

Local Law 1- 2011 Telecommunication Tower Code  
COMMUNICATION TOWER CODE

The Town of Brant 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 communications tower and/or similar facilities. The intent of this chapter is to regulate the location, construction and modification of telecommunications facilities in accordance with the guidelines of the Telecommunications Act of 1996 and other applicable laws by:

**Article 1 Intent.**

- A. Accommodating the need for telecommunications towers/antennas while regulating their location and number in the community.
- B. Minimizing adverse visual impacts of these towers/antennas through proper siting, design and screening.
- C. Preserving and enhancing the positive aesthetic qualities of the natural environment and current development in the Town of Brant.
- D. Providing for the health, safety and welfare of the community by avoiding potential damage or other negative impact to adjacent properties from tower failure, falling ice, etc., through proper siting and engineering.
- E. 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.

**Article 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 transmits or receives frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, digital and/or data communications, personal wireless communication services (PWS) and microwave communications.

**TELECOMMUNICATIONS FACILITY**

One or more towers, foundations, supporting devices, and/or antennas and accessory structures used in connection with the provision of cellular telephone service, personal communications services, digital and/or data communication services, paging services, radio and television broadcast services, switches and/or routers and similar broadcast services (also referred to as "facilities" or equipment").

**TOWER**

A structure designed or used to support antennas and/or satellite dishes. It includes, without limit, freestanding towers, guyed towers, monopoles and similar structures which do or which do not employ camouflage technology.

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**Article 3 -Tower special permit and application materials.**

- A. The Town Board shall be the issuing agency for all tower special permits and shall also be the lead agency for SEQRA.
- B. All applicants for a tower special permit shall file a building permit application and make written application to the Town Board, through the Code Enforcement Officer. This application shall include:
- (1) A 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 the requirements of Chapter (ref) Zoning, § (ref), generally applicable to special permits. 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. 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. In no event shall the applicant's responsibility be greater than the actual costs of such services. Periodic monetary deposits may be required from the applicant, on account with the Town, from which the Town may make payments to such consultants for services rendered, after approval of consultants' vouchers by the Town Board.
  - (2) Site plan application forms, including long-form EAF. The site plan application shall not be deemed complete unless accompanied by the propagation studies and search ring analysis described in Subsection (ref) and (ref) of this section.
  - (3) A site plan, in form and content acceptable to the Town, complying with the requirements of Chapter (ref), Zoning, § (ref), prepared to scale and in sufficient detail and accuracy. In addition to the requirements of Chapter (ref), Zoning, § (ref) said site plan shall also show:
    - (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 landowner's consent if the applicant will not own the property. (A copy of the final lease agreement 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 Assessors' 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 minimally maintained in order to ensure access by emergency vehicles on a year-round basis.

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- (1) 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 certified 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) A plan showing the approximate location of all facilities the applicant has erected, or collocated on, or upon which it plans to erect or collocate on in the Town of Brant.
  - (6) A search ring analysis prepared by a qualified radio frequency engineer (signed and sealed by a certified 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.
- C. The applicant shall 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 within 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 co-location may be part of this requirement, as may technical information, documentation and data to demonstrate that reasonable efforts have been made to fit within established grid systems or facilities, preexisting or already operating within the Town of Brant.
- D. 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 Planning Board/Town Board. Visual impact statements, line-of-sight drawings and visual simulations are mandatory for applications in residential and local business zoning districts
- E. 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 specially designed towers, additional screening, greater setbacks and improved landscaping. Siting in these areas should be avoided to the maximum extent possible.
- F. Tower special permits shall be renewed on an annual basis, provided applicable permit conditions are satisfied. Each year, the owner shall supply any required reports or documents and the renewal fee. The Code Enforcement Officer shall report to the Town Board any complaints or problems that have occurred during the previous year.

**Article 4 - Location; permits; bulk requirements.**

- A. No telecommunications facility shall be sited, located, constructed, erected or modified without the issuance of a building permit and such other permits or approvals as are prescribed in this chapter.
- B. All applications shall be processed with due regard for lighting and safety requirements of state or local agencies and/or emergency services (such as Mercy Flight, Erie County Sheriff's Department, etc.).

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C. Collocated/existing structure antennas.

- (1) An antenna that is to be attached to an existing communications tower, smoke stack, water tower or other existing structure is permitted in all zoning districts.
- (2) Approvals and bulk requirements.
  - (a) The antenna is permitted as of right upon issuance of a building permit. The building permit application will include the following:

[1] A structural analysis/report, certified by a New York State licensed professional engineer or architect, verifying the ability of the structure to safely support the antenna.

[2] 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.

(b) The height of the new antenna shall not extend above the height of the existing structure by more than 50 feet.

(c) 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.

- (3) When the telecommunication facilities owner applies to renew the special use permit, a complete inventory of all existing facilities currently collocated upon the subject tower shall be submitted. Inventory shall include, but not be limited to: a description of the collocated facilities, a plan showing the location of the collocated facilities upon the tower, and the owner of the collocated facilities.

D. Non-collocated/new structure antennas. An antenna that will not be mounted on an existing structure as defined above, or is more than 50 feet higher than the existing structure on which it is mounted, is permitted in accordance with the following regulations:

- (1) No application for a non-collocated or a new site for a telecommunications facility shall be considered complete unless and until the applicant shall have submitted a report which establishes to the satisfaction of the Planning Board the following: 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.
- (2) 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.
- (3) 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:
  - (a) The proposed equipment would 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.
  - (b) The existing or proposed equipment would cause interference with other existing or proposed equipment, which could not reasonably be mitigated or prevented.

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- (c) 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.
- (d) Other reasons which make it impracticable to locate or place the proposed equipment on said facilities or structures.

E. Zoning districts, approvals and bulk requirements. In all zoning districts, new towers must be set back a minimum of 500 feet from all residential dwellings, schools and historic structures.

- (1) On municipal or government-owned property or in industrial districts
  - (a) Approvals and bulk requirements. Site plan approval is required in accordance with Chapter (REF) of this chapter and a tower special permit as set forth herein.
  - (b) The tower must be set back a minimum of the height of the tower from all property lines and any existing building(s). The Planning Board may require an additional setback area in the case of guyed towers, taking into consideration the length of guy wires and the location of ground anchors.
- (2) In I, C and A Zoning Districts:
  - (a) Approvals and bulk requirements: site plan approval and a tower special permit as set forth herein.
  - (b) The tower must be set back a minimum of the height of the tower from all property lines and any existing building(s). The Planning Board may require an additional setback area in the case of guyed towers, taking into consideration the length of guy wires and the location of ground anchors.
  - (c) The maximum height of a tower in these zoning districts is 195 feet. A variance will be required from the Zoning Board of Appeals, following review by the Planning Board, to exceed this height.
  - (d) Towers exceeding 195 feet in height in these zoning districts shall be treated as Type 1 actions under the State Environmental Quality Review Act (SEQRA).

**Article 5 Permit standards.**

The following criteria will be considered by the Town prior to the approval/denial of a request for a site plan approval and/or 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.
- (2) 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) I or C Districts.
- (3) Where a tower is identified for possible co-location, but the tower is unable to accommodate a new telecommunications facility, for example, the tower is full or the tower is too short, the applicant shall show reasonable efforts to work with the existing tower owner and attempt to

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augment the tower in order to accommodate the new telecommunications facility.

- (4) 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 technologically feasible to help ensure compatibility with 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.

(a) 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.

(b) 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 requirement(s) or that the tower height be 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 to 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 disturbances. However, such request shall not unreasonably delay the application.

- (4) Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements. Towers shall be of a nonreflective finish; the color shall be subject to Board approval, unless otherwise required by the FAA or the Town. Any lights which may be required by the FAA or the Town shall not consist of strobe lights unless specifically mandated by the FAA. 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 pays the applicant an appropriate and reasonable sum to collocate; and

(c) The party desiring to collocate has a similar policy of collocation for the applicant.

- (7) The applicant shall be required, as a condition of approval, to allow municipal communication services such as police, fire and EMS on its towers.

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- (8) 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.
- (9) The applicant will submit documentation to demonstrate how the proposed tower will meet broadcast demands to reach new areas of anticipated reception and how it is in keeping with competition of other radio towers and antennas. The applicant will provide documentation as to how this format is just and reasonable and promotes and shares art, music, moral, educational, spiritual, practical and tactical practices and advice to listeners.
- (10) The applicant must demonstrate that the radio station is consistent with the public interest.
- (11) The applicant must demonstrate that denial would be discriminatory or a restraint of the constitution.
- (12) Any decision to approve or deny a tower must be in writing and supported by substantial evidence contained in a written record.
- (13) FAA & FCC approval must be received to the town prior to approval of the special use permit.
- (14) Review and approval from local emergency responders that access to the proposed site does not pose any hazard to the responders.
- (15) All tower sites shall require an arial balloon test for the visual ascetics of the area.

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 Federal Communication Commission (FCC) designated frequencies and power levels 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. Applicants must provide the name and phone number of one or more representatives or agents who will be available on a twenty-four-hour basis to receive, investigate and respond to complaints of alleged radio frequency interference emanating from any permitted site. It shall be a condition of each permit that the permittee maintain a record of every such complaint showing the date and time of the complaint, name and address of the complaining party and the outcome of the processing of such complaint. The permittee shall make all such records available to the Town, upon request of the Code Enforcement Officer.
- (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 Code Enforcement Officer. Radio emission inspection shall be performed by a New York State certified licensed professional engineer 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 Code Enforcement Officer that the power density levels of the electromagnetic energy to be generated at the facility are below the applicable standards.

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D. Traffic, access and safety.

- (1) A road of sufficient strength to accommodate all types of emergency vehicles and a turnaround and parking spaces necessary for such vehicles 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) It shall be a condition of each permit that the permittee immediately notify the Town of Brant Police Department in the event of a failure of any safety device at the telecommunications facility site, including, but not limited to, tower lighting and perimeter security.

E. Removal of telecommunications facilities.

- (1) The applicant shall agree to remove the telecommunications facility if the telecommunications facility becomes obsolete or ceases to be used for its intended purpose for 12 consecutive months, and to otherwise restore the site to its condition prior to the installation of the telecommunications facility. 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 New York State licensed professional engineer, the cost of same to be borne by the applicant. If said analysis and report determines 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 New York State licensed professional engineer, 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 Code Enforcement Officer. The structural inspection shall be performed by a New York State licensed professional engineer specializing in structural engineering. The structural inspection report shall describe the structural integrity of the facility, maintenance, issues and repairs needed or made, if any. In the event that the structural inspections indicate structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Code Enforcement Officer. Upon the applicant's failure to do so, the permit may be revoked.

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



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**Article 6 Exemptions.**

The following are exemptions:

- A. The tower and antenna(s) may be repaired and maintained without restriction.
- B. Antenna(s) used solely for residential household television and radio reception.
- C. Satellite antennas measuring two meters or less in diameter and located in commercial districts and satellite antennas one meter or less in diameter regardless of location. (Note: FCC rule regarding preemption of local zoning and regulations for satellite antennas, 47 CFR Part 25.)

**Article 7 Conflict with other laws.**

In the event of any conflicts or inconsistencies between this chapter and any other local law, including Chapter (ref), Zoning, this chapter is meant to control for telecommunications towers and similar facilities in the Town unless otherwise specifically referenced in this chapter.

**Article 8 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 permit(s) issued hereunder, the Town may seek enforcement under any available authority, including but not limited to Town Law (ref), at the expense of the applicant.
- 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, at the expense of the applicant.

**Article 9 Enforcement.**

The Town Code Enforcement Officer or his designee shall be provided access to any telecommunications facility or site for the purposes of ensuring compliance with this and any other applicable code. Such access shall be upon providing twenty-four-hour advance notification to the owner or operator of any such facility or site.

