

Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE
41 STATE STREET, ALBANY, NY 12231

(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~~
County

~~XXXX~~
City

Town of Duanesburg

~~XXXX~~
Village

Local Law No. 4 of the year 2001.

A local law Telecommunications Facilities Law
(Insert Title)

A local law relating to the regulation of telecommunication
facilities within the Town of Duanesburg.

Resolution # 119-01

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

~~XXXXXX~~
County

~~XXXX~~
City

Town of Duanesburg as follows:

~~XXXXXX~~
Village

One copy of Local Law No. 4 attached.

(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. _____⁴ of 20⁰¹ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____
Duanesburg Town Board on Sept. 13, 2001, 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
(Name of Legislative Body)
disapproval) by the _____ and was deemed duly adopted on _____ 20____,
(Elective Chief Executive Officer*)
in accordance with the applicable provisions of law.

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
(Name of Legislative Body)
disapproval) by the _____ on _____ 20____. Such local law was submitted
(Elective Chief Executive Officer*)
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
(Name of Legislative Body)
disapproval) by the _____ on _____ 20____. Such local law was subject to
(Elective Chief Executive Officer*)
permissive referendum and no valid petition requesting such referendum was filed as of _____ 20____, in accordance with the applicable provisions of law.

* 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.)

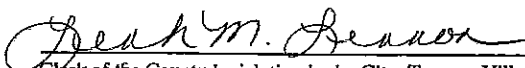
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified 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---1-----, above.



Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

(Seal)

Date: September 25, 2001

(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 Schenectady

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.


Signature

Town Attorney
Title

XXXXX
County

XXX
City

XXX
Town

XXXXX
Village

of Duanesburg

Date: 9/28/01

Town of Duanesburg

Telecommunications Facilities Law

Local Law No. 4 of the Year 2001

A local law relating to the regulation of telecommunication facilities within the Town of Duanesburg.

Be it enacted by the Town Board of the Town of Duanesburg, Schenectady County, State of New York as follows:

A local law regulating the location, construction, and operation of telecommunication facilities that radiate and transmit radio frequency energy within the Town of Duanesburg. The law shall apply to towers and other structures to which antenna are attached for the purpose of transmitting and (or) receiving radio frequency energy for the purposes of communication by telephone, radio or television signals.

1.0 Purpose

The purpose of this law is to protect the health, safety and general welfare of the residents of the Town of Duanesburg, to provide standards for the safe provision of telecommunications consistent with Federal and State regulations; to minimize the total number of telecommunication facilities by encouraging shared use of existing and future towers and facilities, and the use of existing tall buildings and other high structures; and to protect the natural features and aesthetic characteristics of the town by minimizing adverse visual effects by requiring careful location selection, visual impact assessment, and appropriate landscaping. These regulations are not intended to prohibit or have the effect of prohibiting the provision of personal or public wireless services not shall they be used to unreasonably discriminate among providers of functionally equivalent services consistent with current federal regulations.

2.0 Enabling Authority

The Planning Board is hereby authorized to review and approve, approve with modifications, or disapprove site plans and special use permits consistent with the zoning laws and regulations of the Town of Duanesburg. The Zoning Board of Appeals is authorized to review and approve, or approve with modifications, or disapprove applications for use variances consistent with the zoning laws and regulations of the Town of Duanesburg. The Planning Board shall review use variance applications before the Zoning Board of Appeals renders a decision.

3.0 Definitions

- (a) Telecommunication Tower – A structure on which transmitting and/or receiving antenna (s) are located.
- (b) Antenna-A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include but are not limited to radio navigation, radio, television, wireless and microwave communications.
- (c) Accessory Facility-An accessory facility serves the principal use, extent and purpose of the principal use, and is located on the same lot as the principal use. Examples of such facilities include transmission equipment and storage sheds.
- (d) Special Use-A use which is deemed allowable within a given zoning district, but which is potentially incompatible with other uses and, therefore is subject to special standards and conditions set forth for such use subject to approval by the Planning Board.
- (e) Use Variance-Use of property that is inconsistent with permitted uses of property within a particular zoning district. The applicant must demonstrate practical difficulty, and that a public necessity exists to render adequate telecommunications service, and that no alternative locations are available.

4.0 Application of Special Use Regulations and Use Variance Regulations:

- (a) No telecommunication tower shall hereafter be used, erected, moved, reconstructed, changed or altered except after approval of a Special Use Permit and in conformity with these regulations. No existing structure shall be modified to serve as a transmission and (or) receiving tower unless in conformity with these regulations.
- (b) These regulations shall apply to all property within the general business district. They shall also apply to property where application for use variance is made for telecommunication facilities. In accordance with Commercial (C-1), Manufacturing & Light Industrial (C-2) as defined in the Zoning Ordinance, an applicant may apply to the Zoning Board of Appeals for a use variance to install telecommunication facilities in all other zoning districts. Use variances must receive Planning Board review prior to approval.
- (c) Exceptions to these regulations are limited to (1) new uses which are accessory to residential uses and (2) lawful or approved uses existing prior to the effective date of these regulations.

- (d) Where these regulations conflict with other laws and regulations of the Town of Duanesburg, the more restrictive shall apply, except for tower height restrictions, which are governed by these special use standards.

5.0 Requirements for Sharing Existing Facilities.

At all times, shared use of existing tall structures (i.e. multi-story buildings, church steeples or farm silos, etc.) or existing or approved towers shall be preferred to the construction of new towers.

- (a) An applicant proposing to share use of an existing tall structure shall submit a Special Use Permit application as described in the Zoning Ordinance of the Town of Duanesburg. The site plan and supporting documentation shall include:

- (1) A completed application for a special use permit. The application shall include detailed information on the construction and operation of the facility. The Planning Board or the Zoning Board of Appeals may require the applicant to provide any additional information considered necessary to evaluate and act on the application.
- (2) Documentation of intent from the owner of the existing facility to allow shared use. The applicant shall pay all reasonable fees and costs of adapting an existing tower or structure to a new shared use. Those costs include but are not limited to structural reinforcement, preventing transmission or receiver interference, additional site screening, and other changes including real property acquisition or lease required to accommodate shared use.
- (3) A Site Plan; The site plan shall show all existing and proposed structures and improvements including antennas, roads, building, guy wires and anchors, parking, landscaping, and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility, shall be indicated on the site plan. The site plan shall also include the location, and distance from the nearest residence, and the antenna shall not be closer than 500 feet from the nearest residence. The highest part of the antenna shall not extend more than 30 feet above the highest part of the structure.
- (4) Documentation of the proposed intent and capacity of use. This shall include: the transmission and maximum effective radiated power, the direction of maximum lobes, and associated radiation from the antennae.
- (5) A Licensed Professional Engineer's report certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, will not hamper existing emergency networks,

and explaining what modifications, if any, will be required in order to certify to the above.

- (6) A completed long EAF and a completed visual EAF addendum, including mitigation measures of the visual impacts.
 - (7) A copy of its Federal Communications Commission (FCC) License.
 - (8) A copy of the lease agreement.
- (b) If at a pre-application meeting an applicant proposing to share use of an existing tall structure, or existing or approved tower, submits complete and satisfactory documentation in accordance with paragraph 5.0 (a) above, and if modifications indicated according to subsection 5.0 (a) are deemed insignificant by the Planning Board, the Planning Board shall grant a special permit without further review under this section. A public hearing shall be held before the Planning Board makes a decision. If the Planning Board determines that any modifications indicated according to paragraph 5.0 (a) are significant, it may require further review according to paragraph 7.0 thru 13.0 below.
- (c) The Planning Board may consider a new telecommunication tower when the applicant demonstrates that shared use of existing tall structures and existing or approved towers is impractical. An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within the area to be served (both within and outside of this municipality) by the proposed site and outlining opportunities for shared use of these existing facilities as an alternative to a proposed new tower. The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical and/or financial reasons why shared usage is not practical in each case. Written requests and responses for shared use shall be provided.
- (d) Shared usage of an existing tower site for new tower. Where shared use of existing tall 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 paragraph 5.0 (c) above. Any new Telecommunication tower proposed for an existing tower site shall also be subject to the requirements of paragraph 6.0 thru 13.0 below.

6.0 Site Plan Submission Requirements for New Towers

The Planning Board may consider a new telecommunications tower on a site not previously developed with an existing tower when an applicant demonstrates that shared use of existing tall structures, and existing or approved towers, is impractical, and when the Board determines that shared use of an existing tower site for a new tower is undesirable based upon the applicant's investigation in accordance with paragraph 5.0 (a). Any proposed new telecommunications tower shall also be subject to the requirements of paragraph 6.0 thru 13.0.

An applicant proposing to construct a new tower shall submit a Special use permit application as described in the zoning law of the Town of Duanesburg. The site plan and supporting documentation shall include:

- (a) Detailed information on the construction and operation of the facility. The Planning Board or the Zoning Board of Appeals may require the applicant to provide any additional information considered necessary to evaluate and act on the application.
- (b) A Site Plan; The site plan shall show all existing and proposed structures and improvements including antennas, roads, buildings, guy wires and anchors, parking and landscaping and shall include grading plans for new facilities and roads. Any methods used to conceal the modification of the existing facility. The site plan shall also show the location, and distances from the nearest residences. The tower will be no closer than 500 feet from the nearest residence.
- (c) Documentation on the proposed intent and capacity of use. This shall include: the transmission and maximum effective radiated power, the direction of maximum lobes, and associated radiation from the antennae.
- (d) Justification for the height of any tower or antennas and justification for any land or vegetation clearing required.
- (e) A completed Full Environmental Assessment form in accordance with the State Environmental Quality Review Act (SEQR) and a landscaping plan addressing other standards listed within this section with particular attention to visibility from key viewpoints within and outside the municipality as identified in the Visual EAF Addendum. The Planning Board may require submittal or a more detailed visual analysis based on the results of the visual EAF and shall include:
 - (1) A "Zone of Visibility Map" shall be provided in order to determine locations where the tower may be seen.

- (2) Pictorial representations of "before and after" views from key points both inside and outside of the town (or village or city) including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors or travelers. The board shall determine the appropriate key sites at a pre-submission conference with the applicant.
- (3) Assessment of alternative tower designs and color schemes, as described in subsection 7.0(D)(2).
- (4) Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.
- (f) A report inventorying existing towers within reasonable distance of the proposed site and outlining opportunities for shared use of existing facilities and use of other pre-existing structures as an alternative to a new construction.
- (g) A report demonstrating good faith efforts to secure shared use from existing towers as well as documenting capacity for future shared use of the proposed tower. Written requests and responses for shared use shall be provided.
- (h) Future Shared Use of New Towers – The applicant shall design a proposed new telecommunications tower to accommodate future demand for reception and transmitting facilities. The applicant shall submit to the board 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 telecommunication providers in the future. This letter, which shall be filed with the building inspector prior to issuance of a building permit (assuming the telecommunications tower is approved according to this section), shall commit the new tower owner and his/her successors in interest to:
 - (1) Respond in a timely, comprehensive manner 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 charges.

- (4) 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.
- (i) Proof of certified announcements to all other telecommunications providers in the area declaring the applicant's sharing capabilities and/or siting needs.
- (j) A report detailing the compatibility of proposed construction with existing emergency networks.
- (k) A report detailing the long range plans for additional towers within the area.
- (l) A copy of its Federal Communications Commission (FCC) license.
- (m) A copy of any proposed lease agreement.
- (n) The applicant may be required to address the impact upon property values brought about by the proposed tower.

7.0 Special Use Standards:

- (a) Shared Use-At all times, shared use of existing tower shall be preferred to the construction of new towers. Additionally, where such shared use is unavailable, location of antenna on pre-existing structures shall be considered.
- (b) Lot Size and Setbacks – all proposed telecommunication towers and accessory structures shall be located on a single parcel and shall be setback from abutting parcels and street lines a distance sufficient to substantially contain on-site all ice-fall or debris from tower failure.
 - (1) Lot size of parcels containing a tower shall be determined by the amount of land required to meet the setback requirements. If the land is to be leased the entire lot required shall be leased from a single parcel.
 - (2) Telecommunication Towers shall comply with all existing setback requirements of the underlying zoning district, or shall be located with a minimum setback from any property line equal to one and one half (1 ½) times the height of the tower, which ever are greater. Accessory structures shall comply with the minimum setback requirements in the underlying zoning district.

(c) Visibility

- (1) All towers and accessory facilities shall be sited in a manner, which will provide adequate wireless telecommunications service and have the least practical adverse visual effect on the environment.
- (2) In all cases, structures offering the least visual impact shall be preferable.
- (3) Accessory facilities shall maximize use of building materials, colors and textures designed to blend with the natural surroundings.

(d) Tower Design

- (1) When proposing a new telecommunications tower, the applicant must examine feasibility of designing the proposed tower to accommodate future demand for at least two (2) additional commercial applications (i.e. future collocations). The tower must be structurally designed to accommodate at least two additional antenna arrays equal to those of the applicant, and located as close to the applicant's antenna as possible without causing interference. The requirement to construct a tower that can accommodate collocation may be waived by the Planning Board, provided that the applicant demonstrates that the provisions of future shared usage of the facility is not feasible and an unnecessary burden, based upon consideration such as, for example:
 1. The number of FCC lines foreseeable available for the area;
 2. The kind of tower site and structure required;
 3. The number of existing and potential licenses without tower spaces/sites;
 4. Available spaces on existing and approved towers;
 5. The potential for significant adverse visual impact of a tower designed for shared use.
- (2) Unless specifically required by other regulations, all towers shall be galvanized steel or have a neutral earth tone or similar painted finish that shall minimize the degree of visual impact. Towers shall be designed and sited to avoid FAA painting requirements.
- (3) The height shall be the maximum height necessary to provide adequate reception to meet the applicant's communication needs as described in the application. The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation. Under unique circumstances, the Board at its discretion may modify this requirement if the applicant can justify the need to exceed this height limitation. In no case shall the height of the tower exceed 125 feet.

- (4) The Board may request a review of the application by a qualified engineer in order to evaluate the need for, and the design of, any new tower. The applicant shall pay the fees of any consultants hired by the Board.
- (5) Accessory structures shall maximize the use of building materials, colors and textures designed to blend with the natural surroundings.
- (6) No portion of any tower or accessory structure shall be used for a sign or other advertising purpose. Signs providing: Company name, Contact, Phone Numbers and Warnings are permitted provided they meet Town zoning ordinance requirements.
- (e) Existing Vegetation – Existing on-site vegetation shall be reserved to the maximum extent possible, and no cutting of trees exceeding four (4) inches in diameter (measured at a height of four (4) feet off the ground) shall take place prior to approval of the special permit use. Clear cutting of all trees in a single contiguous area exceeding 20,000 square feet shall be prohibited.
- (f) Screening – Deciduous or evergreen tree plantings may be required to screen portions of the tower from nearby residential property as well as from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetation screening shall be required, for all towers at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten 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 beams to assure plant survival. Plant height in these cases shall include the height of the berm.
- (g) Access and Parking – A road and parking will 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 of private roads and shall at all times minimize ground disturbance and vegetation cutting to within the toe of fill, the top of cuts, or no more than ten feet beyond the edge of any pavement. Road grades shall closely follow natural contours. Public road standards may be waived in meeting the objectives of the section.
- (h) Fencing – Sites of proposed new towers and towers and sites where modifications to existing towers are proposed, shall be adequately enclosed by a fence, to ensure the security of the facility and meet public safety requirements. The design of the signs shall be approved by the Board.

- (i) Public Use – An area on telecommunications towers shall be provided to the town and/or law enforcement agencies, fire districts and ambulances without charge for location or service communication equipment, shall be installed without charge by the applicant / owner. If the Tower is replaced, or maintenance activities require equipment to be moved, removed or modified, the applicant / owner shall make these adjustments without cost to the public users.

8.0 Authority to Impose Conditions:

The authorized boards shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunication tower Special Use Permit or Use Variance.

9.0 Removal

Before the building inspector can issue a building permit for an approved tower, the applicant shall: 1) Submit to the Planning Board a letter of agreement committing the tower owner, and his / her successors in interest, to notify, in writing, the building inspector within thirty (30) days of the discontinuance of use of the tower, 2) provide the Town of Duanesburg with a bond or other form of security approved by the Town Attorney to cover the cost of removal of the tower and accessory structures should the owner not remove the unused tower and structures within four (4) months of such notification. The project removal costs shall be verified by the Town Engineer. A copy of this letter and bond shall be filed in the building inspector's office prior to the issuance of a building permit.

Failure to notify and/or to remove the obsolete or unused tower in accordance with these regulations shall be in violation of, and shall be punishable in accordance with Section 13.6 of the Zoning Ordinance.

10.0 Inter-Municipal Notification for New Towers. – In order to keep neighboring municipalities informed, and to facilitate the possibility of directing that existing tall structure or existing telecommunications tower in a neighboring municipality be considered for shared use, the Board shall require that:

- a) An applicant who proposes a new telecommunication tower shall notify in writing the legislative body of each municipality that borders Duanesburg, and the Schenectady County Planning Department. Notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.
- b) Documentation of this notification shall be submitted to the Planning Board at the time of application.

- 11.0 Notification of Nearby Landowners** – The applicant shall be required to mail notice of the public hearing directly to all landowners whose property is located within fifteen hundred (1500) feet of the property line of the parcel on which a new tower is proposed. Notice shall 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. Documentation of this notification shall be submitted to the Board prior to the public hearing. In addition, the applicant shall erect a sign on the property whereon the proposed new tower is to be located. The sign shall have an area of thirty-two (32) square feet and shall be erected no more than twenty-five (25) feet from the boundary of the property and right of way of the road on which the property faces, and at the time of application. The sign shall be clearly visible from the road. The sign shall show the details of the proposed tower and accessory buildings, and have a map of the property and the location on the property of the proposed location of the tower, accessory buildings, parking area and access road.
- 12.0 Maintenance and/or Performance Bond.** - The Planning Board, in its sole discretion, may require the applicant and/or owner to post and file with the Town Clerk of the Town of Duaneburg prior to approval of any application a maintenance and/or performance bond or other form of security as approved by the Town Attorney in an amount sufficient to cover the installation, maintenance and/or construction of said tower during its lifetime. The amount required shall be determined in the sole discretion of the Planning Board, based upon the unique characteristics of the tower and site. In furtherance of the foregoing, the applicant and/or owner shall cooperate with the Planning Board in supplying all necessary construction and maintenance data to the Board prior to approval of any application and/or permit to accomplish the foregoing.
- 13.0 Fees, Permits and Insurance** – Simultaneously with the filing of an application for a Special Use Permit or a Use Variance as required by this ordinance, the applicant and/or owner shall pay an application fee of \$5,000.00, before starting construction of the tower and/or its accessory buildings, the applicant shall obtain a building permit from the Code Enforcement Officer. The standard building permit fee shall be paid at the time of application. For other Building Permit requirements see 6.0 (f). After completion of the tower, and before the tower becomes operational, the Code Enforcement Officer shall issue a Certificate of Compliance after the applicant has paid an annual operating fee. The annual operating fee shall be established by the Town Board in its sole discretion based on the unique characteristics of the site and taking into consideration, the cost of its implementation and processing. The annual operating fee is \$1,000.00 for sites utilizing existing high structures, and \$2,000.00 for new towers. Every year thereafter, on the anniversary date of the issuance of the Certificate of Compliance, the applicant or owner shall pay the Town of Duaneburg the annual operating fee. At that time the applicant or owner shall certify that:

- (a) All maintenance and inspection procedures are being complied with, including all visual screening conditions in the permit.
- (b) The tower and related facilities are not a hazard or threat to the health, safety and welfare of the public.
- (c) The RF emissions comply with current FCC limits.
- (d) The facility is in use.

As part of the application for a Special Use Permit or Use Variance the applicant shall file with the Town Clerk proof of casualty and liability insurance in a form and amount which shall be determined and approved by the Town Board. The insurance shall remain in effect whether or not the tower is operating. Termination of insurance shall result in the immediate revocation of the Special Use Permit or Use Variance, and be immediate grounds to vacate, rescind and set aside the applicant's or owner's authority to operate said tower. In the event the Town Board determines that due to termination of insurance and/or for any other cause, which shall include the applicant's failure to abide by any conditions of the Special Use Permit or Use Variance or any provision of this ordinance, said applicant or owner shall be entitled to five (5) days notice to cure after which, in the event that the applicant or owner does not correct the defect complained of, the Certificate of Compliance shall immediately terminate. Termination of the Certificate of Compliance shall be grounds for immediate revocation of the Special Use Permit or Use Variance, and action taken shall be at the sole discretion of the Town Board.

14.0 Designation of Enforcing Official – This section shall be administered and enforced by the Uniform Code Enforcement Officer, hereinafter referred to as the “official”, duly appointed by the Town Board of Duanesburg to carry out the word and intent of this law.

14.1 Duties of Enforcing Official

- (a) Rules, regulations and forms. The official shall have authority to make, adopt and promulgate written rules, regulations and forms as may be necessary for administration and enforcement of the content and intent of this law. The official shall be responsible to submit such rules, regulations and forms to the Town Board, which shall move to approve, reject or modify the same within sixty (60) days after submission. Once approved by the Town Board and filed with the Town Clerk, rules, regulations and forms shall have the same force and effect as the provisions of this section and be subject to the same penalties for violation thereof.
- (b) Entry and Inspection. The official shall have the right to enter upon, examine and inspect or cause to be entered, examined and inspected any building or property for the purpose of carrying out the provisions of this section after reasonable written notice of intent to examine or inspect has been provided to a property owner and permission of the owner has been granted. If such permission is denied, access shall be pursued by the Town Attorney, who shall be notified in writing by the official.

- (c) Referral to the Planning Board, Town Board and Zoning Board of Appeals. The official shall inform any applicant of the appropriate town agency to whom the application should be presented prior to the issuance of a building permit, in accordance with this section and all other state, county and local law.
- (d) Retention of Experts.
- (1) The purpose of this provision is to provide for coordinated review of applications and avoid duplication of services among the Town Board, Zoning Board of Appeals and the Planning Board.
 - (2) The Zoning Board of Appeals and the Planning Board are hereby authorized to retain engineering consultants and/or such other expert consultants as are determined to be necessary to enable the full performance of their respective duties relative to any matters before either Board.
 - (3) Payment for the services of such consultants and/or other experts is to be made from funds deposited by the applicant with the town in escrow accounts for such purposes.
 - (4) It shall be the responsibility of the applicant to submit to the Town, prior to the start of any work associated with said application before the Board or at such other time as directed by the Board, certified check(s) in amounts equal to the estimate of the engineering consultant and/or other expert consultant for the cost of services to be rendered to the Town. This sum shall be released by the Town to said engineer or consultant in payment for the services rendered to it upon acceptance by the Town of said services.
 - (5) In the event that an application requires Town Board action for review or implementation, including consideration of zoning issues, contracts, bonding, financing or other associated actions required by virtue of an application under local zoning ordinances, the experts retained by the Zoning Board of Appeals and/or the Planning Board on behalf of the Town as outlined subsection (2) through (4) above shall provide to the Town Board such services as may be required by it also in connection with its review of the application and associated actions; the cost of said experts to be provided for as set forth under this section.
- (e) **General Duties and Powers.** The official shall be charged with the general and executive administration of this section and shall have the following general duties and powers:
- (1) To oversee and enforce all provisions of this section and all rules, conditions and requirements adopted or specified pursuant thereto.
 - (2) To record all identifiable complaints or violations of any provision of this section.
 - (3) To file a report with the Town Board when required, summarizing his activities and listing all complaints of violations and subsequent action taken on each such complaint.
- (f) **Appearance Tickets.** In addition to any and all other authority vested in the official by state law and this section, the official is hereby authorized and

empowered to issue appearance tickets, in a form to be approved by the Town Board, for the prosecution of all violations of this section. Following the filing of information, the official shall have the authority to appear at any and all actions and proceedings in furtherance of said prosecution in any court of competent jurisdiction.

(g) **Conflicts with other provisions.**

This section shall be administered and enforced in tandem with all other applicable town, county, state and federal laws.

14.3 Penalties for Offenses. Whenever, in the opinion of the official after proper examination and inspections, there appears to exist a violation of any provision of this section or of any rule or regulation adopted pursuant thereto, the official shall serve a written notice of violation upon the owner or occupant of the premises by personal service or registered mail; if to the owner, at the tax billing address, if to the occupant, at the property address.

(a) Notice of Violation. Such notice of violation shall inform the recipient of:

1. The nature and details of such violation.
2. Recommended remedial action, if possible, which, if taken, will effect compliance with the provisions of this section and with rules and regulations adopted pursuant thereto.
3. The date of compliance by which the violations must be remedied or removed.
4. The right to a hearing before the official in accordance with Subsection C below.

(b) Extensions. The official may extend the date of compliance in a notice of violation, after written application, if, in his opinion, there is reasonable evidence of intent to comply and reasonable conditions exist which prevent compliance by the specified date.

(c) Request for hearing. Any person served with a notice of violation in accordance with Subsection (i) above and who denies the violation or is allegedly aggrieved by the required action necessary for compliance may, within ten (10) days after service of notice, request, in writing, a hearing before the official stating the reasons why such a hearing is requested. The person requesting the hearing shall be required to show cause or give evidence why he should be required to remedy the violation or why he is unable to comply with the remedial action outlined in the notice of violation.

(d) Abeyance. Compliance with a notice of violation shall not be required while a hearing is pending.

(e) Hearing. Within ten (10) days after receipt of a request for a hearing, the official shall acknowledge receipt, in writing, and set a time and place for such hearing, not later than thirty (30) days after the date the request is

received. Hearings may be postponed beyond thirty (30) days by the official for just cause, and notice of postponement shall be served.

- (f) Findings. After consideration of all testimony given at the hearing held in accordance with subsection E above, the official shall sustain, withdraw or modify the notice of violation as originally served. If such notice is sustained or modified, the official shall set a new compliance date by which the violation shall be remedied or removed in accordance with the original notice of violation or modified remedial action specified at the hearing.
- (g) Certificate of Compliance. Upon re-inspection, following the expiration of the date of compliance as specified in the notice of violation or modification thereof, if the violation has been remedied or removed in accordance with the specified remedial action and there is no longer a violation of any provision of this section, then a certificate of compliance shall be issued by the official.
- (h) Legal Action by the Town of Noncompliance. Upon re-inspection following the expiration of the date of compliance as specified in the notice of violation or as extended in accordance with Subsection B above, if the remedial action specified has not been carried out and there is still in existence, in the opinion of the official, a violation of a provision of this section, or, upon refusal to permit such re-inspection, then the official shall immediately issue an appearance ticket and notify the Town Attorney, who shall, if necessary, take appropriate legal action to restrain, prevent, enjoin, abate, remedy or remove such violation and take whatever other legal action is necessary to compel compliance with this section.
- (i) Penalties –
 - (1) Any person who shall violate or cause to be violated or assist in the violation of any provision of this section shall be subject to conviction of an offense by a proper court and be subject to a fine of not less than one hundred dollars (\$100,000), not more than three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed fifteen (15) days, or both, for conviction of a first offense; for conviction of a second offense, both of which were committed within a period of three (3) years, such person shall be subject to a fine of not less than three hundred fifty dollars (\$350.00), nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed fifteen (15) days, or both; and, upon conviction for a third or subsequent offense, all of which were committed within a period of five (5) years, such person shall be subject to a fine of not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1,000.00) or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon the courts and

judicial officers, generally, the first and second offenses shall be violations and third and subsequent offenses shall be misdemeanors for such purposes and all provisions of law relating to Penal Law violations and Penal Law misdemeanors shall apply.

- (2) The term "person," as used in this subsection, shall include an owner, occupant, tenant, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agent or any other person, firm or corporation directly or indirectly in control of the facilities or part thereof.
- (3) Failure to timely comply with any court mandated action shall constitute a separate and distinct offense.

15.0 Amendments

The Town Board may, from time to time, on its own motion or on petition or on recommendation of the Planning Board or the Board of Appeals, after public notice and hearing, amend, supplement, change, modify or repeal this Local Law, pursuant to the provisions of the New York State Town Law applicable thereto. Every such proposed amendment shall be referred to the Planning Board for review and comment. Any amendment shall, within ten (10) days of effective date, be incorporated in the text of the master copy of the Telecommunications Facilities Law and all undistributed copies held for sale. The Records Management Officer shall be responsible for said incorporation and sale.

16.0 Sever Ability

If any section, paragraph, subdivision, clause, phrase, or provision of the Local Law shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Local Law as a whole or any part of provisions thereof other than the part so declared to be invalid or unconstitutional.

17.0 Effective Date

This local law shall become effective by its publication and posting in accordance to the applicable sections of the law.