

# **WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE**

## **Town of Alstead, New Hampshire updated 3/12/13**

### **I. AUTHORITY**

This Ordinance is adopted by the Town of Alstead, New Hampshire on March 11, 2003 in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16, “Grant of Power”, and 674: 21, II “Innovative Land Use Controls”, and procedurally under the guidance of 675:1 “Enactment and Adoption Procedures, General Requirements”, and in accordance with RSA 12-K, “Deployment of Personal Wireless Service Facilities”.

### **II. PURPOSE**

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas in accordance with Federal and State law and to enhance and fulfill the following goals:

- A.** Preserve the authority of the Town to regulate and provide for reasonable opportunity for the siting of telecommunications facilities in keeping with the town’s existing Ordinances and Regulations;
- 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, surrounding towns, historically significant locations, health and safety by injurious accidents to persons and property, and property values;
- D.** Require, where technically feasible, co-location and minimal impact siting through an assessment of technology, current and future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- E.** Preserve the Town’s unique viewsheds and scenic values.

### III. DEFINITIONS

- A. ***Alternative Tower Structure (ATS):*** Shall mean innovative siting techniques, including, but not limited to, man-made trees, clock towers, bell steeples, light poles, and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.
- B. ***Antenna:*** Means any apparatus or surface designed for telephonic, radio, television, personal communications service, pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any frequency and bandwidth.
- C. ***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.
- D. ***Board:*** Means Town of Alstead, New Hampshire Planning Board.
- E. ***Tower:*** Means any structure that is designed and constructed primarily for supporting one or more antennas.
- F. ***Town:*** Means Alstead, New Hampshire.
- G. ***Wireless Telecommunications Facilities:*** Means any antenna, tower, or other structure or device intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic transmission/receptions.

### IV. LOCATION OF TELECOMMUNICATIONS FACILITIES

Telecommunications facilities may be permitted in all districts provided they are camouflaged, hidden, or disguised. Historic Districts that may be established in the future are intended to be specifically exempted from this provision. In no case, however, shall such a facility be sited in a location that would impact any of the Town's unique viewsheds.

### V. PERMITTED USES

- A. **Principal or Secondary Use.** 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 this Ordinance are met. A different existing use or an existing structure on the 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/or device configuration of the facility will require a new approval.
- C. **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 or is used exclusively for receive-only antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16,IV “Grant of Power”.
- D. **Essential Services & Public Utilities.** Telecommunication 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.

## VI. CONSTRUCTION PERFORMANCE REQUIREMENTS

- A. **Federal Requirements.** All facilities must meet or exceed current standards and regulations of the Federal Aviation Administration (FAA), the Federal Communications Commission (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 changes 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.** Every two (2) years, all facilities will be inspected by an engineer, approved by the Town, to ensure the structural integrity of towers and antennas and to ensure that the tower is in compliance with standards contained in applicable Town building codes and the applicable standards for towers that are published by the Electronics Industries Association, as amended from time to time. The cost of the inspection is 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 abandonment and grounds for 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 the Town Ordinances or Regulations that are less strict.
1. **Height.** All efforts should be made to keep tower height at a minimum; in all cases, the tower height shall be less than 100 feet above ground level and shall be less than 20 feet above the surrounding tree line.
  2. **Setbacks and Separation.** In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from all property lines.
  3. **Security Fencing.** Towers and all related structures shall be enclosed by security fencing, constituting a compound, of not less than six (6) feet in height and shall be equipped with an appropriate anti-climbing device. The fence must include the area within which there is a potential hazard from falling debris such as ice or collapsing material.
  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 to make the antenna and related equipment visually unobtrusive.
- 6. **Balloon Test.** The applicant shall provide ten (10) days advance written notice to the Board of a date on which a balloon (or balloons) will be floated at the proposed site, and provide pictures from all roads around Town and within 20 miles from which the balloon(s) is/(are) visible.
- 7. **Signs.** Signs shall be strictly limited to those required by law and/or needed to identify the property and the owner and to warn of any danger.
- 8. **Lighting:** Towers shall not be artificially lighted, unless required by the FAA or other Federal or State Authority. If lighting is required, the Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

## VII. CONDITIONAL USE PERMITS

- A. **General.** Telecommunications Facilities are permitted only after obtaining a Conditional Use Permit from the Board. All such uses must comply with other applicable Ordinances and Regulations of the Town.
- B. **Issuance of Conditional Use Permits.** In granting a Conditional Use Permit, the 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 Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4 “Administrative and Enforcement Procedures; Board’s Procedures on Plats”.
    - b. All municipalities visible within 20 miles of the proposed location will be notified of the public hearing, by certified mail. 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 ten (10) days nor more than 21 days

prior to the public hearing date. It shall be the responsibility of the Applicant to provide the list of the municipalities that fall within the 20-mile radius of the proposed location, and to pay the cost of all notifications and mailings.

2. **Decisions.** All decisions shall be rendered in writing. A denial must be based upon substantial evidence contained in the written record.
3. **Permit Renewal.** Permits shall be renewable every three (3) years and shall be coincident 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 Board endorsement.
4. Vicinity sketch and zoning district(s).
5. Total area of the parcel 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 the Cheshire County Soil Survey.
12. All natural features, such as streams, ponds, wetlands, etc.
13. Existing and proposed grades and contours, and base flood elevations.
14. Shape, size, height, location, and use of existing and proposed structures on the site.

15. Existing buildings and structures within 500 feet of the site.
16. Access to the site, with location and width of existing and proposed driveways.
17. A driveway permit granted from either the NH DOT or the Town.
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 storm water runoff, and the direction of the flow indicated by arrows.
23. Sizes and locations of all storm water 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 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 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, including ATS's.
7. The applicant shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such agreement shall become a condition to any approval and 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 of New Hampshire and Vermont within a 20-mile radius, both active and inactive.
  - 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 to the Board a copy of any lease/sub-lease agreement(s) related to the proposed facility.



11. In accordance with RSA 12-K 4 and RSA 676:4, 1 (g), a wireless carrier seeking approval to deploy a wireless communication facility may be required to pay reasonable fees, including regional notification costs, imposed by the municipality to cover its administrative expenses and costs of special investigative studies, review of documents and other matters which may be required by particular applications.

## 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.** The applicant for Board review shall submit a petition for any such waiver in writing. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

## IX. BONDING AND SECURITY INSURANCE

- A. Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the applicant shall provide a security bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The amount of the security shall be based upon 1.5 times the removal cost as provided by the applicant and certified by a professional engineer licensed in the State of New Hampshire as of the date of the issuance of a building permit or the date of Board approval, whichever is applicable, and thereafter every three (3) years. Applicant shall pay all costs related to determining the amount of the security bond. If the removal cost has increased more than 15%, the owner of the facility shall provide additional security in the amount of the increase.
- B. The Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction, and thereafter at any time upon written request by the Board or Board of Selectmen of the Town and on an annual basis to the Town Clerk during the period December 1 –10. Ongoing evidence of liability insurance shall constitute a condition for maintaining the permit. Failure to provide evidence of appropriate liability insurance may result in suspension or cancellation of the permit by the Board.

- C. The term of the bond shall be negotiated with the Board and be administered by the Selectmen. In all cases, a bond shall be in place over the entire life span of the tower and related facilities.

**X. REMOVAL OF ABANDONED ANTENNAS AND TOWERS**

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. 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 bond 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.

**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.

**XII. SEVERABILITY**

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

**XIII. APPEALS**

Pursuant to RSA 676:5 “Administrative and Enforcement Procedures; Appeals to Board of Adjustment”, 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 “Rehearing and Appeal Procedures; Appeal and Court Review of Planning Board Decisions”.