

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
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(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~XXXXXX~~
~~City~~ of Dunkirk
~~Town~~
~~XXXXXX~~

Local Law No. 3 of the year 1997

A local law entitled: Regulation of Telecommunications Facilities
(Insert Title)

located in the Town of Dunkirk

Be It enacted by the Town Board of the

(Name of Legislative Body)

~~XXXXXX~~
~~City~~ of Dunkirk as follows:
~~Town~~
~~XXXXXX~~

SECTION 1: LEGISLATIVE INTENT:

The Town of Dunkirk recognizes the increased demand for wireless communication 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 local law is to regulate the location, construction, and modification of these facilities in accordance with sound land use planning by:

1. Minimizing adverse visual effects of Towers and/or similar facilities through careful design, siting, and vegetative screening and/or buffering.
2. Avoiding potential damage to adjacent properties from Tower failure or falling debris through engineering and careful siting of Tower structures.
3. Maximizing use of any new and/or existing Tower or existing building and/or structure to reduce the number of Towers and/or similar facilities needed in the Town.
4. Providing for the general health, safety and welfare of the Town in and by the regulation of these facilities as such regulation is permitted under applicable Federal and/or State law.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

(1)

5. Accommodating and allowing wireless service providers to meet their service objectives insofar as can be accommodated consistent with these regulations and/or other applicable Federal or State law.

SECTION 2: DEFINITIONS:

- A. **ACCESSORY STRUCTURE** - A non-habitable accessory facility or structure serving or being used in conjunction with communications Tower and/or similar facility or antenna, and located on the same lot as the communications Tower or antenna. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.
- B. **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, personal communication services (PSC), and microwave communications.
- C. **CO-LOCATED ANTENNAS** - Telecommunications facilities which utilize existing Towers, buildings, or other structures for placement of antennas and do not require construction of a new Tower.
- D. **FALL DOWN ZONE** - The radius around a Tower within which all portions of the Tower and Antennas would fall in the event of a structural failure of the Tower.
- E. **TELECOMMUNICATION FACILITIES** - Towers and/or Antennas and accessory structures together used in connection with the provision of cellular telephone service, personal communication services (PCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.
- F. **TOWER** - A structure designed to support Antennas. It includes without limitation free-standing Towers, guyed Towers, monopoles, and similar structures which do, or do not, employ camouflage technology.

SECTION 3: TELECOMMUNICATION FACILITY PERMIT REQUIRED:

No Telecommunication Facility shall be sited, located, constructed, erected, or modified without the issuance of a permit as prescribed in this Local Law.

The Zoning Board of Appeals may waive any provision of this Local Law for Telecommunication Facilities whose total height above ground does not exceed 60 feet.

SECTION 4: ZONING DISTRICTS AND BULK REQUIREMENTS:

- A. Municipal or Government owned property, and Light Industry Zoned areas: Site plan application per Town of Dunkirk Zoning Ordinance Requirements and Section 5 of this Local Law. If the tower is to be set back in any of these districts less than the height of the proposed tower to any residential district then the application will require a Tower Special Permit per

Section 5 and site plan approval. All Towers shall be set back a minimum of 500 feet from any residential dwelling, school or historic structure.

B. Agricultural, Residential, Conservation, and Highway Commercial Zoning Districts: Site plan review and a Tower Special Permit as forth in Section 5.

The tower must be set back a minimum of the height of the tower from any residentially zoned property or any front yard line and be a minimum of 500 feet from any residential dwelling, school or historic structure.

Towers exceeding 175 feet in height shall be treated as Type I Actions under the State Environmental Quality Review Act (SEQRA).

Towers shall not be allowed on any other districts except as specifically set forth herein.

SECTION 5: GENERAL STANDARDS:

A. No permit or renewal thereof or modification of the conditions of a current permit relating to a Telecommunication Facility shall be authorized by the Zoning Board of Appeals unless it finds that such Telecommunication Facility

- (1) Is necessary to meet current or expected demands for the services supported by the Telecommunications Facility;
- (2) Conforms with all applicable regulations promulgated by the Federal Communications Commission and/or any other applicable State or Federal regulatory agency.
- (3) Is designed and constructed in a manner which minimizes its visual impact.
- (4) Complies with all other requirements of the Zoning Law of the Town.
- (5) Is the most appropriate site within the immediate area for the location of a Telecommunication Facility. It is preferred that Telecommunication Facilities be located on industrial, business, or municipal property and/or co-located.

All applicants are required to provide a report which establishes to the satisfaction of the Zoning Board of Appeals 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 of the Town, showing the specific locations and/or areas the applicant is seeking to serve.

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 applicant is seeking to serve and include a report on the possibilities and opportunities for a co-location as an alternative to a new site.

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 exceed the existing and reasonable 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 or owners of such facilities or structures.
4. Other reasons which make it impracticable to locate or place the proposed equipment on said facilities or structures.

SECTION 6: CO-LOCATED ANTENNAS PREFERRED:

The shared use of existing Telecommunication Facilities or other structures shall be preferred to the construction of new such facilities. Any application for a Telecommunication Facility Permit or renewal thereof or modification of the conditions of a current Telecommunication Facility Permit shall include proof that reasonable efforts have been made to co-locate with an existing Telecommunication Facility or upon an existing structure. The application shall include an adequate inventory report specifying existing Telecommunication Facility sites and structures of height exceeding 75% of the height of the proposed Tower within a one mile radius from the proposed site if the application is for cellular telephone or personal communication use, or a five mile radius for other services and for cellular telephone or personal communication use and outlining opportunities for shared use as an alternative to the proposed location. The application must demonstrate that the proposed Telecommunication Facility cannot be accommodated on all sites in the inventory due to one or more of the reasons set forth in the above Section 5.

SECTION 7: SPECIAL PERMIT OR TELECOMMUNICATION FACILITIES TOWERS/ANTENNAS:

A. All applicants for Special Use Permit for Telecommunication Facilities Towers and/or Antennas shall make a written application to the Zoning Board of Appeals of the Town. This application shall include

1. Tower Special Permit application form, supplied by the Town;

2. Long form Environmental Assessment form (EAF), including but not limited to a Visual EAF Addendum.

3. Applicable Fees;

4. Site plan in form and content acceptable to the Town, prepared to scale and in sufficient detail and accuracy, showing on a minimum:

- a) The exact location of the proposed Tower, together with guy wires, guy acres, if applicable.
- b) The maximum height of the proposed Tower;
- c) A detail of Tower type (monopole, guyed, free-standing, or other);
- d) The color or colors of the Tower;
- e) The location, type, and intensity of any lighting on the Tower;
- f) The property boundaries; (A copy of a property survey must also be provided.)
- g) Proof of the landowner's consent if the applicant will not own the property; (A copy of a lease agreement must also be provided if the applicant will not own the property.)
- h) The location of all 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) Names and addresses of adjacent land owners;
- j) The location, nature and extent of any proposed fencing, landscaping, or screening;
- k) The location and nature of proposed utility easements and/or access roads, if applicable;
- l) Building elevations of accessory structures or immediately adjacent buildings.

5. Before and after propagation studies prepared by a qualified radio frequency engineer demonstrating existing signal coverage contrasted with the proposed signal coverage resulting from the proposed Telecommunication Facility.

6. A search ring prepared by a qualified radio frequency engineer 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 area or cell. The applicant must be prepared to explain to the Board why it selected the proposed site, discuss the availability or lack of availability of a suitable site within the search ring, which would have allowed for co-located Antennas and to what the extent the applicant explored locating the proposed Tower in a more intensive use district. Correspondence with other Telecommunication companies concerning co-location is part of this requirement.
 7. The applicant must submit a copy of its policy regarding co-location of the proposed Tower with other potential applications. Such policy should allow co-location if new Antennas and/or equipment do not or will not exceed structural loading requirements, interfere with Tower space use, or pose any technical or radio frequency interference with existing equipment.
 8. A report prepared by a New York State licensed professional engineer, which in the case of a Tower describes its height and design, including a cross section of the structure, demonstrates the Towers compliance with applicable structural standards and describes the Towers capacity including the number and type of Antennas it can accommodate. In the case of an Antenna or Antennas mounted on an existing structure, the report shall indicate the existing structures suitability to accept the Antenna and proposed method of affixing the Antenna to the structure. Complete details of all fixtures and couplings and the precise point of attachment shall be indicated.
 9. An agreement by the applicant in writing to remove the Telecommunication Facility if such Facility becomes technically obsolete or ceases to be used for its originally intended purpose for 12 consecutive months.
 10. The applicant, at the time of obtaining a Special Use Permit, if one is obtained, must provide a financial security bond with the Town as assignee in an amount fixed by the Zoning Board of Appeals, but not less than \$100,000.00 (see Section 9-1).
 11. The Town reserves the right upon review of the application to request reasonable, additional, visual, and aesthetic information it deems appropriate on a case by case basis and as it may pertain to a residential zone, historic district, agricultural use, or other special situation.
- B. Upon receipt of the application materials as set forth in Section A above, the Zoning Board of Appeals shall refer the application to the Planning Board. The Planning Board shall review the site plan and recommend changes, if any, to the Zoning Board of Appeals. The Zoning Board of Appeals shall consider the application and approve or deny same in accordance with the procedures and standards set forth in this Local Law and in the Zoning Law.

C. The Zoning Board of Appeals shall determine the application for a Telecommunications Tower Special Use Permit in accordance with their requirements established for determining a Special Use Permit under the Town's Zoning Law and under this Local Law. Any and all grants of a Special Use Permit for a Telecommunications Facility under this Local Law shall be non-assignable and non-transferable and shall not run with the land, notwithstanding anything in the General Zoning Laws of the Town to the contrary.

SECTION 8: TELECOMMUNICATIONS FACILITIES SPECIAL USE PERMIT STANDARDS:

The following criteria will be considered by the Town prior to the approval/denial of a request for a Special Use Permit for a Telecommunications Facility. The criteria list that may be used as a basis to impose reasonable conditions upon the applicant:

A. **SITING PREFERENCES:** The Town may express a preference that the proposed Telecommunications Facility be located in a higher intensity use district or on higher intensity use property. As a general guideline, the Town's preference from most favorable to least favorable districts shall be as follows:

1. Property with existing structure suitable for co-location;
2. Municipal or government owned property;
3. Light Industrial;
4. Highway Commercial; and
5. Agricultural/Conservation and Residential.

B. **AESTHETICS:** Telecommunication Facilities shall be located and buffered to the maximum extent practicable and technologically feasible to help insure capability with surrounding land uses. In order to minimize any adverse aesthetic impact on neighboring residents to the extent possible, the Zoning Board of Appeals may impose conditions on the applicant, including the following:

1. Tower height, location and design are matters of primary public concern. The Town may require a monopole or guyed Tower instead of a free-standing Tower.
2. The Town may require reasonable landscaping consisting of trees or shrubs to screen the base of the Tower, and/or to screen the Tower to the extent possible from adjacent property. Existing on site trees and vegetation shall be preserved to the maximum extent possible.
3. All Telecommunications Facilities shall be separated from residential dwellings, schools, houses of worship, places of public assembly, and designated

historical sites and/or districts by the greater of 500 feet or 5 times the height of the Facility. The Zoning Board of Appeals may modify this condition if the Facility is attached to an existing structure or for other satisfactory reasons supported by expert testimony.

4. Towers shall be designed and sited so as to avoid whenever possible application of FAA lighting and painting requirements. The Towers shall not be artificially lighted except as required by the Federal Aviation Administration or the Town. The Towers shall be of a non-reflective finish, color subject to Town approval unless otherwise required by the FAA. Any lighting which may be required by the FAA shall not consist of strobe lights unless specifically mandated by FAA.

5. All Permits shall include a fall zone surrounding any support, which fall zone must have a radius of at least equal to the height of such support Tower and any Antenna attached thereto. The entire fall zone may not include public roads, must be on private property, either owned or leased by the applicant, or for which the applicant has obtained an easement. It may not contain any structure other than those associated with the Telecommunication Facilities and may not be located within any set back area established by this Local Law. If the Facility is attached to an existing structure, fall zone requirements may be modified by the Zoning Board of Appeals.

6. No Tower or device or Facility shall contain any signs or advertising. The Town may, however, require appropriate signage indicating ownership of the facility and telephone number to call in case of emergency.

7. Towers and auxiliary structures shall be surrounded by a fence or wall at least 8 feet in height of a design approved by the Board so as to make intrusion difficult. Barbed wire is not to be used in a residential area or on public property unless specifically permitted by the Board. There shall be no permanent climbing pegs within 15 feet of the ground on any Tower or facility.

8. All other uses ancillary to the Telecommunications Facility and associated equipment are prohibited unless otherwise permitted in zone.

9. The Town may impose as a condition on the applicant that the Antennas be operated only at FCC designated frequencies on power levels and/or EPA technical exposure limits and that the applicant provide competent documentation to support the maximum allowable frequencies, power levels, and exposure limits will not be exceeded.

SECTION 9: TELECOMMUNICATIONS FACILITIES MAINTENANCE:

All Telecommunications Facilities, both predating and otherwise, this Local Law shall fulfill the requirements of this section. The Town Code Enforcement Officer and/or Building Inspector is empowered to enforce these regulations.

1. The sufficiency of the bond for removal shall be confirmed at least every five (5) years by an analysis of the cost of removal and property restoration performed by a licensed New York State professional engineer with the results to be communicated to the Town. If the bond amount in force is insufficient to cover the cost of removal, it shall be immediately increased to cover such amount.
2. The Facility shall be inspected at least every two years for structural integrity by a New York State licensed professional engineer, and a copy of the inspection report submitted to the Town.
3. All Telecommunications Facilities shall be maintained in good order and repair and all such work shall comply with all applicable code requirement of any governmental body issuing such rules and/or regulations.
4. Any additional Antennas, reception or transmission devices or other similar receiving or transmitting device proposed for attachment to an existing facility shall require review in accordance with this Local Law. The intent of this requirement is to insure the structural integrity, visual aesthetic and land use compatibility of communication towers upon which additional Antennas, reception or transmission devices are to be installed.
5. No outside storage of vehicles, materials or waste shall be allowed except for the limited periods when the facility is undergoing construction, repair, or maintenance.

SECTION 10: EXEMPTIONS:

- A. Towers and Antennas may be repaired and maintained without restriction.
- B. Antennas used solely for residential household television and radio reception are exempt from the provisions of this Local Law, provided they do not exceed 30 feet in height.
- C. Other Antennas or devices exempt under FCC rule or regulation.

SECTION 11: VIOLATIONS/PENALTIES:

This Local Law is adopted pursuant to the zoning and planning powers granted to the Town under the Town Law of the State of New York and other applicable law, rule, and regulation. In the event of any violation of this Local Law or any permit issued hereunder, the Town may seek enforcement under any available authority, including but not limited to Town Law Section 268 as from time to time amended.

Any applicant upon receipt of a Special Use Permit for Telecommunication Facilities that substantially does not meet any of the requirements and/or conditions of that permit, shall have its permit revoked and the Telecommunications Facilities removed within ninety (90) days of notification by the Town of such violation.

SECTION 12: MISCELLANEOUS:

1. In the event of any conflicts or inconsistencies between this Local Law and any other Local Law of the Town Zoning Law or other Local Law, Zoning Ordinance, Rule or Regulation, this Local Law is meant to regulate Telecommunication Facilities and is not generally applicable unless otherwise specifically referenced in this Local Law.
2. The term Special Use Permit as used in this Local Law shall be deemed to be a Telecommunication Facilities Special Use Permit.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 3 of 19 27 of the ~~(County)(City)(Town)(Village)~~ of Dunkirk was duly passed by the Town Board on July 30 19 27, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on 19 , and was (approved)(not approved)(repassed after disapproval) by the and was deemed duly adopted on 19 , in accordance with the applicable provisions of law.
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on 19 , and was (approved)(not approved)(repassed after disapproval) by the on 19 . Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on 19 , in accordance with the applicable provisions of law.
(Name of Legislative Body)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. of 19 of the (County)(City)(Town)(Village) of was duly passed by the on 19 , and was (approved)(not approved)(repassed after disapproval) by the on 19 . Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of 19 , in accordance with the applicable provisions of law.
(Elective Chief Executive Officer*)

* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____, having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____, of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the city of said county as a unit and a majority of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph _____, above.



Mary Jane Wills

Clerk of the County Legislative Body, City/Town or Village Clerk
or officer designated by local legislative body
Mary Jane Wills

(Seal)

Date: July 31, 1997

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF CHAUTAQUA

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Albert W. Foley

Signature Albert W. Foley

Title Town Attorney

~~XXXXXX~~
~~XXXX~~ of Dunkirk
Town
~~XXXXXX~~

Date: July 31, 1997