

TELECOMMUNICATIONS FACILITIES ORDINANCE

SECTION I: AUTHORITY

This ordinance is adopted by the Town of Windsor on March 12, 2002 in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16 and 21, II.

SECTION II: PURPOSE

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals;

- A. Preserve the authority of the Town of Windsor to regulate and provide for reasonable opportunity for the siting of telecommunications facilities.
- B. Enhance the ability of providers of telecommunications services to provide such services to the community effectively and efficiently.
- C. Reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to a person and property, and diminution of property values.

SECTION III: DEFINITIONS

- A. *Antenna*: Means any exterior apparatus designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic wave of any frequency and bandwidth.
- B. *Average Tree Canopy Height*: Means the average height found by inventorying the height above ground level of all trees over 20 feet in height for a radius of 150 feet.
- C. *Tower*: Means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas.
- D. *Telecommunications Facilities*: Means any antenna, tower, or other structure intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic transmission/receptions.

SECTION IV: LOCATION OF TELECOMMUNICATIONS FACILITIES

Telecommunications facilities may be permitted anywhere in Town, provided that they are camouflaged, hidden or disguised. Historic Districts are specifically exempted from this provision.

SECTION V: PERMITTED USES

- A. **Principal or secondary uses.** Telecommunications facilities may be considered either principal or secondary uses. Having an existing-permitted use on site shall not preclude the addition of a facility as a Secondary Use as long as all other provisions of the Ordinance are met. A different existing use or an existing structure on a same lot shall not preclude the installation of a facility on such lot. For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities that are installed in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

- B. Any alteration of the original permitted use and device configuration of the facility will require a new approval.
- C. **Amateur Radio; Receive-Only Antennas.** This Ordinance does not apply to any antenna used exclusively in the amateur radio services that is eligible under the Amateur Radio Preemption, 101 FCC 2nd 952 (1985).
- D. **Essential Services & Public Utilities.** Telecommunications facilities shall not be considered infrastructure, essential services, or public facilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications is a use of land, and is addressed by this Section.

SECTION VI: CONSTRUCTION PERFORMANCE REQUIREMENTS

- A. **Federal Requirements.** All facilities must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of facilities governed by this Ordinance shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any charges shall constitute grounds for the removal of the tower or antenna at the owner's expense, in accordance with Section X through the execution of the posted security.
- B. **Building Codes/Safety Standards.** To ensure the structural integrity of towers and antennas, all facilities will be inspected every two (2) years by an engineer approved by the Town, with the cost to be paid by the owner. The engineer will submit a report to the Town. If the report concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such tower into compliance with the standards. If the owner fails to comply within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with section X, of the tower or antenna, at the owner's expense through execution of the posted security.
- C. **Additional Requirements for Telecommunications Facilities.** These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.
 - 1. **Height:** All efforts should be made up to keep tower height at minimum; in no case shall a tower exceed 200 feet.
 - 2. **Setbacks and Separation:** In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back at a distance equal to 125% of the height of the tower from all property lines.
 - 3. **Security Fencing:** Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.
 - 4. **Landscaping.**
 - a. A buffer shall be provided that effectively screens the view of the compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.
 - b. In locations where the visual impact of the compound would be minimal or non-existent, the landscaping requirement may be reduced or waived entirely.
 - c. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
 - 5. **Camouflaging.**
 - a. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.

- b. 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 visually unobtrusive.
6. Balloon Test. The applicant shall provide notice of a date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all locations around town and within 20 miles from which the balloon(s) is visible.

SECTION VII: **CONDITIONAL USE PERMITS**

- A. **General.** Telecommunications facilities are permitted only after obtaining a Conditional Use Permit from the Planning Board. All such uses must comply with other applicable ordinances and regulations of the Town of Windsor.
- B. **Issuance of Conditional Use Permits.** In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.
 1. Procedure on Application
 - a. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.
 - b. All towns within 20 miles of the proposed location will be notified of the public hearing, by certified mail, to be paid by the applicant. A notice will also be posted in the newspaper customarily used for legal notices by these municipalities. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.
 2. Decisions - All decisions shall be rendered in writing. A denial must be based upon substantial evidence contained in the written record.
 3. Permits shall be renewable every two (2) years. When possible, this time frame shall be consistent with the timing for performance bond renewal.
- C. **Plan Requirements.** Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan showing or accompanied by the following information:
 1. Title block that shows the name of the development or project.
 2. North arrow, date of plat, scale, name, address, and seal of all persons preparing the plat.
 3. Signature block for Planning Board endorsement.
 4. Vicinity sketch and zoning district(s)
 5. Total area of the panel in acres and square feet.
 6. Lot frontage.
 7. Boundary lines and approximate dimensions and bearings.
 8. Tax map and lot numbers.
 9. Locations and descriptions of any existing or proposed easements, deed restrictions, or covenants.
 10. Physical features on the site and within 200 feet of the site.
 11. Soil information based on Hillsborough County Soil Survey.
 12. All natural features, such as streams, ponds, wetlands, etc.
 13. Existing and proposed grades and contours, and based flood elevations.
 14. Shape, size, height, location and use of existing and proposed structures on the site.
 15. Existing buildings and structures within 500 of the site.
 16. Access to the site, with location and width of existing and proposed driveways.
 17. A driveway permit been granted from the NH DOT, as applicable.
 18. Locations, names, right of way and travel widths of any existing and proposed roads on the property and within 200 feet of the site.
 19. Final road profiles and cross sections for any new roads,
 20. Locations and sizes of all electric and telephone lines on the site.

21. Existing and proposed fire hydrants and/or fire ponds.
22. Existing and proposed methods of handling stormwater runoff, and the direction of the flow indicated by arrows.
23. Sizes and locations of all stormwater drainage lines, catch basins, drywells, drainage ditches, retention basins, and culverts.
24. Location, types, and sizes of all existing and proposed landscaping and screening.
25. Location of any proposed lighting.

- D. Other Information Required.** In order to assess compliance with this Ordinance, the Planning Board shall require the applicant to submit the following prior to any approval by the Board:
1. Propagation map showing proposed radio frequency coverage.
 2. Photographic documentation of the balloon test(s).
 3. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
 4. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal 30-day comment period; the Town proceedings with respect to the proposed facility shall become part of the FCC application requirements.
 5. The applicant will provide the Board with the following information:
 - a. the number of sites for telecommunication facilities each provider will require;
 - b. sites outside of the Town for the particular coverage area that are being considered;
 - c. how the siting of a telecommunication facility will affect the ability to allow a competitor's antennas on the same property;
 6. The applicant will provide the Board with studies of alternative sites in Town that have been considered for siting.
 7. The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites.
 8. The applicant will provide the Board with any copies of the federal license from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.
 9. Upon request, the applicant will provide:
 - a. detailed maps showing all of the carrier's current externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive; and
 - b. Site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.
 10. The applicant will submit an agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

SECTION VIII. WAIVERS

- A.** Any portion of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the spirit and intent of these regulations.
- B. Conditions.** In approving waivers, the Board may impose such conditions, as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
- C. Procedures.** A petition for any such waiver shall be submitted in writing by the applicant for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

SECTION IX: BONDING AND SECURITY INSURANCE

- A.** The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.
- B.** The term of the bond shall be negotiated with the Planning Board and administered by the Selectmen. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

SECTION X: REMOVAL OF ABANDONED ANTENNAS AND TOWERS

- A.** Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.
- B.** In cases of co-location, the agreement shall make clear which owner is responsible for the removal of which facilities and pieces of equipment.

SECTION XI: ADMINISTRATION AND ENFORCEMENT

It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of this Ordinance. The Selectmen may appoint an agent to enforce this Ordinance. Upon any well-founded information that this Ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this Ordinance by seeking an injunction in the Superior Court or by any other legal action.

SECTION XII: SEVERABILITY

The invalidity of any provision of this Ordinance shall not affect the validity of any other provision.

SECTION XIII: APPEALS

Pursuant to RSA 676:5, any decision made under this Ordinance cannot be appealed to the Board of Adjustment, but to the Superior Court as provided by RSA 677:15.