansing recognizes the increased demand for wireless communications and transmitting facilities and the need for the services they provide. Often these facilities require the construction of Towers and related Telecommunications Facilities. The intent of this local law is to protect the Town's interest in siting such Towers and related infrastructure in a manner consistent with sound land use planning by minimizing visual effects through careful design, siting, and vegetative screening. The Town seeks to avoid potential damage to adjacent properties from Tower failure or falling debris through engineering and the careful siting of Towers, while also maximizing use of any new or existing Tower and encouraging the use of existing buildings and structures to reduce the number of Towers needed, while also allowing wireless service providers to meet their technological and service objectives for the benefit of the public.

B. The purpose of this local law is to allow for telecommunications installations in accordance with applicable state and federal law. While acknowledging the demand for wireless communications, the Town recognizes that the small-scale residential and commercial districts, agricultural landscapes, and Cayuga Lake waterfront are primary community resources. The erection of Towers of unusual height or bulk within the Town in some locations may threaten the historic integrity, damage the aesthetic value, and reduce residents' opportunities to enjoy these resources.

C. The intent of this local law is to regulate the construction and siting of communications Towers in compliance with the Telecommunications Act of 1996 ("TCA") to achieve the following: (i) protection of the health, safety and general welfare of the residents of the Town of Lansing; (ii) to protect the aesthetic characteristics and historic features of the Town of Lansing; and (iii) to ensure that communications Towers planned for locations within the Town of Lansing are sited and constructed in a manner consistent with sound land use planning, the Town's comprehensive plan, and other adopted goals of the Town of Lansing. As well, Tower heights are particularly problematic from a public health and safety perspective in the Town of Lansing given the hilly terrain and the presence of an international airport.

D. This local law supersedes, repeals, and replaces the Town of Lansing Cellular Tower Ordinance, commonly known as Appendix II to the Lansing Land Use Ordinance, together and along with each other local law or ordinance which, by its purpose, is intended to regulate cellular or communications towers and facilities. In the event any other law or regulation may affect any Telecommunications Facility, then such law or regulation shall apply together with this local law, and any conflict shall be resolved by applying the most restrictive non-preempted, enforceable standard or requirement.

**ARTICLE II - DEFINITIONS.**

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

Telecommunications Facilities as set forth in and by this Local Law, and any requirements of any local laws or ordinance of the Town requiring otherwise are hereby expressly superseded.

TCA - The federal Telecommunications Act of 1996, as now exists and as hereafter amended, supplemented, or recodified. This includes all aspects of the TCA, including the codification of its provisions within Title 47 of the United States Code.

TELECOMMUNICATIONS FACILITIES - Towers, Antennae, and Accessory Structures used in connection with the provision of cellular telephone service, DAS, WAN, personal communications services (PCS), paging services, radio and television broadcast services, internet and data processing, SMS, and similar broadcast and communication services.

TOWER - A structure not intended for human habitation upon which Antennae are designed to be located or arrayed. It includes, without limit, freestanding Towers, latticework Towers, guyed Towers, monopoles, and other similar structures which may employ camouflage technology.

TOWN - The Town of Lansing, in Tompkins County, New York.

TOWN BOARD - The Town Board of the Town of Lansing.

### **ARTICLE III - RULES, REVIEW STANDARDS, AND APPROVALS REQUIRED FOR TELECOMMUNICATIONS FACILITIES; SPECIAL PERMITTING; SITE PLANNING; DOCUMENTATION REQUIRED.**

A. No Telecommunications Facilities shall hereafter be used, erected, modified, or reconstructed except after the granting of a Special Use Permit and Site Planning approval by the Lansing Planning Board and in conformity with the Town's Land Use Ordinance and the provisions of this local law. To the extent any other law or zoning requirement requires, or purports to require, that special permitting for Telecommunications Facilities requires approval or issuance thereof by the Town Board, such provisions are expressly hereby superseded and such power be and hereby is vested in the Planning Board.

B. No existing structure shall be modified to serve as a telecommunications or telecommunications-related Tower unless in conformity with this local law.

C. New Towers are and shall only be permitted in a RA, B2, or IR zoning district upon the issuance of a Special Use Permit and the granting of Site Plan approval by the Planning Board. Telecommunications Facilities and Towers are not permitted in R1, R2, R3, L1, and B1 zoned areas per the Town of Lansing Land Use Ordinance. These requirements are specifically intended to regulate Tower placement and not to preclude or regulate wireless and cellular services in the Town.

D. Not more than one communication Tower shall be permitted on any parcel of land.

E. Telecommunications Facilities under the exclusive control or ownership of a municipal corporation are exempt from subsection F. of this Article III, immediately below.

F. In reviewing any applications for any allowed or new Telecommunications Facilities or Tower(s), the Planning Board shall, at a minimum, require that the following application materials and

- Siting in mixed-use residential districts (R3 Zones).
- Siting in the town center area properties (B1 Zone and mapped surrounding areas).
- Siting in moderate density residential districts (R2 Zones).
- Siting in low density residential districts (R1 Zones).

The applicant shall provide an explanation as to how this provision was considered and applied in selecting a site and why a lower-preferred site was selected over a higher-preferred site (if a lower-preferred site was selected). "Small-site" refers, generally, to multiple antennae configurations and arrays that avoid the need for a large Tower, such as certain DAS systems or the utilization of telephone pole-mounted antennae.

3. Site Plan and Special Permit Applications. All Site Plans shall require the seal of a New York State licensed Professional Engineer, and all facilities shall meet applicable NYS code requirements, including the applicable safety and other requirements of the NFPA, ANSI, IEEE, and related national code agencies. A fully completed Special Permit Application and Site Plan prepared to scale in sufficient detail and accuracy shall be provided, and such Site Plan and related application shall show, at a minimum:

- a. The exact location of the proposed Tower, together with any guy wires and anchors, if applicable, and a side elevation of the Tower showing the proposed Antenna locations or arrays.
- b. The maximum height of the proposed Tower.
- c. A detail of Tower type (monopole, guyed, latticed, freestanding, or other) including any appendages, and further including design parameters and mapping for all sub-surface improvements.
- d. The location, type, and intensity of any lighting on the property, together with a description of all FAA or other lighting requirements, including verification of such description and disclosure by an appropriate qualified engineer, or from the FAA or other authority having jurisdiction, and including a reference to the statute, regulations, or design manuals (or similar authoritative source of such requirements) that shows what lighting requirements are required for the particular Telecommunications Facilities and Towers.
- e. Property boundaries and names of adjacent landowners.
- f. Proof of the landowner's consent if the applicant does not own the property and a map or other document delineating the scope of any lease or easement allowing or relating to the siting of any improvements or facilities, together with a depiction and description of the access provided to the site.
- g. The location of all other structures on the property and all structures on any adjacent property within 1,000 feet of the property lines, together with the distance from those structures to any proposed Tower.
- h. The location, nature and extent of any proposed fencing, landscaping, and screening, together with final grading plans for all facilities and roads, and further including planting

a waiver of this 200' limit is required or needed based upon applicable engineering, the need to meet any Colocation requirements of this local law, or to achieve required coverage. However, nothing herein shall require an approval merely because the telecommunications or coverage needs of the applicant are less expensively achieved by one single taller tower as opposed to multiple smaller Towers or the installation of Telecommunications Facilities in other elevated locations. In approving or rejecting such request for any additional height, the Planning Board may take into consideration any other factor it deems reasonable, including lighting requirements and location in relation to known hazards, such as the airport.

5. Colocation. The applicant must examine the feasibility of designing a proposed Tower to accommodate future demand for additional facilities and applicants are encouraged (and where allowed, required) to allow Colocation upon their Towers and provide their Towers for use by other providers and carriers at a reasonable fair market value cost or rate. All Towers shall, unless impractical or not possible due to engineering or other considerations, be designed for and allow at least two future colocators to emplace Telecommunications Facilities and Antennae upon the proposed Tower, and thus all engineering and load capacity data shall delineate the present and future design loading capabilities of the Tower design chosen, including static, wind, and snow loads. An applicant shall also be required to present an adequate report inventorying existing Towers and Telecommunications Facilities within a reasonable distance of the proposed site and outline opportunities for Colocation with such existing facilities and other preexisting structures as an alternative to new construction. If no such existing facilities or preexisting structures are viable, then the reasons therefor shall be delineated, explained, and clearly stated. The applicant shall be further required to submit a report demonstrating good faith efforts to secure Colocation with or upon existing Towers, as well as to document the capacity for future Colocation for the proposed Tower. Written requests for and responses relating to Colocation shall be provided to the Town. One or more of these requirements may be waived by the Planning Board if the applicant demonstrates that Colocation or future shared usage or Colocation upon a proposed Telecommunications Facility or Tower is not feasible and an unnecessary burden, based upon:

- a. The number of FCC licenses foreseeably available for the area.
- b. The number of existing and potential licensees or Colocators without Tower spaces or sites.
- c. Available spaces on existing and approved Towers.
- d. Potential adverse visual impacts of a Tower designed for Colocation.
- e. Colocation would exceed the structural capacity of such existing Tower and there is no reasonable manner by which the structural capacity of the existing Tower may be improved.
- f. Colocation would cause unavoidable radio frequency interference with other equipment or signals.
- g. The existing Tower or Telecommunications Facility owner refused to allow Colocation despite reasonable and diligent application, and the Colocation refusal is not an implied refusal due to a claim of a non-market-based, unfair, or steep price, or facility improvement or study costs as may be necessary to ensure safe Colocation, or similar fiscal factors.

high when planted and spaced not more than 20 feet apart for trees, and a lesser and species-specific appropriate amount for shrubs or hedges.

d. All trees, plantings, and landscaping shall be maintained and replaced if needed.

e. Existing on-site vegetation shall be preserved to the maximum extent possible.

f. The Planning Board may require that the Tower be designed and sited so as to avoid, if possible, application of FAA lighting and painting requirements, it being generally understood that Towers should not be artificially lighted except as required by the FAA, or when public safety so requires.

g. The Tower shall be of a non-reflective galvanized finish or painted matte grey unless otherwise required by the FAA, and Accessory Structures should maximize use of building materials, colors, and textures designed to blend with the natural surroundings including by the use of camouflaging, where appropriate.

h. All Towers and Accessory Structures shall be sited to have the least adverse visual effect on the environment, and having Towers camouflaged as to shape, appearance, or coloration is encouraged.

i. All communication cable and utilities, including water, gas, electric, telephony, fiber optic and data lines, and sewer leading to and away from any Telecommunications Facilities or Tower shall be installed underground.

10. NEIR. Certification that the NIER levels at the proposed site are within threshold levels adopted by the FCC.

11. RFI and General Compliance. Certification that the proposed Antenna(s) will not cause interference with existing communication devices, or existing radio, television, or telephone reception, and that the Tower and attachments meet all state and federal structural requirements for loads, wind, ice, fall down specifications, etc.

12. FCC Licensure. Applicant shall provide a copy of the applicant's FCC license and verification in a form reasonably required by the Town that the applicant has utility status from New York State and the Public Service Commission.

13. FCC Compliance Assurances. Verification that the proposed facility will comply with all applicable FCC rules and regulations, and the Town shall impose conditions on the applicant that: (i) the communications Antennas be operated only at FCC designated frequencies and power levels (and Environmental Protection Agency (EPA) technical exposure limits); (ii) the applicant an owner submit evidence upon approval, and periodically thereafter (but not less than triennially and at the same time as reports are due under Article IX hereof), demonstrating that the proposed use is in compliance with such standards. These requirements shall be enforced to the extent permissible under FCC rules, including those affecting cellular and PCS Towers based on the environmental effects of radio-frequency emissions.

Telecommunications Facilities from trespassing or vandalism. All security measures and devices shall be identified, including motion sensing lights, camera systems, lock boxes, and emergency notification systems.

17. Agricultural Data Statement and Notice of Intent. If required, an Agricultural Data Statement shall be submitted, and if the Tower or Telecommunication Facilities are located within, contiguous to, or within a specified distance of an Agricultural District mapped by Tompkins County and recognized by the State of New York, Department of Agriculture and Markets, then the applicant shall also be required to file a Notice of Intent and to supply the Town with all documents, communications, and information submitted, together with any replies received from, New York State or the Department of Agriculture and Markets.

18. Emergency Response Plan and Removal. The applicant shall submit any required emergency response plan, if requested by the Planning Board. Additionally, the applicant shall be required to identify the manner in or by which the obligation to remove the Tower or Telecommunications Facilities will be securitized, whether by letter of credit, bonding, escrow deposit or otherwise. Any such proposed form of security shall be subject to review and approval by the Town Board, and in all cases the applicant shall provide detailed calculations supporting the amount of removal costs to be secured, taking into account a reasonable rate of inflation over the proposed useful life of the project. Such calculations shall be sealed by an engineer licensed in New York State. In no case may any removal or related performance bond be issued upon, in conjunction with, or as secured or underwritten upon a direct or indirect indemnity agreement supplied by the applicant or the present or future owner of such Tower of Telecommunications Facility, or any lessor or user thereof. Additional requirements for bonding and removal obligations appear elsewhere in this local law.

19. Indemnity Agreement. The form of the proposed indemnity and hold harmless agreement shall be submitted for approval and the same shall be approved by the Town Board as to form and content.

20. Other. Within the scope of FCC rules and the TCA, the Planning Board shall have the authority to require appropriate camouflaging and to impose such other reasonable conditions and restrictions as are directly related or incidental to the proposed Telecommunications Facilities Special Use Permit or Site Plan, or to general public health, safety, or welfare issues implicated by such permit, plan, or application.

#### **ARTICLE IV – MODIFICATIONS OF EXISTING TOWERS AND FACILITIES.**

A. Modifications to existing Telecommunications Facilities are permitted and shall require a Special Use Permit upon application to the Planning Board.

B. The review shall be non-discretionary and ministerial and the Planning Board shall issue such Special Use Permit if the applicant meets the following criteria:

1. The proposed modification involves the Colocation of new transmission equipment, or the removal or replacement of transmission equipment.
2. The proposed modification does not substantially change the physical dimensions of any Tower or base station, and does not exceed the 200' height restrictions set forth in this local law, or such

B. As security for the performance of the requirements set forth above, the applicant shall, upon the granting of approval under this local law and prior to the installation of any Telecommunications Facilities, execute and file with the Town Clerk a bond or other form of security or undertaking which shall be approved as to form, manner of execution, and sufficiency for surety by the Town Board and Town Engineer. Any bond or guaranty shall be provide by or placed with a solvent surety corporation duly licensed in the State of New York. Such bond or undertaking shall be conditioned upon the faithful performance of the provisions of this local law, and in the event of default the bond or undertaking shall be forfeited to the Town, which shall be entitled to maintain an action thereon. The bond or undertaking shall remain in full force and effect until the removal of all Telecommunications Facilities, including the Tower, Antennas, and Accessory Structures, and all site restoration has been completed. The value of the bond shall be equal to 125% of the cost of demolition and restoration of the site, as determined by the Town Engineer, and no such decommissioning or removal bond shall be secured by an indemnity agreement with the applicant or any party affiliated with the applicant.

C. At least once every 3 years after any approval or permit is issued by the Town and concurrently with the certification or report required by Article IX in this Local law, the applicant or then future owner or operator of the Telecommunications Facility shall provide updated certified cost estimates for removal of all Telecommunications Facilities and all site restoration, and if the resulting 125% cost requirement shows that the exiting security or bond is monetarily insufficient, then the owner shall update such bond or undertaking, or see to its replacement or supplementation in an amount to equal such updated 125% cost number.

#### **ARTICLE VII - EMERGENCY SERVICE COLOCATION.**

All essential emergency services will be given access to obtain necessary space or service on the Tower at no cost (other than installation and maintenance). This provision shall be enforceable only to the maximum extent permitted by applicable law and in all cases this provision shall be presumed valid and the burden of proof shall be to establish the contrary by clear and convincing evidence.

#### **ARTICLE VIII - REIMBURSEMENT FOR EXPENSES.**

Each application shall include application fees, engineering review fees and legal fees, in the amount of \$1,000 or as outlined in (or updated by) the Town's Fee Schedules. The Town may also retain such technical consultants as it deems necessary to provide assistance in the review of the site location alternative analyses, the environmental review of the project, and any engineering reviews pertaining to building permits or structural designs, structural integrity, and the feasibility of any modifications or the carrying capacity of any Tower for Colocation of any Antennas or other appurtenances. The applicant shall bear the reasonable costs associated with such consultations, which costs shall be assessed as an additional application fee. In no case shall the total fees and charges payable by an applicant be more than 5% of the total project cost as determined for building permit fee assessment purposes, but SEQRA costs shall not count towards such 5% limit and shall be separately assessable pursuant to the Statutes and regulations of SEQRA.

#### **ARTICLE IX - TRIENNIAL REPORTING REQUIRED.**

The applicant or its successors or assigns shall file with the Town on the second day of January of the third year following approval of the Telecommunications Facility, and upon every third anniversary thereafter, a written report certifying that the applicant or its successors or assigns are complying with

A. The Town's Code Enforcement Officer is authorized to investigate any non-compliance (or complaints of such violation of non-compliance) with the requirements of this local law, to issue appearance tickets for any violation of this local law or any permit or approval requirements or conditions, to recommend the commencement of civil enforcement or related proceedings to the Town Board, and to order in writing the remedying of any condition or activity found to exist in, on, or about any Telecommunications Facility, Tower, building, structure, or premises in violation of this local law. Upon finding that any such violation exists, the Code Enforcement Officer may issue a Compliance Order, which Compliance Order shall comply with the requirements of Executive Law § 382 and served accordingly. The Person so served shall come into compliance with this local law within the specified period of time as set forth in the Compliance Order, and any failure to do so shall be a violation of this local law. Any failure to comply with the terms and requirements of this local law, or the requirements and conditions of any permit or approval issued hereunder, is hereby declared also declared to be a violation of this local law. All violations of this local law are hereby declared to be illegal and subject to civil penalties and criminal sanctions as herein set forth.

B. All provisions of New York law generally applicable to misdemeanors shall apply to any criminal proceeding brought under this local law, and each such misdemeanor shall be an unclassified misdemeanor. The following civil penalties and criminal fines and sanction shall apply violations of this Local Law:

1. **First Violation:** Any Person that violates any of the provisions of this Local Law shall be (i) guilty of an unclassified misdemeanor and subject to a fine of not more than \$1,500, or (ii) subject to a civil penalty of not more than \$2,500 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate offense for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect or refusal shall continue.

2. **Second Violation:** Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any other violation of this Local Law shall be deemed a second violation. Any Person that commits or permits any second violation shall be (i) guilty of an unclassified misdemeanor and subject to a fine of not more than \$2,500, or (ii) subject to a civil penalty of not more than \$5,000 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect, or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.

3. **Third and Subsequent Violations:** Any violation that is found to have occurred within 2 years of any prior civil or criminal determination of any second violation of this Local Law shall be deemed a third or subsequent violation, as applicable. Any Person who commits or permits a third or subsequent violation shall be (i) guilty of an unclassified misdemeanor and subject to a fine not more than \$5,000 and a period of incarceration not to exceed 60 days, or (ii) subject to a civil penalty of not more than \$10,000 to be recovered by the Town in a civil action. Every such Person shall be deemed guilty of a separate unclassified misdemeanor for each week that such violation, disobedience, omission, neglect or refusal shall continue. Similarly, a separate civil penalty shall apply and be assessable for each week that such violation, disobedience, omission, neglect, or refusal shall continue.



In the event any existing or hereafter adopted federal or state law restricts the ability of the Town to review or regulate any Telecommunications Facility or Tower, then the provisions hereof shall be read in harmony with such restrictions or limitations and applied to the maximum extent permitted under applicable law or in the face of preemption by a superior sovereign.

**ARTICLE XVI - EFFECTIVE DATE.**

This local law shall take effect immediately.