

TOWN OF SCHAGHTICOKE

**LOCAL LAW NO. 3 OF THE YEAR 2004
OF THE TOWN OF SCHAGHTICOKE**

**MISCELLANEOUS
& STATE RECORDS**

A Local Law to Which Provides for Regulations for Telecommunication Towers Within the
Town

BE IT ENACTED BY THE TOWN BOARD OF THE TOWN OF SCHAGHTICOKE:

SECTION 1. AUTHORITY

This Local Law is enacted pursuant to the authority of chapter 365 of the Laws of 1976 which added a new subparagraph (3) to paragraph d of subdivision 1 of section 10 of the Municipal Home Rule Law authorizing towns to adopt a local law which amends or supercedes any provision of the Town Law in relation to the property, affairs or government of the Town or in relation to any of the other enumerated subject matters in such section 10, unless there is a state legislative restriction on such amendment or supercession.

SECTION 2. PURPOSE AND FINDINGS

This Local Law is enacted as Local Law 3 of the Year 2004, adopted as an amendment to the Town of Schaghticoke Zoning Law, which provides for regulations for telecommunications towers within the Town. The Town Board has determined

- a) The Planning Board of the Town of Schaghticoke is hereby authorized to review and approve, approve with modifications or disapprove site plans consistent with this section, the regulations of the Town of Schaghticoke and Town Law §§274-a and 274-b.
- b) The Zoning Board of Appeals of the Town of Schaghticoke is hereby authorized

to review and approve, approve with conditions or disapprove special permit applications consistent with this section, the regulations of the Town of Schaghticoke and Town Law §§ 274-a and 274-b.

The Purpose of these supplemental regulations is to promote the health, safety, and general welfare of the residents of the Town of Schaghticoke, to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations, to protect the natural features, aesthetic character and property values of the town, and to minimize the number of telecommunications towers in the town by encouraging shared use of existing and future structures.

These regulations are not intended to prohibit or have the effect of prohibiting the provision of any federally licensed communications services nor shall they be used to unreasonably discriminate among the providers of functionally equivalent services consistent with current federal regulations.

SECTION 3.

- A) No transmission tower shall hereafter be used, erected, moved, changed or altered except in conformity with these regulations. No existing structure shall be modified to serve as a transmission tower unless in conformity with these regulations.
- B) Applicants planning to construct new tower(s) or tall structure(s) must obtain a special permit from the Zoning Board of Appeals and site plan approval from the Planning Board.
- C) Applicants planning to collocate on a previously approved telecommunications

tower or construct facilities upon an existing tall structure must obtain site plan approval from the Planning Board.

- D) No telecommunications towers may be approved upon any property within RA, R60, R40, MD and HD Districts.
- E) Where these regulations conflict with other laws and regulations of the Town, the more restrictive shall apply.
- F) Exceptions to these regulations are limited to new uses or modifications to existing uses which are accessory to residential uses, and lawful or approved uses existing prior to the effective date of these regulations.
- G) New Towers; future shared use: The applicant shall design a proposed new telecommunications tower to accommodate future demand for similar reception and transmitting facilities. The applicant shall submit to the Board, a letter of intent committing the owner of the proposed new tower and its successors in interest to negotiate in good faith for shared use of the proposed tower by other telecommunications providers in the future. This letter shall be filed with the Building Inspector prior to the issuance of a building permit. The letter shall commit the new tower owner and its successors in interest to:
 - 1) Respond within 90 days to a request for information from a potential shared-use applicant.
 - 2) Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers.
 - 3) Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. Said charges

may include by are not limited to a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate the shared user(s).

H) Site plan submission requirements for new towers.

1) Required submissions. An applicant proposing to construct a new tower shall submit a site plan as described in Town of Schaghticoke Zoning Law Section VII. (Site Plan Review). The site plan and supporting documentation shall include:

- a) Special permit approval.
- b) A site plan showing all existing and proposed structures and improvements including towers, antennas, roads, accessory facilities, parking, landscaping and any proposed screening methods.
- c) Engineering documentation describing the capacity for additional antennas and radio-frequency equipment.
- e) A visual environmental assessment form (EAF) with particular attention to visibility from key viewpoints within and outside of the municipality as identified within the visual EAF.
- f) A complete inventory of existing towers and other structures over 75 feet in height within one-half mile of the proposed site.
- g) A report demonstrating good faith efforts to secure shared use

upon all structures identified in Subsection H(1)(e) which are of sufficient height and mechanical stability to support the proposed use or can be modified to meet the applicant's needs; and also justifying why the remainder cannot be outfitted to meet its requirements. Written requests and responses for shared use shall be provided.

h) A report detailing the applicant's long-range plans for additional facilities within the town.

i) A copy of applicant's Federal Communications Commission (FCC) license.

2) Visual Impact assessment. The Planning Board may require the applicant to undertake a visual impact assessment which may include"

a) A Zone of Visibility Map indicating locations where the tower will be seen.

b) Pictorial representations of "before and after" views from key viewpoints both inside and outside of the town.

I. Site plan submission requirements for sharing existing facilities.

1) Required submissions. An applicant proposing to share use of an existing tall structure shall submit a site plan as described in Town of Schaghticoke Zoning Law Section VII. (Site Plan Review). The site plan and supporting documentation shall include:

a) A letter of intent from the owner of the existing facility to allow shared use by the applicant.

- b) A site plan showing all existing and proposed structures and improvements including towers, antennas, roads, accessory facilities, parking, landscaping and screening methods.
- c) In the case of use on a structure not originally designed as a telecommunications tower, a report, prepared by a New York State licensed professional engineer specializing in structural engineering, certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure and explaining what modifications, if any, will be required in order to certify to the above.
- d) A completed short EAF with completed visual EAF addendum.
- e) A copy of the applicant's FCC license.

J. New tower design standards.

- 1) Setbacks. New towers and antennas shall comply with all existing setbacks within the affected zone. Furthermore, a minimum of one-hundred-foot setback shall be required where the site adjoins residential or public property. Setbacks shall apply to all tower parts including guy wire anchors and to any accessory facilities.
- 2) Visual Impact.
 - a) Siting. All new towers and accessory facilities shall be sited to have the least practical adverse visual impact upon the environment.
 - b) Lighting and painting. New towers shall not be artificially lighted

except to assure human safety as required by the Federal Aviation Administration (FAA). New towers shall be a galvanized finished or painted gray above the surrounding treeline and painted gray, green, black or similar colors designed to blend into the natural surrounding below surroundings tree line unless other standards are required by the FAA. New towers shall be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements pursuant to 47 CFR Part 17.

- c) **Materials:** Accessory facilities shall maximize use of building materials, colors, and textures designed to blend with the natural surroundings.
- 3) **Existing vegetation.** Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at a height of four feet off the ground) shall take place prior to approval of the site plan. Clear-cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- 4) **Screening.** Where the site abuts residential or public property, including streets, and includes construction of a new tower or an increase in height of an existing structure, at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least 10 feet in height within two years of planting shall be provided to effectively screen the tower base and accessory facilities. In the case of poor soil conditions, planting may be required on soil berms to assure plant survival.

- 5) Access and parking. A road and parking shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. Road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of any cuts, or no more than 10 feet beyond the edge of any pavement. Roads shall be designed to minimize visual disturbance, soil erosion and excavation. Public road standards may be waived in meeting the objectives of this subsection.
- 6) Consulting engineering services. The Planning Board may request a review of the application by a qualified engineer in order to evaluate the need for and/or the design of any new tower. The cost of this review shall be borne by the applicant.
- 7) Signs. No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to company name, phone numbers, banners and streamers.
- K.) Authority to impose conditions. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed site plan.
- L.) Removal. Before a building permit may be issued for the construction of a new tower, the applicant must first submit to the Building Inspector a letter of intent committing the tower owner and its successors in interest to notify the Building

Inspector within 30 days of the cessation of service operation from the tower. Telecommunications facilities, including but not limited to antennas, towers and accessory structures, shall be removed from the site within one year of the expiration or forfeiture of the FCC license governing their operation.

M.) Definitions. As used in this section, the following terms shall have the meanings indicated :

ANTENNA - A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but not be limited to radio navigation, radio, television, wireless and microwave communications. The frequency of these waves generally range from 20 kilohertz to 300,000 megahertz.

TELECOMMUNICATIONS ACCESSORY FACILITY - An accessory facility serves the principal use, is subordinate in area, extent and purpose to the principal use and is located on the same lot as the principal use. Examples of such facilities include transmission equipment and storage sheds.

TELECOMMUNICATIONS TOWER - A structure upon which transmitting and/or receiving antennas are located.

SECTION 4. VALIDITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Schaghticoke hereby declares that it would

have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 5. REPEAL

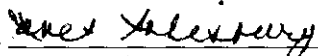
All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed.

SECTION 6. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the New York State Secretary of State in accordance with section 27 of the Municipal Home Rule Law.

BE IT ENACTED THIS 13 DAY OF OCTOBER 2004 BY THE TOWN BOARD OF THE TOWN OF SCHAGHTICOKE, COUNTY OF RENSSELAER, STATE OF NEW YORK.

JEAN CARLSON, SUPERVISOR
DAVID AKIN, COUNCILMAN
MICHAEL BAYLY, COUNCILMAN
JERRY MOORE, COUNCILMAN
JOHN RUSTIN, COUNCILMAN



JANET SALISBURY, TOWN CLERK
TOWN OF SCHAGHTICOKE

Local Law Filing

(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.

~~COUNTY~~

~~CITY~~ of

Schaghticoke

Town

~~VILLAGE~~

Local Law No. 3 of the year 2004

A local law to Which Provides for Regulations for Telecommunication
(Insert Title)

Towers Within the Town

Be it enacted by the Town Board of the
(Name of Legislative Body)

~~COUNTY~~

~~CITY~~ of

Schaghticoke

Town

~~VILLAGE~~

as follows:

See Annexed.

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

**(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 20 04 of the ~~(County)(City)~~ (Town)(Village) of Schaghticoke was duly passed by the Town Board on 10/13 2004, 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 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ and was deemed duly adopted on _____ 20 _____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____.
(Name of Legislative Body)
(Elective Chief Executive Officer*)
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 _____ 20 _____, in accordance with the applicable provisions of law.

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 20 _____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20 _____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20 _____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20 _____, in accordance with the applicable provisions of law.
(Name of Legislative Body)
(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 20____ of the City of _____ 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 _____ 20____, 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 20____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 20____, 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 cities of said county as a unit and a majority of the qualified electors 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.

Shel Salenbury
Clerk of the county legislative body, City, Town or Village Clerk or
officer designated by local legislative body

(Seal)

Date: 10/25/04

(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 ALBANY

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.

David C. Brennan
Signature

DAVID C. BRENNAN, ESQ.
Title Attorney for the Town

~~XXXXX~~

~~City~~

~~of~~ Schaghticoke

~~Town~~

~~Village~~
~~XXXXX~~

Date: October 25, 2004