

Chapter 100

TELECOMMUNICATIONS

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[HISTORY: Adopted by the Town Board of the Town of New Baltimore 7-28-1998 by L.L. No. 5-1998. Amendments noted where applicable.]

ARTICLE I
Title; Purpose

§ 100-1. Title.

This chapter shall be referred to as the "Telecommunications Tower Law of 1998." The purpose of this chapter is to regulate the laying out of and siting of towers in the Town of New Baltimore.

§ 100-2. Purpose.

- A. The Town Board of the Town of New Baltimore finds a growing need for personal wireless service facilities and commercial mobile radio service facilities, as defined in § 704 of the Telecommunications Act of 1996, based on an increase in demand to locate these facilities in the town. Accordingly, the town finds that a local law is necessary to control and direct the location, construction, maintenance and removal of these facilities within the town.
- B. The purpose of this chapter is to promote the health, safety and general welfare of the residents of the town through the establishment of minimum standards to protect property values, to avoid potential damage to adjacent properties from tower failure through proper engineering and careful siting of structures, to ensure that the residents of the town are adequately served by personal wireless services and commercial mobile radio service facilities technology, to protect a citizens ability to receive communication signals without interference from other communication providers while preserving competition among communication providers and to maximize the use of existing towers or antenna host sites so as to minimize the number and visual impact of towers needed to serve the town.

ARTICLE II
Building Inspector Review

§ 100-3. Definitions.

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

TELECOMMUNICATIONS TOWER - Any structure greater than 35 feet in

height which is specifically designed for receiving and/or transmitting signals (for the purpose of communications).

§ 100-4. New telecommunications towers; restrictions. [Amended 3-12-2007 by L.L. No. 3-2007¹]

The Planning Board may consider a new telecommunications tower when the applicant demonstrates that shared use of existing tall structures or approved towers is impractical. New telecommunications towers require a special use permit. Documentation and conditions shall be in accordance with the building permit application submitted to the Building Inspector.

§ 100-5. Shared usage of existing tower for new tower.

Where shared use of existing structures and existing or approved towers is found to be impractical, the applicant shall investigate shared usage of an existing tower site for its ability to accommodate a new tower and accessory uses. Documentation and conditions shall be in accordance with the building permit application submitted to the building inspector.

§ 100-6. Shared use of existing tall structures or existing or approved towers. [Amended 3-12-2007 by L.L. No. 3-2007¹]

At all times, shared use of existing tall structures (for example, municipal water towers, multistory buildings, church steeples, farm silos, etc.) and existing or approved towers, where practical, is preferred to the construction of new towers.

- A. An applicant proposing to share use of an existing tall structure or existing or approved tower shall be required to submit a report of a licensed professional engineer certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, or existing or approved tower, and explaining what modifications, if any, will be required in order to certify to the above. This report is to be submitted to the Building Inspector and the Planning Board.
- B. If an applicant proposing to share use of an existing tall structure, or

¹ This local law also provided that it shall apply to all new special use permit applications filed on or after 3-1-2007.

existing or approved tower, submits complete and satisfactory documentation, and if modifications indicated are deemed insignificant by the Building Inspector, the Building Inspector shall grant approval without further review. If the Building Inspector determines that any modifications indicated according to Subsection A are significant, or the applicant proposes a new telecommunications tower, the applicant must first obtain further review according to §§ 100-7 through 100-8 below, and, in the case of a new tower, the applicant must obtain a special use permit.

§ 100-7. Future shared use of new towers.

The applicant may be required to design a proposed new telecommunications tower to accommodate future demand for reception and transmitting facilities, where financially feasible. The applicant shall submit to the Building Inspector a letter of intent committing the new tower owner, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers or users in the future. This letter, which shall be filed with the Planning Board prior to issuance of a building permit (provided that the telecommunications tower is approved according to this section), shall commit the new tower owner and his/her successors in interest to:

- A. Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
- B. Negotiate in good faith concerning future requests for shared use of the new tower, by other telecommunications providers or users.
- C. Allow shared use of the new tower if another telecommunications provider or user agrees, in writing, to pay charges.
- D. Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is 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 a shared user without causing electromagnetic interference.
- E. Make shared use available at no charge to local public safety and service agencies.

§ 100-8. Site plan review: submission requirements.

An applicant must apply for site plan approval under § 90-11². An applicant shall be required to submit a site plan in accordance with § 90-12². The site plan shall include documentation on the proposed intent and capacity of use as well as a justification for the height of any tower and justification for any clearing required. All other applicable sections of Chapter 90, Site Plan Review, shall apply².

ARTICLE III
Guidelines for Towers

**§ 100-9. Lot size; setbacks; new tower design.
[Amended 3-12-2007 by L.L. No. 3-2007]**

- A. Lot size and setbacks. All proposed telecommunications towers and accessory structures shall be set back from abutting parcels, recorded rights-of-way and street lines a distance sufficient to substantially contain on site all ice-fall or debris from tower failure. In no case shall the setback from any property line be less than the height of the tower plus 25 feet.
- B. New tower design. Alternative designs shall be considered for new towers, including lattice and single-pole structures. The design of proposed new towers shall comply with the following:
- (1) The Planning Board may request, at the expense of the applicant, a review of the application by a professional engineer licensed in New York State in order to evaluate the need for, and the design of, any new tower.
 - (2) 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.
 - (3) Maximum height shall be 180 feet in commercial and developmental zones and 100 feet in all other zones.

² Pursuant to L.L. 4 of 2008, site plan review provisions are now found in Chapter 112, Zoning, Article VII.

§ 100-10. Vegetation; fencing.

- A. Existing vegetation. Existing on-site vegetation shall be preserved to the maximum extent possible.
- B. Fencing. Sites of proposed new towers and sites where modifications to existing telecommunications towers are proposed shall be adequately enclosed by a fence, design of which shall be approved by the Planning Board. The Planning Board may require signage to be placed upon said fence identifying the owner and/or operator of the facility, its business address, telephone numbers (business number and emergency number) and that no trespassing upon the site is allowed.

§ 100-11. Discontinuance and removal.

The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Building Inspector within 30 days of the discontinuance of use of the tower. This letter shall be filed with the Planning Board prior to issuance of a building permit (assuming the telecommunications tower is approved according to this section). Obsolete or unused towers and accessory structures shall be removed from any site within six months of such notification. Failure to notify and/or to remove the obsolete or unused tower in accordance with these regulations shall be a violation of this chapter and shall be punishable according to § 112-28 of the Town Zoning Code³. If the tower owner or his/her successor refuses to remove the tower, then the Town Board may require the owner of the land on which the tower is located to remove the tower at the owner's expense.

§ 100-12. Notification of nearby landowners.

[Amended 3-12-2007 by L.L. No.3-2007⁴]

The applicant shall be required to mail notice of the public hearing before the Planning Board directly to all landowners whose properties are abutting or located within 500 feet of the property line of the parcel on which a new tower is proposed. Notice shall also be mailed to the administrator of any state or federal parklands from which the proposed tower would be visible if constructed. Notification, in all cases, shall be made by certified mail.

³ Pursuant to L.L. 4 of 2008, Enforcement of the Town Zoning Code is now covered under Chapter 112, Article XIV.

⁴ This local law also provided that it shall apply to all new special use permit applications filed on or after 3-1-2007.

Documentation of this notification shall be submitted to the Planning Board prior to the public hearings.