

TOWN OF WARNER, NEW HAMPSHIRE
WIRELESS TELECOMMUNICATION FACILITIES
ORDINANCE



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WIRELESS TELECOMMUNICATION FACILITIES ORDINANCE

Warner, New Hampshire

1000.00 WIRELESS TELECOMMUNICATION FACILITIES

In recognition of the requirements of the Federal Telecommunications Act of 1996, this ordinance is designed and intended to balance the interests of the residents of Warner, telecommunications providers, and Telecommunication customers in the siting of Telecommunication facilities within the Town of Warner, so as to ensure coordinated development of communications infrastructure while preserving the health, safety, and welfare of the town and its residents. This ordinance establishes general guidelines for the siting of wireless telecommunications towers, and antennas to enhance and fulfill the following goals:

- a. Preserve the authority of the Town of Warner Planning Board to provide for reasonable opportunity for the siting of telecommunications services and to provide such services to the community effectively and efficiently.
- b. Minimize the visual impact of such facilities as viewed from other vantage points.
- c. Enhance prosperity through protection of property values, and reduce adverse impacts such facilities may create, including, but not limited to, impacts on: aesthetics, environmentally sensitive areas, historically significant locations, view sheds, flight corridors, health and safety of persons and property.
- d. Provide for co-location and minimal impact siting options through assessment of technology, current location options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the town.
- e. Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and require that towers and antennas be constructed in a manner that minimizes the adverse visual impact of the tower and its supporting facility and access points.
- f. Provide for a tree preservation easement to camouflage towers and support facilities when required by the Planning Board of the Town of Warner.
- g. Require cooperation and co-location, to the greatest extent possible, between competitors in order to reduce cumulative negative impact upon the Town.
- h. Provide constant maintenance and safety inspections for any and all facilities.
- i. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Building Code compliance, and provide a mechanism for the Town to remove these abandoned towers to protect the citizens from imminent harm and danger.

1001.00 DEFINITIONS

- 1001.01 Alternative Tower Structure:** Innovative siting techniques such as artificial trees, clock towers, bell towers, steeples, light poles and similar design mounting structures that camouflage or conceal the presence of antennas are towers.
- 1001.02 Antenna:** Any exterior apparatus designed for telephone, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving electromagnetic waves of any bandwidth.
- 1001.03 Average tree canopy height:** The average height above ground level of all trees that provide camouflage for the wireless telecommunications facility, such average to be determined by inventorying the trees to remain after the construction of the wireless telecommunications facility.
- 1001.04 Camouflaged:** A wireless telecommunications facility that is sited in a wooded area or a disguised or hidden part of an existing or proposed building or structure, or a facility placed within an existing or proposed building or structure, or constructed as an alternative tower structure.
- 1001.05 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. 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 other similar equipment and accessories in connection therewith.
- 1001.06 Guy Wire:** A cable used it to secure and steady a tower.
- 1001.07 Height:** The distance measured from ground level to the highest point on the tower or other structure, including antennas.
- 1001.08 Monopole:** Any tower consisting of a single poll, constructed without guy wires or ground anchors.
- 1001.09 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.
- 1001.10 Secondary Use:** Any use of land or of a building or portion thereof which is unrelated to the principle use of the land or building.
- 1001.11 Stealth Technology:** Any wireless telecommunication facility designed to look like a structure which may commonly be found in the area surrounding such proposed facilities.

- 1001.12 Tower:** A 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 carrier towers, cellular telephone towers, wireless telecommunication facilities and alternative tower structures.
- 1001.13 Wireless Telecommunication Facilities:** Any structure, antenna, tower, or other device that provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communication (SMR) and personal communications services (PCS), and common carrier wireless exchange access services.
- 1001.14 Substantial modification:** The mounting of a proposed PWSF (Personal Wireless Service Facilities) on a tower or mount which, as a result of single or successive modification applications:
- a) Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
 - b) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or
 - c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or
 - d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage

1002.00 APPLICABILITY

- 1002.01 Public Property:** The terms of this ordinance shall apply to all wireless telecommunications facilities proposed to be located within the Town of Warner whether on property owned by the Town of Warner or on privately owned property, or on property owned by another governmental entity that acts in a proprietary capacity to lease such property to a carrier.
- 1002.02 Amateur Radio, Receive-Only Antennas:** This ordinance shall not govern any tower, or the installation of any antenna that is under thirty-five (35) 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 application adopts the provisions and limitations as referenced in RSA 674:16, IV.
- 1002.03 Essential Services and Public Utilities:** Wireless telecommunications facilities and not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the town's ordinances and regulations. Siting for telecommunications facilities is the use of land and subject to the town's zoning ordinance and all other applicable ordinances and regulations.

1002.04 Collocation applications and non substantial modification applications shall be reviewed for conformance with applicable building permit requirements but shall not otherwise be subject to zoning or land use requirements, including design or placement requirements, or public hearing review.

1002.05 Notwithstanding the limitations in 1002.04, nothing in this Ordinance shall be construed to:

- a) Limit or preempt the scope of an authority's review of zoning, land use, or permit applications for the siting of new towers or for substantial modifications to existing towers, mounts, or PWSFs (Personal Wireless Service Facilities).
- b) Prevent a municipality from exercising its general zoning and building code enforcement powers pursuant to RSA 672 through RSA 677 and as set forth in this Ordinance.

1003.00 SITING STANDARDS

1003.01 General Provisions

- a. A Site Plan application and Site Plan Review approval are required for any wireless telecommunication facility construction. Co-location of facilities must meet all current Site Plan Review regulations.
- b. The uses in this section are deemed to be permitted uses in the designated district in accordance with all other applicable ordinances and regulations of the Town including Site Plan Review and approval by the Warner Planning Board.
- c. Antennas and towers may be considered either principle or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lots.
- d. For purposes of determining whether the installation of a tower or antenna complies with district development standards, the dimension of the entire lot shall control, even though the antennas and towers may be located on leased parcels within such lots.
- e. If a wireless telecommunication facility is to be located on an easement or leased area, said easement or leased area shall have a minimum area equal to an area having a radius of 125% of the tower's height plus additional area for accessory structures and access, if required.
- f. All free-standing towers, except in pre-existing sites, must be set back a distance equal to 125% of the height of the tower from any off-site residential structure. Towers and accessory facilities must satisfy the minimum zoning district setback requirements.
- g. Towers that are constructed and antennas that are installed in accordance with the provisions 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.

1003.02 Wireless Telecommunication Facilities Location, Construction and Performance Requirements.

Traditional lattice, guyed, and monopole towers with external arrays are prohibited. All new wireless telecommunication facilities must either be camouflaged or employ appropriate stealth technologies that are visually compatible and in scale with the rural character of the Town and its villages and shall satisfy the following additional requirements:

- a. A wireless telecommunication facility proposed to be located on or within a building or structure shall employ stealth technologies and be architecturally compatible with a host building or structure.
- b. Unless paragraph “a” applies, all wireless telecommunication facilities shall be camouflage in a wooded area and shall not project higher than twenty (20) feet above the average tree canopy height of the proposed site.
- c. No tree cutting, removal, or damage shall be allowed within a 200 foot radius of the perimeter of the fenced facility, beyond the absolute minimum required for construction. The interior area of the fenced facility shall be the minimum necessary to support and service the wireless telecommunication facility.
- d. In all cases, the applicant shall demonstrate legal capacity to control tree cutting and removal from the proposed camouflage area.
- e. In all cases, the top of the tower shall be at least 100 ft. below the nearest ridgeline. The nearest ridgeline shall be measured directly upslope from the tower and extend a maximum of one-quarter (1/4) mile radius from the point that the extended line from the tower intersects the ridgeline.

1003.03 Districts Permitted

- a. Pre-existing Towers and Co-Location: Two telecommunication tower sites exist within the town limits of Warner as of January 1, 1998.
 1. Summit of Mount Kearsarge (a State facility)
 2. MCT Communication, Inc. site on Tory Hill

Additionally, there are wireless telecommunication facility sites in Warner and in neighboring towns that serve Warner and the Route 89 corridor. Co-location on any of these facilities is a priority consideration for any new communication providers before any application for new tower construction will be accepted by the Zoning Board of Adjustment or the Planning Board. Any provider intending to co-locate on the MCT tower or the Kearsarge tower in Warner must submit written notification and application to the Planning Board. Notwithstanding anything in this ordinance to the contrary, this ordinance shall not apply to any pre-existing towers and antennas; however, any changes to either of these facilities by present or future owners must conform with height, aesthetics and lighting Site Plan Review standards in effect at that time.

- b. New Towers: New tower construction and co-location of wireless telecommunication facilities shall be permitted in the following districts subject all applicable local, state and federal regulations as well as Site Plan Review and approval by the Planning Board. New tower construction is permitted by Special Exception in the following areas:

- R1 Not Permitted
- R2 Special Exception
- R3 Special Exception
- B1 Not Permitted
- C1 Special Exception
- OC1 Not Permitted
- OR1 Special Exception

- c. All applications shall present written information that addresses, to the satisfaction of the Zoning Board of Adjustment, the requirements of this ordinance. In addition, before approving an application for a Special Exception for a wireless telecommunications facility, the Zoning Board of Adjustment shall find that the application complies with Special Exception standards of Article XVII, C.1. of the Zoning Ordinance of the Town of Warner.

1004.00 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 1005.00. Bonding and surety shall be consistent with the provisions in the Site Plan Regulations. Furthermore, the Planning Board shall require submission of proof of adequate insurance covering accident or damage.

1005.00 REMOVAL OF ABANDONED ANTENNAS AND TOWERS

Any tower that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety. In addition, any antenna or tower that fails to comply with Sections 1006.00 and 1007.00 relative to compliance with federal, state and local standards shall be considered abandoned. The owner shall remove the abandoned structure within ninety (90) days of receipt of a Declaration of Abandonment from the Town. A Declaration of Abandonment shall only be issued following a Public Hearing Notice according to RSA 676:4, with noticed abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within ninety (90) days, the Town may execute the security and have the tower removed. If there are two or more uses of a single tower, this provision shall not become effective until all uses cease using the tower.

1006.00 BUILDING CODES AND 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 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 within thirty (30) days of notice being provided to the owner by the Town shall constitute abandonment and grounds for the removal of the tower or antenna in accordance with Section 1005.00 of the Wireless Telecommunication Facilities Ordinance.

1007.00 FEDERAL REQUIREMENTS

All towers must meet or exceed current standards and regulations of the Federal Aviation Administration, the Federal Communications Commission and any other agency of the Federal Government with the authority to regulate towers and antennas. Failure to bring towers and antennas into compliance with revised standards and regulations within six (6) months of their effective date shall constitute grounds for the removal of the tower or antenna in accordance with Section 1005.00 of the Wireless Telecommunication Facilities Ordinance.

1008.00 PENALTY

Any person who violates any provision of the ordinance shall be subject to penalties in accordance with RSA 676.17. [*Amended March 2004*]