

I – Recommended changes to the Telecommunications Ordinance

Note: Changes shown in bold type

Town of Washington Wireless Telecommunications Facility Ordinance

I. TITLE

This Ordinance and any amendments shall be known as the “Town of Washington Personal Wireless Telecommunications Facility Ordinance”, herein referred to as “this Ordinance”.

II. AUTHORITY

This Ordinance is adopted by the Town of Washington on March 12, 2002, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1,II.

III. PURPOSE AND GOALS

This Ordinance is enacted in order to establish general guidelines for the siting of telecommunications Towers and Antennas and to enhance and fulfill the following goals:

- 1) Preserve the authority of Washington to regulate and to provide for reasonable opportunity for the siting of Wireless Telecommunications Facilities and to provide such services to the community effectively and efficiently.
- 2) Minimize adverse impacts such facilities may create, including, but not limited to impacts to the following: aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety of persons and property, and prosperity through protection of property values.
- 3) Provide for co-locations and minimal impact siting options through an assessment of technology, current location options, future available locations, innovative siting techniques including stealth telecommunications facilities, and siting possibilities beyond the political jurisdiction of the Town.
- 4) Permit the construction of new Towers only where all other reasonable opportunities have been exhausted, and to encourage the users of Towers and Antennas to configure them in a way that minimizes the adverse visual impact of the Towers and Antennas.
- 5) Require cooperation and co-location, to the greatest extent possible, between competitors in order to reduce cumulative negative impact on the Town.
- 6) Provide for the removal of abandoned Wireless Telecommunications Facilities and ones that are not in compliance with this Ordinance and approved permit.

IV. APPLICABILITY

Essential Services and Public Utilities: Wireless Telecommunications Facilities shall not be considered infrastructure, Essential Services, or public utilities as defined or used elsewhere in the Town's ordinances and regulations. Siting for Wireless Telecommunications Facilities is a use of land, and is subject to the Town's Land Use Ordinance and all other applicable ordinances and regulations.

Amateur Radio; Receive-Only Antennas: This ordinance 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 and used exclusively for that purpose, or is used exclusively for receive only Antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

V. GENERAL PROVISIONS

1) Site Plan Review approval and Business Permit approval are required for any Wireless Telecommunications Facility **on a new structure or Tower. Site plan review is not required for placement of additional Antennas on an existing structure or Tower.** All structures related to Wireless Telecommunications Facilities shall obtain approval of a Building Permit from the Board of Selectmen subsequent to all required approvals by the Planning Board and Board of Adjustment prior to construction.

2) Principal or Secondary Use: Wireless Telecommunications Facilities may be considered either principal or secondary uses. Subject to this Ordinance, Wireless Telecommunications Facilities may be permitted as a secondary use on a parcel that has an existing primary use. A different existing use or an existing structure on the same lot shall not preclude the installation of an Antenna or Tower on such lot.

3) Towers that are constructed and Antennas that are installed in accordance with the provision of this Ordinance on a non-conforming lot or in conjunction with a nonconforming use shall not be deemed to constitute the expansion of a non-conforming use or structure.

4) Wireless Telecommunications Facilities shall be permitted in all Zoning Districts subject to this Ordinance.

5) Wireless Telecommunications Facilities located on Existing Structures or Towers: Applicants seeking approval for Wireless Telecommunications Facilities shall first evaluate existing structures for the siting of facilities. Only after finding that there are no suitable existing structures, shall a provider propose a new ground mounted facility. The applicant shall have the burden of proving that there is no existing structure that is suitable to locate its proposed Wireless Telecommunications Facility.

6) Wireless Telecommunications Facilities located on New Structures or Towers: If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted telecommunications facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to, use of stealth technology, compatible building materials and colors, screening, landscaping, and placement among trees. Any new Tower shall be structurally capable of handling multiple facilities.

VI. APPLICATION REQUIREMENTS

Each applicant shall submit to the Planning Board the following information:
All the application requirements as specified in the Site Plan Review Regulations and further information including:

- 1) Scaled elevation views from all quadrants of all proposed Wireless Telecommunications Facilities including any Tower(s), Antenna(s) and accessory structures;
- 2) A written description of the facility, engineering information detailing the size and coverage required for the facility location including justification for Height proposals including the applicant's complete current plans to provide coverage to the Town. **In addition, the application shall include adequate information to indicate that there are significant coverage gaps which necessitate the siting and construction a new tower in the community. This information should include a coverage map within the community and adjoining communities;**
- 3) Inventory of existing Wireless Telecommunications Facilities and structures that are located within the Town and those within two miles of the border thereof;
- 4) A list of the names and address of the governing body for any municipality located within 20 miles from the boundaries of the Town;
- 5) A copy of their license from the Federal Communications Commission proving that they are eligible to deploy their systems in this geographical area and that this deployment falls under the jurisdiction of the Federal Telecommunications Act of 1996;
- 6) A viewshed analysis depicting all areas the proposed facility would be visible from and what the appearance would be including photo-realistic simulations. **This viewshed analysis shall include, at a minimum,**
 1. **A mapped viewshed delineation; and**
 2. **A test balloon or crane extension moored at the site to indicate the visibility of proposed towers and/or antennas. Photographs or video footage of the balloon or crane test shall be provided to the Planning Board and shall provide views of the tower from the site and other vantage points as determined by the Planning Board. The applicant shall coordinate this test with the Planning Board so that public notification can be performed.**

7) A declaration to the Town that allows for the maximum allowance of co-location on the new structure. This declaration shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other telecommunications providers. Such statement shall become a condition of any approval;

8) An environmental assessment that demonstrates the proposed Wireless Telecommunications Facility meets requirements of the National Environmental Policy Act as administered by the Federal Communications Commission via procedures adopted as Subpart 1, Section 1.130 1 et se q. (47 CF R Ch I);

9) Proof of adequate insurance covering accident or damage;

10) Lease agreement, if applicable, shall be submitted for Planning Board review;

11) Any other information deemed necessary to the Planning Board to assess compliance with this Ordinance.

VII. DESIGN AND CONSTRUCTION STANDARDS

1) Wireless Telecommunications Facilities shall not exceed twenty feet above the preexisting Average Tree Canopy Height and in no event shall exceed 120 feet in Height above the natural grade of the site.

2) Equipment, buildings, Towers, guy wires and other structures shall conform to the minimum setbacks of the Land Use Ordinance. Towers must be set back a distance equal to 125% of the Height of the Tower and any Antennas from all property lines.

3) The design of the building, Tower, Antenna, and related structures shall, to the maximum extent possible, use materials, colors, screening, and landscaping that will blend the facility with the natural setting and built environment.

4) Towers and Antennas shall not be artificially lighted unless required by **the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot-candles.**

5) Wireless Telecommunications Facilities shall be enclosed by security fencing no less than six feet in Height that shall blend, to the maximum extent possible, with the natural setting and built environment.

6) Wireless Telecommunications Facilities shall be landscaped with a buffer of plant materials that screens to the maximum extent feasible the view of the facility from public roads, public recreation areas, public waters, and abutting properties. Retention of existing vegetation is preferred. **The Planning Board shall have the authority to increase, decrease, relocate or alter the required buffering based on site conditions.**

The vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.

7) Signs shall be limited to those necessary to identify the property and the owner and warn of any danger. Otherwise, Towers shall not contain any permanent or temporary signs, writing, symbols, or graphic representation.

8) Any Wireless Telecommunications Facility located on a historic structure, or in an area of Town containing historic structures, shall not alter the character-defining features, distinctive construction methods, or original historic characteristics of the building or area. Any telecommunications facility located on or near a historic structure shall be concealed within or behind existing architectural features, and shall be located so that it is not visible from public roads, public recreation areas, public waters, or abutting properties.

9) If applicable, existing entrances and driveways shall be utilized to serve a Telecommunications Facility site, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact. New driveways shall obtain an access permit from the New Hampshire Department of Transportation if accessing a state highway or from the local Road Agent if accessing a town road. Access roads shall follow the contour of the land to the extent practicable. Utility or service lines shall either be installed underground or be designed and located so as to minimize or prevent disruption of the scenic character or beauty of the area.

VIII. BONDING SECURITY AND INSURANCE

Recognizing the extremely hazardous situation presented by abandoned and unmonitored Towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned Towers in the event that the Tower is abandoned and the Tower owner is incapable and/or unwilling to remove the Tower in accordance with Section IX. **The amount of the security shall be based upon the removal cost plus, fifteen percent (15%), provided by the applicant and certified by a professional structural engineer licensed in New Hampshire. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional structural engineer licensed in New Hampshire every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase.** Furthermore, the Planning Board shall require submission of proof of adequate insurance covering accident or damage. Any transfer of ownership or operational responsibilities of any facility permitted under this Ordinance shall be reported to the Planning Board and adequate provision made for the continuation of security and insurance will be made.

Failure to provide for continuation of security and insurance shall constitute grounds for a determination of abandonment.

IX. MAINTENANCE, MONITORING AND SAFETY STANDARDS

The owner of the facility shall maintain the telecommunications facility in good condition. Such maintenance shall include, but not limited to, painting, structural integrity of the mount and security barrier and maintenance of the buffer areas and landscaping.

Recognizing the extremely hazardous situation presented by abandoned and unmonitored Towers, quarterly reports based on on-site inspections of the structural integrity of the Tower shall be submitted to the Board of Selectmen by the owner of the Tower. If the Board of Selectmen does not receive a report in any given six month time period, lack of such report shall be grounds to initiate abandonment proceedings.

To ensure the structural integrity of Towers and Antennas, the owner of a Tower shall ensure that it is maintained in compliance with applicable standards for Towers that are published by the Electronic Industries Association, as amended from time to time. Failure to bring a Tower into compliance with revised standards with 60 days of their effective date or notice of deficiency from the Town shall constitute grounds for a determination of abandonment.

X. FEDERAL AND STATE REQUIREMENTS

All Towers must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission, and any agency of the Federal Government with the authority to regulate Towers and Antennas. All equipment proposed for a Wireless Telecommunications Facility shall be compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation under *Report and Order* FCC 96-326, published on August 1, 1996, and all subsequent amendments. Failure to bring Towers and Wireless Telecommunications Facilities into compliance with revised standards and regulations within six months of their effective date, or within 60 days of a notice of deficiency from the Town shall constitute grounds for a determination of abandonment.

XI. REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any Wireless Telecommunications Facility that is not operated for a continuous period of six months shall be considered abandoned and hazardous to the public health and safety. In addition, any Antenna or Tower that fails to comply with Section X relative to compliance with federal, state and local standards shall be considered abandoned. A declaration of abandonment shall be issued following a public hearing notice with notice to abutters and the last known owner/operator of the facility. The owner shall dismantle and remove the abandoned structure within

ninety days of receipt of a declaration of abandonment from the Town. If the abandoned facility is not removed within ninety days, the Town may execute the security and have the facility removed.

Removal shall include, but shall not be limited to:

- 1) Removal of Antennas, mounts, Equipment Shelters and security barriers from the property.**
- 2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.**
- 3) Restoring the location of the Wireless Telecommunications Facility to its natural condition, except that any landscaping and grading shall remain.**

If the owner of the facility does not remove the facility upon Town order, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

XII. DEFINITIONS

ALTERNATIVE TOWER STRUCTURE: A Tower or Antenna that is designed to look like a structure which may commonly be found in the area surrounding a proposed facility such as, but not limited to, artificial trees, clock towers, bell towers, steeples, light poles and similar mounting structures that camouflage or conceal the presence of Antennas or Towers.

ANTENNA: Any apparatus designed for telephonic, radio, television, personal communications service, pager network, or other communications through the sending and /or receiving of electromagnetic waves of any bandwidth.

AVERAGE TREE CANOPY HEIGHT: The average Height found by inventorying the Height above ground level of all trees over 60 feet in Height for a radius of 150 feet.

EQUIPMENT SHELTER: An enclosed structure, cabinet, shed vault, or box near the base of an Antenna, Tower, or Alternative Tower within which is housed equipment for Wireless Telecommunications Facilities, such as batteries, electrical, and electronic equipment.

ESSENTIAL SERVICES: Services provided by public utility or government agencies through erection, construction or maintenance of underground or overhead gas, electrical, steam or water transmission and distribution systems, and collection, communications, supply or disposal systems; and facilities necessary for the provision of Essential Services including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm boxes,

police call boxes, traffic signals, hydrants and similar equipment and accessories in connection therewith.

HEIGHT: The height above ground level from the natural grade of a site to the highest point of a structure.

PRE-EXISTING TOWERS AND ANTENNAS: Any Tower or Antenna lawfully constructed or permitted prior to the adoption of this Ordinance as well as the replacement of any such Towers and Antennas.

TOWER: A structure that is designed and constructed primarily for the purpose of supporting one or more Antennas. This includes radio and television transmission towers, microwave towers, common carrier towers, cellular, all Wireless Telecommunications Facilities, and Alternative Tower Structures.

WIRELESS TELECOMMUNICATIONS FACILITY (WTF): Any structure, Antenna, Tower, or other device that provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communication (SMR), personal communications services (PCS), common carrier wireless exchange access services, or facility associated with the transmission or reception of radio or television signals, or other electromagnetic spectrum communications.

XIII. ENFORCEMENT

It shall be the duty of the Board of Selectmen, or its appointed representative, to enforce the provisions of this Ordinance. The Selectmen are authorized to institute in the name of the Town any legal action by way of injunctive relief or otherwise to enforce this Ordinance or to restrain, prevent or abate any violations thereof, as authorized by RSA 676:15, shall be entitled to all of the reimbursement and restitution and penalties granted to municipalities by RSA 676:17, shall be further entitled to issue cease and desist orders per RSA 676:17-a, and any other provision of the law.

XIV. SEPARABILITY

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such invalidity shall not affect the remaining portions of this Ordinance.

XV. AMENDMENTS

This Ordinance may be amended in accordance with the procedures set forth in RSA Chapter 675.

XVI. EFFECTIVE DATE

This Ordinance shall take effect immediately upon its adoption by a ballot at a Town Meeting.