

**TOWN OF NEW DURHAM  
TELECOMMUNICATIONS FACILITY ORDINANCE  
ADOPTED MARCH 9, 1999**

**A. AUTHORITY**

This Ordinance is adopted by the Town Of New Durham pursuant to New Hampshire RSA 674:16, grant of Power and 674:21, Innovative Land Use Controls, and procedurally under the guidance of 675:1, II. This ordinance grants the New Durham Planning Board the authority to issue Special Use Permits for telecommunications facilities, which are a permitted use in the Residential/Recreational/Agricultural District under Article IV.A. of the Zoning and Land Use Ordinance for the Town of New Durham. The granting of a Special Use Permit for a telecommunications facility shall be subject to the requirements outlined herein.

**B. PURPOSE AND OBJECTIVES**

This Ordinance is enacted to establish general guidelines for the siting of telecommunications towers and antennas and to fulfill the following objectives:

1. Preserve the authority of New Durham to regulate and to provide reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of telecommunications providers to deliver these services to the community quickly, effectively and efficiently.
2. Reduce adverse impacts such facilities may create, including but not limited to: impacts on aesthetics, environmentally sensitive areas, safety, historically significant locations, rural viewsheds, and prosperity through protection of property values.
3. Require co-location and provide for minimal impact siting through technology assessment, evaluation of current and future location options, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
4. Permit the construction of new towers only where all other reasonable options have been exhausted, and to encourage the construction of towers and antennas which minimize adverse visual impact.
5. Provide for regular maintenance and safety inspections of all facilities.
6. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance.

**C. DEFINITIONS**

*"Alternative tower structure"* – innovative siting techniques that shall mean man-made trees, clock towers, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

*"Antenna"* shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

*"Buildings and Related Structures"* shall mean any structure, improvement, land development, or infrastructure, including rights-of-way, necessary for the operation of telecommunication facilities defined in this section.

*"Co-location"* means locating wireless communication facilities from more than one provider on a single tower.

*"FAA"* – an acronym that shall mean the Federal Aviation Administration.

*"FCC"* – an acronym that shall mean the Federal Communications Commission.

*“Height”* shall mean, when referring to a tower or other structure, the distance measured from the average existing ground level within ten feet of the tower location at the time of application to the highest point on the tower or other structure, including antennas or other appurtenances.

*“Telecommunication facility”* shall mean any structure, antenna, tower or other device which provides, but is not limited to the following services: commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), enhanced SMR, personal communications service (PCS), paging and similar services that are marketed to the general public.

#### **D. APPLICABILITY**

1. **Amateur Radio; Receive-Only Antennas.** This Ordinance shall not govern any tower or antenna that is less than 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.
2. **Essential Services and Public Utilities.** Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities; siting for telecommunications facilities is considered a use of land subject to Planning Board review.

#### **E. GENERAL REQUIREMENTS**

1. Telecommunications facilities are permitted by Special Use Permit provided that all standards set forth in this Article are met as well as all other applicable ordinances and regulations (including Site Plan Review). Existing towers or structures that are not presently used as telecommunications facilities must meet all requirements of this Ordinance once they are proposed for use as a telecommunication facility. Applicants proposing an increase in height of an existing telecommunications facility must also meet all requirements of this Ordinance.
2. **Principal or Secondary Use.** Subject to this Ordinance, an applicant who successfully obtains permission to site under this Ordinance as a second and permitted use may construct a telecommunications facility in addition to the existing permitted 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. For purposes of determining whether the installation of a tower or antenna complies with development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the tower or antenna may be located on a leased parcel within such lot. Telecommunications facilities that are installed in accordance with the provisions of this Ordinance are not considered an expansion of a non-conforming use or structure.
3. **Height.** The maximum height of a telecommunications facility proposed under this regulation shall be 110 feet including antennas and all other appurtenances.
4. **Aesthetics and Lighting.**
  - a. Towers shall maintain a non-glossy, galvanized steel finish or be painted a neutral color (subject to FAA requirements) to reduce visual obtrusiveness. The use of alternative tower structures is strongly encouraged by the Town.
  - b. At a telecommunications facility site, the design of buildings and related structures, including utility service to the facility, shall use materials, colors, textures, screening and landscaping that will allow it to blend with the natural setting and built environment. These buildings and related structures shall also be subject to all other Site Plan Review requirements. The profile of any built structures shall not project above topographic high points on the lot.

- c. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to or compatible with the existing structure, and shall be made as visually unobtrusive as possible. In no case shall the height of any antenna be more than 20 feet greater than the height of the existing structure with which it is associated, and shall not exceed the maximum height limitation of 110 feet.
  - d. Towers and related structures shall not be lighted unless required by the FAA or other applicable authority.
  - e. Telecommunications facilities shall not contain any permanent or temporary signs, writing, or graphical representation of any kind, other than warning or safety signs placed within 10 feet of the ground surface.
5. **Building Codes, Safety Standards.** To ensure the structural integrity of towers, antennas, and accessory structures, the owner of a tower shall ensure that it is maintained in compliance with standards published by the Electronic Industry Association and local building codes. Telecommunications facilities shall be surrounded by security fencing not less than 6 feet in height and shall be equipped with an appropriate anti-climbing device. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice to the owner of the tower, the owner shall have 30 days to bring the facility into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with Section I of this Ordinance, of the tower and antenna(s) at the owners expense through execution of the posted security.
6. **Setbacks and Separation Requirements.** The following requirements shall supersede any other applicable standards of the Zoning Ordinance that are less strict:
- a. Towers must be set back a minimum distance equal to the tower height from all lot lines.
  - b. Towers, guy wires, and accessory structures must satisfy all other setback requirements of the New Durham Zoning Ordinance.
  - c. A telecommunications tower or antenna over 70 feet in height shall not be located within 2 miles of an existing tower or antenna over 70 feet in height, whether or not such existing tower is located within the Town of New Durham.
7. **Landscaping/Natural Growth Buffer.** Telecommunications facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the tower from occupied portions of adjacent property. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible, and constitute the preferred method of screening.
8. **Towers Excluded.**
- a. Construction of telecommunications facility towers is specifically excluded from areas within a horizontal distance of 300 feet of topographic summits greater than 700 feet elevation National Geodetic Vertical Datum, or 300 feet from a ridge line leading to such topographic summit.
  - b. No telecommunications facility shall be constructed within 1000 feet of a historically or culturally significant location designated as such by the Town of New Durham, State of New Hampshire or federal government agencies.
9. **Co-Location.** A permittee shall cooperate with other telecommunications providers in co-locating additional antennas on towers or existing structures, provided that such proposed co-locators have received approval by Special Use Permit from the Town. A permittee shall exercise good faith in co-locating with other providers and sharing the permitted site, provided that such shared use does not give rise to a substantial technical level impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities as opposed to a competitive

conflict or financial burden). Such good faith shall include sharing technical information to evaluate the feasibility of co-location. In the event a dispute arises as to whether a permittee has exercised good faith in accommodating other users, the Town may require a third party technical study at the expense of either or both the applicant and permittee.

#### **F. SUBMITTAL REQUIREMENTS**

All applicants under this Ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the Town of New Durham Site Plan Review regulations. Applicants shall also be required to submit the following information:

1. A map showing the service area and an explanation of need.
2. A map showing the location and service areas of other existing or proposed sites operated by the applicant which are close enough to impact service within the Town's borders.
3. A diagram and/or map showing the viewshed of the proposed telecommunications facility, including all buildings and accessory structures.
4. Photosimulations from at least four directions, which simulations adequately represent the appearance of the completed structure when viewed from inhabited areas and/or traveled roads within the Town.
5. A site and landscaping plan which also meets the requirements of Site Plan regulations.
6. If the applicant is proposing a new tower, written evidence demonstrating that no existing structure within two miles of Town borders can accommodate the applicant's proposed antenna. This evidence can consist of:
  - a. Substantial Evidence that no existing towers or structures are located within the geographic area.
  - b. Substantial Evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements or do not have sufficient structural strength to support applicant's proposed equipment.
  - c. Substantial Evidence that the applicant's proposed antenna would cause electromagnetic interference with the existing antenna(e) on the towers or structures, or vice-versa.
7. An agreement with the Town that allows for the maximum allowance for co-location upon the new telecommunications structure. Such statement shall become a Condition to any approval, and shall, at a minimum, require that the applicant supply available co-location for reasonable fees and costs to other telecommunications providers.
8. Engineering information detailing the size and coverage required for the telecommunications facility location. Structural plans shall bear the seal of a qualified Professional Engineer licensed in the State of New Hampshire. The Planning Board may have any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technical limitations and feasibility of alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant in accordance with RSA 676:4, I(g).

#### **G. WAIVERS**

Where the Planning Board feels that extraordinary hardships, technical difficulties, or unreasonable expense would result from strict compliance with the foregoing regulations, or to encourage innovative approaches to providing telecommunications services, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to ensure that an applicant is not unduly burdened, as opposed to merely inconvenienced, by said regulations. The Board shall only approve any waiver(s) when a majority of those present and voting, where proper quorum requirements are met, shall find that any waiver would not be detrimental to the public safety, health or welfare, or be

injurious to other property; would promote the public interest; and will substantially secure the objectives and requirements of these regulations. A petition for any such waiver shall be submitted in writing by the applicant along with the application for Board review.

#### **H. SECURITY AND INSURANCE.**

1. Recognizing the extremely hazardous situation presented by abandoned or 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 or unwilling to remove the tower in accordance with Section I.
2. Furthermore, the Planning Board shall require the annual submission of proof of adequate insurance covering accident or damage. Such insurance shall provide for a minimum 30 days notice of cancellation to the Town.

#### **I. 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, unless the owner of said tower provides proof of quarterly inspections and operation. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Planning Board notifying the owner of such abandonment. 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.

#### **J. INSPECTIONS, ENFORCEMENT.**

The owner of the telecommunications facility shall provide for quarterly structural and safety inspections to be conducted by a licensed Professional Engineer experienced in the evaluation of telecommunications structures. The results of these inspections shall document compliance with applicable FCC requirements, and shall be submitted on an annual basis to the Town's Code Enforcement Officer. If deficiencies are noted during an inspection, the owner must notify the Code Enforcement Officer within 5 days of completion of the inspection. Enforcement of the provisions of this Ordinance shall be in accordance with New Hampshire RSA 676.

#### **K. SEVERABILITY.**

The invalidity of any part of this Ordinance shall not affect the validity of the remainder of this Ordinance. The provisions of this Ordinance are severable.

#### **L. EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon its adoption by the Town.