

## Chapter 193

### TELECOMMUNICATIONS

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[HISTORY: Adopted by the Board of Trustees of the Village of Alden 3-3-1997 by L.L. No. 1-1997. Amended in its entirety 1-23-2003 by L.L. No. 16-2003. Subsequent amendments noted where applicable.]

#### GENERAL REFERENCES

Zoning -- See Ch. 210.

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#### § 193-1. Intent.

It is the intent of the Board of Trustees of the Village of Alden to provide a safe and efficient method of erecting, regulating and removing telecommunications facilities including, but not limited to, towers, cellular sites, antenna and buildings within the boundary limits of the Village of Alden. This ordinance is intended to provide for the appropriate location and development of communication towers to serve the residents and businesses of the Village of Alden; to minimize adverse visual effects of towers through careful design, siting and vegetative screening; to avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures; to maximize use of any new or existing communication towers to reduce the number of towers needed; and to provide a safe and efficient means for the removal of unused facilities and to provide for the upkeep of facilities currently being utilized at no cost to the village taxpayers.

#### § 193-2. Definitions.

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

**ACCESSORY STRUCTURE** -- An accessory facility or structure serving or being used in conjunction with a communications tower and/or similar facility and

located on the same lot as the communications tower. These shall include but not be limited to utility or transmission equipment, storage sheds, building and cabinets.

**ANTENNA** -- An arrangement of wires or metal rods used in transmitting or receiving electromagnetic waves. It shall also mean a system of electrical conductors that transmit or receive frequency signals. Such signals shall include but not be limited to radio, television, cellular, paging, personal communications services (PCS) and microwave communications.

**BREAK POINT** -- The location on a communication tower (a design feature) which, in the event of a tower failure, would result in the tower falling entirely within the boundaries of the property on which it is located.

**EMERGENCY SERVICES** -- Any municipal and/or emergency service provider, including but not limited to Department of Public Works, fire, police, emergency medical services, first aid, ambulance, rescue, recreation and any and all other municipal facilities and any private entity performing such services on behalf of or pursuant to any agreement with the village for the providing of such service.

**EMF** -- Electromagnetic field.

**GUYED TOWER** -- A communications tower that is supported, in whole or in part, by guy wires and ground anchors.

**MONOPOLE TOWER** -- A communications tower consisting of a single pole, constructed without guy wires and ground anchors.

**NIER** -- Nonionizing electromagnetic radiation.

**ONE-HUNDRED-PERCENT-CLEAR ZONE** -- The requirement that in the event of a tower failure, the entire height of the tower would fall completely within the boundaries of the property on which it is located.

**SELF-SUPPORTING TOWER** -- A communications tower that is constructed without guy wires and ground anchors.

**TELECOMMUNICATION TOWER** -- A guyed, monopole or self-supporting tower, constructed as a freestanding structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting or receiving television, am/fm radio, digital, paging, personal communication services, microwave, cellular, telephone or similar forms of electronic communication.

**TELECOMMUNICATIONS EQUIPMENT BUILDING** -- The building in which electronic receiving and relay equipment for cellular telecommunications facility is housed.

**TELECOMMUNICATIONS FACILITY** -- A telecommunications facility consists of the equipment and structures involved in receiving telecommunication or radio signals from a mobile radio communications source and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

**UTILITY SERVICE FACILITIES** -- Elements of utility distribution, collection or transmission networks required by their nature to be relatively disbursed throughout the service area. Typical utility service facilities include but are not limited to electrical distribution substations, sewage lift stations and telephone exchange buildings and structures.

**§ 193-3. Location.**

- A. Municipal property. With regard to any property owned by a municipal corporation, a party shall first seek a special permit from the Board of Trustees of the Village of Alden.
- (1) Such special permit application shall contain the following information, in addition to any other information deemed relevant by the Board of Trustees of the Village of Alden:
- (a) Four copies of all building plans.
  - (b) An application fee as so determined by the Board of Trustees.<sup>1</sup>
  - (c) Such performance, maintenance and removal bond(s) and such guaranties as may be required by the Board of Trustees.
  - (d) A detailed statement as to whether or not any other location is feasible within the village limits.
  - (e) Detailed map indicating the placement of all other telecommunications towers and communications towers within the geographical limits of the Town of Alden.

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<sup>1</sup> Editor's Note: See Ch. A220, Fees.

- (f) Proof of notification (certified mail return receipts) to be given to the village by the applicant of all property owners within five hundred (500) feet of the boundaries of the property that the tower is to be constructed.
- (g) Site plan, in a form and content acceptable to the Board of Trustees, prepared to scale and in sufficient detail and accuracy showing at a minimum:
  - [1] The exact location of proposed tower, together with guy wires and guy anchors, if applicable.
  - [2] The maximum height of the proposed tower.
  - [3] A detail of tower type (monopole, guyed, freestanding or other).
  - [4] The color or colors of the tower.
  - [5] The location, type and intensity of any lighting on the tower.
  - [6] The property boundaries (a copy of a property survey must also be provided).
  - [7] Proof of the landowner's consent if the applicant will not own the property (a copy of a lease agreement must also be provided if the applicant will not own that property.)
  - [8] Location of all structures on the property and all structures on any adjacent property within 50 feet of the property lines, together with the distance of the structures to the tower.
  - [9] The names and addresses of adjacent landowners.
  - [10] The location, nature and extent of any proposed fencing and landscaping or screening.
  - [11] The location, nature of proposed utility easements and access roads, if applicable.

- [12] Building elevations of accessory structures or immediately adjacent buildings.
  - [13] Before and after propagation studies prepared by a qualified radio frequency engineer (signed and sealed by a professional engineer registered in the State of New York) demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.
- (2) Use of municipal property may be subject to any lease arrangements and other terms and conditions as may be deemed appropriate by the Board of Trustees.
  - (3) All permit holders shall provide, in a form to be determined by the Board of Trustees, adequate protection to the residents of the Village of Alden with regard to the removal and maintenance of all such structures so as to ensure that same shall be removed when no longer in service.
  - (4) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within thirty (30) days of the submission of the application for the special permit.
  - (5) The use of any right-of-way owned, controlled and/or existing for the benefit of the village shall be subject to such payments by any entity utilizing such right-of-way as may be deemed reasonable by the municipality.
- B. Industrial Zone.
- (1) Upon the filing of a building permit, a telecommunications tower may be placed within any Industrial Zone within the limits of the Village of Alden upon submission of the site plan to the Planning Board pursuant to the requirement of Chapter 210, Zoning. After approval by the Planning Board, an application for a special permit shall be filed with the Board of Trustees of the Village for final approval, as provided in § 193-3A(1) of this Chapter.
  - (2) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within thirty (30) days of the submission of the application for the special permit.
- C. Commercial Zone.
- (1) Telecommunications towers shall be permitted in any commercial zone within the limits of the Village of Alden upon the filing of the appropriate building permit and after site plan review by the Planning Board pursuant to Chapter 210, Zoning.

Upon completion of the site plan review, a special permit application shall be filed with the Board of Trustees of the Village of Alden for final approval, as provided in § 193-3A(1) of this Chapter.

- (2) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within sixty (60) days of the submission of the application for the special permit.
- (3) In addition to the special permit application, the applicant shall provide to the Planning Board and Board of Trustees a search ring prepared by a qualified radio frequency engineer (signed and sealed documents by a professional engineer registered in the State of New York) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Boards why it selected the proposed site, discuss the availability (or lack of availability of a suitable structure within the search ring which would have allowed for a collocated antenna) and to what extent the applicant explored locating the proposed tower in an Industrial District or upon municipal property. Correspondence with other telecommunications companies concerning collocation is a part of this requirement.
- (4) The village, upon reviewing the application, may request reasonable additional visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the village. Line-of-sight drawings and visual simulations are mandatory for applications in residential districts.

D. Residential Zone.

- (1) Telecommunications towers shall be permitted in any residential zone within the limits of the Village of Alden upon the filing of the appropriate building permit, SEQR review and after site plan review by the Planning Board pursuant to Chapter 210, Zoning. Upon completion of the site plan review, a special permit application shall be filed with the Board of Trustees of the Village of Alden for final approval, as provided in § 193-3A(1) of this Chapter.
- (2) The Board of Trustees shall render a final decision with regard to the placement of the cellular tower within ninety (90) days of the submission of the application for the special permit.

- (3) In addition to the special permit application, the applicant shall provide to the Planning Board and Board of Trustees a search ring prepared by a qualified radio frequency engineer (signed and sealed documents by a professional engineer registered in the State of New York) and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Boards why it selected the proposed site, discuss the availability (or lack of availability of a suitable structure within the search ring which would have allowed for a collocated antenna) and to what extent the applicant explored locating the proposed tower in an industrial or commercial district or upon municipal property. Correspondence with other telecommunications companies concerning collocation is a part of this requirement.
- (4) The village, upon reviewing the application, may request reasonable additional visual and aesthetic information as it deems appropriate on a case-by-case basis. Such additional information may include, among other things, enhanced landscaping plans, line-of-sight drawings and/or visual simulations from viewpoints selected by the village. Line-of-sight drawings and visual simulations are mandatory for applications in residential districts.
- (5) A renewal application for a special permit within a residential zone shall be made every three years from the date initial approval is given.

E. Colocation.

- (1) An antenna and/or tower that is to be attached to an existing communications tower shall be permitted upon the issuance of a building permit and upon final approval of the Board of Trustees. A decision with regard to such approval shall be granted within sixty (60) days of filing of the application for a building permit.
- (2) The building permit application shall also include a structural analysis/report verifying the ability of the structure to handle the additional antenna.

**§ 193-4. General conditions.**

- A. Aesthetics. Telecommunications towers, facilities and antenna shall be located and buffered to the maximum extent which is practical and technologically feasible to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences to the extent possible, the Board of Trustees may impose reasonable conditions on the applicant, including, but not limited to, the following:

- (1) Use of a monopole or guy wire instead of a freestanding tower.
- (2) Reasonable landscaping consisting of trees or shrubs to screen the base of the tower and/or to screen the tower to the extent possible from adjacent residential property. Existing on-site trees and vegetation shall be preserved to the maximum extent possible.
- (3) Additional site plan requirements, such as specially designed towers, additional screening, greater setbacks and improved landscaping, to address aesthetic and safety concerns.
- (4) The village may require the applicant to show that it has made good faith efforts to collocate on existing towers or other available and appropriate structures or to construct new towers near existing towers in an effort to consolidate visual disturbances.
- (5) Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements. Towers shall not be artificially lighted except as required by the Federal Aviation Administration. Towers shall be of a nonreflective finish, the color of which shall be subject to approval. Any lights which may be required by the FAA shall not consist of strobe lights, unless specifically mandated by FAA.
- (6) No tower shall contain any signs or advertising devices. A small sign on the fencing shall be placed to identify the ownership of the facility and a telephone number for emergencies.
- (7) The applicant must submit a copy of its policy regarding collocation on the proposed tower with other potential future applicants. Such policy should allow collocation under the following conditions:
  - (a) The new antennas and equipment do not exceed structural loading requirements, interfere with village space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment.
  - (b) The party desiring to collocate pays the applicant an appropriate and reasonable sum to collocate.
  - (c) The party desiring to collocate has a similar policy of collocation for the applicant.



- B. Radio frequency effect. The Planning Board may impose a condition on the applicant that the communication antennas be operated only at Federal Communications Commission designed frequencies and power levels and/or Environmental Protection Agency technical exposure limits and that the applicant to provide competent documentation to support that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.
- C. Traffic, access and safety.
- (1) A road turnaround and one parking space shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. The use of public roadways or road rights-of-way for the siting of a tower antenna accessory structures is prohibited.
  - (2) All towers and guy anchors, if applicable, shall be enclosed by a fence not less than eight feet in height as measured from the finished grade or otherwise sufficiently protected from trespassing or vandalism.
  - (3) Radiation standards. All proposed communications towers shall comply with current standards of the Federal Communications Commission for nonionizing electromagnetic radiation and electromagnetic fields.
  - (4) If high voltage is necessary for the operation of the communications tower or any accessory structures, appropriate warning signs shall be permanently attached to the fence or wall shall be spaced not more than forty (40) feet apart.
  - (5) "No trespassing" warning signs shall be permanently attached to the fence or wall and shall be spaced not more than forty (40) feet apart.
  - (6) Mobile or immobile equipment not used in direct support of the telecommunications facility shall not be stored or parked on the site unless repairs to the tower are currently underway.
  - (7) Inspection. The Code Enforcement Officer and Board of Trustees may require periodic inspections of the telecommunications facilities to ensure structural integrity and adherence with this chapter. Based upon the results of that inspection, the Board of Trustees and Code Enforcement Officer may require repair, replacement or removal of nonconforming structures.
  - (8) The Superintendent of Public Works, in conjunction with the Board of Trustees and the Code Enforcement Officer, may promulgate other rules and regulations with regard to breakpoint, clear zones and telecommunications facilities as may be deemed necessary from time to time to implement the intent of this chapter.

- D. Removal of tower. The applicant shall agree to remove the tower if the telecommunications facility becomes obsolete or ceases to be used for its intended purpose for four consecutive months. The Board of Trustees shall require the applicant to provide a demolition bond in an amount to be determined by the Board of Trustees based upon the cost of removal or such other security as the parties may agree for purposes of removing the telecommunications facility in case the applicant fails to remove the tower as otherwise required.
- E. Structural safety. During the application process and every three years after construction of the tower, the applicant/owner shall provide a certification from a qualified, professional engineer, certifying that the tower meets applicable structural safety standards and that an inspection of the tower, all accessory structures and all fencing has been made by the applicant/owner.
- F. All telecommunications facilities shall be maintained in good order and repair.
- G. No tower shall exceed one hundred fifty (150) feet in height from the base of the tower to the topmost portion of the tower.
- H. No signal or frequency, whether radio, television, cellular, paging, personal communication services (PCS), microwave communication or other form of electronic communication, shall be permitted to be used on a frequency or band of frequencies utilized for emergency services within the Village of Alden and/or in any other area which would have the effect of interfering with the use and operation of any emergency service provider operating within the Village of Alden.

#### **§ 193-5. Exemptions.**

Subject to limits and allowable reasons therefor as permitted under federal and state law, rules and regulations.

- A. Antennas less than seventy-five (75) feet in total height as measured from ground level used solely for residential household television, amateur radio and radio reception.
- B. Satellite antennas measuring two (2) meters or less in diameter and located in commercial districts and satellite antennas one (1) meter or less in diameter regardless of location.

#### **§ 193-6. Penalties for offenses.**

- A. A facility receiving a special permit by the Board of Trustees that subsequently does not meet the requirements of that permit shall have its permit revoked and the tower shall be

removed within ninety (90) days with notification of the violation by the village. Failure to so remove the tower within ninety (90) days after notification by the Village shall result in a civil penalty not to exceed two hundred fifty dollars (\$250.00) for each day of a continuing violation.