



# CHAPTER 215. ZONING CODE

## Part 2. District & Use Regulations

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## Article 20. Residential Districts

### §215-20.1

#### DISTRICTS ESTABLISHED

The residential districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to residential or "R" zoning districts it is referring to one of the following:

District Name	Abbreviation & Map Symbol
<i>Single-Family Residential</i>	<b>R-1</b>
<i>Two-Family Residential</i>	<b>R-2</b>
<i>Mixed Residential</i>	<b>MR</b>

### §215-20.2

#### PURPOSE STATEMENTS

- A. Single-Family Residential (R-1).** The purpose of the R-1 District is to support the neighborhood vision and goals of the Town's Comprehensive Plan through the preservation and enhancement of existing single-family neighborhoods. Since the settlement of the Town, these neighborhoods have provided affordable, multi-generational housing options arranged in a manner that fosters a sense of community connection. The intent of the R-1 District regulations is to permit the construction and/or reconstruction of homes in a manner that does not compromise this traditional character and community setting, consisting of owner-occupied, single-family detached homes on varied lot sizes, with unobstructed front yards, and pedestrian-scaled streetscapes with sidewalks, street trees, and other amenities.
- B. Two-Family Residential (R-2).** The R-2 District is intended to reflect and preserve the Town's traditional neighborhoods established with a mix of single- and two-family homes, increasing housing choice and continuing to foster a sense of community. The purpose of the R-2 District regulations is to protect and enhance these moderate density neighborhoods in accordance with the vision and housing goals of the Town's Comprehensive Plan. Like the R-1 District, these neighborhoods are generally defined by detached homes on varied lot sizes, with sidewalks, street lighting, street trees, and garages located to the rear of the property. These neighborhood design elements create visually interesting, connected, and walkable environments for residents. Future investment should reflect the existing settlement pattern and neighborhood design.
- C. Mixed Residential (MR).** The purpose of the MR District is to provide for quality, affordable, and diversified housing options within the Town in accordance with the vision and goals of the Town Comprehensive Plan. MR District identifies both existing and potential mixed density neighborhood areas. Residential uses permitted in this District include single-, two-, and multi-family dwellings arranged in a manner that provides for an inclusive and connected community. The design and location of housing stock should be scaled according to the existing neighborhood context, where applicable. To ensure the future design, layout, and character of the MR District is cohesive and

consistent with the vision of the Town of Tonawanda, all development and/or redevelopment proposals should seek to achieve the following:

1. Establish neighborhoods with a variety of housing types in a unique, attractive environment that is oriented toward connecting residents and fostering pedestrian activity.
2. Locate residential types and densities in a manner that provides a natural transition from single- and two-family neighborhoods to higher density developments, community resources, and commercial centers.
3. Expand housing options for residents of all ages, incomes, and life stages in a connected, community-centered environment.
4. Foster the compatibility of residences and other improvements through their arrangement, bulk, form, character, and landscaping.
5. Develop on- and off-site connections to nearby amenities, roadways, sidewalks, parks, and trails.
6. Design well-configured greens, landscaped streets, greenbelts, and parks that are woven into the pattern of the neighborhood and dedicated to the social interaction, recreation, and visual enjoyment of the residents.
7. Preserve and integrate existing natural features and undisturbed areas into the open space and design of the neighborhood.
8. Create a cohesive and interconnected traditional neighborhood development pattern throughout the entirety of the District, regardless of the sequence of proposals or project phasing.

### §215-20.3

#### REVIEWS REQUIRED

- A. **Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.
- B. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. **Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. **Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

### §215-20.4

#### USE LISTS

Uses are allowed in residential districts in accordance with Table 20-a.

- A. Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
- B. Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.

C. Uses not listed and those identified with a "-" are expressly prohibited.

TABLE 20-a	R-1	R-2	MR	Additional Regulations
<b>RESIDENTIAL USES</b>				
Single-Family Dwelling	P	P	P	
Two-Family Dwelling	-	P	P	
Multi-Family Dwelling, up to 4 units	-	-	P <sup>1</sup>	§24.15
Multi-Family Dwelling, over 4 units	-	-	SP <sup>2</sup>	§24.15
Mobile Home Park	-	-	SP	
Bed and Breakfast or Short-Term Rental	-	SP	SP	§24.7
Senior Housing	-	-	P	
<b>OTHER USES</b>				
Community Center	-	-	P	
Day Care Center, Child or Adult	-	-	SP	§24.10
Municipal Structure or Use	P	P	P	
Place of Worship	SP	P	P	
Park or Playground	P	P	P	
Telecommunications Facility	-	-	-	Article 29
<b>ACCESSORY USES</b>				
Accessory Use or Structure	P	P	P	§24.4
Accessory Dwelling Unit or In-Law Suite	SP	SP	SP	§24.3
Home Occupation	P	P	P	§24.13
Keeping of Animals <sup>3</sup>	-	-	-	
Small-Scale Solar, Rooftop-Mounted	P	P	P	Article 26
Tier 1 Battery Energy Storage System	P	P	P	Article 28
Tier 2A Battery Energy Storage System	P	P	P	Article 28

**NOTES:** (1) Multi-family dwellings up to four units may be permitted by conversion or new construction.  
 (2) Conversion of a single- or two-family dwelling to more than four units is prohibited.  
 (3) This shall include the breeding, raising, or keeping of bees, fowl, farm animals, exotic animals, pigeons, reptiles, or more than three dogs on any property.

## §215-20.5

## DIMENSIONAL &amp; BULK REQUIREMENTS

Table 20-b indicates the dimensional and bulk requirements for residential districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

TABLE 20-b	R-1	R-2	MR
<b>MIN LOT AREA <sup>1</sup></b>			
Single- or Two-Family Dwelling	4,500 sf	4,500 sf	4,500 sf
Multi-Family Dwelling, per unit	-	-	2,000 sf
Other Use	10,000 sf	10,000 sf	10,000 sf
<b>MIN LOT WIDTH <sup>1</sup></b>			
Residential Use	45 ft	45 ft	45 ft
Other Use	55 ft	60 ft	60 ft
<b>MIN FRONT SETBACK <sup>2</sup></b>			
Primary Use	25 ft	25 ft	20 ft
<b>MIN SIDE SETBACK <sup>3</sup></b>			
Primary Use	2 / 6 ft	2 / 6 ft	2 / 6 ft
Nonresidential Use, adjacent to residential	8 ft	8 ft	8 ft
Accessory Use	2 ft	2 ft	2 ft
<b>MIN REAR SETBACK</b>			
Primary Use	25 ft	25 ft	25 ft
Accessory Use	2 ft	2 ft	2 ft
<b>MAX LOT COVERAGE</b>			
Structures & Impervious Surfaces	60%	60%	50%
<b>MIN OPEN SPACE</b>			
Grass, Landscaped, or Natural Areas	40%	40%	50%
<b>MAX BUILDING HEIGHT</b>			
Primary Structure	35 ft	35 ft	45 ft
Accessory Structure	12 ft	12 ft	12 ft
Private Garage	16 ft	16 ft	16 ft
<b>MIN BUILDING FOOTPRINT</b>			
One-Story Dwelling	800 sf	-	-
Two or More Story Dwelling	520 sf	-	-
<b>MAX BUILDING FOOTPRINT</b>			
Primary Structure	-	-	-
Private Garage, Attached or Detached	900 sf	900 sf	900 sf
Other Accessory Structure <sup>4</sup>	180 sf	180 sf	180 sf

- NOTES:**
- (1) Or the average lot area/width on the block.
  - (2) Where 20% of the lots in a single block are improved with buildings on a uniform line or on various building lines, the average setback shall be the established building line for that block.
  - (3) At least one side yard shall meet the larger requirement. The larger width of side yards on any street in any block shall be on the same side of the building.
  - (4) This provision shall apply to enclosed accessory buildings only. For maximum number of permitted accessory structures, see §215-24.4.



# LOT & BUILDING REQUIREMENT VISUALIZATIONS

FIGURE 1. Dimensional Standards by Parcel Configuration

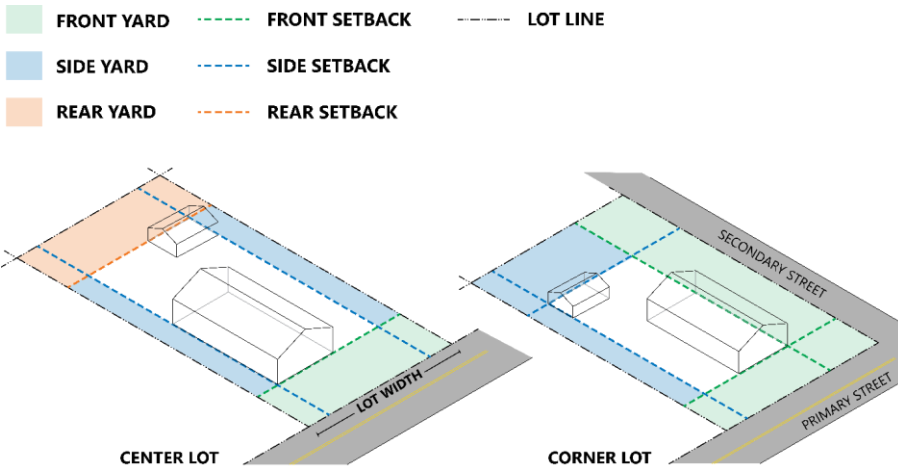
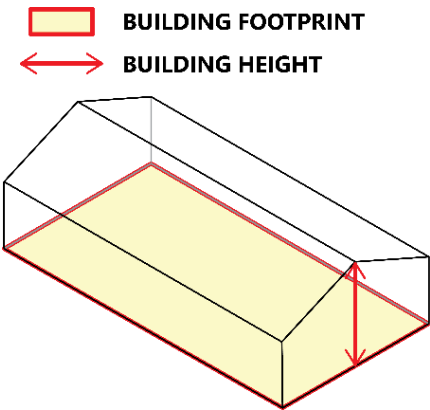


FIGURE 2. Building Height & Building Footprint



# Article 21. Mixed Use Districts

## §215-21.1

### DISTRICTS ESTABLISHED

The mixed-use districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to mixed-use or "MU" zoning districts it is referring to one of the following:

District Name	Abbreviation & Map Symbol
<i>Mixed Use Neighborhood</i>	<b>MU-N</b>
<i>Mixed Use General Commercial</i>	<b>MU-GC</b>
<i>Mixed Use Waterfront</i>	<b>MU-W</b>

## §215-21.2

### PURPOSE STATEMENTS

- A. **Mixed Use Neighborhood (MU-N).** The purpose of the MU-N District is to facilitate investment in properties along established secondary commercial corridors, such as Delaware and Englewood Avenue, in accordance with the Town's Comprehensive Plan. The regulations of this District serve to protect the character of existing neighborhoods abutting such corridors, where the accommodation of large-scale, high-intensity commercial uses would be disruptive. Future investment within this District should:
1. Fit the context of existing neighborhoods in terms of scale, architectural style, intensity of use, and size of lots and structures.
  2. Accommodate a mix of uses which are designed to serve the residents of the neighborhoods and surrounding community.
  3. Be of an appropriate scale and design to complement the existing character of neighborhoods where they are located and be sensitive to the context of existing surroundings.
  4. Reduce the presence of generic, auto-oriented suburban development, and encourage the transformation of buildings and sites in a manner that improves the aesthetics of the corridor and enhances the character and walkability of the streetscape.
  5. Provide for safe, convenient pedestrian connectivity and access on- and off-site and reduce potential conflicts between motor vehicles and pedestrians.
  6. Ensure the design of the site balances adequate landscaping, buffering, and green space with parking, circulation, and access needs, particularly where abutting residential properties.
  7. Promote optimal utilization of properties fronting commercial collector streets and provide future opportunities for economic development by enhancing the viability of low impact commercial corridors and activity centers.

- B. Mixed Use General Commercial (MU-GC).** The purpose of the MU-GC District is to support the vision and goals of the Town's Comprehensive Plan to support investment in and redevelopment of Tonawanda's major commercial corridors and activity centers, such as Sheridan Drive and Niagara Falls Boulevard. The regulations of this District are intended to permit a wide variety and mix of uses that serve the needs of local residents and the traveling public. In order to accomplish this, the MU-GC District regulates the location, design, and use of structures and land to redefine the public and private realms in a manner that promotes attractive, multi-modal streetscapes. Although higher intensity commercial uses may be permitted in the MU-GC District, proper landscaping, screening, and site design elements will be required to mitigate any potential negative impacts to the desired character of the streetscape and quality of life for adjacent neighborhoods. Special attention should be given to the design of sites and structures at major intersections and gateways to the Town to define Town character and create a sense of place.
- C. Mixed Use Waterfront (MU-W).** In accordance with the Town of Tonawanda Waterfront Land Use Plan, Local Waterfront Revitalization Program (LWRP), and Comprehensive Plan, the MU-W District provides for the redevelopment of the Niagara River shoreline, while balancing the need to protect the unique environmental features and aesthetic qualities of the waterfront. The regulations of this District are intended to achieve the following objectives:
1. Encourage a mix of residential, limited commercial, tourism, and recreational uses, including public and private water-dependent and water-oriented uses.
  2. Support the redevelopment of the waterfront into a vibrant, attractive destination for residents and visitors alike.
  3. Ensure development is sensitive to the physical and environmental limitations of the lands within this district, working with the landscape to preserve natural features and optimize green space.
  4. Promote public access to and use of waterfront areas, including along the shoreline, through the extension and enhancement of public parks and trails.
  5. Protect unique vistas and viewsheds to and from the shoreline.
  6. Provide a buffer between the waterfront and the industrial areas of the Town on the inland side of River Road.
  7. Utilize building and site design practices that address both the River Road streetscape and Niagara shoreline, enhancing the overall character and aesthetic of the waterfront.
  8. Remediate brownfields and other contaminated lands to restore environmental quality, reclaim developable space, and provide opportunities for more desirable land uses.
  9. Reduce the presence of industrial uses through increased landscaping and screening, and redirect such uses to the appropriately designated industrial areas of the Town.

### §215-21.3

#### REVIEWS REQUIRED

- A. Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.

- B. Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

§215-21.4

USE LISTS

Uses are allowed in mixed use districts in accordance with Table 21-a.

- A.** Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
- B.** Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.
- C.** Uses not listed and those identified with a "-" are expressly prohibited.

TABLE 21-a	MU-N	MU-GC	MU-W	Additional Regulations
<b>RESIDENTIAL USES</b>				
Single-Family Dwelling	P	P	-	
Two-Family Dwelling	P	P	-	
Multi-Family Dwelling, up to 4 units	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>	§24.15
Multi-Family Dwelling, over 4 units	SP <sup>2</sup>	SP <sup>2</sup>	SP <sup>2</sup>	§24.15
Upper Floor Dwelling Units or Lofts	P	P	P	
Transitional Housing	SP	SP	-	
Bed and Breakfast or Short-Term Rental	P	P	P	§24.7
Senior Housing	SP	P	P	

- Table continued on next page -

TABLE 21-a	MU-N	MU-GC	MU-W	Additional Regulations
<b>COMMERCIAL USES</b>				
<i>Animal Grooming Shop</i>	P <sup>3</sup>	P	-	§24.6
<i>Animal Hospital or Veterinary Clinic</i>	-	P <sup>4</sup>	-	§24.6
<i>Art, Dance, Music, or Photo Studio</i>	P	P	P	
<i>Car Wash</i>	-	SP	-	§24.8
<i>Day Care Center, Child or Adult</i>	P <sup>3</sup>	P	P	§24.10
<i>Financial Institution</i>	P <sup>3</sup>	P	-	
<i>Funeral Home or Parlor</i>	P <sup>3</sup>	P	-	
<i>Gym, Fitness, or Health Club</i>	P <sup>3</sup>	P	P	
<i>Hotel or Inn</i>	-	P	P	
<i>Laundromat or Dry Cleaner</i>	P <sup>3</sup>	P	-	
<i>Personal Service Establishment</i>	P <sup>3</sup>	P	P	
<i>Item Repair or Service Shop</i>	P <sup>3</sup>	P	-	
<i>Construction, Landscape, or Other Property Service Operation</i>	-	SP <sup>5</sup>	-	
<i>Office, Administrative or Professional</i>	P	P	P	
<i>Office or Clinic, Medical</i>	P <sup>3</sup>	P	P	
<i>Restaurant or Bar</i>	P <sup>3</sup>	P	P	§24.18
<i>Retail Store</i>	P <sup>3</sup>	P	P	
<i>Self-Storage</i>	SP	SP	-	
<i>Retail Dispensary, Marijuana/Cannabis</i>	P <sup>3</sup>	P	-	§24.14
<i>Consumption Site, Marijuana/Cannabis</i>	-	-	-	
<i>Microbusiness, Marijuana/Cannabis</i>	-	SP	P	§24.14
<i>Micro-Winery, Brewery, or Distillery</i>	-	SP	P	§24.20
<i>Winery, Brewery, or Distillery</i>	-	-	P	§24.20
<i>Recreation or Entertainment Facility, Indoor</i>	P <sup>3</sup>	SP	P	
<i>Recreation or Entertainment Facility, Outdoor</i>	-	-	SP	§24.17
<i>Water-Oriented or Enhanced Use (Marina, Dock, etc.)</i>	N/A	N/A	P	
<i>Fueling or Charging Station</i>	-	SP	-	§24.12
<i>Vehicle Sales, Service, or Repair Shop</i>	-	SP	-	§24.19

- Table continued on next page -

TABLE 21-a	MU-N	MU-GC	MU-W	Additional Regulations
<b>OTHER USES</b>				
Community Center	P <sup>3</sup>	P	P	
Library, Museum, or Cultural Facility	SP	P	P	
Municipal Structure or Use	P	P	P	
Park or Playground	P	P	P	
Parking Lot, as primary use	-	SP	SP	
School, Public or Private	SP	P	-	
Service Club or Organization	P <sup>3</sup>	P	-	
Large- or Utility-Scale Solar, Rooftop-Mounted	-	P	P	Article 26
Large-Scale Solar, Building or Ground-Mounted	-	-	-	Article 26
Wind Energy Conversion System, Building-Mounted	-	-	P	Article 27
Wind Energy Conversion System, Noncommercial	-	-	SP	Article 27
Wind Measurement Tower	-	-	SP	Article 27
Telecommunications Facility	-	SP	-	Article 29
Use of Incinerators or Autoclaves	-	-	-	
Waste Transfer Station or Disposal	-	-	-	
Mix of Uses in Single Structure or Lot Permitted Use over 5,000 sf in Floor Area	Refer to Each Use			
	SP	N/A	N/A	
<b>ACCESSORY USES</b>				
Accessory Use or Structure	P	P	P	§24.4
Accessory Dwelling Unit or In-Law Suite	P	P	P	§24.3
Drive-Through Facility	-	SP	-	§24.11
Home Occupation	P	P	P	§24.13
Small-Scale Solar	P	P	P	Article 26
Tier 1 or Tier 2A Battery Energy Storage System	P	P	P	Article 28
Tier 2B Battery Energy Storage System	-	P	P	Article 28
Outdoor Assembly or Seating Area <sup>6</sup>	SP	P	P	§24.16
Outdoor Sales or Display	-	SP	SP	§24.16
Outdoor Storage	-	-	-	§24.16

- NOTES:**
- (1) Multi-family dwellings up to four units may be permitted by conversion or new construction.
  - (2) Conversion of a single- or two-family dwelling to more than four units is prohibited.
  - (3) Provided such use occupies no more than 5,000 square feet of floor area.
  - (4) Where such use includes the overnight accommodation of animals or outdoor facilities for animals a special use permit shall be required.
  - (5) Outdoor sales, display, and/or storage areas, including storage of vehicles, shall be in accordance with §215-24.16.
  - (6) Outdoor dining areas must obtain an outdoor dining permit per §215-24.16.

## §215-21.5

## DIMENSIONAL &amp; BULK REQUIREMENTS

Table 21-b indicates the dimensional and bulk requirements for mixed use districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

TABLE 21-b	MU-N	MU-GC	MU-W
<b>MIN LOT AREA</b>			
Single- or Two-Family Dwelling	4,500 sf	6,500 sf	-
Multi-Family Dwelling, per unit	2,000 sf	2,000 sf	SPR <sup>1</sup>
Other Use	10,000 sf	15,000 sf	SPR <sup>1</sup>
<b>MIN LOT WIDTH</b>			
Residential Use	50 ft	50 ft	60 ft
Other Use	70 ft	70 ft	70 ft
<b>MIN FRONT SETBACK</b>			
Primary Use <sup>2</sup>	0 / 20 ft	30 / 50 ft	20 / 50 ft
Primary Use, at shoreline	-	-	SPR <sup>1</sup>
<b>MIN SIDE SETBACK</b>			
Primary Use <sup>3</sup>	5 / 10 ft	5 / 15 ft	SPR <sup>1</sup>
Accessory Use <sup>3</sup>	3 / 5 ft	3 / 5 ft	SPR <sup>1</sup>
<b>MIN REAR SETBACK</b>			
Primary Use	25 ft	25 ft	SPR <sup>1</sup>
Accessory Use	5 ft	5 ft	SPR <sup>1</sup>
<b>MAX LOT COVERAGE</b>			
Structures & Impervious Surfaces	85%	85%	SPR <sup>1</sup>
<b>MIN OPEN SPACE</b>			
Grass, Landscaped, or Natural Areas	15%	15%	35%
<b>MAX BUILDING HEIGHT</b>			
Primary Structure	35 ft	45 ft (3 stories)	SPR <sup>1</sup>
Accessory Structure, residential	16 ft	16 ft	SPR <sup>1</sup>
Accessory Structure, nonresidential	15 ft	15 ft	SPR <sup>1</sup>
<b>MAX BUILDING FOOTPRINT</b>			
Primary Structure, nonresidential	5,000 sf	-	-
Private Garage	900 sf	-	-
Other Accessory Structure <sup>4</sup>	180 sf	-	-

- NOTES:** (1) SPR indicates requirement to be determined through site plan review.  
(2) The larger shall be the maximum front setback requirement.  
(3) The larger is the requirement where adjacent to a residential use or district.  
(4) This provision shall apply to enclosed accessory buildings only. Accessory structures such as pools, patios, and playgrounds are exempt. For maximum number of permitted accessory structures, see §215-24.4.

# Article 22. Industrial Districts

## §215-22.1

### DISTRICTS ESTABLISHED

The industrial districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to industrial or "I" zoning districts it is referring to one of the following:

District Name	Abbreviation & Map Symbol
<i>Mixed Use Industrial</i>	<b>MU-I</b>
<i>General Industrial</i>	<b>GI</b>

## §215-22.2

### PURPOSE STATEMENTS

- A. **Mixed Use Industrial (MU-I).** The purpose of the MU-I District is to foster the transformation of industrial areas into vibrant, stable economic centers. While the presence of industrial operations continues to serve as an important facet of Tonawanda's economy, the viability of large-scale industrial operations may be affected by current market shifts and advances in technology. This District is intended to support the vision and recommendations of the Town's Comprehensive Plan by allowing for creative redevelopment and investment efforts that cultivate increased employment opportunities. Future development in the MU-I District should seek to achieve the following objectives:
  1. Contribute to the local economy by increasing the tax base and local job opportunities, as well as providing for the production and availability of goods, services, and utilities to the region.
  2. Capitalize on opportunities to rehabilitate vacant or underutilized buildings and sites within the District.
  3. Foster an innovative, viable center for industry within the Town in a campus style environment, allowing for supportive commercial uses that serve office and industrial operations.
  4. Continue to support large-scale industry and commerce provided that such uses operate in a manner that protects and maintains the health, safety, welfare, and quality of life of adjacent neighborhoods.
- B. **General Industrial (GI).** The purpose of the GI District is to accommodate industrial activity, which may be more intensive than light industrial operations, in a manner that supports the goals and objectives contained in the Town's Comprehensive Plan. The GI District provides opportunities for a wide range of manufacturing activities, which have a greater potential for negative impacts on surrounding properties. Uses permitted in the GI District shall be in areas where public utilities and adequate transportation facilities (rail, tractor trailer, etc.) are available or can be made available. Developments in this District shall employ techniques to minimize negative impacts (including traffic, parking, glare, noise, odor, soil contamination, etc.) on site and where adjacent to non-industrial uses, especially established residential districts and environmentally sensitive areas.



§215-22.3

REVIEWS REQUIRED

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- A. **Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.
- B. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. **Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. **Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

§215-22.4

USE LISTS

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Uses are allowed in industrial districts in accordance with Table 22-a.

- A. Uses identified with a "P" are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
- B. Uses identified with a "SP" may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.
- C. Uses not listed and those identified with a "-" are expressly prohibited.

TABLE 22-a	MU-I	GI	Additional Regulations
<b>COMMERCIAL USES</b>			
Adult Use	SP	SP	§24.5
Animal Hospital, Veterinary Clinic, or Kennel	SP	-	§24.6
Office, Administrative or Professional	P	P	
Office or Clinic, Medical	P	P	
Hospital	P	-	
Item Repair or Service Shop	P	P	
Construction, Landscape, or Other Property Service Operation	SP	P	
Consumption Site, Marijuana/Cannabis	-	-	
Microbusiness, Marijuana/Cannabis	P	P	§24.14
Micro-Winery, Brewery, or Distillery	P	P	§24.20
Winery, Brewery, or Distillery, including Micro	P	P	§24.20
Recreation or Entertainment Facility, Outdoor	SP	-	§24.17
Self-Storage Facility	P	P	
Vehicle Sales, Service, or Repair Shop	P	P	§24.19
<b>INDUSTRIAL USES</b>			
Manufacturing, Processing, or Fabrication of Food Items	SP	P	
Manufacturing, Processing, or Fabrication of Other Goods	P	P	
Distribution, Delivery, or Processing of Marijuana/Cannabis	SP	P	§24.14
Cultivation of Marijuana/Cannabis	SP	P	§24.14
Research and Development Facility or Laboratory	P	P	
Packaging or Assembly of Products	P	P	
Printing or Publishing Operation	P	P	
Industrial Equipment Sales, Service, or Repair	-	P	
Junkyard or Stockyard	-	-	
Land Mining	-	-	
Laundry or Dry-Cleaning Plant	-	P	
Lumber or Storage Yard	-	P	
Truck or Rail Terminal or Storage Facility	SP	P	
Warehouse, Storage Facility	P	P	

- Table continued on next page -

TABLE 22-a	MU-I	GI	Additional Regulations
<b>OTHER USES</b>			
Crematorium	-	SP	§24.9
Municipal Structure or Use	P	P	
Park or Playground	P	-	
Parking Lot, as primary use	P	P	Article 30
Recycling Center	SP	SP	
Large- or Utility-Scale Solar, Rooftop-Mounted	P	P	Article 26
Large-Scale Solar, Building or Ground-Mounted	P	P	Article 26
Utility-Scale Solar, Building or Ground-Mounted	SP	SP	Article 26
Wind Energy Conversion System, Building-Mounted	P	P	Article 27
Wind Energy Conversion System, Commercial	-	SP	Article 27
Wind Energy Conversion System, Noncommercial	SP	SP	Article 27
Wind Measurement Tower	SP	SP	Article 27
Tier 3 Battery Energy Storage System	SP	SP	Article 28
Telecommunications Facility	SP	SP	Article 29
Use of Incinerators or Autoclaves	-	-	
Vertical Farming	SP	SP	
Waste Transfer Station or Disposal	-	-	
Mix of Uses in Single Structure or Lot	P	P	
Energy Storage and Distribution	P	P	
<b>ACCESSORY USES</b>			
Accessory Use or Structure	P	P	§24.4
Ancillary Retail Sales or Restaurant	SP	SP	
Drive-Through Facility	P	P	§24.11
Small-Scale Solar	P	P	Article 26
Tier 1 or Tier 2 Battery Energy Storage System	P	P	Article 28
Outdoor Assembly, Seating, Sales, Display, or Storage Area	P	P	§24.16

Commented [MG1]: Definition?

§215-22.5

**DIMENSIONAL & BULK REQUIREMENTS**

Table 22-b indicates the dimensional and bulk requirements for industrial districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

TABLE 22-b	MU-I	GI
<b>MIN LOT AREA</b>		
	30,000 sf	40,000 sf
<b>MIN LOT WIDTH</b>		
	80 ft	100 ft
<b>FRONT SETBACK</b>		
Primary Use	40 ft	40 ft
<b>MIN SIDE SETBACK <sup>1</sup></b>		
Primary Use	10 / 25 ft	25 / 50 ft
Accessory Use	5 / 15 ft	5 / 25 ft
<b>MIN REAR SETBACK <sup>1</sup></b>		
Primary Use	25 ft	25 / 50 ft
Accessory Use	5 / 15 ft	5 / 25 ft
<b>MAX LOT COVERAGE</b>		
Structures & Impervious Surfaces	65%	75%
<b>MIN OPEN SPACE</b>		
Grass, Landscaped, or Natural Areas	35%	25%
<b>MAX BUILDING HEIGHT</b>		
Primary Structure	80 ft	80 ft
Accessory Structure	25 ft	25 ft

**NOTE:** (1) The larger is the requirement where adjacent to a residential use or district.

§215-22.6

**MU-I DISTRICT PERFORMANCE STANDARDS**

- A. Uses are not permitted which exceed New York State regulations or any of the following standards measured at the individual property line:
  1. Emission of noise in excess of 65 decibels.
  2. Emission of any odor which endangers the health, comfort, safety or welfare of any person or which has a tendency to cause injury or damage to property, business or vegetation.
  3. Emission of dust or dirt which endangers the health, comfort, safety or welfare of any person or which has a tendency to cause injury or damage to property, business or vegetation.
  4. Emission of any smoke in excess of Ringelmann Chart No. 2.
  5. Emission of any noxious gases which endanger the health, comfort, safety or welfare of any person or which have a tendency to cause injury or damage to property, business or vegetation.
  6. Causing, as a result of normal operations, a vibration which creates displacement of 0.003 of one inch.

7. Certain lighting or signs which create glare which could impair the vision of a driver of any motor vehicle.
- B. No use shall be permitted if the operation of such use on the premises would:
1. Cause a fire, explosion or safety hazard.
  2. Cause, as the result of its operation, an adverse environmental impact or a hazard to the safety, health or well-being of any person.
  3. Cause, as the result of its operation, the violation of the New York State Fire Prevention Code, adopted by the Town of Tonawanda, New York.
  4. Cause, as the result of its operation, the violation of Local Law No. 1-73, as amended, regulating the use of public and private sewers and drains in the Town of Tonawanda, New York.
  5. Cause anything to be done which would create a violation of any law, ordinance, rule or regulation of the Town of Tonawanda, Erie County, or State of New York.
- C. Tank storage of flammable liquids shall be limited to 48,000 gallons total and shall be constructed, protected, located and maintained in accordance with the latest rules, regulations and specifications of the National Fire Protection Association (NFPA).

# Article 23. Special Purpose Districts

## §215-23.1 DISTRICTS ESTABLISHED

The special purpose districts of the Town of Tonawanda are listed in the following table. When this zoning code refers to a special purpose district it is referring to one of the following:

District Name	Abbreviation & Map Symbol
<i>Community Facility</i>	CF
<i>Open Space</i>	OS
<i>Local Waterfront Overlay</i>	LWO
<i>Flood Hazard Overlay</i>	FHO
<i>Transit-Oriented Development</i>	TOD
<i>Planned Unit Development</i>	PUD

## §215-23.2 REVIEWS REQUIRED

- A. **Site Plan.** Site plan review shall be required as provided for in Article 42 of this Chapter. This shall include, but is not limited to, new construction, alteration, or demolition of structures.
- B. **Special Use Permit.** A special use permit shall be required as indicated in this Article and as provided for by Article 43 of this Chapter.
- C. **Local Waterfront Consistency.** Local Waterfront Consistency review shall be required for all development actions in the LWO District as provided by Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.
- D. **Flood Damage Prevention.** A floodplain development permit shall be required for all development actions in the FHO District as provided by Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code.
- E. **Municipal Projects and Public Infrastructure.** A public hearing shall be required for any municipal sponsored development actions and/or those involving public utilities and infrastructure.

## §215-23.3 COMMUNITY FACILITY (CF) & OPEN SPACE (OS) DISTRICTS

- A. **Community Facility (CF).** The purpose of the CF District is to identify, protect, and enhance the availability of community services and resources throughout Tonawanda in accordance with the Town's Comprehensive Plan. Uses permitted within the CF District include those providing social, cultural, educational, recreational, municipal, and public safety services. The intent of this District is to provide for the continuation of these services, support community institutions and organizations, and increase access to services that better the physical and mental health, safety, and wellbeing of Tonawanda residents. Development within the CF District should be context sensitive and utilize appropriate building and site design practices to ensure connectivity to

and compatibility with adjacent activity centers, commercial corridors, and neighborhoods.

- B. **Open Space (OS).** The purpose of the OS District is to implement the vision and goals of the Town’s Comprehensive Plan to preserve and enhance Tonawanda’s open spaces, parks, trails, and environmentally sensitive areas by protecting these natural amenities from development pressures. The OS District applies to private and publicly owned or accessible parks, squares, recreational fields, natural wildlife areas, creeks or streams, and cemeteries. The intent of this District is to ensure ample passive and active recreational opportunities for residents and visitors and to identify areas of valued green space throughout the Town.
- C. **Use Lists.** Uses are allowed in accordance with Table 23-a.
  1. Uses identified with a “P” are permitted as-of-right, subject to compliance with all other applicable standards of this zoning code.
  2. Uses identified with a “SP” may be allowed if reviewed and approved in accordance with Article 43 (Special Use Permits) of this Chapter.
  3. Uses not listed and those identified with a “-” are expressly prohibited.

TABLE 23-a	CF	OS	Additional Regulations
<b>PRIMARY USES</b>			
Cemetery	-	P	
Community Center	P	SP	
Day Care Center, Child or Adult	P	-	§24.10
Golf Course	-	P	
Library, Museum, or Cultural Facility	P	-	
Municipal Structure or Use	P	P	
Park or Playground	P	P	
Parking Lot, as Primary Use	SP	SP	Article 30
Place of Worship	P	-	
Public Safety or Service Facility	P	-	
Public Utility Infrastructure	P	SP	
Recreation or Entertainment Facility, Indoor	P	-	
Recreation or Entertainment Facility, Outdoor	P	P	§24.17
Rehabilitation or Social Support Services	SP	-	
School, public or private	P	-	
Senior Housing	SP	-	
Telecommunications Facilities	SP	SP	Article 29
<b>ACCESSORY USES</b>			
Accessory Use or Structure	P	P	§24.4
Ancillary Retail Sales, Services, or Concessions	SP	SP	
Small-Scale Solar	P	P	Article 26
Outdoor Assembly or Seating Area	P	P	§24.16
Outdoor Sales, Display, or Storage Area	SP	SP	§24.16

D. **Dimensional and Bulk Requirements.** Table 23-b indicates the dimensional and bulk requirements for the CF and OS Districts. There shall be no more than one primary structure per lot, unless otherwise approved as part of site plan review.

TABLE 23-b	CF	OS
<b>MIN LOT AREA</b>	20,000 sf	-
<b>MIN LOT WIDTH</b>	80 ft	-
<b>FRONT SETBACK</b>		
<i>Primary Use</i>	20 ft	20 ft
<b>MIN SIDE SETBACK <sup>1</sup></b>		
<i>Primary Use</i>	10 / 25 ft	25 ft
<i>Accessory Use</i>	5 / 10 ft	5 / 10 ft
<b>MIN REAR SETBACK <sup>1</sup></b>		
<i>Primary Use</i>	25 ft	25 ft
<i>Accessory Use</i>	5 / 10 ft	5 / 10 ft
<b>MAX LOT COVERAGE</b>		
<i>Structures &amp; Impervious Surfaces</i>	65%	15%
<b>MIN OPEN SPACE</b>		
<i>Grass, Landscaped, or Natural Areas</i>	35%	85%
<b>MAX BUILDING HEIGHT</b>		
<i>Primary Structure</i>	45 ft (3 stories)	35 ft (2.5 stories)
<i>Accessory Structure</i>	15 ft	12 ft

NOTE: (1) The larger is the requirement where adjacent to a residential use or district.

§215-23.4

**LOCAL WATERFRONT OVERLAY (LWO) DISTRICT**

The purpose of the LWO District is to align the Town's zoning code and map with the Town of Tonawanda Local Waterfront Revitalization Program (LWRP), implementing special controls to guide land use and development within the waterfront areas. The extent of the LWO District boundary shall follow that of the Town's LWRP boundary. The overlay district is to be superimposed on the underlying zoning district provisions, applying the additional regulations of Chapter 129 (Local Waterfront Revitalization) of the Town of Tonawanda Code.

§215-23.5

**FLOOD HAZARD OVERLAY (FHO) DISTRICT**

The Town of Tonawanda has determined and found that the potential and/or actual damages from flooding and erosion may cause physical, financial, and environmental harm to property owners. Such damage may include, but is not limited to, destruction or loss of private and public housing, damage to public facilities, and injury to or loss of human life. The application of this overlay district is intended to minimize the threat of such damage and align this Zoning Law with the land use provisions set forth in Chapter 92 (Flood Damage Prevention) of the Town of Tonawanda Code. The FHO District boundary shall include all property within the



Town's Special Flood Hazard Areas, floodways, and floodplains as outlined in Chapter 92.

### §215-23.6

#### TRANSIT-ORIENTED DEVELOPMENT (TOD) DISTRICT

It is the intent of the TOD District to encourage walkable, mixed-use development along corridors served by public transit. Further, it is the specific intent of the TOD District to:

- A. Encourage an intensity of development and complementary mix of land uses near transit stops that are compatible with and supportive of increased ridership and fosters the creation of a livable community with opportunities to live, work, and play within walking distance of convenient transit facilities.
- B. Encourage land uses and site design practices that promote the use of alternative modes of transportation, such as bus, bicycling, and walking, thereby reducing traffic congestion from individual automobile use.
- C. Promote economic revitalization of transit corridors by encouraging innovative, transit-oriented infill development and redevelopment of underutilized land near transit stops.
- D. Encourage shared parking between compatible uses on the same or on adjacent lots, wherever feasible, to minimize the number of curb cuts that interrupt the pedestrian network and to provide for more efficient utilization and distribution of parking within the TOD District.
- E. Foster well-designed vibrant public and private gathering spaces that create a sense of place and encourage social interaction.
- F. Encourage the provision of additional amenities that benefit the public health, safety, and welfare, such as moderate-income housing, efficient roadways, safe bicycle and pedestrian connections, stormwater management, and green building practices.

### §215-23.7

#### PLANNED UNIT DEVELOPMENT (PUD) DISTRICT

- A. **Purpose.** The Town Board hereby finds that when coordinated with the comprehensive plan, planned unit development zoning is an effective tool for guiding development in ways that support the community's goals and priorities. Planned unit development, among other things, provides a means by which different land uses within an area covered by a single development plan may be combined to achieve compatibility among such uses. Unattainable with traditional municipal zoning techniques, planned unit development provides flexibility in the regulation of land use development in order to:
  1. Encourage innovation in land use variety and design, in the layout and type of new structures and in their integration with existing structures;
  2. Enhance efficiency in the use of land, natural resources, energy, community services, and utilities;
  3. Encourage open space preservation and protection of natural resources, historic sites, and structures;
  4. Facilitate the provision of housing and improved residential environments;
  5. Encourage economic development with new businesses, support existing business, and create employment opportunities; and

6. Encourage public access to the Town's waterfront area and encourage the implementation of facilities and uses both private and public that promote that access.
- B. Eligibility.** Unless waived by the Town Board, a planned unit development district shall be comprised of at least 20 acres of land. Subsequent subdivision of the property will not affect the zoning provisions.
- C. Use of Land.** In planned unit development districts, land and buildings may be used for any lawful purposes, as determined by the Town Board upon recommendation by the Planning Board in the course of its review of the applicable preliminary and final planned unit development plans, and subject to the limitations and procedures of this article. No building or structure shall be erected, nor shall any land, building, or structure be used in any planned unit development district until approval of a final planned unit development plan is issued by the Town Board. No uses, buildings, or structures which deviate from the approved final planned unit development plan or are inconsistent with the comprehensive plan or the community character shall be allowed. The approval of a final planned unit development plan establishes the zoning regulations for the subject property, and building permits shall not be issued unless in conformity with the final planned unit development plan.
- D. Permissible and Prohibited Uses.** Planned unit developments may include a mix of uses including commercial, residential, light industrial, and public uses of a variety and type such that may be deemed appropriate by the Town Board. Such approved uses shall be stated in the authorizing resolution of the PUD. The following uses shall be prohibited in any PUD:
1. Heavy industrial uses.
  2. Adult uses.
  3. Crematoriums.
  4. Waste transfer stations.
  5. Junkyards.
  6. Organic recycling operations.
  7. Agricultural uses.
- E. Preservation of Open Space.** One of the Town's primary goals in authorizing planned unit development is the preservation of open space. For any PUD zoning district, 20% of the site shall be usable open space. The preservation of open space is an important goal, with the particular requirements determined in the evaluation of the preliminary planned unit development plan. Open space may include walkways, plazas, landscaped areas, and recreation areas. Parking areas and vehicle access facilities shall not be considered in calculating open space.
- F. Public Benefits.** Applicants shall provide for one or more the following public benefits towards justification of the proposed project and shall offset any identified adverse impact(s).
1. Acquisition and/or construction of a new Town park or recreational facility.
  2. Improvements or rehabilitations to existing Town parks or recreational facilities.

3. Creation of active and passive recreation to include greenways, sidewalks, and other pedestrian/bicycle circulation networks that serve to connect significant areas and various land uses.
  4. Utility extensions that provide additional service connection opportunities to other potential users to a degree that the Town Board deems acceptable.
- G. Common Property.** The applicant shall provide for and establish a perpetual organization for the ownership and maintenance of any common property in the planned unit development district. Such organization, which shall be established prior to any permits being issued, shall not dispose of any common property by sale or otherwise except to dedicate such property to the Town for public use, but nothing in this code shall require such dedication nor require the Town to accept any dedication of land.
- H. Ownership and Management.** The tract of land or combination of lands under application for consideration for a planned unit development may be owned, leased, or controlled either by a single person or corporation or by a group of individuals or corporations. An application must be filed by the owner or jointly by the owners or their agent(s) of all property included in the project. In the case of multiple ownership, the approved plan shall be binding upon all property owners, and such owners shall provide written certification of such binding agreements. All land included for the purpose of development within a PUD shall be owned by or be under the complete control of the applicant for such PUD, whether the applicant be an individual, partnership, corporation, or other entity, and shall be planned and developed as a whole in a single development operation or a definitely programmed series of development operations or phases. The applicant shall provide to the Office of Planning and Development all of the necessary documents and information that may be required by the Town Attorney to assure that the development project may be lawfully completed according to the plans sought to be approved and shall be binding upon all property owners, with written certification of such binding agreement(s).
- I. Phasing.** At the time of application, preliminary planned unit development plan approval, and final planned unit development plan approval, through the completion of construction of all improvements, ownership and/or control of the development shall be in the hands of one entity, except that for each phase, if a project is done in phases, properties may be sold for completed phases, provided single control shall be maintained over each phase until the final planned unit development plan is approved and construction completed.

## Article 24. Additional Use Regulations

### §215-24.1

#### PURPOSE & INTENT

- A. **Purpose.** This Article provides additional regulations for uses that are generally considered to have a higher potential for incompatibility with residential or low impact commercial uses without proper mitigation measures. The purpose of the regulations contained herein is to promote the health, safety, and general welfare of the public, while also protecting property values and the character of the immediate neighborhood and greater Tonawanda community.
- B. **Intent.** These regulations are intended to mitigate the potentially undesirable impacts of certain uses, which by reason of nature or manner of operation, are or may become hazardous, obnoxious, or offensive owing to excessive and undue increases in the production and presence of odors, dust, smoke, fumes, noise, vibrations, refuse matter, vehicular traffic, or human activity.

### §215-24.2

#### APPLICABILITY

- A. The following requirements are applicable to all uses, permitted (P) and specially permitted (SP), as noted in the use tables of Articles 20, 21, 22, and 23 of this Chapter.
- B. Specially permitted uses must obtain a special use permit and site plan review in accordance with Articles 43 and 42.
- C. Permitted uses do not require a special use permit. However, uses permitted as-of-right must obtain site plan review approval in accordance with Article 42 and conform to the additional use requirements of this Article, where applicable.
- D. Should the additional use regulations of this Article conflict with other requirements of this Chapter, the regulations contained herein shall take precedence.

### §215-24.3

#### ACCESSORY DWELLING UNITS & IN-LAW SUITES

- A. **Purpose.** The purpose of regulating accessory dwelling units and in-law suites is to:
  - 1. Create new housing units while respecting the design and scale of low density residential neighborhoods;
  - 2. Increase the housing stock of existing neighborhoods in a manner that is less intense than multi-family dwelling alternatives;
  - 3. Provide a broader range of affordable housing options that respond to changing family and household needs; and
  - 4. Offer a means for residents to remain in their homes and neighborhoods while also obtaining extra income, security, companionship, and/or services.
- B. **General Requirements.** Accessory dwelling units and in-law suites shall conform to the following.

1. Such use may only operate as an accessory use to a single-family dwelling. There shall be no more than one such use per property.
  2. No such use shall be permitted on a nonconforming lot or within a nonconforming structure.
  3. The total floor area shall not exceed 30% of the total habitable floor area of the single-family dwelling and shall not include more than two (2) bedrooms.
  4. All exterior entrances shall be located on the side or rear façade of the primary structure or in the rear yard of the principal residence.
  5. No such use shall be permitted if an existing approved driveway cannot accommodate at least one off-street parking space in addition to the parking spaces required for the single-family dwelling.
  6. The construction, modification, addition, or demolition of such use shall not discernably alter the single-family residential character of the lot or structure located thereon.
  7. Such use may be subject to an annual inspection by the Code Enforcement Officer to ensure compliance with the requirements of this Chapter and all other local, regional, or state laws, rules, and regulations.
- C. Owner-Occupancy Requirements.**
1. At least one of the dwellings (primary, accessory, or in-law suite) shall be occupied by the property owner and maintained as their primary residence.
  2. The property owner shall sign an affidavit before a notary public affirming that the property is their primary residence. Such affidavit shall be submitted to the Code Enforcement Officer. Upon sale of the property, a new owner shall be required to sign and submit a new affidavit within 30 days of the close of sale.
  3. The individual sale of an accessory dwelling unit or in-law suite apart from the single-family dwelling is strictly prohibited.

**§215-24.4****ACCESSORY USES & STRUCTURES**

Accessory uses and structures are allowed in any zoning district in connection with any principal use lawfully existing within such district as noted in Articles 20, 21, 22, and 23 of this Chapter. All accessory uses and structures shall conform to the following requirements.

- A. General Requirements.** Accessory uses and structures shall:
1. Be clearly incidental and subordinate to the primary structure or use by height, area, extent, and purpose.
  2. Not be located in any required front yard area, unless otherwise permitted in this Chapter.
  3. Be in conformance with the dimensional and bulk requirements of the zoning district in which they are located. No accessory use or structure shall cause the rate of lot coverage to exceed the maximum rate permitted.
  4. Be limited to one attached garage and/or detached garage and up to two additional sheds or otherwise fully enclosed accessory structures.

Where both an attached and detached garage are located on a single lot, the combined maximum floor area shall not exceed 900 square feet.

5. Be finished with materials and/or siding that is consistent and compatible with the existing character of the primary structure and surrounding neighborhood.
  6. Not obstruct, block, or force the enclosure of any structural opening (windows, doors, etc.), open porch, deck, or terrace, or required vehicular or pedestrian accessway.
  7. Overhead electric circuits to garages or accessory structures shall not be permitted. All electric circuits and feeders must be installed underground.
  8. No standby generator, air conditioner condenser or similar type units shall be located in any front yard. All standby generators shall be screened from adjacent properties by fencing or vegetation.
- B. Residential Accessory Uses and Structures.** The following shall be considered permissible residential accessory uses or structures for the purposes of this Chapter.
1. Decks, patios, terraces, seating areas, or gazebos.
  2. Residential garages, carports, off-street parking areas, and driveways, including personal charging stations and EVSE, provided all applicable residential parking and driveway requirements of this Chapter are met.
    - a. Private garage overhead doors shall be restricted to 9 feet or less in height.
    - b. The maximum perimeter dimension shall be 40 feet for any private garage.
  3. Enclosed storage structures, such as sheds.
  4. Fences and walls in accordance with §215-25.6.
  5. Playgrounds or playhouses and private swimming pools in accordance with §215-25.7.
  6. Noncommercial nurseries, gardens, or greenhouses.
  7. Fire escapes or other such structures intended to maintain the health, safety, and welfare of residents within the dwelling and the general public.
  8. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use.
  9. Dish or radio antennae no more than one meter in diameter and intended for noncommercial use. Such antennae shall not extend more than 30 inches above the roofline or exceed the maximum building height of the district, whichever is less.
  10. Personal generators, air conditioning units, and other small-scale mechanical equipment for noncommercial use, provided such equipment is located in the rear yard.
  11. Green infrastructure installations, such as rain barrels, rain gardens, or bioswales.
  12. Other uses and structures which the Code Enforcement Officer deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.

- C. **Nonresidential Accessory Uses and Structures.** The following shall be considered permissible nonresidential accessory uses or structures for the purposes of this Chapter.
1. Decks, patios, terraces, or seating areas otherwise not programmed for public use as part of the primary operation. Outdoor seating and assembly areas shall be in conformance with §215-24.16.
  2. Garages or carports and off-street parking and loading areas, including charging stations and EVSE, provided all requirements of Article 30 and §215-24.12 are met.
  3. Enclosed storage structures, such as sheds.
  4. Fences and walls in accordance with §215-25.6.
  5. Playgrounds or playhouses.
  6. Nurseries, gardens, or greenhouses.
  7. Fire escapes or other such structures intended to maintain the health, safety, and welfare of employees, patrons, and the general public.
  8. Ramps, lifts, or other such structures intended to provide an increased level of accessibility to the structure or use.
  9. Dish or radio antennae no more than two meters in diameter when screened from public view and adjacent residential property. Such antennae shall not extend more than five feet above the roofline or exceed the maximum building height of the district, whichever is less.
  10. Generators, HVAC systems, and other mechanical equipment, provided such equipment is located, screened, and operated in accordance with the requirements of this Chapter.
  11. Green infrastructure installations, such as rain barrels, rain gardens, or bioswales.
  12. Pump houses, water towers and storage tanks.
  13. Walkup service windows with site plan review approval.
  14. Clinics, cafeterias, and recreational facilities for the exclusive use of employees of the principal use.
  15. Other uses and structures which the Code Enforcement Officer deems appropriate by virtue of similarity in nature, activity, and/or extent to those already listed.

## §215-24.5

### ADULT USES

#### A. Purpose and Intent.

1. The regulation of adult use establishments, as hereinafter defined, is found to be necessary in light of the operational characteristics of such uses which, without the enactment and enforcement of appropriate regulations, would have documented adverse, detrimental and harmful impacts and effects within the Town of Tonawanda, and particularly on residential neighborhoods and community business areas. Such impacts and effects include but are not limited to decreased property values; creation of traffic and/or parking problems due to the attraction of transients; potential increases in criminal activities; loss of business by non-

adult-use commercial establishments in the vicinity, and deterioration within residential neighborhoods.

2. It is the purpose and intent of this section to establish appropriate and reasonable regulations and restrictions regarding the location and operation of adult use establishments, as hereinafter defined, so as to promote the health, safety, and general welfare of the residents of the Town of Tonawanda, and to establish reasonable and uniform regulations to prevent the deleterious impacts and effects identified above which may result from the location and operation of such establishments.
3. It is neither the purpose nor intent of this section to impose a limitation or restriction on the content of any communicative materials, including sexually explicit or sexually oriented materials, nor is it the purpose or intent of this section to restrict or deny access by adults to sexually explicit or sexually oriented materials, activities, performances or depictions protected by the First Amendment to the United States Constitution, or to deny access by distributors and/or exhibitors of sexually explicit or sexually oriented materials or entertainment to their intended market. However, it is also not the purpose or intent of this section to condone or legitimize the display or distribution of obscene materials.

**B. General Requirements.** All adult uses shall:

1. Be conducted in an enclosed building.
2. Be conducted in such a manner that, regardless of location or distance, no one who is passing by or who is at any point outside of the enclosed building occupied by such a use shall be able to observe or perceive any performance, conduct, image, printed matter, visual representation, instrument, device or paraphernalia displaying, depicting or otherwise presenting any specified anatomical area or specified sexual activity regulated hereunder, including but not limited to any sign or advertisement or any window or other opening permitting the view of the interior of the premises from the exterior of the premises.
3. Not employ loudspeakers or sound equipment as part of the adult use establishment in such a way as may be audible to or discerned by the public from public or semipublic areas.
4. Be permitted only on lots of two acres or more.
5. Not be established or maintained within 500 feet of:
  - a) A church, synagogue or regular place of worship.
  - b) A public or private elementary or secondary school.
  - c) Any child-care institution or day-care center, as defined herein and in the Education Law.
  - d) A residence, or the boundary of any residential zoning district.
  - e) A public park, playground, playing field, governmental office or facility or other similar area where large numbers of persons may travel or congregate.
  - f) River Road or coastal area as defined by the Town's Local Waterfront Revitalization Program.
  - g) A municipal boundary.
6. Not be established or maintained within 1,000 feet of another adult use.



- C. Distance Measurement.** For the purposes of this section, measurement of the distances specified above shall be made in a straight line, without regard to intervening structures or objects, from building to building. The distance between any two adult use establishments shall be measured from the nearest property boundary line of the property upon which the adult use is proposed to be located to the nearest point of the parcel containing the use from which the adult use is to be separated.
- D. Registration Required.** The owner of a building or premises, his agent for the purpose of managing, controlling or collecting rents or any other person managing or controlling a building or premises, any part of which contains an adult use, shall register with the Town Clerk the following information. Registration under the provisions of this section shall not be transferable.
1. The address of the premises.
  2. The name and address of the owner of the premises and the names and addresses of the beneficial owners if the property is in a land trust.
  3. The name of the business or the establishment subject to the provisions of this article.
  4. The name(s) and address(es) of the owner, beneficial owner or the major stockholder(s) of the business or the establishment subject to the provisions of this article.
  5. The date of initiation of the adult use.
  6. The nature of the adult use.
  7. If the premises or building is leased, a copy of said lease.
- E. Display of Registration.** The owner, manager or agent of a registered adult use shall display in a conspicuous place on the premises of the adult use a copy of the registration filed with the Town Clerk.
- F. Inspection Requirements.** Prior to the commencement of any adult use establishment business, or upon any transfer of ownership or control of such a business, the premises on which such establishment is located must be inspected and found to be in compliance with all laws, rules and regulations of or enforced by the New York State Health Department, Fire Department, Code Enforcement Office, Fire Marshal, and other code enforcement officials of the Town and county.

## §215-24.6

**ANIMAL GROOMING SHOPS, ANIMAL HOSPITALS, VETERINARY CLINICS, & KENNELS**

- A. General Requirements.** The following requirements shall apply to all animal groom shop, animal hospital, veterinary clinic, and kennel uses.
1. Adjacent properties shall be adequately protected from noise, odors, and unsightly appearances as determined appropriate by the reviewing board in site plan review. Such protections may include, but are not limited to landscaped buffers, berming, and fencing.
  2. A waste management plan shall be required to ensure proper upkeep of the site and disposal of animal excrement and waste.
  3. All operations must apply for and secure proper licensing and registration as required by state and local law.
- B. Animal Grooming Shops.**

1. All services shall be provided within a completely enclosed building.
  2. The boarding of animals shall be prohibited.
  3. All buildings, structures, and accessory use areas, except off-street parking areas, shall be located at least 50 feet from any property line abutting a residential district.
- C. Animal Hospitals, Veterinary Clinics and Kennels.**
1. All services shall be provided within a completely enclosed building, with the exception of outdoor animal exercise, play, or containment areas subject to site plan review approval.
  2. All buildings, structures, accessory use areas, and outdoor animal exercise, play, or containment areas, except off-street parking areas, shall be located at least 50 feet from any property line abutting a residential use or district.
  3. Screening for outdoor animal exercise, play, or containment areas may be required along lot lines bordering residential uses or districts at the reviewing board's discretion.
  4. All animals will be confined to the property and housed in an enclosed structure in humane conditions (i.e. protected from weather, clean, sanitary, adequate space, non-porous surfaces, well-ventilated, etc.) All animals shall be kept within a totally enclosed building between 10:00 PM and 6:00 AM.

**§215-24.7****BED & BREAKFASTS & SHORT-TERM RENTALS**

All bed and breakfast and short-term rental uses shall be in conformance with the following requirements.

- A. Such uses shall be duly licensed, registered as a business and shall be subject to the Hotel Occupancy Tax of Erie County, New York.
- B. Such uses may be permitted in an owner-occupied single-family dwelling or detached accessory structure located on the same lot as the dwelling.
- C. No such use shall be permitted on a nonconforming lot or within a nonconforming structure.
- D. Sales of merchandise shall be incidental to the use.
- E. The residential character of the lot and structures located thereon shall be preserved. Structural alterations or additions of a nonresidential nature shall be prohibited.
- F. There shall be no more than two nonresidential employees (not living on the property) reporting for work.
- G. Such uses must be able to accommodate the minimum off-street parking requirements on-site. Where on-site parking is impracticable, the reviewing board may provide relief from this provision in whole or in part through site plan review, if deemed appropriate.
- H. Off-street parking shall not be permitted in the front yard, except for within an approved driveway area. All parking areas shall be screened from adjacent properties and the public right-of-way in a manner approved through site plan review.

- I. All outdoor lighting proposed for the operation shall be appropriately shielded so as not to adversely impact neighboring properties.

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**§215-24.8****CAR WASHES**

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- A. All washing facilities shall be completely within an enclosed building.
- B. Washing facilities shall not be located within 200 feet of any residential district or use.
- C. Vacuuming facilities may be outside of the building but shall not interfere with the free flow of traffic on or off the site.
- D. Where fueling and charging stations are either a principal use with or an accessory use to the car wash, the requirements of the fueling and/or charging station (§215-24.12) shall also be adhered to.
- E. All areas for the travel or storage of motor vehicles shall be paved, suitably graded and drained, and maintained in a neat and orderly manner.
- F. Any such use shall be buffered from adjacent uses by no less than 10 feet. The buffer area shall minimally consist either of fencing, evergreen shrubbery, coniferous trees, or any combination thereof that prevents the unwanted transmission of headlight glare across the property line.
- G. Sufficient screening shall be provided along all lot lines abutting or adjacent to residentially zoned or developed property to block any view of operations from all points on such residential property when viewed from ground level.
- H. Perimeter landscaping shall be a minimum of 10 feet in width along the street frontage(s).
- I. In the event a car wash is abandoned the owner shall immediately remove any outdoor vacuums, and all signs. The owner shall also provide adequate protection against unlawful entry into the building and onto the property and shall close all vehicular entrances to the property. A car wash shall be considered abandoned if it is inactive for a period of 12 consecutive months.

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**§215-24.9****CREMATORIUMS**

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- A. Crematoriums shall be a minimum of 300 feet from any residential, school, day care, and public or semi-public use. The distance shall be measured from the nearest portion of the crematorium building to the nearest property line of the use from which the crematorium shall be separated.
- B. All activity relating to the dead shall be handled discreetly and be screened from public view to the maximum extent possible, including delivery and storage of the remains.
- C. Crematoriums shall not be used for the disposal of any waste materials.
- D. Crematoriums shall not emit any visible air emissions nor generate odors which are discernable beyond their lot lines.
- E. Special use permit application materials for a crematorium shall also include:
  1. Proposed cremation equipment including emission control devices.
  2. Chimney stack height.
  3. Plans for ongoing emission monitoring and performance testing.

- 4. Documentation that all emissions fall within accepted industry practices and meet all applicable state or federal air quality standards.
- F. Crematoriums shall be constructed, installed, operated and maintained in accordance with all manufacturers' specifications and all applicable federal, state and local permits, as amended.
- G. A crematorium may be allowable by special use permit as part of a cemetery provided it complies with all requirements of this section.

### §215-24.10

#### DAY CARE CENTERS, CHILD & ADULT

- A. No day care shall be permitted without obtaining the proper license and registration, as required by NYS and Erie County Law.
- B. All buildings, structures, and areas of organized activity dedicated to the primary day care use shall maintain a setback of at least 10 feet from all property lines.
- C. A landscaped buffer or fence of at least five feet in height shall be provided at all side and rear property lines abutting a residential use or district.
- D. Outdoor speakers and public-address or stereo systems are prohibited in residential districts.
- E. Day care centers may be conducted as a home occupation, provided such use is in also in conformance with §215-24.13.

### §215-24.11

#### DRIVE-THROUGH FACILITIES

- A. **Purpose.** Products of the automobile age, drive-through facilities have become a common amenity for a specific range of uses, including banks, freestanding drug stores, and fast-food restaurants. A well-designed drive-through on a parcel with adequate area can be convenient for motorists and have minimal impact upon the streetscape and pedestrians. Conversely, a poorly designed drive-through on a parcel of inadequate size can cause problems with traffic circulation and create areas that are hostile to the pedestrian. Moreover, drive-throughs have the potential to generate undesirable impacts for adjacent properties such as odors from vehicle exhaust and noise from engines, car stereos, and menu board speakers. The purpose and intent of this section is to establish appropriate standards which allow for the typical range of activities while ensuring public safety and mitigating the associated impacts.
- B. **Access Drives and Vehicular Lanes.**
  - 1. Only one access drive, or two one-way access drives, shall be permitted per street frontage.
  - 2. Vehicular stacking/exit lanes, service areas, or windows shall not be located in the front yard.
  - 3. All stacking/exit lanes shall be designed so that they do not interfere with off-street parking areas or vehicular and pedestrian circulation on the site. Such lanes shall be designed to reduce the impacts of traffic congestion on adjacent property and public streets.
  - 4. All stacking/exit lanes and pedestrian walkways shall be delineated with landscaping, curbing, raised or decorative pavement, and/or signage that is identifiable during all seasons.

**C. Speakers and Menu Boards.**

1. Speakers and any other such devices used for audio amplification shall be located a minimum of 30 feet from any adjacent residential property line and shall not be audible beyond the property line.
2. Menu boards may be internally or externally illuminated in accordance with Article 34 (Signage). Menu boards utilizing digital sign technology shall comply with all applicable requirements of §215-34.18 (Digital Signs).
3. Menu boards shall not be illuminated outside of business hours.
4. To the greatest extent practicable, all speakers and menu boards shall face away from adjacent residential use(s) and public rights-of-way.

**D. Buffering and Landscaping.** All impervious surfaces, including curbing, shall maintain a setback of at least 10 feet from any abutting residential property line. Such setback areas shall be landscaped to the satisfaction of the reviewing board in site plan review.

**E. Traffic Capacity Limitations.** No drive-through shall be permitted that is anticipated to be a significant detriment to the community or to the local road network. The applicant must demonstrate that the proposed use will not alter levels of service or utilize available traffic capacity to such an extent that it cannot be adequately mitigated or otherwise create unsafe on-site or off-site traffic conditions.

**§215-24.12****FUELING & CHARGING STATIONS**

**A. General Requirements.** All fueling and charging stations shall be in conformance with the following.

1. A curbed landscaped area shall be maintained at least three feet in depth along all street frontage space not used as driveway. The required landscaping and screening treatments shall be determined through site plan review.
2. No access drive shall be within 200 feet of and on the same side of the street as a school, public library, theater, church, or other public gathering place, park, playground or fire station unless a street 50 feet or more wide lies between such service station and such building or use.
3. The storage and/or display of vehicles for sale or for rent shall be prohibited.

**B. Fueling Stations.**

1. No part of any filling pump, lift, or other service appliance shall be erected within 100 linear feet of a property line of any residential district or use.
2. No fuel pump shall be located closer than 20 feet to any side lot line nor closer than 35 feet to any street line, measured from the outside edge of the fuel island.
3. Minor vehicle repair or service may be permitted provided all activities are conducted within a completely enclosed building.

**C. Charging Stations.** The following requirements shall apply to charging stations and electric vehicle supply equipment (EVSE) established as a primary use or part of an approved accessory off-street parking area. Private charging stations and EVSE installed as an accessory use to single- or two-family dwellings are exempt.

1. Charging stations and EVSE shall also comply with the requirements of Article 30 (Circulation, Access, and Parking), where applicable.
2. Permitted EVSE shall include Level 1, 2, and 3 charging stations.
3. Battery charging station outlets and connector devices shall be mounted to comply with local and state building and energy codes and must comply with all relevant Americans with Disabilities Act (ADA) requirements.
4. Equipment mounted on pedestals, lighting posts, bollards, or other devices shall be designed and located as to not impede pedestrian travel or create trip hazards on sidewalks.
5. Cords shall be retractable or have a place to hang the connector and cord at least three (3) feet off the ground. Any cords connecting the charger to a vehicle shall be configured so that they do not cross a driveway, sidewalk, or passenger unloading area.
6. EVSE pedestals shall be designed to minimize potential damage by accidents, vandalism and to be safe for use in inclement weather.
7. EVSE shall not encroach into the required dimensions of a parking space (length, width, and height clearances).
8. EVSE shall be maintained in all respects, including the functioning of the equipment. A phone number or other contact information shall be provided on the equipment for reporting problems with the equipment or access to it.
9. All charging stations shall provide EVSE in at least one (1) accessible parking space or 25% of the minimum number of accessible parking spaces required by the ADA, whichever is greater.

### §215-24.13

#### HOME OCCUPATIONS

- A. **Purpose.** The purpose of regulating home occupations is to provide residents with the opportunity to conduct professional office or administrative uses within their home, while still preserving the value and character of the neighborhood.
- B. **Permitted Occupations.** Permitted home occupations include lawyers, accountants, authors, engineers, architects, consultants, realtors, insurance agents/brokers, artists, photographers, tailors, repairpersons, beauticians, barbers, counselors, teachers, tutors, music or art instructors, seeing no more than one client in-person at a time, or other such vocations which the Zoning Board of Appeals deems appropriate by virtue of similarity in nature, activity, and/or extent.
- C. **Prohibited Occupations.** Prohibited home occupations include those that would generate adverse impacts to or are incompatible with the existing character of a residential neighborhood. These uses include, but are not limited to, retail stores, medical or emergency services, animal care services, and vehicle sales, service, or repair, dancing instruction, instrument instruction in groups, tearooms, convalescent homes, or mortuary establishments.
- D. **General Regulations.**
  1. The home occupation must be clearly incidental and secondary to the use of the residential dwelling and shall conform to all requirements of the NYS Uniform Building and Fire Prevention Code.

2. The residential character of the lot and structures located thereon shall be preserved. Structural alterations or additions of a nonresidential nature shall be prohibited.
3. The home occupation shall be owned and operated by a full-time resident of the dwelling.
4. All home occupation related activities shall occur wholly within an enclosed structure.
5. No more than one employee shall be permitted that is a nonresident of the dwelling.
6. No more than one patron shall be served by the home occupation at one time, except for home day care centers as permitted by §215-24.10.
7. Hours of operation shall be limited to those between 8:00 AM and 9:00 PM
8. There shall be no exterior display or storage of materials, good, supplies, or equipment related to the home occupation.
9. No home occupation shall produce odors, noises, dust, vibrations, glare, or any other nuisance not typically found in a residential neighborhood.
10. On-site retail sales are prohibited, except for the sale of items that are clearly incidental to a permitted home occupation.
11. Deliveries to home occupations shall be permitted by two-axle vehicles only.
12. No home occupation shall be permitted that generates more than the average volume of waste of the residential use of the dwelling in which it is located.

§215-24.14

**MARIJUANA & CANNABIS USES**

- A. **Retail Dispensaries and Microbusinesses.** All retail marijuana and cannabis uses, where permitted by this Chapter, shall require the review and approval of a site plan by the Planning Board. The purpose of this is to prepare and provide for the high level of demand and traffic typically experienced by such use, while also giving the Town and applicant an opportunity to adapt to any changes in the intensity of use during the first year of operation.
  1. **Site Plan Review Required.** Prior to establishing and operating such a use, approval of a site plan shall be required. Such plan shall address the potential issues resulting from high volumes of pedestrian and vehicular traffic and activity. This may include, but is not limited to, identification of a queuing plan for pedestrians and vehicles and temporary or overflow parking provisions.
  2. A copy of the approved state license from the Office of Cannabis Management shall be provided to the Town along with the application materials regarding safety and security on the site.
- B. **Distribution, Delivery, Processing, Cultivation.**
  1. Production and supplying uses for marijuana and cannabis shall submit an energy use plan as part of special use permit and site plan review. The energy use plan shall include an electrical system overview, proposed energy demand, ventilation system and air quality, proposed water system and utility demand. The plan shall also indicate how the operation

will implement best practices for energy consumption to reduce demand on public infrastructure.

2. Additional review criteria to be considered as part of special use permit and site plan review include air quality impacts, wastewater management, solid waste disposal, odors, and buffering from residential districts and uses.

## §215-24.15

### MULTI-FAMILY DWELLINGS

- A. **By Conversion.** The conversion of an existing single- or two-family dwelling to three or more units, where permitted by this Chapter, shall be required to comply with the following:
  1. No dwelling unit conversion shall be permitted in a structure with less than 1,000 square feet of gross floor area. No dwelling unit conversion shall cause the use to exceed the maximum density requirements of the district in which it is located.
  2. All dwelling units and structures resulting from conversion shall comply with the standards set forth in the NYS Uniform Code. Said standards shall take precedence to this Chapter should there be a conflict.
  3. Any alterations made to the exterior of the building due to the unit conversion shall be completed in such a way to preserve the single- or two-family residential character.
  4. No dwelling unit conversion shall be permitted unless the dwelling, following such conversion, can comply with all off-street parking requirements of this Chapter. Landscaping and screening of off-street parking areas shall be provided as determined necessary in site plan review.
  5. Conversions of dwellings that decrease the number of units or combine units shall be required to ensure the discontinued dwelling unit is permanently and fully integrated into a legal dwelling unit with unimpeded access throughout the legal unit.
- B. **New Construction.** Newly constructed multi-family dwellings shall be in conformance with the following regulations and design standards:
  1. When adjacent to an existing residential neighborhood building designs are required to take the form of single- or two-family dwellings in a manner that is visually compatible with the architectural detailing of the Town's traditional residential character.
  2. Buildings shall not have uninterrupted or undefined continuous wall or roof planes in excess of 50 feet. Varied roof heights, projecting bays, gables, recesses, and porches shall be used to visually divide larger building facades to produce a scale that is compatible with and complimentary to adjacent residential development.
  3. Buildings shall maintain a distance of at least 20 feet from other structures on the lot.
  4. Detached garages shall be located in the side or rear yard only.
  5. Where garages are erected to serve multi-family dwellings, all of the exterior walls thereof shall be constructed of or faced with materials similar to those used in the facing of the main building.



6. Buildings shall be laid out so that the primary entrances face the street. Each entrance shall be connected by sidewalk to the Town's public sidewalk system, where applicable.
7. Developments of 10 or more units shall provide recreational open space at a standard of 250 square feet per dwelling unit. Each recreation area shall be developed with both passive and active recreation facilities, including the installation of appropriate playground or leisure equipment. Where compliance with the minimum open space area is infeasible due to lot size or other physical restriction, the reviewing board may waive or modify this requirement.

**§215-24.16****OUTDOOR ASSEMBLY, SEATING, SALES, DISPLAY, & STORAGE AREAS**

These standards shall not apply to outdoor residential accessory uses.

**A. General Requirements.**

1. No area shall block windows, entrances, exits, pedestrian or vehicular access, sidewalks, fire lanes, or other travel lanes.
2. No area shall exceed 30% of the gross floor area of the primary use.
3. All areas shall remain clean and free of trash or debris at all times.
4. The use of such areas shall be clearly ancillary to the primary use. Businesses and operators not directly associated with the primary use of the property are not permitted to occupy such space.
5. No outside music or speakers shall be permitted.
6. Noise levels shall not exceed those outlined in Chapter 133 of the Code of the Town of Tonawanda.

**B. Assembly, Seating, Sales, and Display Areas.**

1. Such areas may be allowable in the public right-of-way with the issuance of a license by the Town Board and site plan approval in accordance with this Chapter.
2. All areas shall be located adjacent to the wall of the primary structure and shall not extend more than 20 feet from said wall or beyond any public right-of-way or property line, unless otherwise approved through site plan review.
3. No outdoor assembly, seating, sales, or display area shall be used for storage purposes.
4. Seating and all items for sales or display shall be removed, enclosed, screened, and/or otherwise secured during non-business hours.

**C. Storage Areas.**

1. No area shall be permitted in any front yard or within any public right-of-way.
2. All areas shall be fully screened from public view and from adjacent residential uses or districts.

3. Outside storage areas shall not exceed 12 feet in height, unless within the MU-I or GI District, and located at least 150 feet from the public right-of-way.
  4. The storage of materials shall be limited to those necessary for and specific to the operation of the use, such as items for sale at a retail store or building materials for a construction company.
  5. Where more than five commercial vehicles are to be parked overnight or otherwise stored on-site, the parking area for such vehicles shall be in the rear yard and screened from the view of adjacent property and rights-of-way. The nature and extent of such screening shall be approved as part of site plan review.
  6. Acceptable pavement surfaces include asphalt, concrete, or other such paving systems designed to carry anticipated vehicle and material weights.
  7. Unacceptable paving surfaces include millings, loose stone, degraded concrete or asphalt, and any surface that will generate dust.
  8. Exceptions may be made to the paving requirements by the Planning Board as part of site plan review.
- D. Outdoor Dining Permit.**
1. Any person, firm, partnership, corporation or any other entity in the food service or related industry desiring to provide patrons with outdoor facilities for dining or similar activity shall annually make application for an outdoor dining permit to the Code Enforcement Officer.
  2. Prior to issuance of a permit, the applicant shall obtain site plan approval.
  3. Permit Expiration.
    - a) All outdoor dining permits expire on the 31st day of December of each year.
    - b) Each outdoor dining permit shall be posted in a conspicuous location on the premises.
    - c) Any outdoor dining permit which has not been suspended or revoked may, upon filing of an application for renewal and payment of a fee prescribed by this section, be renewed for an additional period of one year from its expiration.
    - d) No outdoor dining permit shall be assignable or transferable.
  4. Bar and/or restaurant facilities licensed by the New York State Liquor Authority (NYSLA) to sell alcohol on the premises shall provide written approval from the NYSLA to establish such outdoor dining prior to permit issuance.
- E. Temporary Use Permit.** The use of outdoor areas associated with a commercial use or business for a special event or other temporary purpose may be allowed with the issuance of a temporary use permit by the Director of Planning and Development, in accordance with this following.
1. Application Requirements. An application for a temporary use permit may be submitted by the property owner(s) to the Planning and Development Department on the provided form(s). The applicant shall attach materials addressing the following, as applicable:
    - a) A description of the temporary event or use, including dates/times.

- b) The number of employees at maximum shift.
  - c) The maximum seat capacity and/or anticipated number of people expected to attend over the course of the event.
  - d) A recycling and waste management plan.
  - e) The nature and type of all mechanical equipment provided and/or required.
  - f) Any desired or necessary temporary signage.
  - g) A description of any music or noise that may be generated by the proposed activity.
  - h) Anticipated parking demand and location and amount of parking to be provided.
  - i) A site plan, survey or aerial image denoting the location of the subject property and all structures thereon, including appropriate markings to show the location of all proposed activities.
  - j) Copies of any other required local, county, or state permits such as Erie County Health Department permits or fire inspection certificates.
2. Review Criteria. The Director of Planning and Development shall consider the following when reviewing an application for temporary use. The Director may consult with any other Town department or review board as deemed necessary for an adequate and informed review.
- a) Be in harmony with the general purpose and intent of this chapter, taking into account the location and size of the use, the nature and intensity of the operations involved or conducted in connection with it and the size of the site with respect to the streets giving access thereto.
  - b) Not tend to depreciate the value of adjacent property, taking into account the possibility of screening or other protective measures.
  - c) Not create a hazard to health, safety or general welfare.
  - d) Not alter the essential character of the neighborhood nor be detrimental to the residents thereof.
  - e) Not introduce substantial adverse impacts on the surrounding neighborhood.
  - f) Not be detrimental to the flow of traffic, taking into account the duration and times of the activity.
  - g) Not adversely impact pedestrian safety.
  - h) Not create a hazard to health, safety or general welfare.
  - i) Not be a nuisance or create offensive odors or noise.
3. Issuance of Permit.
- a) The Director of Planning and Development may grant, grant with conditions, or deny the application.
  - b) The permit shall be valid for the dates/times approved as part of review. No permit may be granted for a period exceeding 30 days.
  - c) No more than four permits may be granted to any one applicant, property, or use in a 12-month period.

**§215-24.17****RECREATION & ENTERTAINMENT FACILITIES, OUTDOOR**

- A. Permanent, enclosed bathroom facilities for the public shall be provided on site.
- B. No outdoor recreation or entertainment facilities shall be located closer than 200 feet to the property line of any adjacent residential use or district unless proper landscaping and screening is provided as approved in site plan review.
- C. Hours of operation shall be posted on-site. All outdoor facilities shall be secured and closed to the public outside of operating hours.
- D. A waste management plan shall be required to ensure proper upkeep of the site and disposal of trash, litter, animal waste, and other refuse.

**§215-24.18****RESTAURANTS & BARS**

- A. All such uses dealing with the importation, manufacture, distribution, or sale of alcohol shall obtain a license as required by the NYS Liquor Authority and operate in accordance with the regulations therein.
- B. Uses where the sale of food is the primary source of revenue shall be considered restaurants. Restaurants must have a full kitchen and menu as required by the NYS Liquor Authority when the sale of beer, wine, and/or liquor is provided.
- C. Bars shall include a minimum food preparation area and menu that satisfies the NYS Liquor Authority's minimum food requirement.
- D. A waste management plan shall be required to provide for proper upkeep of the site and disposal of refuse. All refuse containers shall be located in the rear yard and maintain a setback of at least five feet from all property lines.
- E. Where the provision of on-site refuse containers is infeasible, a shared waste management agreement may be established between adjacent uses. Under no circumstance shall any shared refuse container be located outside of a 200-foot radius of a single use.

**§215-24.19****VEHICLE SALES, SERVICE, & REPAIR SHOPS**

- A. A curbed landscaped area shall be maintained at least three feet in depth along all street frontage space not used as driveway. The required landscaping and screening treatments shall be determined through site plan review.
- B. No access drive shall be within 200 feet of and on the same side of the street as a school, public library, theater, church, or other public gathering place, park, playground or fire station unless a street 50 feet or more wide lies between such service station and such building or use.
- C. All automobile parts and dismantled vehicles are to be stored within a building, and no repair work or automobile maintenance is to be performed outside a building.
- D. No vehicle sales, service, or repair operation shall be used for auto wrecking.
- E. No more than five wrecked, partially dismantled, junked, or unlicensed vehicles shall be stored on site unless located within an enclosed structure. Such vehicles may be stored outdoor on the premises for no more than two weeks.

**§215-24.20****WINERIES, BREWERIES, & DISTILLERIES (INCLUDING MICROS)**

- A. When adjacent to residential uses or districts, such uses shall be buffered to minimize visual and auditory impacts in a method approved during site plan review. Such buffering may include but is not limited to landscaping, screening, and fencing.
- B. All such uses dealing with the importation, manufacture, distribution, or sale of alcohol shall obtain a license as required by the NYS Liquor Authority and operate in accordance with the regulations therein.
- C. Bars and tasting rooms shall include a minimum food preparation area and menu that satisfies the NYS Liquor Authority's minimum food requirement.
- D. A waste management plan shall be required to provide for proper upkeep of the site and disposal of refuse. All refuse containers shall be located in the rear yard and maintain a setback of at least five feet from all property lines.
- E. Where the provision of on-site refuse containers is infeasible, a shared waste management agreement may be established between adjacent uses. Under no circumstance shall any shared refuse container be located outside of a 200-foot radius of a single use.

## Article 25. Supplemental Regulations

### §215-25.1

#### SIGHT OBSTRUCTIONS

It is the intent that a person requiring ingress or egress from a private driveway, alley or intersections of public rights-of-way shall have a clear view of the street and sidewalk in all directions and that persons using the street or sidewalk will have a clear unobstructed view of vehicles approaching the street from private driveways, alleys or another street and that the view shall not be obstructed by parked vehicles, fences, hedges, shrubbery, trees or any structure greater than three feet in height above the ground elevation of said driveway at the street line. This unobstructed vision clearance shall apply to the area bounded by the first 15 feet from the point of intersection of the boundary lines of public or private rights-of-way in both directions and a line connecting the same. This unobstructed vision clearance shall also apply where lot lines intersect street lines and when the edge of a driveway for either of the adjoining lots is within 15 feet of the lot line. Trees with branches no lower than 12 feet above the street grade within these areas of vision clearance shall not be deemed obstructions. Persons responsible for violations of these vision clearance requirements shall be served written notice by the Code Enforcement Officer ordering correction.

### §215-25.2

#### ANTENNA RESTRICTIONS

In all zoning districts, no antenna or antenna support structure of any type shall be located in the front yard of any premises, except that a single-wire antenna utilized by a person who holds a valid amateur radio operator's license issued by the Federal Communications Commission shall be permitted to project into the front yard of a premises and the required antenna support system may be situate thereon.

### §215-25.3

#### EXCAVATION, REMOVAL, & STORAGE OF MATERIALS

Standards for the excavation, removal and storage of materials are contained in Chapter 179 of the Code of the Town of Tonawanda, New York.

### §215-25.4

#### HOME VEHICLE & APPLIANCE REPAIR

The repairing, rebuilding, servicing, maintenance, painting or repainting of motor vehicles, motorcycles, boats, trailers, furniture or other appliances owned by the resident of the property upon which such activity is to be conducted is permitted, provided the activity is controlled to avoid unreasonable interference with the use of any adjoining or neighboring premises.

### §215-25.5

#### OVERHEAD ELECTRIC CIRCUITS

Overhead electric circuits to garages or accessory structures shall not be permitted. All electric circuits and feeders must be installed underground.

## §215-25.6

## FENCES

**A. General Requirements.**

1. It shall be the responsibility of the property owner to ensure all fencing is located upon their own property and not on adjoining property.
2. Fences shall be oriented so that the side with posts or other structural supports faces the interior of the lot on which it is located, unless such posts or supports are an integral part of the decorative design of the fence.
3. No fencing shall be installed, or replaced, which poses a potential hazard to either pedestrians or motorists by restricting vision.
4. It shall be the responsibility of the property owner whose land contains a fence to maintain that fence so that it remains structurally sound and does not aesthetically detract from neighboring properties. The property owner is also responsible to see that any vegetation (i.e. grass, weeds) around a fence is regularly mowed.
5. A fence, wall or other similar structure shutting out, unduly or unnecessarily, light or air or which may cause a nuisance or a fire hazard shall not be permitted.

**B. Residential Districts and Uses.**

1. Fencing located within the front yard shall not exceed three (3) feet in height. For the purposes of this Section the term "open fencing" shall refer to fencing which is no more than 50% opaque.
2. Fencing located within any side yard shall not exceed four (4) feet in height.
3. Fencing in a rear yard shall not exceed six (6) feet in height.

**C. Nonresidential Districts and Uses.**

1. Fencing located within the front yard shall not exceed three (3) feet in height for closed fencing or four (4) feet in height for open fencing.
2. Fencing located within any side or rear yard shall not exceed eight (8) feet in height.
3. In industrial districts, fences in the side or rear yard shall not exceed 10 feet in height.

**D. Non-Lot Line Fences.** Fences other than lot-line fences may be erected if approved by the Code Enforcement Officer. Any person intending to erect such a fence shall first make application to the Code Enforcement Officer. Such application shall specify the reasons and need for such a fence. The Code Enforcement Officer may then determine whether or not to approve such application and, if approved, may specify such additional conditions which, in his sole discretion, he may deem necessary.**E. Height Exceptions.**

1. Where a residential use abuts a nonresidential use or district, the maximum fence height requirement for the nonresidential use shall apply to both properties.
2. In nonresidential districts, fences utilized for the purposes of screening dumpsters, outdoor storage areas, telecommunications facilities, energy facilities, or other potentially unsightly uses or structures, where the

maximum height would be insufficient to properly screen such use, may exceed said maximum height with site plan review approval.

3. The maximum building height restriction in any district shall not apply to the antenna or antenna support structure utilized by any person who holds a valid amateur radio operator's license issued by the Federal Communications Commission.

**F. Materials.**

1. No fence shall be comprised of unfinished metal, concrete block, plastic, fiberglass, or plywood.
2. Decorative concrete fences are permitted in nonresidential districts.

- G. Snow Fences.** Snow fences may be erected and maintained without a permit only in locations appropriate for the control of snow between the dates of November 1 and April 1. All other uses, with the exception of temporary protection at emergency and/or construction sites, are strictly prohibited.

## §215-25.7

### SWIMMING POOLS (PRIVATE)

- A. Applicability.** This section shall apply to any swimming pool operated as an accessory use to a residential dwelling unit or units and located on an individual residential lot or site.

1. An in-ground swimming pool is one so constructed that the majority of the pool depth is located below grade, requiring significant excavation of land and often providing for at-grade access.
2. An aboveground swimming pool is one so constructed that the majority of the pool depth is located above grade, raising the level of access above grade and often requiring the use of a ladder or other structure to gain entry.

**B. General Requirements.**

1. All swimming pools, hot tubs, and spas shall be in conformance with the Residential Code of New York State.

**C. Location.**

1. A swimming pool as an accessory structure to a residential use may be installed and used in a rear or side yard of a lot in a residential district, provided that the rear and side setback requirements are met.
2. A swimming pool hereafter constructed on the rear of a corner lot and adjacent to the side line of an interior lot shall be located not less than six feet from the above-mentioned side line and not less than two feet or more than three feet from the side line of the lot opposite the side street line.

## §215-25.8

### PROJECTION INTO YARDS

Only the following shall be permitted to project into a minimum yard setback:

- A.** Awnings, canopies, single-story porches, and deck stairs may project a maximum of nine feet.



- B. Cornices, eaves, passive solar devices, other such architectural features, and roof-mounted antennas may project a maximum of two feet.
- C. Exterior uncovered and unenclosed handicap access facilities may project up to the lot line if required to meet the access requirements of the Americans with Disabilities Act (ADA).

**§215-25.9**

**EXCEPTIONS TO REAR & SIDE YARD REQUIREMENTS**

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The space required in a side or rear yard shall be open and unobstructed except for the ordinary projections of window sills and belt courses not to exceed four inches; projections of cornices, eaves or ornamental features not to exceed 18 inches; projections of fireplaces, chimneys or flues not to exceed 12 inches; or an open porch, patio or veranda projecting a maximum of nine feet from the main body of the rear of the dwelling.

# Article 26. Solar Energy Systems

## §215-26.1

### SMALL-SCALE SOLAR ENERGY SYSTEMS

- A. Interpretation.** The provisions of this chapter shall be interpreted as providing minimum requirements for small-scale solar energy systems adopted for the purpose of promoting the health, safety, and general welfare of this community.
- B. Intent; Greater Restrictions to Prevail.** It is not intended by this chapter to repeal, except as herein stated, abrogate or impair existing conditions previously made or permits previously issued relating to the use of buildings or premises or to impair or interfere with any easements, covenants or agreements existing between parties. Except as otherwise provided herein, whenever this chapter imposes a greater restriction upon the use of buildings or premises than is required by existing provisions of law, ordinance, regulations or permits or by such easements, covenants or agreements, the provisions of this chapter shall control.
- C. Building Permit Required.**
1. Installation of solar energy systems and equipment is encouraged on all preexisting structures; however, access to sunlight which is necessary therefor cannot be obtained through the provisions of this chapter. The installation of a solar collector, whether attached to the main structure or as a detached accessory structure, shall require a building permit and a New York State Unified Solar Permit as stated in §54-5F(8).
  2. Other alternative natural energy conservation devices shall be considered structures and shall require a building permit. All permit applications for such devices will be reviewed and considered as they meet §215-10.3 of this chapter.
- D. General Requirements.**
1. Solar collectors are subject to the minimum setbacks, offsets and lot area coverage for whatever use district in which they are proposed to be installed.
  2. Height limitations for solar collectors in all residential districts and the MU-N District shall be five feet above the level of the permitted building height. Height limitations in all other districts shall be in accordance with the regulations therein.
  3. All solar collectors and their associated support elements shall be designed according to generally accepted engineering practice to withstand wind pressures applied to exposed areas by wind from any direction, to minimize the migration of light or sound from the installation and to minimize the development of sight obstructions for adjacent structures or land parcels.
  4. All solar energy systems located in residential districts are only permitted to contain solar collectors located on the rooftops of principal or accessory buildings. The solar collectors must be completely contained within the limits of the building roof. All other equipment and components of the

solar energy system shall be located within the rear yard only and are subject to setbacks for accessory structures.

## §215-26.2

### LARGE-SCALE & UTILITY-SCALE SOLAR ENERGY SYSTEMS

#### A. Purpose.

1. The Town of Tonawanda recognizes that solar energy is a clean, readily available, and renewable energy source. Development of solar energy systems provides an excellent opportunity for the reuse of brownfields and landfills throughout the Town and offers an energy resource that can act to attract and promote green business development.
2. The Town of Tonawanda has determined that comprehensive regulations regarding the development of solar energy systems is necessary to protect the interests of the Town, its residents, and its businesses. This article is intended to promote the effective and efficient use of solar energy resources; set provisions for the placement, design, construction, and operation of such systems to uphold the public health, safety, and welfare; and to ensure that such systems will not have a significant adverse impact on the aesthetic qualities and character of the Town.

#### B. Applicability.

1. Any large-scale or utility-scale solar energy system erected, constructed, modified, or operated in the Town of Tonawanda after the effective date of this article shall be in compliance with this section.
2. In order to promote innovative design and encourage the inclusion of alternative energy systems within the overall design of a building, solar energy systems determined by the Code Enforcement Officer to be building-integrated photovoltaic (BIPV) systems, as defined herein, are exempt from the requirements of this article. BIPV systems are still required to meet applicable building codes and obtain all necessary permits. The Code Enforcement Officer may request assistance from the Planning Board to determine whether a solar energy system should be considered a BIPV system.

#### C. Permits and Approvals Required.

1. A building permit shall be required for installation of all large-scale and utility-scale solar energy systems.
2. A special use permit shall be required in accordance with the district use tables of this Chapter.
3. Building- or ground-mounted large-scale and utility-scale solar energy systems shall be subject to site plan review.
4. Large-scale solar energy systems shall not be permitted as a principal use on a lot in the MU-GC District.

#### D. Applications for Solar Energy Systems. All applications for large-scale or utility-scale solar energy systems shall include the following:

1. Plans and drawings of the solar energy system installation signed by a professional engineer registered in New York State showing the proposed layout of the entire solar energy system along with a description of all components, whether on site or off site, existing vegetation and proposed clearing and grading of all sites involved. Clearing and/or grading

activities are subject to review and approval by the Planning Board and shall not commence until the issuance of site plan approval.

2. Certification from a professional engineer or architect registered in New York State indicating that the building or structure to which the solar energy system is to be affixed is capable of handling the loading requirements of the solar energy system and various components.
3. One- or three-line electrical diagram detailing the solar energy system installation, associated components, and electrical interconnection methods, with all disconnects and over-current devices.
4. Documentation of access to the project site(s), including location of all access roads, gates, parking areas, etc.
5. Plan for clearing and/or grading of the site. If necessary, a plan for stormwater management and erosion control of the site.
6. Documentation of utility notification, including an electric service order number.
7. Decommissioning plan and description of financial surety that satisfies the requirements of Subsection L for utility-scale only.
8. Photo simulations shall be included showing the proposed solar energy system in relation to the building/site along with elevation views and dimensions, and manufacturer's specs and photos of the proposed solar energy system, solar collectors, and all other components.
9. Sunchart. Where an applicant for a solar energy system requests that the setback for solar collectors from the south property line be less than that identified in Subsection I, the Planning Board may require that the applicant submit a sunchart for the proposed site indicating the sun angle for the southern boundary of the site for a minimum four-hour continuous period during the time of the highest sun angle on December 21, along with the potential for existing buildings, structures, and/or vegetation on the site or on adjacent sites to obstruct the solar skyspace of the proposed solar energy system. The sunchart shall also indicate the potential for obstructions to the solar skyspace of the proposed solar energy system under a scenario where an adjacent site is developed according to Chapter 215, Zoning, with a building/structure built to maximum bulk and height at the minimum setback. Where no standards for height and/or setback are established, this scenario shall assume a minimum fifty-foot building height developed with a maximum setback of five feet from the property line. The sunchart shall be kept on file at the Town Building Department and determine the minimum setback required for any solar collectors from the south property line as well as the solar skyspace that should be considered when development of neighboring properties occurs. This article in no way places responsibility on the Town for ensuring or enforcing solar skyspace easements, nor places responsibility for guaranteeing the solar skyspace of a solar energy system in the event setbacks are waived at the applicant's request.
10. A property owner who has installed or intends to install a solar energy system may choose to negotiate with other property owners in the vicinity for any necessary solar skyspace easements. The issuance of a special use permit does not constitute solar skyspace rights, and the Town shall not be responsible for ensuring impermissible obstruction to the solar skyspace as a result of uses or development performed in accordance with the Town Code. In the event that solar easements are negotiated by an applicant

or property owner, a copy or documentation of any solar skyspace easements shall be provided, properly recorded as such, negotiated with neighboring property owners that shall, at a minimum, include:

- d) The restrictions placed upon buildings, structures, vegetation, and other objects or uses that would potentially obstruct the solar skyspace of the solar energy system.
  - e) A description of the dimensions of the easement expressed in measurable terms, such as the maximum height of buildings and structures, vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector may not be obstructed, or a combination of these descriptions.
  - f) The amount, if any, of permissible obstruction of the solar skyspace through the easement, expressed in measurable terms, such as a specific percentage of the solar skyspace that may be obstructed or hours during the day.
  - g) Provisions for trimming vegetation that would impermissibly obstruct solar skyspace, including any compensation for trimming expenses.
  - h) Provisions for compensation of the owner/operator benefiting from the easement in the event of impermissible obstruction of the solar skyspace that would be in violation of the easement.
  - i) The terms or conditions, if any, under which the easement may be revised or terminated.
11. Where the owner of the property is different than the site host of a solar energy system, the owner of the property shall provide an affidavit or evidence of agreement between the property owner and the solar energy system's owner/operator verifying that the system owner/operator has the permission of the property owner to install and operate the solar energy system.
- E. Fees.** All fees shall be approved by the Town Board by resolution. Nothing in this article shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required under SEQRA if an EIS is required.
- F. General Provisions.** All applications for large-scale or utility-scale solar energy systems shall be in accordance with the following:
- 1. All solar energy systems shall adhere to all applicable Town of Tonawanda building, plumbing, electrical, and fire codes.
  - 2. Development and operation of a solar energy system shall not have a significant adverse impact on fish, wildlife, or plant species or their critical habitats, or other significant habitats identified by the Town of Tonawanda or other federal or state regulatory agencies.
  - 3. The design, construction, operation, and maintenance of any solar energy system shall prevent the misdirection and/or reflection of solar rays onto neighboring properties, public roads, and public parks in excess of that which already exists.

4. All structures and devices used to support solar collectors shall be nonreflective and/or painted a subtle or earth-tone color.
  5. All transmission lines and wiring associated with a solar energy system shall be buried and include necessary encasements in accordance with the National Electric Code and Town requirements. The Planning Board may recommend waiving this requirement if sufficient engineering data is submitted by the applicant to demonstrate that underground transmission lines are not feasible or practical. The applicant is required to show the locations of all proposed overhead and underground electric utility lines, including substations and junction boxes and other electrical components for the project on the site plan.
  6. All transmission lines and electrical wiring shall be in compliance with the utility company's requirements for interconnection.
  7. Artificial lighting of solar energy systems shall be limited to lighting required for safety and operational purposes and shall be shielded from all neighboring properties and public roads.
  8. Any signage used to advertise the solar energy facility shall be in accordance with the Town's signage regulations.
- G. Lot Requirements.** The overall footprint for any large-scale or utility-scale ground-mounted solar energy system shall be permitted to occupy up to 100% of the overall buildable area of the site, and shall not be counted towards the site's maximum lot coverage. Overall footprint shall be determined by the outline created on the ground by wholly enclosing all components/ structures of a solar energy system on a lot.
- H. Bulk and Siting Requirements.**
1. Large-scale or utility-scale solar energy systems located in an industrial district.
    - a) Rooftop-mounted solar energy systems.
      - (i) The maximum height of any rooftop-mounted solar energy system shall be 15 feet, as measured from the finished surface of the roof to which the system is affixed.
      - (ii) Where rooftop-mounted solar energy systems are affixed to a pitched or peaked roof, the solar energy system should generally follow the slope of the roof.
      - (iii) A rooftop-mounted solar energy system shall not extend horizontally beyond the plane of the roof surface.
    - b) Building-mounted solar energy systems.
      - (i) The maximum height of a building-mounted solar energy system shall be 15 feet as measured from the lowest point where the system is affixed to the vertical side of a building.
      - (ii) A building-mounted solar energy system shall not extend horizontally more than eight feet from the vertical surface of a building.
      - (iii) Building-mounted solar energy systems should be integrated into the design of the building and shall not obstruct any window, door, or other architectural feature of the building.

- c) Ground-mounted solar energy systems. The maximum height of a ground-mounted solar energy system shall be 30 feet as measured from the finished grade.
- 2. Large-scale or utility-scale solar energy systems located in a mixed-use district:
  - a) Rooftop-mounted solar energy systems.
    - (i) The maximum height of any rooftop-mounted solar energy system shall be eight feet, as measured from the finished surface of the roof to which the system is affixed.
    - (ii) Where rooftop-mounted solar energy systems are affixed to a pitched or peaked roof, the solar energy system should generally follow the slope of the roof.
    - (iii) A rooftop-mounted solar energy system shall not extend horizontally beyond the plane of the roof surface.
    - (iv) Where practical and when obstruction of solar skyspace can be avoided, a rooftop-mounted solar energy system shall be screened from view from the public right-of-way by use of a building parapet or other measure.
  - b) Building-mounted solar energy systems.
    - (i) The maximum height of a building-mounted solar energy system shall be 15 feet as measured from the lowest point where the system is affixed to the vertical side of a building.
    - (ii) A building-mounted solar energy system shall not extend horizontally more than eight feet from the vertical surface of a building.
    - (iii) Building-mounted solar energy systems should be integrated into the design of the building and shall not obstruct any window, door, or other architectural feature of the building.
    - (iv) Building-mounted solar energy systems shall not be located on the side of a building that faces a public right-of-way.
  - c) Ground-mounted solar energy systems.
    - (i) The maximum height of a ground-mounted solar energy system shall be 15 feet as measured from the finished grade.
    - (ii) Ground-mounted solar energy systems shall not be located within the front yard.
- I. **Setbacks.**
  - 1. Large-scale or utility-scale ground-mounted solar energy systems.
    - a) Where an applicant fails to provide proof that a solar skyspace easement has been negotiated with adjacent property owners, or fails to provide the Town with a sunchart or other written evidence justifying a reduced setback, the default setback from the south property line for all solar collectors constructed as part of a large-scale or utility-scale ground-mounted solar energy system shall be 135 feet.

- b) In no case shall the setback from the south property line be less than that determined by the setback for accessory structures identified for the zoning district in which the system is located.
2. Utility-scale ground-mounted solar energy systems.
    - a) All solar energy equipment and components/structures developed as part of a utility-scale ground-mounted solar energy system shall be set back from any property zoned residential or mixed use, a public road, or any public park a minimum of 50 feet.
    - b) All other setbacks for all solar energy equipment and components/structures developed as part of a utility-scale ground-mounted solar energy system, whether developed as a principal use or accessory use, shall be as determined by the setback for principal structures identified for the zoning district in which the system is located.
  3. All other setbacks for all solar energy system equipment and components/structures developed as part of a large-scale or utility-scale rooftop-mounted, building-mounted and/or ground-mounted solar energy system not identified above shall be as determined by the setback for accessory structures identified for the zoning district in which the system is located.
- J. Landscaping and Screening.**
1. Due to the need to keep the solar skyspace for solar energy systems free from obstructions, the Planning Board may recommend modifying the landscaping requirements within Chapter 215, Zoning, for any site proposed to contain solar collectors and shall ensure that any landscaping proposed is low-growth vegetation that will not obstruct the solar skyspace at mature height.
  2. Following construction of a large-scale or utility-scale ground-mounted solar energy system, all disturbed areas where soil has been exposed shall be reseeded with grass and/or planted with low-level vegetation capable of preventing soil erosion and airborne dust.
  3. Applications for utility-scale solar energy systems shall meet the following additional criteria:
    - a) Any site containing a utility-scale solar energy system shall contain fencing or other enclosure acceptable to the Town enclosing all solar energy system components that present safety hazards.
    - b) A berm, landscape screen, or other opaque enclosure, or any combination thereof acceptable to the Town capable of screening the site, shall be provided along any property line that abuts an existing residence or any property zoned residential or mixed use.
- K. Certification.** After completion of a utility-scale solar energy system, the applicant shall provide a post-construction certification from a professional engineer registered in New York State that the project complies with applicable codes and industry practices and has been constructed and is operating according to the design plans.
- L. Abandonment or Decommissioning.**
1. Unsafe, inoperable, and/or abandoned solar energy systems and solar energy systems for which a special use permit has expired shall be removed by the owner. A solar energy system shall be deemed



abandoned when it fails to produce energy for at least one year. All safety hazards created by the installation and operation of the solar energy system shall be eliminated and the site restored to its preexisting condition within six months of the removal of the solar energy system.

2. For all utility-scale solar energy systems, the applicant shall submit a decommissioning plan for review and approval as part of the special use permit application. The decommissioning plan shall identify the anticipated life of the project, method and process for removing all components of the solar energy system and returning the site to its preexisting condition, and estimated decommissioning costs, including any salvage value.
3. The applicant for a utility-scale solar energy system where the system is the principal use on a lot shall, as a condition of the special use permit and upon each renewal, provide and maintain a form of financial surety. Such financial surety shall be provided either through a security deposit, escrow account, bond, or in a manner otherwise acceptable to the Town. The amount shall be based upon the estimated decommissioning costs and shall not exceed \$50,000 per application. It is intended to cover, in whole or in part, the cost of decommissioning in the event the Town must remove any utility-scale solar energy systems and associated structures/components, as well as restore the site subsequent to such removal in accordance with the approved decommissioning plan. Upon successful completion of all decommissioning activities, any remaining portion of the posted financial surety shall be returned to the applicant. Such financial surety shall not be required for municipally or state-operated solar energy systems or for utility-scale solar energy systems that meet all of the following criteria:
  - a) The solar energy system is constructed as part of an approved industrial or business park; and
  - b) The approved industrial or business park consists of a solar energy system or systems located on land that is leased with ownership retained by the owner of the industrial or business park; and
  - c) The solar energy system supplies energy to tenants of the industrial or business park and not solely into the grid.

**M. Transfer of Special Use Permit.**

1. Special use permits granted for utility-scale solar energy systems and performance standards use permits issued for large-scale or utility-scale solar energy systems shall be assignable or transferable so long as they are in full compliance with this article and all conditions, and the Building Department is notified of the transfer at least 15 days prior thereto.
2. Any post-construction changes or alterations to the solar energy system shall be done by amendment to the special use permit only and subject to the requirements of this article.

## Article 27. Wind Energy Conversion Systems (WECS)

### §215-27.1

#### PURPOSE & APPLICABILITY

- A. **Purpose.** The Town of Tonawanda has determined that a comprehensive local law regulating the development of WECS is necessary to protect the interests of the Town and its residents. The Town adopts this law to promote the effective and efficient use of the Town's wind energy resource through WECS, and to regulate the placement of such systems so that the public health, safety and welfare will not be jeopardized, and that the WECS will not have a significant adverse impact on the aesthetic qualities of the Town.
- B. **Applicability.** The requirements of this section shall apply to all WECS proposed, operated, modified, or constructed after the effective date of this article.

### §215-27.2

#### PERMITTING

- A. No WECS shall be constructed, reconstructed, modified, or operated in the Town of Tonawanda except in compliance with this article.
- B. A building permit shall be required for installation of all WECS.
- C. A special use permit shall be required in accordance with the district use tables of this Chapter. The special use permit shall not be assignable or transferable.
- D. All WECS or MET shall be subject to site plan review.
- E. Permits approved shall be renewed annually. The permit holder shall make renewal application to the Code Enforcement Officer 60 days prior to expiration to allow for inspection and full compliance with all applicable laws and regulations. The renewal application will include a fee as set by the Town Board.
- F. Any changes or alterations postconstruction to the WECS shall be done only by amendment to the special use permit and subject to all requirements of this article.
- G. Industrial grade WECS are not allowed in the Town of Tonawanda.

### §215-27.3

#### APPLICATION PROCEDURE

- A. Applications for a building-mounted WECS shall be made through the Town Building Department on a specially designated building permit application.
- B. Applications for a special use permit for noncommercial WECS will follow the general process for the issuance of a special use permit as described in Article 43 of this Chapter and this article.
- C. Applications for site plan approval for noncommercial WECS shall be made in accordance with Article 42 of this chapter.

- D. The applicant shall agree to indemnify and save the Town, its Town Board, officers, agents and employees harmless from any liability imposed upon the Town, its officers, agents and/or employees arising from the construction, operation or maintenance of the WECS.

**§215-27.4****APPLICATION REQUIREMENTS**

Applicants for a special use permit for WECS within the Town of Tonawanda shall submit the following information to the Town for its referral to a professional engineer or consultant and the Planning Board of the Town for review and recommendation to the Town Board:

- A. Name and address of the applicant.
- B. Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
- C. Visual environmental assessment form (visual EAF), including appropriate models to scale elevations, renderings and photography assessing the WECS from key viewpoints identified in the visual EAF (or by the Town of Tonawanda). The visual EAF shall include a detailed photographic simulation showing the site fully developed with all proposed WECS and accessory structures. Each photo must be labeled with line of sight, elevation and with date taken imprinted on the photograph.
- D. Landscaping plan indicating the proposed placement of the facility on the site, location of existing structures, and any other significant environmental features. Shall include the type and location of plants proposed to screen the WECS at ground level; method fencing prohibiting unauthorized entry, and any ground level lighting.
- E. A narrative describing the distance of the proposed WECS, and the extent to which it would be visible, from any local, county, state, or national scenic, historic, or environmental resources located within its viewshed, including any proposed mitigation measures.
- F. SEQR full environmental assessment form (EAF).
- G. A site plan drawn in sufficient detail to show the following:
  - 1. Location of the WECS on the site and the tower height, including blades, rotor diameter and ground clearance.
  - 2. Utility lines, both above and below ground, within a radius equal to the proposed tower height, including the blades.
  - 3. Property lot lines and the location and dimensions of all existing structures and uses on site within 1,000 feet of the WECS.
  - 4. Surrounding land use and all structures within 1,500 feet of the WECS.
  - 5. Dimensional representation of the various structural components of the tower construction including the base and footing.
  - 6. Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code:
  - 7. Existing topography.
  - 8. Proposed plan for grading and removal of natural vegetation.

9. Proposed plan for restoration after construction according to Town of Tonawanda and New York State Department of Environmental Conservation guidelines.
10. Wind characteristics and dominant wind direction from which 50% or more of the energy contained in the wind flows.
11. Plan for ingress and egress to the proposed project site including:
  - a) Road surface material stating the type and amount of surface cover.
  - b) Width and length of access route.
  - c) Dust control procedures.
  - d) Road maintenance schedule or program.
  - e) Review railroad accessibility for deliveries.
12. Detailed construction plan, including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material, equipment, and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in the field with name and phone number.
13. Tree delineation. All groves of trees shall be located on the site plan at time of application. No tree of three inches DBH or greater shall be removed without approval of the Planning Board.
14. Turbine information. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.
15. Turbine drawings. Photographs or detailed drawings of each wind turbine model including the tower and foundation.
16. Noise report. [See §215-27.6(H) for requirements.] A noise report shall be furnished which shall include the following (the noise report requirement may be waived by the Town for noncommercial WECS):
  - a) A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
  - b) A description and map of the noise-sensitive environment, including any noise-sensitive receptors, i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important within two miles of the proposed wind energy facility.
  - c) A survey and report prepared by a qualified engineer that analyzes the preexisting ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut- in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction, and analyses at affected sensitive receptors located within two miles of the proposed project site.
  - d) A description and map showing the potential noise impacts, including estimates of expected noise impacts upon construction and

- operation workers, and estimates of expected noise levels at sensitive receptor locations.
- e) A description and map of the cumulative noise impacts.
  - f) A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with levels in this article.
  - g) Identification of any problem areas.
  - h) Manufacturers noise design and field testing data, both audible (dBA) and low frequency (deep bass vibration), for all proposed structures.
  - i) A report that outlines issues and considerations for individuals that use hearing aids.
17. A geotechnical report shall be furnished which shall at a minimum include the following:
- a) Soils engineering and engineering geologic characteristics of the site based on on-site sampling and testing.
  - b) Foundation design criteria for all proposed structures.
  - c) Slope stability analysis.
  - d) Grading criteria for ground preparation, cuts and fills, and soil compaction.
18. Ice throw calculations (for commercial WECS): a report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
19. Blade throw calculations (for commercial WECS): a report from a New York State professional engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)
20. Catastrophic tower failure. A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions).
21. Emergency ingress and egress plan. Plan illustrating how emergency service personnel should respond to emergencies in and around the WECS Plan should illustrate: ingress and egress routes for emergency service personnel, evacuation routes for WECS staff, and minimum safe distance to establish an evacuation perimeter.
22. Evacuation perimeter: minimum safe distance specified by the WECS manufacturer that people should be removed from the radius of the WECS in the event of an emergency or catastrophic tower failure.
23. Plan illustrating how the manufacturer's WECS is designed to cease operations in the event of a fire. Plan also includes the manufacturer's recommendations for emergency service personnel response in the event of a fire. The Fire Safety Plan shall be approved by the Town of Tonawanda Fire Chief or appropriate Building Department designee.
24. FAA notification. A copy of written notification to the Federal Aviation Administration.

- 25. Utility notification. Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- 26. Notification to microwave communications link operators. An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- 27. Floodplain. An application that includes any wind turbine which is located within a one-hundred-year floodplain area shall submit the appropriate floodplain study to the Town and any additional information as requested by the Town.
- 28. Other information. Such additional information as may be reasonably requested by the Development Services Staff, Planning Board or Town Board.

§215-27.5

PERMIT FINDINGS

Findings necessary to grant a WECS facility permit. In order to grant a WECS facility permit, the Town of Tonawanda shall review the application, all filings by any other party, and conduct a public hearing. A commercial wind energy facility permit shall not be granted unless the Town of Tonawanda makes the following findings based on substantial evidence:

- A. Consistent with the Comprehensive Plan. The proposed commercial wind energy facility project is consistent with the Comprehensive Plan of the Town of Tonawanda.
- B. Will not unreasonably interfere with the orderly land use and site plans. The proposed WECS facility will not unreasonably interfere with the orderly land use and development plans of the Town of Tonawanda.
- C. Benefits to the applicant and public will exceed any burdens. The benefits of the proposed WECS facility project to the applicant and the public will exceed any burdens.
- D. Not detrimental to the public health, safety and general welfare of the community. The proposed WECS facility will not be detrimental to the public health, safety or general welfare of the community.
- E. Complies with all required provisions of the Zoning Ordinance. The proposed WECS facility shall comply with all required provisions of the Zoning Ordinance, unless variances have been properly applied for and granted pursuant to this Chapter.

§215-27.6

WECS CONDITIONS

WECS shall be subject to the following conditions.

- A. **Setbacks.** The applicant shall adhere to the following setbacks.
  - 1. From property boundary lines:
    - a) One thousand feet from any residential district or MU-N District boundary line.
    - a) A minimum 1.5 times the total WECS height from any nonresidential property line excluding adjoining lot lines of project participants.

- b) One thousand feet from any other municipal boundary lines.
  - 2. From structures:
    - a) A minimum 1.5 times the total WECS height from any building located outside the applicant's property line.
    - c) A minimum of 1,500 feet from any dwelling (located off of the site).
  - 3. From public road and highways.
    - a) A minimum 1.5 times the total WECS height from any public road and highway.
    - d) Where the lot line abuts a public right-of-way, the setbacks specified above shall be measured from the center line of such right-of-way.
  - 4. From aboveground transmission lines greater than 12 kilovolts: A minimum 1.5 times the total WECS height from any aboveground transmission line greater than 12 kilovolts, excluding where transmission lines are located within PUD zones.
- B. Maximum Overall Height.**
- 1. Building-mounted WECS must meet the height requirements of the district in which they are located and are restricted to a maximum of 15 feet above the roofline.
  - 2. The maximum overall height of any noncommercial WECS shall be 165 feet. The maximum height shall be measured from the ground elevation to the top of the tip of the blade in the vertical position.
- C. Signage.** No advertising sign or logo shall be placed or painted on any commercial wind energy facility.
- D. Color and Finish.**
- 1. Color and finish: Wind turbines shall be painted a nonobtrusive natural (such as white, gray, or beige) color that is nonreflective.
  - 2. Camouflage facilities: The design of WECS buildings and related structures shall, to the extent reasonably possible, use materials, colors, textures, screening and landscaping that will blend the facility to the natural setting and the existing environment.
- E. Lighting.** Lighting plan required: The applicant shall submit a noncommercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
- F. Compliance with Regulatory Agencies.** The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction and approval related to the completion of the wind energy conversion system.
- G. Safety and Security Requirements.** The applicant shall adhere to the following safety and security requirements:
- 1. Safety shutdown. Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed-shutdown-disconnect switches shall be provided and clearly labeled on

the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.

2. Grounding. All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
  3. Wiring. All wiring between the wind turbines and the wind energy facility substation shall be underground. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.
  4. All transmission lines from WECS to on-site substations shall be underground. The Town Board shall have the authority to waive this requirement if the owner of the property upon which the transmission line will be sited consents to aboveground transmission lines or if the Town Board has sufficient engineering data submitted by the applicant to demonstrate that underground transmission lines are unfeasible.
  5. Ground clearance. The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
  6. Climability. Wind turbine towers shall not be climbable (exterior) up to 15 feet above ground level.
  7. Access doors locked. All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
  8. Self-supporting structures. All structures shall be of monopole construction (single pole). No lattice structures or guy wire supported structures shall be permitted.
  9. Signage. Appropriate warning signage shall be placed on WECS and all WECS appurtenances (towers, electrical equipment, and wind energy facility entrances, etc.). Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with local, state, and federal codes.
- H. **Noise Requirements.** The applicant shall adhere to the following noise requirements:
1. Compliance with noise regulations required. A WECS permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.
  2. Noise study required. The applicant shall submit a noise study based on the requirements set out in §215-27.4. The Planning Board and Technical Support Department shall determine the adequacy of the noise study and, if necessary, may require further submissions. The noise study shall consider the following:
    - a) Low frequency noise.
    - b) Infrasound noise.
    - c) Pure tone.
    - d) Repetitive/impulsive sound.
  3. Noise setbacks. The Town Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such



greater setbacks are necessary to protect the public health, safety and welfare of the community.

4. Audible noise standard. The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dBA for more than five minutes out of any one-hour time period or to exceed 50 dBA for any time period.
  5. Operations, low frequency noise. A WECS facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
  6. Noise complaint and investigation process required. The applicant shall submit a noise complaint and investigation process. The Planning Board shall determine the adequacy of the noise complaint and investigation process.
- I. **Fire Hazard Protection.** The applicant shall submit a fire control and prevention program that is appropriate and adequate for the proposed facility as determined by the Town of Tonawanda Building Department or its designee. The proposed program may include, but is not limited to, the following:
1. Fireproof or fire-resistant building materials.
  2. Buffers or fire-retardant landscaping.
  3. Availability of water.
  4. An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment — without regular human occupancy.
  5. Provision of training and fire-fighting equipment for local fire protection personnel.
- J. **Impact on Wildlife Species and Habitat.** The applicant shall adhere to the following regarding the impact on wildlife species and habitat:
1. Endangered or threatened species. Development and operation of a WECS facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Tonawanda Comprehensive Plan and/or the studies and plans of the regional planning commissions based on criteria established by the federal or state regulatory agencies.
  2. Migratory birds. Development and operation of a commercial WECS shall be evaluated based on SEQRA findings.
- K. **Unsafe and Inoperable Wind Energy Facilities; Site Reclamation.** The applicant shall adhere to the following:
1. Removal and site restoration. Unsafe WECS facilities, inoperable WECS facilities, and WECS facilities for which the permit has expired shall be removed by the owner at their expense. All safety hazards created by the installation and operation of the commercial wind energy facility shall be eliminated, and the site shall be restored to its natural condition to the extent feasible as per Subsection 2 of this section. A bond or other appropriate form of security shall be required to cover the cost of the

removal and site restoration at the time of building permit application. The bond shall be payable to the Town of Tonawanda for the removal of nonfunctional WECS and appurtenant facilities in an amount to be determined by the Town for the period of the life of the facility. Any fund established may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant.

2. Removal and site restoration plan required. The applicant shall submit a removal and site restoration plan and removal and site restoration plan cost estimate to the Code Enforcement Officer and Technical Support Department for review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four feet below finished grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the WECS facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.
  3. Public nuisance. Every unsafe WECS facility and every inoperable WECS facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable WECS facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six months.
  4. Inoperable, defined. A commercial wind energy facility shall be deemed inoperable if it has not generated power within the preceding six months.
- L. Interference with Residential Television, Microwave and Radio Reception.** The applicant must submit proof that the proposed construction of the WECS will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.
- M. Interference with Aviation Navigational Systems.** The applicant shall adhere to the following:
1. No interference with aviation facilities. No commercial wind energy facility shall be installed or operated in a manner that causes interference with the operation of any aviation facility.
  2. Compliance with FAA regulations. All wind energy siting shall comply with Federal Aviation Administration (FAA) regulations.
  3. Locking mechanisms to limit radar interference required. All WECS facilities shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference or clutter. This provision does not apply while the WECS is "free-wheeling" during startup and shutdown. The Town Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference or clutter will be caused by the WECS facility.

- N. Erosion Control.** The applicant shall adhere to the following:
1. Before the Town of Tonawanda shall issue a grading or building permit for the WECS facility, the applicant shall submit a stormwater pollution prevention plan (SWPPP) consistent with the requirements of Chapter 73, Stormwater Management, of the Code of the Town of Tonawanda, if applicable. The SWPPP shall meet the performance and design criteria and standards in §73-9 of the Town Code or most recent standard.
  2. If the proposed project disturbs over one acre, the applicant must comply with the New York State Department of Environmental Conservation SPDES General Permit for Stormwater Discharges from Construction Activity (Permit No. GP-02-01). A copy of the notice of intent (N.O.I.) and stormwater pollution prevention plan (SWPPP) as required by the General Permit must be filed with the Town of Tonawanda prior to construction. Per Permit No. GP-02-01, construction cannot begin until the required time period for NYSDEC review has passed.

## §215-27.7

### CERTIFICATIONS

The applicant shall provide the following certifications:

- A. Certification of Structural Components.** The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer licensed and registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Uniform Building and Construction Code that have been adopted in New York State.
- B. Certification of Postconstruction.** After completion of the WECS, the applicant shall provide a postconstruction certification from a licensed professional engineer licensed and registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans.
- C. Certification of Electrical System.** The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State.
- D. Certification of Rotor Overspeed Control.** The rotor overspeed control system shall be certified in writing by a mechanical engineer licensed and registered in New York State. The engineer shall certify compliance with good engineering practices.
- E. Certification of Project.** Certificate of completion must be supplied by the applicant and approved by the Town of Tonawanda Code Enforcement Officer.
- F. Certification of Security.** The applicant shall certify to the Town that appropriate security will be in place to restrict access to the WECS and facilities following completion of construction.

## §215-27.8

### MONITORING REQUIREMENTS FOR WECS

- A. Right to Enter Premises for Monitoring.** Upon reasonable notice, Town of Tonawanda officials or their designated representatives may enter a lot on which a WECS facility permit has been granted for the purpose of monitoring

compliance with any permit requirements. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.

- B. Avian/Bat Impact Study Plan.** The applicant shall submit a plan for monitoring the avian impact of the commercial wind energy facility to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. In addition, the applicant shall agree to submit a report to the Planning Board according to the requirements of the applicable regulatory agencies that identifies all dead birds found within 500 feet of the commercial wind energy facility.
- C. Periodic Reporting Required.** The applicant shall agree to submit periodic monitoring reports to the Town. The report shall contain data on the operations and environmental impacts and shall be in the form prescribed by the Code Enforcement Officer.
- D. Power Production Report Required.** The applicant shall agree to submit a quarterly power production report to the Town. The power production report shall cover the preceding calendar quarter and shall be in the form prescribed by the Technical Support Department and shall include actual power production in kilowatt hours for each WECS facility.
- E. Inspections.** Unless waived by the Town Board, all commercial WECS shall be inspected annually by a New York State licensed professional engineer that has been approved by the Town or at any other time upon a determination by the Town's Code Enforcement Officer that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.
- F. General Complaint Process.**
  - 1. During construction, the Town of Tonawanda Code Enforcement Officer can issue a stop-work order at any time for any violations of the permit.
  - 2. Postconstruction. After construction is complete, the permit holder shall establish a contact person, including name and phone number, for receipt of any complaint concerning any permit requirements. Upon receipt of complaint from the Town of Tonawanda Code Enforcement Officer, the permit holder/ contact person shall have seven working days to reply to the Town in writing.

## §215-27.9

### APPLICATION & DEVELOPMENT FEES & COSTS

- A. Application Fee.** The applicant shall pay all costs associated with the Town of Tonawanda's review and processing of the application. The applicant shall submit a deposit with the application in the amount as determined by resolution by the Town Board. The Town of Tonawanda may require additional deposits to cover the costs of reviewing and processing the application. Such additional deposits, if requested, shall be promptly submitted by the applicant. Following action on the application, any unused amount of the deposit(s) shall be returned to the applicant with a summary of the costs incurred.
- B. Development Fees to Be Paid.** A one-time or periodic fee and a requirement to provide public works or services may be imposed as a condition of a commercial WECS permit. Such fees must be related to the public need created by the wind energy development. The purposes for which the permit fee may be used include, but are not limited to, providing roads required by

the wind energy development, providing fire protection services, and establishing and operating a monitoring system.

- C. **Proof of Insurance.** Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof.

## §215-27.10

### WIND MEASUREMENT TOWERS

- A. The Town Board acknowledges that, prior to construction of a WECS, a wind site assessment is conducted to determine the wind speeds and feasibility of using particular sites. Installation of wind measurement towers, also known as anemometer ("Mei") towers, shall be permitted under the laws as a temporary special use (for up to two years) in the same zoning districts as the WECS.
- B. An application for a wind measurement tower shall include:
1. Name, address and telephone number of the applicant. If the applicant is represented by an agent, the application shall include the name, address and telephone number of the agent as well as an original signature of the applicant authorizing the representation.
  2. Name, address and telephone number of the property owner. If the property owner is not the applicant, the application shall include a letter or other written permission signed by the property owner confirming that the property owner is familiar with the proposed applications and authorizing the submission of the application.
  3. Address of each proposed tower site, including Tax Map section, block and lot number.
  4. Site plan.
  5. Decommissioning plan, including a security bond or cash for removal.

## §215-27.11

### PERMIT REVOCATION

- A. **Testing Fund.** A special use permit shall contain a requirement that the application fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as every two years, or more frequently upon request of the Town Board in response to complaints by residents. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the special use permit and this article and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.
- B. **Operation.** A WECS shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a WECS become inoperable, or should any part of the WECS be damaged, or should a WECS violate permit conditions, the owner or operator shall remedy the situation within 90 days after written notice from the Town Board. The applicant shall have 90 days after written notice from the Town Board to cure any deficiency. An extension of the ninety-day period may be considered by the Town Board, but the total period may not exceed 180 days.

- C. Notwithstanding any other abatement provision under this article, if the WECS is not repaired or made operational or brought into permit compliance after said notice, the Town may, after a public hearing at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance: 1) order either remedial action within a particular time frame, or 2) order revocation of the wind energy permit or the WECS and require the removal of the WECS within 90 days. If the WECS is not removed, the Town Board shall have the right to use the security posted as part of the decommission plan to remove the WECS.

**§215-27.12**

**FEES & COSTS**

All fees shall be approved by the Town Board by resolution. Nothing in this article shall be read as limiting the ability of the Town to enter into host community agreements with any applicant to compensate the Town for expenses or impacts on the community. The Town shall require any applicant to enter into an escrow agreement to pay the engineering and legal costs of any application review, including the review required by SEQRA.

**§215-27.13**

**ENFORCEMENT, PENALTIES & REMEDIES FOR VIOLATIONS**

- A. Any person owning, controlling or managing any building, structure or land who shall undertake a WECS or wind measurement tower in violation of this article or in noncompliance with the terms and conditions of any permit issued pursuant to this article, or any order of the Enforcement Officer, and any person who shall assist in so doing, shall be guilty of an offense and subjected to a fine of not more than
- B. \$250 or to imprisonment for a period of not more than six months, or both. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue. The Town may institute a civil proceeding to collect civil penalties in the amount of \$250 for each violation, and each week said violation continues shall be deemed a separate violation.
- C. In case of any violation or threatened violation of any of the provisions of this article, including the terms and conditions imposed by any permit issued pursuant to this article, in addition to other remedies and penalties herein provided, the Town may institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use, and to restrain, correct or abate such violation to prevent the illegal act.

## Article 28. Battery Energy Storage Systems

### §215-28.1

#### AUTHORITY & PURPOSE

- A. Authority.** This article is adopted pursuant to Article IX of the New York State Constitution, §2(c)(6) and (10), New York Statute of Local Governments, §10(1) and (7); §261-263 of the Town Law and §10 of the Municipal Home Rule Law of the State of New York, which authorize the Towns to adopt zoning provisions that advance and protect the health, safety and welfare of the community.
- B. Statement of Purpose.** This article is adopted to advance and protect the public health, safety, welfare, and quality of life of the Town of Tonawanda by creating regulations for the installation and use of battery energy storage systems, with the following objectives:
1. To provide a regulatory scheme for the designation of properties suitable for the location, construction and operation of battery energy storage systems.
  2. To ensure compatible land uses in the vicinity of the areas affected by battery energy storage systems.
  3. To mitigate the impacts of battery energy storage systems on environmental resources such as important agricultural lands, forests, wildlife and other protected resources.
  4. To protect the public health and safety of the residents of the Town of Tonawanda.
  5. To regulate the development of battery energy storage systems in accordance with the Town's Comprehensive Plan.

### §215-28.2

#### APPLICABILITY

- A.** The requirements of this article shall apply to all battery energy storage systems permitted, installed, or modified in Town of Tonawanda after the effective date of this article, excluding general maintenance and repair.
- B.** Battery energy storage systems constructed or installed prior to the effective date of this article shall not be required to meet the requirements of this article.
- C.** Modifications to, retrofits or replacements of an existing battery energy storage system that increase the total battery energy storage system designed discharge duration or power rating shall be subject to this article.

### §215-28.3

#### GENERAL REQUIREMENTS

- A. Permit Required.** A building permit, an electrical permit, special use permit, and potentially an operating permit shall be required for installation of all battery energy storage systems as provided by this chapter.
- B. SEQR Compliance.** Issuance of permits and approvals by the Tonawanda Town Board or Planning Board shall include review pursuant to the State

Environmental Quality Review Act [ECL Article 8 and its implementing regulations at 6 NYCRR Part 617 ("SEQRA")].

- C. **Additional Code Requirements.** All battery energy storage systems, all dedicated use buildings, and all other buildings or structures that (1) contain or are otherwise associated with a battery energy storage system and (2) subject to the Uniform Code and/or the Energy Code shall be designed, erected, and installed in accordance with all applicable provisions of the Uniform Code, all applicable provisions of the Energy Code, and all applicable provisions of the codes, regulations, and industry standards as referenced in the Uniform Code, the Energy Code, and the Town Code.
- D. **Fees.** Fees as set by the Town Board periodically by resolution must be paid at the time of submission of an application for site plan approval, special use permit, a building permit, for an amended building permit, or for renewal of a building permit. The applicant, for Tier 2 or 3 projects, may also be required to pay the costs of the Town's engineers and attorneys or outside professional consultants for time spent reviewing and analyzing the application.

#### §215-28.4

#### PERMITTING REQUIREMENTS FOR TIER 1

Tier 1 battery energy storage systems shall be permitted in all zoning districts, subject to the Uniform Code, all other applicable Codes and the battery energy storage system permit, and are exempt from site plan review.

#### §215-28.5

#### PERMITTING REQUIREMENTS FOR TIER 2 (2A & 2B)

- A. **Tier 2A Permits.** Tier 2A battery energy storage systems are located within a structure shall be permitted in all zoning districts, subject to the Uniform Code, all other applicable Codes, the battery energy storage system permit, and an operating permit, and are exempt from site plan review.
- B. **Tier 2B Permits.** Tier 2B battery energy storage system is located exterior of the primary building on site and shall be permitted through the issuance of site plan approval and an operating permit within all zoning districts except any residential zoning districts or the MU-N District and shall be subject to the Uniform Code and the site plan application requirements set forth in this section. Tier 2B battery energy storage systems associated with a solar or wind energy project shall also only be allowed in conformance with the Town laws associated with these type projects (only allowed in the zoning districts that allow a solar and/or wind project).
- C. **Review Procedures.** Applications for the installation of a Tier 2B battery energy storage system have the following requirements:
  1. They shall be reviewed by the Code Enforcement Officer and the Town Planning Department for completeness. An application shall be complete when it addresses all matters listed in this article including, but not necessarily limited to, (i) compliance with all applicable provisions of the Uniform Code and all applicable provisions of the Energy Code and (ii) matters relating to the proposed battery energy storage system and floodplain, utility lines and electrical circuitry, signage, lighting, vegetation and tree-cutting, noise, decommissioning, site plan and development, special use and development, ownership changes, safety, and permit time frame and abandonment. Any deficiencies in the application must be addressed prior to substantive review.



2. They shall be referred to the County Planning Board pursuant to General Municipal Law §239-m, if required.
  3. The Planning Board shall take action on the application after the SEQR process is completed, which can include approval, approval with conditions, or denial.
- D. Utility lines and Electrical Circuitry.** All on-site utility lines shall be placed underground to the extent feasible and as permitted by the serving utility, with the exception of the main service connection at the utility company right-of-way and any new interconnection equipment, including without limitation any poles, with new easements and right-of-way.
- E. Signage.**
1. The signage shall be in compliance with ANSI Z535 and shall include the type of technology associated with the battery energy storage systems, any special hazards associated, the type of suppression system installed in the area of battery energy storage systems, and twenty-four-hour emergency contact information, including reach-back phone number.
  2. As required by the NEC, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface. A clearly visible warning sign concerning voltage shall be placed at the base of all pad-mounted transformers and substations.
- F. Lighting.** Lighting of the battery energy storage systems shall be limited to that minimally required for safety and operational purposes and shall be reasonably shielded and downcast from abutting properties. In accordance with Town law, there shall be no light spillage onto adjoining properties.
- G. Vegetation and Tree-cutting.** Areas within 10 feet on each side of Tier 2 battery energy storage systems shall be cleared of combustible vegetation and other combustible growth in accordance with all applicable codes. Single specimens of trees, shrubbery, or cultivated ground cover such as green grass, ivy, succulents, or similar plants used as ground covers shall be permitted to be exempt provided that they do not form a means of readily transmitting fire. Removal of trees should be minimized to the extent possible.
- H. Noise.** The one-hour average noise generated from the battery energy storage systems, components, and associated ancillary equipment shall not exceed a noise level of 45 dBA as measured at the outside wall of any nonparticipating residence or occupied community building. Applicants may submit equipment and component manufacturers noise ratings to demonstrate compliance. The applicant may be required to provide operating sound pressure level measurements from a reasonable number of sampled locations at the perimeter of the battery energy storage system to demonstrate compliance with this standard.
- I. Decommissioning.** The applicant shall submit a decommissioning plan, developed in accordance with the Uniform Code, to be implemented upon abandonment and/or in conjunction with removal from the facility. The decommissioning plan may be required to include the following (Planning Board or Town Board to determine the extent of this plan depending on size and location of the installation):
1. A narrative description of the activities to be accomplished, including who will perform that activity and at what point in time, for complete physical removal of all battery energy storage system components,

structures, equipment, ancillary equipment and below ground infrastructure, security barriers, and transmission lines from the site.

2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
  3. The anticipated life of the battery energy storage system.
  4. The estimated decommissioning costs and how said estimate was determined.
  5. The method of ensuring that funds will be available for decommissioning and restoration.
  6. The method by which the decommissioning cost will be kept current.
  7. The manner in which the site will be restored, including a description of how any changes to the surrounding areas and other systems adjacent to the battery energy storage system, such as, but not limited to, structural elements, building penetrations, means of egress, and required fire detection suppression systems, will be protected during decommissioning and confirmed as being acceptable after the system is removed; and
  8. A listing of any contingencies for removing an intact operational energy storage system from service, and for removing an energy storage system from service that has been damaged by a fire or other event.
- J. **Site Plan Application.** For a Tier 2B battery energy storage system the site plan application shall include the following information:
1. Property lines and physical features, including roads, for the project site.
  2. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, and screening vegetation or structures.
  3. A one- or three-line (as determined by the Town) electrical diagram detailing the battery energy storage system layout, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
  4. A preliminary equipment specification sheet that documents the proposed battery energy storage system components, inverters and associated electrical equipment that are to be installed. A final equipment specification sheet shall be submitted prior to the issuance of building permit.
  5. Name, address, and contact information of proposed or potential system installer and the owner and/or operator of the battery energy storage system. Such information of the final system installer shall be submitted prior to the issuance of building permit.
  6. Name, address, phone number, and signature of the project applicant, as well as all the property owners, demonstrating their consent to the application and the use of the property for the battery energy storage system.
  7. Zoning district designation for the parcel(s) of land comprising the project site.
  8. Commissioning plan. Such plan shall document and verify that the system and its associated controls and safety systems are in proper working condition per requirements set forth in the Uniform Code. Where

commissioning is required by the Uniform Code, battery energy storage system commissioning shall be conducted by a New York State (NYS) licensed professional engineer after the installation is complete but prior to final inspection and approval. A corrective action plan shall be developed for any open or continuing issues that are allowed to be continued after commissioning. A report describing the results of the system commissioning and including the results of the initial acceptance testing required in the Uniform Code shall be provided to the Town prior to final inspection and approval and maintained at an approved on-site location.

9. Fire safety compliance plan. Such plan shall document and verify that the system and its associated controls and safety systems are in compliance with the Uniform Code.
10. Operation and maintenance manual. Such plan shall describe continuing battery energy storage system maintenance and property upkeep, as well as design, construction, installation, testing and commissioning information and shall meet all requirements set forth in the Uniform Code.
11. Erosion and sediment control and stormwater management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established in the Town of Tonawanda and by the Town Board through the approval process.
12. Prior to the issuance of the building permit, but not required as part of the application engineering documents must be signed and sealed by a NYS licensed professional engineer.
13. Emergency operations plan. A copy of the approved emergency operations plan shall be given to the system owner, the local fire department, and local fire code official. A permanent copy shall also be placed in an approved location to be accessible to facility personnel, fire code officials, and emergency responders. The emergency operations plan shall include the following information:
  - a) Procedures for safe shutdown, deenergizing, or isolation of equipment and systems under emergency conditions to reduce the risk of fire, electric shock, and personal injuries, and for safe start-up following cessation of emergency conditions.
  - b) Procedures for inspection and testing of associated alarms, interlocks, and controls.
  - c) Procedures to be followed in response to notifications from the battery energy storage management system, when provided, that could signify potentially dangerous conditions, including shutting down equipment, summoning service and repair personnel, and providing agreed upon notification to fire department personnel for potentially hazardous conditions in the event of a system failure.
  - d) Emergency procedures to be followed in case of fire, explosion, release of liquids or vapors, damage to critical moving parts, or other potentially dangerous conditions. Procedures can include sounding the alarm, notifying the fire department, evacuating personnel, deenergizing equipment, and controlling and extinguishing the fire.

- e) Response considerations similar to a safety data sheet (SDS) that will address response safety concerns and extinguishment when an SDS is not required.
- f) Procedures for dealing with battery energy storage system equipment damaged in a fire or other emergency event, including maintaining contact information for personnel qualified to safely remove damaged battery energy storage system equipment from the facility.
- g) Other procedures as determined necessary by the Town to provide for the safety of occupants, neighboring properties, and emergency responders.
- h) Procedures and schedules for conducting drills of these procedures and for training local first responders on the contents of the plan and appropriate response procedures.

**K. Additional Standards (Tier 2B Projects).**

1. Setbacks. Tier 2B battery energy storage systems shall comply with the setback requirements of the underlying zoning district for principal structures, or as prescribed in the following paragraphs, whichever is greater.
  - a) Shall not be placed in the front yard.
  - b) Shall be set back a minimum of 20 feet from any side yard or rear yard if abutting a nonresidential district.
  - c) Shall be set back a minimum of 50 feet from a side yard or rear yard abutting any residential district or a residential use.
2. Height. Tier 2B battery energy storage systems shall comply with the building height limitations for accessory structures of the underlying zoning district, or as required by the Fire Code.
3. Fencing requirements. Tier 2 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-locking gate to prevent unauthorized access unless housed in a dedicated-use building and not interfering with ventilation or exhaust ports, or as otherwise required by any federal, state or local laws or codes.
4. Screening and visibility. Tier 2 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports.

## §215-28.6

### PERMITTING REQUIREMENTS FOR TIER 3

- A. **Tier 3 Permits.** Tier 3 battery energy storage systems are permitted only in industrial districts, as restricted below, through the issuance of a special use permit, site plan approval, and an operating permit and shall be subject to the Uniform Code and the site plan application requirements set forth in the Tier 2B section with the below additional requirements, and other applicable sections of these regulations and the Town Code. Tier 3 battery energy storage systems are also restricted from (not allowed) the lands located on the "river side" of River Road, no matter what the zoning is of the site.
- B. **Special Use Permit Standards (Tier 3 Projects).**

1. Setbacks. Tier 3 battery energy storage systems (as measured from the fence line) shall be setback a minimum of 20 feet from any property line, or as prescribed in the following paragraphs, whichever is greater.
  - a) Shall not be placed in the front yard (for a property having a principal use). For a property not having a principal use or the BESS is the principal use, the front yard setback shall be at least 200 feet.
  - b) Shall be set back a minimum of 100 feet from any side yard or rear yard if abutting a property in a residential district or a property with a residential use.
  - c) Shall be set back a minimum of 20 feet from a side yard or rear yard abutting any property in a commercial district.
  - d) Shall be set back a minimum of 20 feet from a side yard or rear yard abutting any nonparticipating property in an Industrial district, and 20 feet for a participating property in an Industrial district.
  - e) Shall be set back a minimum of 100 feet from a side yard or rear yard abutting any nonparticipating property containing a petroleum storage tank and at least 200 feet from the tank itself. If a participating property, the setback from the tank shall be a minimum of 200 feet or as prescribed by any other law or requirement, whichever is greater.
  - f) Shall be set back a minimum of 20 feet from a side yard or rear yard abutting any nonparticipating property containing electrical infrastructure (substation, electrical towers, etc.).
  - g) Shall not be located within 200 feet any public park or recreation facility.
2. Height. Tier 3 battery energy storage systems shall have building/structure height limitation of 20 feet.
3. Fencing requirements. Tier 3 battery energy storage systems, including all mechanical equipment, shall be enclosed by a seven-foot-high fence with a self-locking gate to prevent unauthorized access, or as otherwise required in federal, state, local laws and codes including national codes and standards, and/or professional consensus standards.
4. Screening and visibility. Tier 3 battery energy storage systems shall have views minimized from adjacent properties to the extent reasonably practicable using architectural features, earth berms, landscaping, or other screening methods that will harmonize with the character of the property and surrounding area and not interfering with ventilation or exhaust ports. The Planning Board shall provide the direction on the location and type of screening based on a visual analysis/study to be submitted by the applicant.
5. Safety standards. Tier 3 battery energy storage systems shall meet all required New York State and federal safety standards including, but not limited to requirements for spill containment, personal protection (eye-wash stations, safety showers, etc.) and fire suppression. After completion of a Tier 3 system but prior to beginning operation, the fire department and applicable emergency service providers will be provided a training and education day with the owner and equipment manufacturers on the system (at the cost of the owner/applicant).

6. A road use agreement with the Town may be required if utilizing Town roads for construction access.
- C. Additional Site Plan and Other Requirements for Tier 3 Systems.**
1. Access design. Due to the nature of these large facilities, it will be a requirement to have a primary and secondary means of access from the public right-of-way (ROW) to the site. The ROW used for access shall not be a dead-end road. Access shall be provided through roadways/driveways designed to Town standards with input from emergency service providers. Primary and secondary access may be created through a public improvement permit.
  2. Any infrastructure to be placed to service the site (water, sewer, etc.) must meet Town and other applicable standards. Public water and sewer extensions may be provided through a public improvement permit.
  3. A noise study will be required addressing noises and tonal issues.
- D. Decommissioning Fund.** The owner and/or operator of any Tier 3 battery energy storage system shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town Attorney for the removal of the battery energy storage system (in accordance with the approved decommissioning plan), in an amount to be determined by the Town (based on 125% of the estimated value for decommissioning), for the period of the life of the facility. This estimate will be updated on a prescribed basis and account for inflation, and the fund or bond will reflect these revised estimates. This fund may consist of a letter of credit from a State of New York licensed financial institution. All costs of the financial security shall be borne by the applicant. The applicant shall also provide a notarized acknowledgement that if the costs for removal of battery facility exceed the bond for decommissioning, the battery developer/owner are fully fiscally responsible.

## §215-28.7

### SAFETY

- A. System Certification.** Battery energy storage systems and equipment shall be listed by a nationally recognized testing laboratory to UL 9540 (Standard for Battery Energy Storage Systems and Equipment) with subcomponents meeting each of the following standards as applicable:
1. UL 1973 (Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power, and Light Electric Rail Applications),
  2. UL 1642 (Standard for Lithium Batteries),
  3. Other standards for other battery types,
  4. UL 1741 or UL 62109 (Inverters and Power Converters),
  5. Certified under the applicable electrical, building, and fire prevention codes as required.
  6. Alternatively, field evaluation by an approved testing laboratory for compliance with UL 9540 and applicable codes, regulations and safety standards may be used to meet system certification requirements.
- B. Site Access Maintenance.** Battery energy storage systems shall be maintained in good working order and in accordance with industry standards. Site access shall be maintained, including snow removal at a level acceptable to the local fire department and emergency service providers.

- C. **Clearances and Enclosures.** Battery energy storage systems, components, and associated ancillary equipment shall have required working space clearances, and electrical circuitry shall be within weatherproof enclosures marked with the environmental rating suitable for the type of exposure in compliance with NFPA 70.

## §215-28.8

### PERMIT TIME FRAME & ABANDONMENT

- A. The special use permit and site plan approval for a battery energy storage system shall be valid for a period of 24 months, provided that a building permit is issued for construction and/or construction is commenced. In the event construction is not completed in accordance with the final site plan, as may have been amended and approved, as required by the Planning Board, within 24 months after approval, the Town may extend the time to complete construction for 180 days. If the owner and/or operator fails to perform substantial construction after 36 months, the approvals shall expire.
- B. The battery energy storage system shall be considered abandoned when it ceases to operate consistently for more than one year. If the owner and/or operator fails to comply with decommissioning upon any abandonment, the Town may, at its discretion, enter the property and utilize the available bond and/or security for the removal of a Tier 2B or Tier 3 battery energy storage system and restoration of the site in accordance with the decommissioning plan. The Town retains the sole right to make the determination site decommission completion (whether by the site owner or by the Town through the security). Any costs borne by the Town to make the determination that the site is decommissioned fully may be passed on to the developer/site owner.

## §215-28.9

### CONSTRUCTION INSPECTIONS (TIER 3 PROJECTS)

- A. **Work to Remain Accessible and Exposed.** Work shall remain accessible and exposed until inspected and accepted by the Code Enforcement Officer. The permit holder shall notify the Code Enforcement Officer when any element of work described in Subsection B of this section is ready for inspection.
- B. **Elements of Work to be Inspected.** The following elements of the construction process shall be inspected, where applicable:
  1. Work site prior to the issuance of a building permit.
  2. Footing and foundation.
  3. Preparation for concrete slab.
  4. Framing.
  5. Building systems, including underground and rough-in.
  6. Fire-resistant construction.
  7. Fire-resistant penetrations.
  8. Solid-fuel-burning heating appliances, chimneys, flues or gas vents.
  9. Energy Code compliance.
  10. Inspection after all work authorized by the building permit has been completed and signed off by the Town Building Inspector and Town Engineer.

11. A final inspection by the fire inspector must be completed prior to activation.
- C. **Inspection Results.** After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code or Energy Code. Work not in compliance with any applicable provision of the Uniform Code or Energy Code shall remain exposed until such work shall have been brought into compliance with all applicable provisions of the Uniform Code and the Energy Code, reinspected, and found satisfactory as completed.
- D. **Fee.** A fee will be set by the Town Board for construction inspections and that fee must be paid prior to or at the time of each inspection performed pursuant to this section.
- E. **Inspection and Certification.** At the completion of construction, the applicant shall have an engineer inspect and certify (PE stamped) that the project has been constructed in accordance with all required standards and in accordance with Town approvals.

**§215-28.10****OWNERSHIP CHANGES (TIER 2 & 3)**

- A. If the owner (or lessee) of the battery energy storage system changes or the owner of the property changes, the special use permit and/or operating permit shall remain in effect, provided that the successor owner or operator assumes in writing all of the obligations of any special use permit, operating permit, site plan approval, and decommissioning plan. A new owner or operator of the battery energy storage system shall notify the Town of Tonawanda of such change in ownership or operator within 30 days of the ownership change. A new owner or operator must provide such notification to the Town in writing.
- B. The successor owner or operator shall assume in writing all of the obligations within the decommission plan. Proof of acknowledgement of the decommission plan and proof of bond may be requested by the Town at time of ownership change. The new owner should sign the acknowledgement regarding the costs exceeding the bond. The special use permit and/or operating permit and all other local approvals for the battery energy storage system would be void if a new owner or operator fails to provide written notification to the Town in the required time frame. Reinstatement of a void special use permit and/or operating permit will be subject to the same review and approval processes for new applications under this article.

**§215-28.11****ENFORCEMENT, PENALTIES & REMEDIES FOR VIOLATIONS**

- A. This section shall be enforced by the Town Code Enforcement Officer.
1. Any person owning, controlling, or managing any building, structure or land who shall undertake a battery energy storage system in violation of this section, or who operates such facility in noncompliance with the terms and conditions of any permit issued pursuant to this section, shall be guilty of a violation and subject to a fine of not more than \$250 or to imprisonment for a period of not more than 15 days, or to both such fine and imprisonment. Every such person shall be deemed guilty of a separate offense for each week such violation shall continue.



2. The Code Enforcement Officer may, after notice of violation, enter into a consent order with the applicant/owner/operator to remedy the violation with specifications to be taken and an agreed schedule.
  3. Special proceeding. In addition to any other remedy, the Town Board may institute an action or proceeding in equity, correct or abate any unlawful construction, erection, structural alteration, reconstruction, modification and/or use of a battery energy storage system, and shall be entitled to injunctive relief, including a temporary restraining order and a temporary injunction as the court deems appropriate.
- B. BESSs requiring an operating permit, shall be required to submit a certified report by the owner and be inspected annually, and shown to be in accordance with the operating permit and any other approvals.

**§215-28.12****STOP-WORK ORDERS**

- A. **Authority to Issue.** The Code Enforcement Officer is authorized to issue stop-work orders pursuant to this section. The Code Enforcement Officer shall issue a stop-work order to halt:
1. Any work that is determined by the Code Enforcement Officer to be contrary to any applicable provision of the Uniform Code or Energy Code, the Zoning Code or any other general or local laws, ordinances, rules or regulations without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work;
  2. Any work that is being conducted in a dangerous or unsafe manner in the opinion of the Code Enforcement Officer, without regard to whether such work is or is not work for which a building permit is required, and without regard to whether a building permit has or has not been issued for such work; or
  3. Any work for which a building permit is required which is being performed without the required building permit, or under a building permit that has become invalid, has expired, or has been suspended or revoked.
- B. **Content of Stop-work Orders. Stop-work orders shall:**
1. Be in writing;
  2. Be dated and signed by the Code Enforcement Officer;
  3. State the reason or reasons for issuance; and
  4. If applicable, state the conditions which must be satisfied before work will be permitted to resume.
- C. **Service of Stop-work Orders.** The Code Enforcement Officer shall cause the stop-work order, or a copy thereof, to be served on the owner of the affected property and, if the owner is not the permit holder, on the permit holder personally or by registered mail or certified mail. Service by registered or certified mail shall be sufficient if addressed to the address set forth in the building permit application. The Code Enforcement Officer shall be permitted, but not required, to cause the stop-work order, or a copy thereof, to be served on any new applicant, owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, or their agents, or any other person taking part or assisting in work affected by the stop-work order, personally or by registered mail or certified mail; provided, however, that failure to serve any

person mentioned in this sentence shall not affect the efficacy of the stop-work order.

- D. **Effect of Stop-work Order.** Upon the issuance of a stop-work order, the owner of the affected property, the permit holder and any other person performing, taking part in or assisting in the work shall immediately cease all work which is the subject of the stop-work order.
- E. **Remedy Not Exclusive.** The issuance of a stop-work order shall not be the exclusive remedy available to address any event described in Subsection A of this section, and the authority to issue a stop-work order shall be in addition to, and not in substitution for or limitation of, the right and authority to pursue any other remedy or impose any other penalty under §215-28.11 of this article or under any other applicable local law or state law. Any such other remedy or penalty may be pursued at any time, whether prior to, at the time of, or after the issuance of a stop-work order.

## Article 29. Telecommunications Facilities

### §215-29.1

#### PURPOSE

The purpose of this article is to establish general guidelines for the siting of telecommunications facilities including communications towers and antennas which are regulated in accordance with the Telecommunications Act of 1996 and other applicable federal laws. The intent of this article is to regulate the location of telecommunication facilities, in accordance with the Town's Master Plan and Zoning Map and giving full consideration to existing land uses and environmentally sensitive areas, while conforming to the Telecommunications Act of 1996 and other applicable federal laws. The goals of this article are to:

- A. Protect residential areas and land uses from potential adverse impacts of towers and antennas;
- B. Encourage the location of towers in nonresidential areas, away from significant natural resources and without adverse impact to designated and eligible for designation historic resources;
- C. Minimize the total number of towers throughout the community;
- D. Strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers;
- E. Encourage users of towers and antennas to locate them, to the greatest extent possible, in areas where the adverse impact on the size and scale of the community's built environment, the natural environment, and designated or eligible for designation historic resources is minimal;
- F. Encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques (stealth technology);
- G. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently;
- H. Ensure that these facilities are limited to those for which the petitioner has demonstrated a need for service. No towers shall be built purely "on speculation" for future users; and
- I. Avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures.

### §215-29.2

#### APPLICABILITY

- A. **New wireless telecommunications facilities.** All new wireless telecommunications facilities, or relocated, rebuilt, modified or extended towers or antennas in the Town of Tonawanda shall be subject to these regulations, including the general requirements contained in §215-29.4 of this article.
- B. **Amateur radio station operators/receive-only antennas.** This article shall not govern any tower or the installation of any antenna that is under 70 feet in

height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for receive-only antennas.

- C. **Preexisting wireless towers or antennas.** Preexisting towers and preexisting antennas shall not be subject to the requirements of this article, other than the requirements of §215-29.4 (H) and (I). Modification of a preexisting wireless telecommunication facility shall be subject to the requirements of this article.
- D. **Radio array.** For purposes of implementing this article, a radio array shall not be considered as a telecommunications facility.

### §215-29.3

#### APPROVALS & BULK REQUIREMENTS

Applications for telecommunications facilities shall propose, locate, site and erect these facilities with priority being given to co-located/existing structure sites first, and consideration given to industrial, commercial and business sites, with residential locations being the least preferred. A petitioner for a non-co-located antenna or new structure may not bypass sites of higher priority by stating that the site proposed is the only site leased or selected. All applications shall address co-location as an option. The petitioner shall submit a written report demonstrating the petitioner's review of the higher priority locations and demonstrating by technical reasons why a higher priority site was not chosen.

- A. **Co-located/existing structures.** An antenna that is to be attached to an existing wireless telecommunications facility, or any building or structure is permitted in all zoning districts and will be reviewed administratively (which may include a courtesy review by the Planning Board, as determined by the Building Department). If the proposal is to locate the antenna on or within a public right-of-way, the project will require approval from the Tonawanda Town Board (see §215-29.6). All co-located small cell facilities installed in the public right-of-way will also meet the requirements of 1 (d) below.
  - 1. Building permit required.
    - a) The antenna is permitted upon issuance of a building permit. The building permit application will include a structural analysis/report verifying the ability of the structure to handle the antenna. Antennas on structures, buildings, etc., shall be located in such a manner to reduce their visual appearance, utilizing stealth technology to the fullest extent possible. In areas of high visibility, accessory equipment structures may need to be screened, camouflaged or placed below ground in a vault.
    - b) Co-located antennas may be placed on existing utility or telephone poles: height of new antenna shall not extend above the height of the existing structure by more than four feet (note the requirement for placing new antennas on or within Town-owned property);
    - c) Also, if the new antenna is being placed on a structure within a higher governmental-owned lands (like a road right-of-way), but is to be located on a structure (like a utility pole) that is not owned by that higher government, then the project will require Planning Board review and approval prior to the issuance of a building permit;
    - d) All small cell facilities that are located in the public right-of-way are subject to the Town's aesthetic design standards and issuance of a license agreement by the Town Board.

2. Industrial buildings: height of new antenna shall not extend above the height of the existing building by more than 12 feet;
  3. Multifamily residential buildings: height of new antenna shall not extend above the height of the existing building by more than 12 feet;
  4. Commercial buildings: height of new antenna shall not extend above the height of the existing building by more than 12 feet;
  5. Water tower: height of new antenna shall not extend above the height of the water tower by more than 12 feet; or
  6. Existing standalone, wireless telecommunication facility: height of new antenna shall not extend above the height of the existing facility by more than 12 feet.
- B. Non-co-located/new structure antennas.** An antenna that will not be mounted on an existing structure, as defined above, or is more than the allowed height above that structure on which it is mounted, is permitted in accordance with the following (all new towers shall not be lattice towers):
1. Site plan review and special use permit required.
  2. Municipal- or government-owned property:
    - a) If located on municipally (Town of Tonawanda) owned property, a Town lease or license agreement must be obtained and the Town must refer the proposal to the Planning Board for its input. The tower must be set back the height of the tower from any residentially zoned property and be in accordance with §215-29.6.
    - b) If proposed in the Town road right-of-way, the Town will require a lease or license agreement but also require the project to receive a tower special use permit (including Planning Board and Highway Department referral and recommendation).
    - c) If located on county, state, or federal property, the tower shall be administratively reviewed by the Town and the Planning Board shall conduct a courtesy review and the tower must be set back the height of the tower from any property line.
    - d) If located on a public school property, the project will be reviewed and approved by the Town Planning Board.
  3. Industrial Districts:
    - a) Setback a minimum of 100 feet from any property line.
  4. Mixed Use Districts:
    - a) The tower must be set back a minimum of the height of the tower from any residentially zoned property or any front yard line.
    - b) Towers exceeding 195 feet in height in mixed use districts shall be treated as Type 1 actions under the State Environmental Quality Review Act (SEQRA).
    - c) Height restriction of 195 feet and setback of 100 feet from any property line.
  5. Residential Districts:
    - a) The tower must be set back a minimum of the height of the tower from all property lines and any existing building not located on the site, but not less than 100 feet.

- b) The maximum height of a tower in these zoning districts is 90 feet. An area variance for height will be required from the Zoning Board of Appeals to exceed this height, following initial review by the Planning Board.
- c) All applications for telecommunications facilities in these zoning districts shall be treated as Type 1 action under the State Environmental Quality Review Act (SEQRA).

## §215-29.4

**GENERAL REQUIREMENTS**

The following requirements apply to all applicants for non-co-located/new structure antennas (except municipal property structures):

**A. Application Requirements.**

1. All applicants under this article must obtain a building permit from the Code Enforcement Officer. The Code Enforcement Officer is hereby authorized to issue building permits under this article if it is determined that an applicant has met the requirements established in this article.
2. All applications are subject to site plan review by the Town of Tonawanda Planning Board. The intent of site plan review is to evaluate site plans and require changes consistent with minimizing conflicts which may result between the site layout and design of proposed uses and natural site conditions and features and/or existing or planned adjacent uses. Site plan review is also responsible for ensuring that development comply with clearly calculated planning goals and policies as are provided in the Town of Tonawanda's Comprehensive Plan and other area-specific planning documents.
3. Further, the applicant must demonstrate by technological evidence that the height requested is the minimum height necessary to fulfill the cell site's function within the grid system.
4. The Town of Tonawanda may deny the application to construct a new tower if the applicant has not proven to the Town that it cannot mount the antenna on an existing structure and/or public property.
5. Applications for necessary permits will only be processed when the applicant demonstrates that it is either an FCG-licensed telecommunications provider or has in place agreements with an FCC-licensed telecommunications provider for use or lease of the support structure or tower (no tower may be built "on-spec").

**B. Principal or accessory use.** Antennas and towers may be considered either principal or accessory uses. A different existing use of an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot.

**C. Lot size.** For purpose of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to setback requirements, lot coverage requirements and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lot.

**D. Inventory of existing sites.** Each applicant shall provide to the Town an inventory of its existing towers, antennas or sites approved for towers or antennas that are either within the jurisdiction of the Town of Tonawanda or within one mile of the

border thereof, including specific information about the location, height, and design of each tower. The Director of Planning and Development or the Code Enforcement Officer may share such information with other applicants applying for administrative approvals or special use permits under this article or other organizations seeking to locate antennas within the jurisdiction of the Town of Tonawanda; provided, however, that the Town official is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

- E. Aesthetics.** Applications shall meet the following requirements:
1. Towers shall either maintain a galvanized steel finish or, subject to any applicable standards of the FAA, be painted a neutral color so as to reduce visual obtrusiveness.
  2. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screening and landscaping that will blend them into the natural setting and surrounding buildings.
  3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a neutral color that is identical to or closely compatible with the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible (stealth or camouflaging technology should be considered).
- F. Fencing.** A well-constructed masonry or stone wall or privacy fence, not less than eight feet for residential districts or 10 feet for nonresidential districts in height from finished grade shall be provided around each antenna and/or tower and shall also be equipped with an anticlimbing device. Access to the tower shall be through a locked gate. No barbed wire shall be used.
- G. Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- H. State or federal requirements.** All towers and antennas must meet or exceed current standards and regulations of the FAA, the FCC and any other agency of the state or federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal of the tower or antenna at the owner's expense.
- I. Building codes safety standards.** To ensure the structural integrity of towers and antennas, the owner of a tower or antenna shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town of Tonawanda concludes that a tower or antenna fails to comply with such codes and standards and constitutes a danger to persons or property, then, upon notice being provided to the owner of the tower or antenna, the owner shall have 30 days to bring such tower or antenna into compliance with such standards. Failure to bring such tower or antenna into

compliance within said 30 days shall constitute grounds for the removal of the tower or antenna at the owner's expense.

- J. **Measurement.** For purposes of measurement, tower setbacks shall be calculated and applied to facilities located in the Town of Tonawanda irrespective of municipal and county jurisdictional boundaries.
- K. **Not essential services.** Towers and antennas shall be regulated and permitted pursuant to this article and shall not be regulated or permitted as essential services, public utilities or private utilities.
- L. **Franchises.** Owners and/or operators of towers or antennas shall certify that all franchises and licenses required by law by any governmental entity, including the Town of Tonawanda, now or in the future for the construction and/or operation of a wireless communication system in the Town of Tonawanda have been obtained and shall file a copy of all required franchises and licenses with the Planning and Development Department or the Code Enforcement Officer.
- M. **Signs.** No signs or advertising material of any nature shall be allowed on an antenna or tower.
- N. **Buildings and support equipment.** Buildings and support equipment associated with antennas or towers shall comply with the requirements of §215-29.10.
- O. **Multiple antenna/tower plan.** The Town of Tonawanda encourages the users of towers and antennas to submit a single application for approval of multiple towers and/or antenna sites. Applications for approval of multiple sites shall be given priority in the review process.
- P. The owner of any tower or antenna shall provide the Town Clerk with a demolition bond equal to twice the cost of removal of the tower or antenna.
- Q. The owner of any tower or antenna shall identify the entities providing the backhaul network for the antenna or tower described in the application and other cell sites owned or operated by the applicant in the Town of Tonawanda, as well as any information detailing the purpose for the proposed antenna or tower.
- R. All applicants under this article must comply with the State Environmental Quality Review Act.
- S. Unless otherwise provided, towers and antennae and their related structures shall comply with all existing setbacks within any zoning districts. Additional setbacks may be required by this article, the Code Enforcement Officer, Planning Board, or the Town Board, as applicable, to contain on site substantially all ice-fall or debris from tower failure and/or to comply with the purpose of this article. Setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory facilities.
- T. An applicant may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the preapplication meeting.
- U. The applicant shall furnish a visual impact assessment, which shall include:
  - 1. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
  - 2. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site



features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.

3. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or its designee, during the preapplication conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
4. A narrative discussing:
  - a) The extent to which the proposed facility would be visible from, but not limited to, state highways, major roads, state and local parks, public lands, historic districts, preserves, historic sites, archaeological sites, environmental conservation areas, any other location where the site is visible to visitors, travelers, employees, or residents; and
  - b) The tree line elevation of vegetation within 100 feet of the facility;
- V. A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require the disclosure of confidential business information.
- W. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
  1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements;
  2. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements;
  3. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
    - a) Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
    - b) The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
    - c) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
  4. For facilities existing prior to the effective date of this article, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this article;

- 5. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure, and has been denied access.
- X. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology; engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. §470w(5); 36 CFR 60 and 36 CFR 800).
- Y. The applicant shall examine the feasibility of designing a proposed tower to accommodate future demand for a minimum of five additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate a minimum of five additional antenna arrays equal to those of the petitioner, and located as close to the petitioner's antenna as possible without causing interference. This requirement may be waived, provided that the petitioner, in writing, demonstrates that the provision of future shared usage of the tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
  - 1. The foreseeable number of FCC licenses available for the area;
  - 2. The kind of wireless telecommunication facility site and structure proposed;
  - 3. The number of existing and potential licenses without wireless telecommunication facilities' spaces/sites; and
  - 4. Available space on existing and approved towers.
- Z. Applicant may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the applicant must explain to the reasonable satisfaction of the Planning Board and Town Board why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- AA. Notwithstanding the above, the Planning Board may approve any site located within an area in the above list of priorities, provided that the Planning Board finds that the proposed site is in the best interest of the health, safety, and welfare of the Town and will further the policies and goals set forth in the Town's laws and Comprehensive Plan.
- BB. The applicant shall submit a written report demonstrating the applicant's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

## §215-29.5

**RETENTION OF EXPERT ASSISTANCE & REIMBURSEMENT BY APPLICANT**

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the

construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Town shall precede the preapplication meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$1,000, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$5,000 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.

- C. The total amount of the funds needed as set forth in Subsection B of this section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis, and inspection of any construction or modification.

## §215-29.6

### USE OF PREMISES OWNED OR CONTROLLED BY TOWN

- A. **General.** All applicants who wish to locate a tower or antenna on Town land must submit to the Planning and Development Department or Code Enforcement Officer a completed application and detailed plan that complies with the requirements of this article and the Code of the Town of Tonawanda and must furnish any other pertinent information as may be requested by the Town. In addition, such applicant shall submit along with the application's nonrefundable fee as shall be established by resolution of the Town Board. Any such application is subject to the site plan review requirements of Article 42 of this chapter. Upon receipt of any such complete application, within a reasonable time, the Code Enforcement Officer shall issue a building permit if he is satisfied that the applicant is in compliance with the requirements contained herein or deny such application.
  - 1. Towers on Town land. Towers or antennas may be located on Town land, provided that a license or lease authorizing such antenna or tower has been approved by the Town of Tonawanda and further provided that the applicant complies with the provisions of this section.
  - 2. Priority of users. Priority for the use of Town land for antennas and towers will be given to the following entities in descending order:
    - a) The Town of Tonawanda;
    - b) Public safety agencies, including law enforcement, fire and ambulance services, which are not part of the Town of Tonawanda and private entities with a public safety agreement with the Town of Tonawanda;
    - c) Other governmental agencies, for uses which are not related to public safety; and
    - d) Entities providing licensed commercial wireless telecommunication services, including cellular, personal communication services (PSC), specialized mobilized radio (SMR), enhanced specialized mobilized radio (ESMR), data, Internet, paging and similar services that are marketed to the general public.

3. Placement. The placement of antennas or towers on Town land must comply with the following requirements:
  - a) The antennas or tower will not interfere with the purpose for which the Town land is intended.
  - b) The antennas or tower will have no adverse impact on surrounding private property.
  - c) The applicant is willing to obtain adequate liability insurance and commit to a lease agreement which includes equitable compensation for the use of Town land and other necessary provisions and safeguards.
  - d) The applicant will submit a letter of credit, performance bond or other security acceptable to the Town of Tonawanda to cover the costs of the antenna or tower's removal.
  - e) The antennas or tower will not interfere with other users of Town land.
  - f) Upon reasonable notice, the Town of Tonawanda may require the antenna or tower to be removed at the applicant's expense.
  - g) The owner of the tower or antenna must reimburse the Town of Tonawanda for any costs which the Town incurs because of the presence of the antenna or tower.
  - h) The applicant must obtain all necessary land use approvals.
  - i) The applicant will cooperate with the Town of Tonawanda's objective to promote co-locations and thus limit the number of separate antenna sites requested.
  - j) The applicant's continued compliance with the requirements of this article.
4. Special requirements. The use of certain Town land, such as water tower sites, parks and Town road rights-of-way, for antennas or towers brings with it special concerns due to the unique nature of these sites. The placement of antennas or towers on these special Town lands will be allowed only when the following additional requirements are met:
  - a) Water tower or reservoir sites. The Town of Tonawanda's water towers and reservoirs represent a large public investment in water pressure stabilization and peak capacity reserves. Protection of the quality of the Town's water supply is of prime importance to the Town. The placement of antennas or towers on water tower or reservoir sites will be allowed only when the Town is fully satisfied that the following requirements are met:
    - (i) The applicant's access to the facility will not increase the risks of contamination to the Town's water supply;
    - (ii) There is sufficient room on the structure and/or on the grounds to accommodate the applicant's facility;
    - (iii) The presence of the facility will not increase the water tower or reservoir maintenance cost to the Town; and
    - (iv) The presence of the facility will not be harmful to the health of workers maintaining the water tower or reservoir.
  - b) Parks. The presence of certain antennas or towers represents a potential conflict with the purpose of some parks owned by the Town

of Tonawanda. In no case shall towers be allowed in designated conservation areas unless they are to be installed in areas which currently contain tower facilities. Antennas or towers will be considered only in the following parks after the recommendation of the Parks and Recreation Committee and approval by the Town Board.

- (i) Public parks of a sufficient scale and character that are adjacent to an existing commercial or industrial use;
  - (ii) Commercial recreation areas and major play fields; and
  - (iii) Park maintenance facilities.
- c) Town road right-of-way. The Town of Tonawanda Town Board may allow antennas to be placed on existing structures within the Town road right-of-way. New structures within the Town road right-of-way will only be allowed under extenuating circumstances and would need to follow the full requirements of this article. Antennas to be placed on existing structures will also require input from the Highway Department, the Engineering Department, the Town Attorney and the Planning Board. They will utilize stealth technology and equipment will either be screened or placed underground. Small cell sites shall be designed in accordance with the Town's aesthetic design standards. The Town will consider all financial impacts of the project and the possibility of yearly fees for use of these lands through a license agreement.
5. Termination.
- a) The Town Board may terminate any lease if it determines that any one of the following conditions exist:
    - (i) A potential user with a higher priority as described in §215-29.6 A(2) cannot find another adequate location and the potential use would be incompatible with the existing use;
    - (ii) A user's frequency broadcast unreasonably interferes with other uses of higher priority as described in §215-29.6 A(2), regardless of whether or not this interference was adequately predicted in the technical analysis; or
    - (iii) A user violates any of the standards in this article or the conditions attached to the Town of Tonawanda's lease or other authorization.
  - b) Before taking action, the Town of Tonawanda will provide notice to the user of the intended termination and the reasons for it and provide an opportunity for the user to address the Town Board regarding the proposed action. This procedure need not be followed in emergency situations.
6. Reservation of right. Notwithstanding the above, the Town Board reserves the right to deny, for any reason, the use of any or all Town land by any one or all applicants.

## §215-29.7

## ADMINISTRATIVELY APPROVED USES

- A. General.** The following provisions shall govern the issuance of administrative approvals for towers and antennas.
1. Applicants for administratively approved uses must comply with the site plan submittal requirements of Article 42 of this chapter.
  2. The Code Enforcement Officer may administratively approve the uses listed in this section.
  3. Each applicant for administrative approval shall apply to the Code Enforcement Officer by providing the information set forth in §§215-29.4 and 215-29.8 of this article, and submitting a nonrefundable fee as established by resolution of the Town Board.
  4. The Code Enforcement Officer shall respond to each such complete application within 60 days after receiving it by either approving or denying the application.
  5. If an administrative approval is denied, the applicant may file an application for a special use permit pursuant to §215-29.8 in order to proceed.
- B. List of administratively approved uses.**
1. An antenna attached to an existing wireless telecommunication facility, building, water tower, or other such structure as described in this chapter.
  2. Installing a small-cell network (in full compliance with the Telecommunications Act of 1996 and this article) through the use of multiple low-powered transmitters/receivers attached to existing wireline system poles, such as conventional cable or telephone wire poles or similar technology that does not require the use of standalone or co-located telecommunication towers and/or antennas.

## §215-29.8

### SPECIAL USE PERMITS

- A. General.** The following provisions shall govern the issuance of special use permits for the construction of new towers or antennas or modification of existing towers:
1. Applicants for a special use permit under this section are subject to the site plan review requirements of Article 42 of this Chapter.
  2. Applications for special use permits under this section shall be subject to the procedures and requirements of Article 43 of this Chapter.
  3. In granting a special use permit, the Town Board may impose conditions to the extent such conditions are necessary to minimize any adverse effect of the proposed tower and antenna on adjoining properties.
  4. An applicant for a special use permit shall submit the information described in this section and a nonrefundable fee as established by resolution of the Town Board.
  5. Compliance with the requirements of this article shall be required.
- B. Towers.**
1. Information required. In addition to any information required for applications for special use permits pursuant to Article 43 of this Chapter, applicants for a special use permit for a tower shall submit the following information:

- a) A scaled site plan clearly indicating the location, type and height of the proposed tower or height increase, on-site land uses and zoning, adjacent land uses and zoning (including when adjacent to other municipalities), adjacent roadways, proposed means of access setbacks from property lines, elevation drawings of the proposed tower or increased height and any other structures, topography, parking and other information deemed by the Development Services Staff to be necessary to assess compliance with this article.
  - b) Legal description of the parent tract and leased parcel.
  - c) The setback distance between the proposed tower or existing tower proposed to be increased in height and the nearest residentially zoned properties.
  - d) A landscape plan showing specific landscape materials.
  - e) Method of fencing and finished color and, if applicable, the method of camouflage and illumination.
  - f) A description of compliance with requirements of §§215-29.4 and 215-29.8 B(4) and all applicable federal, state or local laws.
  - g) A notarized statement by the applicant as to whether construction of the tower will accommodate co-location of additional antennas for future users.
  - h) Identification of the entities providing the backhaul network for the tower(s) described in the application and other cellular sites owned or operated by the applicant in the Town of Tonawanda.
  - i) A description of the suitability of the use of existing towers, other structures or alternative technology not requiring the use of towers or structures to provide the services to be provided through the use of the proposed new tower.
  - j) A description of the feasible locations of future towers or antennas within the Town of Tonawanda based upon existing physical, engineering, technological or geographical limitations in the event the proposed tower is erected.
2. Factors considered in granting special use permits for towers. In addition to any standards for consideration of special use permit applications pursuant to Article 43, the following additional factors shall be considered in determining whether to issue a special use permit:
- a) Height of the proposed tower or the increase in height proposed to any existing tower;
  - b) Proximity of the proposed or existing tower to residential structures and residential zoning district boundaries;
  - c) Nature of uses on adjacent and nearby properties;
  - d) Surrounding topography;
  - e) Surrounding tree coverage and foliage;
  - f) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
  - g) Proposed ingress and egress; and





**§215-29.9****EXTENT & PARAMETERS OF SPECIAL USE PERMIT**

- A. Such special use permit shall be nonexclusive.
- B. Such special use permit shall not be assigned, transferred, or conveyed without the express prior written notification to the Town within 30 days of such assignment, transfer, or conveyance.
- C. Such special use permit may, following a hearing upon due prior notice to the petitioner, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this article after prior written notice to the holder of the special use permit.

**§215-29.10****BUILDINGS OR OTHER EQUIPMENT STORAGE**

- A. **Antennas mounted on structures or rooftops.** The equipment cabinet or structure used in association with antennas shall comply with the following:
  - 1. The cabinet or structure shall not contain more than 300 square feet of gross floor area or be more than 12 feet in height. In addition, for buildings and structures which are less than 65 feet in height, the related unmanned equipment structure, if over 300 feet square feet of gross floor area or 12 feet in height pursuant to an area variance granted by the Zoning Board of Appeals, shall be located on the ground and shall not be located on the roof of the structure.
  - 2. If the equipment structure is located on the roof of a building, the area of the equipment structure and other equipment and structures shall not occupy more than 25% of the roof area.
  - 3. Equipment storage buildings or cabinets shall comply with all applicable building codes.
  - 4. There shall be only two generators allowed per tower site. These generators must service any future antennas and related equipment placed on the tower.
- B. **Antennas mounted on utility poles or light poles.** The equipment cabinet or structure used in association with antennas shall be located in accordance with the following:
  - 1. In residential districts the equipment cabinet or structure shall be sited using stealth technology to the fullest extent practicable and may be located underground or as follows:
    - a) In a front or side yard, provided that the cabinet or structure is no greater than three feet in height or 16 square feet of gross floor area and the cabinet/structure is located a minimum of two feet from all lot lines. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of at least 42 inches to 48 inches and a planted height of at least 36 inches.
    - b) In a rear yard, provided the cabinet or structure is no greater than 12 feet in height or 140 square feet in gross floor area. The cabinet/structure shall be screened by an evergreen hedge with an ultimate height of six feet and a planted height of at least 36 inches.
  - 2. In all other zoning districts, the equipment cabinet or structure shall be no greater than six feet in height or 300 square feet in gross floor area. The structure or cabinet shall be screened by an evergreen hedge with an

ultimate height of eight feet and a planted height of at least 36 inches. In all other instances, structures or cabinets shall be screened from view of all residential properties which abut or are directly across the street from the structure or cabinet by a solid fence eight feet in height or an evergreen hedge with an ultimate height of eight feet and a planted height of at least 36 inches.

- C. **Antennas located on towers.** The related unmanned equipment structure shall not contain more than 300 square feet of gross floor area or be more than 12 feet in height and shall be located in accordance with the minimum yard requirements of the zoning district in which located.

### §215-29.11

#### REMOVAL OF ABANDONED ANTENNAS & TOWERS

Any antenna or tower that is not operated for a period of 12 months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within 90 days of receipt of notice from the Town of Tonawanda notifying the owner of such abandonment.

### §215-29.12

#### NONCONFORMING USES

- A. **Non-expansion of nonconforming use.** Towers that are constructed and antennas that are installed in accordance with the provisions of this article shall not be deemed to constitute the expansion of a nonconforming use or structure.
- B. **Preexisting towers.** Preexisting towers shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such preexisting towers. New construction other than routine maintenance on a preexisting tower shall comply with the requirements of this article.
- C. **Rebuilding damaged or destroyed nonconforming towers or antennas.** Notwithstanding §215-29.11, bona fide nonconforming towers or antennas that are damaged or destroyed may be rebuilt without having to first obtain administrative approval or a special use permit and without having to meet the setback requirements specified in §215-29.8 B(4). The type, height and location of the tower on-site shall be of the same type and intensity as the original facility approval. Building permits to rebuild the facility shall comply with the then applicable building codes and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit is obtained or if said permit expires, the tower or antenna shall be deemed abandoned as specified in §215-29.11, hereof.