

**TOWN OF RINDGE
NEW HAMPSHIRE**

**WIRELESS TELECOMMUNICATION
FACILITY ORDINANCE**

ADOPTED MARCH 2001

WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

SECTION 1.

AUTHORITY

This ordinance is adopted by the Town of Rindge on March 2001, in accordance with the authority granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21.

SECTION 2.

PURPOSE

This regulation has 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 Rindge to regulate and to provide for reasonable opportunity for the siting of wireless telecommunications facilities by enhancing the ability of providers of wireless telecommunications services to provide such services to the community quickly, effectively and efficiently.
- B. Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, environmental sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.
- C. Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available location, innovative siting techniques and siting possibilities beyond the political jurisdiction of the Town.
- D. Permit the construction of new towers only when 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.
- E. Require cooperation and co-location, to the highest extent possible between competitors in order to reduce cumulative negative impacts upon the Town of Rindge.
- F. Provide constant maintenance and safety inspections for any and all facilities.
- G. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town to remove these abandoned towers to protect the citizens from imminent harm and danger.
- H. Provide for the removal or upgrade of facilities that are technologically outdated.

SECTION 3.

DEFINITIONS

Alternative Tower Structure: Shall mean innovative siting techniques that include 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.

Antenna: Shall mean any wire, set of wires, rods, or any apparatus designed for telephonic, radio, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

Average tree Canopy Height: Shall mean 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.

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 ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

Planning Board or Board: Shall mean the Town of Rindge Planning Board, which is the regulator of this Ordinance.

Pre-existing Towers or Antennas: Shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of the Ordinance, as well as the replacement of any such tower or antenna, provided that such replacement meets the requirements of Section 6 paragraph A. Pre-existing towers and antennas shall also mean any tower or antenna lawfully constructed in accordance with this Ordinance that predates an application currently before the Board.

Tower: Shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guy towers or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like.

Wireless Telecommunications Facilities: Shall mean any antenna, tower, or other structure which is intended for use in connection with the transmission or reception of radio or television signals or any other electromagnetic spectrum-based transmission/receptions.

SECTION 4.

WIRELESS TELECOMMUNICATIONS FACILITIES DISTRICT

The Wireless Telecommunications Facilities District shall consist of all land within the Town of Rindge. No telecommunication facilities may be located within the Village or Residential Districts unless they are designed as alternative tower structures, to be hidden, camouflaged, or disguised.

SECTION 5.

PERMITTED USES WITHIN THE WIRELESS TELECOMMUNICATIONS FACILITIES DISTRICT.

- A. General: In addition to the uses permitted in the underlying zoning districts under Section 7 wireless telecommunications facilities are a permitted use within the Wireless Telecommunications Facilities District only after obtaining a Conditional Use Permit, as provided for in Section 7. All such uses must comply with other applicable ordinances and regulations of the Town of Rindge (including Site Plan Review Regulations). Notwithstanding anything in the Ordinance to the contrary, this Ordinance shall not apply to any pre-existing towers or antennas. Further, this Ordinance shall not apply to applications pending prior to the adoption of this Ordinance to construct a tower or antenna.

- B. Height requirements: These requirements and limitations shall preempt all other height limitations as required by the Town of Rindge Zoning Ordinance and shall apply only to wireless telecommunications facilities. In no case may any new structure be higher than 100 feet, or 20 feet above the average tree canopy in the proposed location. These height requirements may be waived through the Conditional Use Permit Process only if the intent of the ordinance is preserved (e.g. where a higher tower would not increase adverse impacts but provide a greater opportunity for co-location in accordance with Section 8).

- C. Amateur Radio: Receive –Only Antennas. This Ordinance shall not govern any tower, or the installation of any antenna that is under 100 feet in height that 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 limitation as referenced in RSA 674:16 IV (Amateur Radio Preemption). For Amateur Radio and receive only towers that are between 100 and 150 feet in total height, the Planning Board requires that a basic site plan review, as defined in Section 7C of this ordinance be submitted, but exempts the installation from the other ordinance requirements for non amateur and receive only towers as specified in this ordinance. Set back requirements for amateur radio and receive only towers shall be 125% of the total height.

SECTION 6.

CONSTRUCTION PERFORMANCE REQUIREMENTS

- A. Aesthetic and Lighting: The guidelines in the subsection shall govern the location of all towers and the installation of all antennas. However, the Planning Board may waive these requirements in accordance with Section 8, if it determines that the goals of the Ordinance are better served thereby.
1. Towers shall either maintain a galvanized steel finish, subject to any applicable standards of the FAA, or 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 maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment. These building and facilities shall also be subject to all other Site Plan Review Regulation requirements.
 3. 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 closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
 4. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
 5. Towers shall not contain any permanent or temporary signs, writing symbols, or any graphic representation of any kind.
- B. Federal Requirements: All towers must meet or exceed current standards and regulation of the FAA, FCC, or any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, the owners of the towers and antennas governed by this Ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with Section 10, of the tower or antenna, as abandoned, at the owners expense through the execution of the posted security.
- C. Building Codes –Safety Standards: To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in all applicable federal, state and 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 concludes that a tower 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, the owner shall have 30 days to bring such tower 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 10, of the tower or antenna as abandoned, at the owners expenses through execution of the posted security.

D. Additional Requirements for Wireless Telecommunications Facilities. These requirements shall supersede any and all applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

1. Setback and Separation:

- a. Towers must be set back a distance equal to 125% of the height of the tower from the property line.
- b. Tower, guys and accessory facilities must satisfy the minimum zoning district setback requirements.

2. Security fencing: Towers shall be enclosed by security fencing not less than eight feet in height and shall also be equipped with an appropriate anti-climbing device.

3. Landscaping:

- a. Towers shall be landscaped with a buffer of plant material that effectively screens the view of the tower compounded 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 tower would be minimal, 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.

SECTION 7

CONDITIONAL USE PERMITS.

A. General: All applications under this Ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided for in the Town's Site Plan Review Regulation. In addition, applications under this Ordinance shall also be required to submit the information provided for in this Section 7.

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. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4
2. Decisions: Possible decisions rendered by the Planning Board include approval, approval with conditions, disapproval without prejudice, or disapproval. All decisions shall be rendered in writing, in accordance with RSA 676:3.
3. Factors Considered in Granting Decisions:
 - a. Height of proposed tower or other structure does not exceed that which is essential for its intended use and public safety.
 - b. Proximity of tower to residential development or zones.
 - 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 to the site.
 - h. Availability of suitable existing towers and other structures as discussed in subparagraphs D (3) and D (4) of this paragraph.
 - i. Visual impacts on view-sheds, ridgelines and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
 - j. That the proposed wireless telecommunication facility, tower or antenna will unreasonably interfere with the view from any public park, natural scenic vista, historic building or major view corridor.
 - k. That the proposed wireless telecommunication facility, tower or antenna is not constructed in such a manner as to result in needless height, mass, and guy-wire supports.
 - l. Availability of alternate tower structures and alternative siting locations.

C. Plan Requirements: Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan in accordance the Site Plan Review Regulations and further information including:

1. A scaled elevation view
2. Topography
3. Radio frequency coverage.
4. Tower height requirements
5. Setbacks;
6. Adjacent uses (up to 200' away);

7. The location of all buildings and structures within 500 feet of proposed tower;
8. Driveways and parking;
9. Fencing and
10. Landscaping

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. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
2. 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 wireless telecommunication facility, tower or antenna, 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 and the Town proceedings with respect to the proposed wireless telecommunications facility, tower or antenna shall become part of the FCC application requirements.
3. Each applicant for an antenna and/or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or Conditional Use Permits under the Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however the Planning Board, is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
4. If the applicant is proposing to build a new tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna.
The evidence may consist of:
 - a. Substantial Evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that the description of the geographic area required is also submitted.
 - b. Substantial Evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements with supporting reasons.
 - c. Substantial Evidence that the existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
 - d. Substantial Evidence that the applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers, or the existing antenna would cause interference with the applicant's proposed antenna.

- e. Substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
 - f. Substantial Evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
 - g. Information on the number of sites for wireless telecommunication facilities each provider will require.
 - h. Information on sites outside of the Town of Rindge that are being considered.
 - i. Information on how future technology may reduce or eliminate the need for tall antenna sites.
 - j. Information on how the siting of a wireless telecommunication facility will affect the ability to allow a competitors antennas on the same property.
 - k. Information of whether any, or all, of the wireless telecommunications carriers providing service to central New Hampshire use the system known as cable micro-cell integrator/headend interface converter (“CMI/HIC”) which utilized cable television lines and small transceivers mounted on utility poles to communicate with wireless telephones.
 - l. Information on whether there are any such carriers using CMI/HIC in surrounding cities and towns.
 - m. Information on whether it is feasible for carriers to locate base station equipment underground.
5. The applicant proposing to build a new tower, shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunications providers. Failure to provide such an agreement is evidence of the applicant’s unwillingness to cooperate with the orderly and well-planned development of the Town of Rindge and grounds for a denial.
6. The Applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Board may retain the services of a consultant qualified in wireless telecommunications services to review the application and all associated information submitted by the applicant. The Board may further require, pursuant to RSA 676:4, 1.(g), that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full.

SECTION 8

WAIVERS

- A. General: Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the forgoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulation. The purpose of granting

waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened, as opposed to merely inconvenienced, by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare of injurious to other property and will not be contrary the public interest.
 2. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include but not be limited to:
 - a. Topography
 - b. Availability of alternative site locations;
 - c. Geographic location of property;
 - d. Size/magnitude of project being evaluated and availability of co-location;
- 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 9

BONDING AND SECURITY INSURANCE:

In recognition of 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 or unwilling to remove the tower in accordance with Section 10. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed wireless telecommunication facilities, tower or antenna prior to the construction of such facilities, tower or antenna.

SECTION 10

REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any antenna or tower that is not operated for a continuous period of twelve months shall be considered abandoned. A declaration of abandonment may only be issued following a public hearing, noticed per Town Regulation, with notice to abutters and the last known owner/operator of the tower. If the owner /operator of the tower can show cause why an extension should be granted the Planning Board may authorize an extension of up to 90 days. If the Planning Board

has determined an extension is not warranted, the owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. 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.