

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 Town Village
(Select one.)

of Sherman

FILED
STATE RECORDS

MAY 14 2020

DEPARTMENT OF STATE

Local Law No. 2 of the year 2020

A local law Regulating Telecommunications Facilities and Small Wireless Facilities
(Insert Title)

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

County City Town Village
(Select one.)

of Sherman

as follows:

Section 1. Purpose

The purpose of this Local Law is to promote the health, safety and general welfare of the residents of the Village of Sherman; to provide standards for the safe provision of communications consistent with applicable federal and state regulations; to minimize the total number of communication towers in the community by encouraging shared use of existing and future towers and the use of existing tall building and other high structures; and to minimize adverse visual effects from communication towers by requiring careful siting, visual impact assessment, and appropriate landscaping, thereby protecting the natural features and aesthetic character of the Village of Sherman.

Section 2. Definitions

For purposes of this Local Law, the terms listed below shall have the definitions that follow:

"Accessory Structure" - a non-habitable accessory facility or structure serving or being used in conjunction with a communications tower or antenna. Examples of such structures include utility or transmission equipment, storage sheds or cabinets.

(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. 2 of 2020 of the (County)(City)(Town)(Village) of Sherman was duly passed by the Village Board of Trustees on May 6th, 20 , in accordance with the applicable *(Name of Legislative Body)* provisions of law.

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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ and was deemed duly adopted *(Elective Chief Executive Officer*)* on _____ 20 , 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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. *(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) *(Name of Legislative Body)* (repassed after disapproval) by the _____ on _____ 20____. Such local *(Elective Chief Executive Officer*)* 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.

* 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.

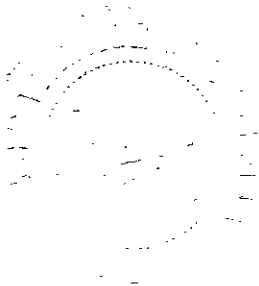
6. (County local law concerning adoption of Charter.)

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.

(Seal)



[Signature]

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

Date: 05-11-2020

"Antenna"- A system of electrical conductors that transmit or receive radio frequency signals. Such shall include but not be limited to radio, television, cellular, paging, personal wireless communication services (PWCS), and microwave communications.

"Board or Village Board"- The Village Board of the Village of Sherman

"Co-Located Antennas"- Telecommunications facilities which utilize existing towers, buildings, or other structures for placement of antennas and do not require construction of a new tower.

"FAA"- The Federal Aviation Administration

"FCC"- The Federal Communications Commission

"Small Cell Facility(ies)" or "wireless facilities"- Whether singular or plural, means and includes the following types of facilities:(a) antenna; and (b) associated Accessory Equipment, which is more particularly known as wireless facilities that, individually and collectively, are part of a system that meets the following qualifications: (1) each antenna of no more than six cubic feet in volume or such greater limits as the federal communications commission has excluded from review under Section 106 of the National Historic Preservation Act; (2) the equipment enclosure is cumulatively no larger than twenty eight cubic feet in volume or such higher limits as the federal communications commission has excluded from review under Section 106 of the National Historic Preservation Act; and (3) the increased or resulting height of the wireless support structure on which the small cell facility is placed is no more than ten feet higher than before, or no more than fifty feet high overall, whichever is greater; or if placed on a new utility pole, the new utility pole is no more than ten feet higher than existing utility poles adjacent to the new pole, or no more than fifty feet high overall, whichever is greater. Accessory equipment is not to be included in the calculation of equipment volume and may be located outside the equipment enclosure. The term small cell facility includes micro facilities, DAS and other wireless technologies meeting the above qualifications and may be referred to as a "node(s)" when referencing the numbers of facilities per application or elsewhere in this Resolution and be it further.

"Telecommunication Facilities"- Towers and/or antennas and accessory structures used in connection with the provision of cellular telephone service, personal wireless communication services (PWCS), paging services, radio and/or television broadcast services, microwave transmission and/or similar or like broadcast services.

"Tower"- A structure designed to support antennas. It includes, without limitation, free-standing towers, monopoles, and similar structures which do, or do not, employ camouflage technology.

Section 3. Special Use Permit Required; Exception.

- A. No telecommunication facility shall be sited, located, constructed, erected, or modified, without the issuance of a Special Use Permit as prescribed by this local law.
- B. This local law shall not apply to modifications to existing telecommunications facilities determined by the Code Enforcement Officer to be "Eligible Facility Requests", as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time; provided, however, that applicants for such modifications shall obtain a non-discretionary permit from the Code Enforcement Officer, and shall pay the permit fee list below.

- C. The Village Board is hereby authorized after public notice and a hearing to review and approve, approve with modifications, or disapprove Special Use Permits pursuant to this law. The Village Board shall have the authority to impose such reasonable restrictions and conditions as are directly related to or incidental to the proposed antenna, tower, or accessory structures.
- D. Notwithstanding any inconsistent provisions of other local laws adopted by the Village of Sherman, towers and antennas shall be permitted and regulated only in accordance with the provisions of this local law.

Section 4. General Standards.

No permit or renewal thereof or modification of the conditions of a current permit relating to a telecommunication facility shall be authorized by the Village Board unless it finds that such telecommunication facility or proposed modification thereto:

- A. Is necessary to meet current or expected demands for the services supported by the telecommunications facility;
- B. Conforms with all applicable regulations promulgated by the Federal Communications Commission and/or any other applicable State or Federal regulatory agency.
- C. Is designed and constructed in a manner which minimizes its visual impact.
- D. Is the most appropriate site within the immediate area for the location of a telecommunication facility. It is preferred that telecommunication facilities be co-located as provided in this local law unless the Village Board finds that co-location is not appropriate under the circumstances.

Section 5. Submittals.

All applicants for a special use permit for the construction of a telecommunication facility in the Village of Sherman shall submit the following:

- A. A report from a professional engineer which shall:
 - (1) Describe the tower and the technical, economic and other reasons for the tower design.
 - (2) State that the tower is structurally sound.
 - (3) Describe how many and what kinds of antenna are proposed.
 - (4) Describe how many and what kind of antenna are possible in the tower.
 - (5) Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure.
 - (6) An analysis of the area containing existing topographical contours and a visual study depicting where within a three-mile radius any portion of the proposed tower could be seen.
- B. A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).

- C. A letter of intent committing the tower owner to negotiate in good faith for shared use by third parties in the future. This letter, which shall be filed with the Building Inspector prior to the issuance of a building permit (assuming the telecommunications tower is approved), shall commit the tower owner and its 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 for shared use by third parties.
 - (3) Allow shared use if an applicant 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, lost cost, site design, construction and maintenance, financing, return on equity, and depreciation, and all of the cost of adapting the tower of equipment to accommodate a shared user without causing electromagnetic interference.
- D. The reports and evaluations required in Section X below, regarding shared use and use without causing electromagnetic interference.

Section 6. Use of existing building and changes to tower and equipment.

- A. When an existing building is proposed to be used, the applicant shall submit the following:
- (1) A fill environmental assessment form (EAF) and the visual addendum to the EAF. The Village Board may require submittal of a more detailed visual analysis based on the results of the visual addendum.
 - (2) A site plan.
 - (3) Any other material that the Village Board deems necessary to evaluate the application.
- B. Any permit granted pursuant to this local law shall be valid only for the number and any type of antennas, and the related equipment in the application and approval.

Section 7. Shared Use.

- A. At all times, shared use of the existing towers shall be preferred to the construction of new towers.
- B. An applicant shall be required to present an adequate report inventorying existing towers, and approved, but unbuilt towers, within a reasonable distance of the proposed site. If an appropriate communications tower or towers are available, the applicant shall submit a written evaluation of the feasibility of sharing such tower.
- (1) The evaluation shall analyze, but is not limited to, the following factors:
 - (a) Structural capacity of the tower or towers;

- (b) Radio frequency interference;
 - (c) Geographic service area requirements;
 - (d) Mechanical or electrical incompatibilities;
 - (e) Inability or ability to locate equipment on the tower or towers;
 - (f) Cost, if fees and costs for sharing would exceed the cost of a new communications tower over a twenty-five-year period; and
 - (g) Any restriction or limitations of the Federal Communications Commission that would preclude the shared use of the tower.
- C. An applicant shall not be required to share use of an existing telecommunications tower if the cost is unreasonable. The costs include, but are not limited to, structural reinforcement of the existing tower, preventing transmission or receiver interference, additional site screening, and other charges including real property acquisition of a lease required to accommodate shared use. Costs associated with this subsection shall be considered unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a twenty-five-year period.
- D. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of an appropriate existing communication tower. Written requests and responses for shared use shall be provided.

Section 8. Use of Existing Buildings.

- A. The use of suitable existing buildings and structures shall be encouraged over the construction of new towers, wherever feasible.
- B. The applicant shall prepare an inventory of buildings and structure in the cell search area determine if any may be suitable to accommodate the antenna. If suitable structures are located, the applicant shall enter into good-faith negotiations with the building owner to secure rights to place one or more antennas on such structures.
- C. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of the existing building or structure. Written requests and responses shall be provided.
- D. An applicant shall not be required to use an existing building or structure if the cost is unreasonable. Costs associated with this subsection shall be considered to be unreasonable if they exceed the cost of the proposed new use at a new and separate location, over a twenty-five-year period.

Section 9. Setbacks.

- A. Telecommunication towers shall be set back from the lot lines a distance at least equal to 150% of the height of the tower. Where an applicant proposes to locate a telecommunications tower at a location consisting of multiple adjacent lots owned or leased by the applicant, the term "lot line" shall mean the exterior boundaries of the applicant's owned or leased property which adjoin property not owned or leased by the applicant.
- B. No telecommunication tower shall be located nearer than 300 feet or three times the height of the tower, whichever is greater, from a residential building, school, place of public worship, or designated historic district or landmark.

Section 10. Visibility.

- A. All towers and accessory facilities shall be sited to have the least practical adverse effect on the environment.
- B. Placement of the antenna or tower on a suitable existing structure, such as a church steeple, water tower or silo is encouraged, whenever feasible.
- C. Towers shall not be artificially lighted, except as required by the Federal Aviation Administration (FAA).
- D. Towers shall be a galvanized finish or painted gray or silver above the surrounding tree line and painted gray, green or black or other neutral color below the surrounding tree line, unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
- E. Existing on-site vegetation shall be preserved to the maximum extent possible. 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 special use permit.
- F. No portion of any tower may be used for signs or advertising purposes, including the company name, banners, streamers, etc.
- G. The applicant shall demonstrate that proposed height for the tower and antenna is the minimum necessary to function satisfactorily. No tower or antenna that is taller than this minimum height shall be approved.

Section 11. Screening.

- A. The Village Board may require fencing around the tower and any associated building(s). The fence shall be a minimum of eight feet in height.

- B. Landscaping shall be planted on the outside of the fencing. The landscaping may be installed on the inside of the fencing, subject to the approval of the Village Board, if the survivability or utility of landscaping on the exterior of the fencing is questionable.
- C. The Village Board may require evergreen hedges or other planting strips as necessary to screen portions of the facility. Installation of new plantings will not be required in those places where the presence of existing vegetation or structures is sufficient to screen the tower and accessory buildings, or in cases where the proposed landscaping would not be visible.

Section 12. Removal of Obsolete Facilities

- A. All obsolete and unused telecommunication towers shall be removed within 12 months of cessation of use.
- B. The owner of the telecommunication tower shall annually file a declaration with the Village as to the continuing operation of every facility installed subject to this local law.
- C. The Village Board may require, as a condition of approval of the special use permit, that the applicant post a bond with the Village, sufficient to allow the Village to have the unused tower removed, if the owner fails to do so within the prescribed time period.

Section 13. Application Fees; Consultant fees.

- A. **New Facilities.** The applicant shall pay an application fee of \$3,000.00 to the Village Clerk on the application's being filed with the Village for the proposed telecommunications tower. Said application fee is not refundable if the application is denied. For each antenna, there shall be an additional fee of \$1,000.00; provided, however, that this initial application fee for tower antennas shall not exceed \$6,000.00.
- B. **Modifications.** Any increase in the number or change in the type of antennas or tower equipment for any existing tower must be approved by the Village Board, as provided herein, subject to an application fee of \$1,000.00. If such modification is an "Eligible Facility Request", no Village Board approval shall be required, but an administrative fee of \$1,000.00 shall still apply.
- C. **Small Cell Facilities.** The permitting fees for Small Cell Facilities shall be as follows:
 - (1) An initial, non-refundable permit/administrative fee of \$500.00 for each permit application submitted to place and operate up to five (5) Small Wireless Facilities on public right-of-way or other public property, or on private property, with an additional \$100.00 for each node beyond five;
 - (2) An initial, non-refundable permit/administrative fee of \$1,000.00 for each new pole and/or new support structure (i.e., not a collocation) intended to support one or more Small Wireless Facilities.

(3) An annual license fee of \$270.00 per Small Wireless Facility in the public right-of-way or on other public property.

(4) This fee structure is intended to comply with the FCC Declaratory Ruling, Order No. 18-133, which sets certain "safe harbor" provision for permitting fees imposed by local municipalities to recover costs associated with the review and permitting of small wireless facilities.

D. The Village of Sherman reserves the privilege to charge additional, reasonable fees to the applicant for engineering and/or other consultants' service as may from time to time be required in conjunction with reviewing and analyzing pertinent information relative to such applications.

Section 14. Effective Date.

This Local Law shall become effective upon filing with the Secretary of State.