

# TOWN OF THORNTON TELECOMMUNICATIONS FACILITIES ORDINANCE

Adopted March 17, 2001

## 1. Purpose and Intent

The purpose of this Ordinance is to preserve the authority of the Town of Thornton to regulate and provide opportunity for the siting of wireless telecommunications facilities while preserving the rural, scenic and environmental qualities of the Town as stated in the Town's Master Plan. The intent and goal of this ordinance is to permit wireless telecommunications in the Town of Thornton and to:

- A. Avoid and mitigate adverse impacts such facilities may create, including, but not limited to, the following impacts: visual, environmental, historical, flight corridors, health, safety and prosperity.
- B. Reduce adverse impacts on environmentally sensitive areas, historically significant locations, health and safety by injurious accidents to persons and property, and prosperity through protection of property values.
- C. Promote co-location when co-location minimizes the adverse impacts listed in A and B above.
- D. Permit the siting of facilities on new ground mounted structures only where all other reasonable siting opportunities have been exhausted, and encourage the siting of facilities, whether on new structures or existing, in a way that minimizes the adverse impacts of the facilities.
- E. Require use of existing structures whenever possible.
- F. Require that facilities be constructed and maintained safely.
- G. Provide for the removal of abandoned facilities, including a mechanism for the Town to remove these abandoned facilities at the facility owner's expense to protect the citizens from imminent harm and danger.

## 2. Definitions

Antenna — Shall mean any exterior apparatus designed for telephonic, radio, television, personal communications (PCS), paper network, or any other communications through the sending and/or receiving of electro-magnetic waves Of any bandwidth.

Co-Location — Shall mean locating wireless facilities of more than one company on One location.

Equipment Shelter — An enclosed structure, cabinet, shed, vault, or box near the base of a wireless telecommunication facility within which are housed equipment for those facilities such as battery and electrical equipment.

Fall Zone — The area on the ground within a prescribed radius from the base of a wireless telecommunications facility. The fall zone is the area within which there is a potential hazard from falling debris (such as ice), collapsing material or the collapse of the tower itself.

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.

Innovative Siting Techniques — Antennas which are mounted on the roof, or side of a structure, 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 the antennas.

Wireless Telecommunications Facilities — Shall mean any facility which provides commercial mobile wireless services and common carrier wireless exchange access services, as described by Section 332 of the Telecommunications Act of 1996.

RFR — Shall mean Radio Frequency Radiation.

Scenic Road — Shall mean a road that has a scenic, natural, cultural or historic qualities.

Scenic Vista — Shall mean any open area that is visible from public roads, recreational areas, or abutting properties.

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, or monopole towers.

### 3. Applicability

The terms of this Ordinance and the Site Plan Review Regulations shall apply to all wireless telecommunications facilities proposed to be located on property within the Town of Thornton, on privately owned property and on property that is owned by any other governmental entity that that acts in its proprietary capacity to lease such property to a carrier.

A. All applications are subject to A Site Plan Review by the Thornton Planning Board in accordance with the terms of this Ordinance and Thornton Site Plan Review Regulations and are subject to approval by the Thornton Board of Selectmen.

B. All requests for a variance must go before the Zoning Board of Adjustment.

#### 4. District Regulations

Location: Wireless telecommunications facilities shall be permitted in all Zoning areas except as restricted by this Ordinance. Applicants seeking approval for a wireless telecommunications facility shall first evaluate existing structures for the siting of the facility. Only after finding that there are no suitable existing structures a provider propose a new ground mounted facility.

Existing Structures Policy: Wireless telecommunications facilities shall be located on existing structures including, but not limited to, buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that installation preserves the character and integrity of those structures.

Existing Structures Burden of Proof: The applicant shall have the burden of proving that there are no existing structures that are suitable to locate its wireless telecommunications facility. To meet that burden, the applicant shall take all of the following actions to the extent they are applicable:

A. The applicant shall submit to the Planning Board a list of all contacts made with owners of potential sites regarding the availability of potential space for a wireless telecommunications facility.

If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact the property owner {s} of those structures.

B. The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures who was contacted.

C. If the applicant claims that a structure is not capable of physically supporting a wireless telecommunications facility, this claim must be certified by an independently licensed professional structural engineer hired by the Town of Thornton and paid for by the applicant.

Ground Mounted Facilities Policy: If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted telecommunications facilities shall be designed so as to

be camouflaged to the greatest extent possible, including, but not limited to, the use of compatible building materials and colors, screening, landscaping, and placement within trees.

Locations for Ground Mounted Facilities: Grounded mounted wireless telecommunications facilities shall be not be permitted:

- A. within residential zones
- B. within the building setbacks designed in the Town's Zoning Ordinance for town or state roads for the zoning district in which the facility is located plus the Fall Zone area plus 100'within 100 feet of town or state roads plus the "fall zone" (125% of the height of the facility, including any antennas or other appurtenances).
- C. within 250 feet of a scenic road or sited in a manner which is readily visible from a scenic road or vista.

#### 4. Use Regulations

All wireless telecommunications facilities shall, in all cases, require a building permit and a Wireless Telecommunications Facility Permit issued by the Board of Selectmen and may be permitted as follows:

- A. Existing Tower Structures: Subject to the issuance of a building permit that includes to the determination that the height of the mount is not increased, a security barrier exists, the area of security barrier is not increased and the siting is consistent with the standards set forth in Section 6. Carriers may locate a wireless telecommunications facility on any guyed tower, lattice tower, mast or monopole in existence prior to the adoptions of the Ordinance, or on any wireless telecommunications facility previously approved under the provisions of this Ordinance so long as the co-location complies with the approved site plan. This provision applies only so long as the height of the mount is not increased, a security barrier already exists and the area of the security barrier is not increased. Otherwise, a full Site Plan Review is required.
- B. Reconstruction of Existing Tower Structures: An existing guyed tower, lattice Tower, mast or monopole in existence prior to the adoption of this Ordinance may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Ordinance are met and so long as this (20) foot increase in height does not cause-a facility previously existing to exceed the tree canopy by more than 25 feet in height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community. Site Plan Review is required.

C. Existing Structures: Subject to the provisions of this Ordinance and Site Plan Review and except as otherwise prohibited under Section 6C, a carrier may locate a wireless telecommunications facility on an existing structure, building, utility tower or pole or water tower.

D. Ground Mounted Facility: A wireless telecommunications facility involving construction of a ground mount shall require Site Plan Review and be subject to the provisions of this Ordinance.

## 5. Dimensional Requirements

All wireless telecommunications facilities shall comply with the following requirements. These requirements shall supersede any and all other applicable standards found elsewhere in the Thornton Zoning Ordinance and Regulations that are less strict.

A. Maximum Height: In no case shall a wireless telecommunications facility exceed 100 feet. The Planning Board will consider a 15-foot extension provided that the applicant can demonstrate the technical necessity of such extension and provided that the performance and design standards of Section 6 are met. The applicant will pay for the town to hire an independent qualified radio frequency engineer to substantiate the applicant's claim of technical necessity. Technical considerations include, but are not limited to, the availability of alternative sites, co-location and improved reception and coverage within the Town. The Planning Board shall not grant the extension for any siting within scenic vistas designated by the Planning Board.

B. Height, Existing Structures and Utility Poles: Carriers that locate new wireless telecommunications facilities on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers lattice towers, masts and monopoles may be permitted with no increase in height.

C. Height, Other Existing Structures: The height of a wireless telecommunications facility shall not increase the height of a structure unless the facility is completely within a flagpole, steeple, or chimney. The increase in height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a wireless telecommunications facility on a building that is legally non-conforming with respect to height, provided that the provisions of this Ordinance are met.

D. Setbacks-All wireless telecommunications facilities and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.

E. Fall Zone for Ground Mounted Towers: In order to ensure public safety, the minimum distance from the base of any ground-mount of wireless telecommunications facilities to any property line, public road, habitable dwelling, business or institution, or public recreational area shall be, at a minimum, equal to 125% of the height as defined in this Ordinance.

## 6. Performance and Design Standards

In order to preserve the character of the existing developed and natural environments within the Town of Thornton, and to minimize and detrimental visual impact that wireless telecommunications facilities might have, all wireless telecommunications facilities will adhere to the following requirements:

A. Towers shall be located on sites where the grade/slope and tree cover of the site and surrounding land can be used to decrease any adverse visual impacts.

1. Wireless telecommunications facilities shall not be located within open areas that are visible from public roads, designated scenic vistas or abutting properties.

2. Wireless telecommunications facilities shall not be visible above the ridge line from public roads, recreational areas, designated scenic vistas or abutting property.

B. The design of the towers, ground mounts, antennas, 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 background and surrounding environment.

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 closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible. To the extent that any component of a wireless telecommunications facility extends above the height of the vegetation immediately surrounding it, shall be of a color which blends with the background or surroundings, including guy wires.

Wireless telecommunications facilities which are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

D. The mounts of the wireless telecommunications facility shall be lighted only if required by the Federal Aviation Administration (FAA) or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candles measurements at the property line shall be 0.0 initial foot candles.

- E. Towers or ground-mounted facilities shall be landscaped with a buffer of plant materials that effectively screens the view of the facilities from adjacent properties and public roads.

The carrier shall provide and maintain a vegetative buffer at least as tall as the fence, 360 degrees surrounding the facility including the security fence, a minimum twenty-five (25) feet deep starting at the fence. The barrier shall be in keeping with the surrounding vegetation and shall effectively screen the facility 365 days of the year.

Existing mature tree growth, natural vegetation and natural landforms on the site shall be preserved to the maximum extent possible.

The vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying, present a hazard to persons or property, or as approved during the Site Plan Review.

- F. In the interest of public safety, towers shall not contain any permanent or temporary signs, writing, symbols or other graphic representation of any kind except as needed to identify the property and the owner and warn of any danger. All signs shall comply with requirements of the Thornton Sign Ordinance.
  - G. Towers shall be enclosed by security fencing located inside the landscaped buffer. The fencing shall be at least 8 feet in height and equipped with appropriate anti-climbing devices.
  - H. Equipment shelters shall be located in underground vaults; or the shelters shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the wireless telecommunications facility; or
- 1 , Equipment shelters shall be camouflaged behind an effective year-round landscape buffer equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing an/or landscape buffer that is compatible with the neighborhood; or

2. If mounted on a roof top, the equipment shelter shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.
  3. All utilities to the site from existing utilities shall be underground.
- I. Security Barrier: A security barrier is required for all wireless telecommunications facilities.
  - J. Access for motorized vehicles to sites where wireless telecommunication facilities are located shall conform to the State or Town requirements relating to driveways. Access from a State road requires a DOT Driveway Permit; Access from a Town road requires a Town Driveway Permit.

Existing entrances and driveways to serve a wireless telecommunication Facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact.

Install a curve in the driveway, close to the state or town road, so that the wireless telecommunication facility is not visible from the corridor.

New driveways to serve a wireless telecommunications facility shall not exceed twelve feet in width. A 1 % crushed gravel surface is required.

All driveways, either new or existing, shall be gated just after the curve.

- K. Any antenna array placed upon an existing or proposed ground mount, utility pole or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount unless the Planning Board finds a larger antenna array does not materially impair the visual of the siting.
- L. All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under 4B.
- M. No hazardous waste shall be discharged on the site of any wireless telecommunications facility. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten per cent (110%) of the volume of the hazardous materials stored or used on the site.



- N. Wireless telecommunications facilities shall not generate noise in excess of that permitted under the Site Plan Review Regulations.
- O. Radio Frequency Radiation (RFR) Standards: All Equipment proposed for a wireless telecommunications facility shall be fully compliant with FCC Guidelines for Evaluating the Environmental Effects of Radio Frequency (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.
- P. To ensure the safety and structural integrity of wireless telecommunications facilities and antennas, the owner of a facility shall certify that it is constructed and maintained in compliance with standards contained in applicable local building codes and the applicable standards of wireless telecommunications facilities that are published by the Electronic Industries Association, as amended from time to time. The owner of the facility shall initially provide proof of structural integrity by report of a structural engineer licensed in New Hampshire and thereafter shall provide certifying reports to the town every five

(5) years. All facilities shall be designed and operated in a manner that minimizes the risk of igniting a fire or intensifying one that otherwise occurs. The Town of Thornton reserves the right to have the Campton/Thornton Fire Chief, or at the expense of the owner of the facility, contract with a structural engineer licensed in New Hampshire of their choice, inspect the facility yearly. If, upon inspection, the Town concludes that a facility fails to comply with such codes and standards constitutes a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have thirty (30) days to bring such facility into compliance within thirty (30) days such action shall constitute grounds for the removal of the facility in accordance with Section 8 at the owners expense through execution of the posted security required by Section 7.

- Q. All wireless telecommunications facilities must meet or exceed current standards and regulations of the Federal Aviation Authority (FAA), the Federal Communications Commission (FCC), and any other agency of the federal government with the authority to regulate facilities and antennas. If such standards and regulations are changed, then the owners of the facilities governed by the Ordinance shall bring such facilities 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 facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the facilities in accordance with Section 8 and at the owner's through expense the execution of the posted security by Section 7.

- R. A full written disclosure of all materials in the sealed transmitters located at the base of the tower must be submitted. The applicant must pay for any training required in handling any potential problem created by any hazardous materials in the transmitter.

## 7. Monitoring and Maintenance

- A. The owner of the facility shall maintain the wireless telecommunications facility in good condition. Such maintenance shall include, but shall not be limited to, painting structural integrity of the mount and security barrier, and maintenance of the buffer and landscaping.
- B. As part of the issuance of the Site Plan approval or building permit, the owner shall agree that the Town of Thornton may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town of Thornton shall provide reasonable notice to the carrier and landowner and provide them the opportunity to accompany the Town Representatives when the measurements are conducted.
- C. Recognizing the hazardous situation presented by abandoned and unmonitored Wireless telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned the facility owner is unwilling or unable to maintain the facility in accordance with section 8. The amount of the security shall be based upon the removal cost plus fifteen (15%), provided by the applicant and certified by an independent professional civil engineer licensed in New Hampshire every five (5) years from the date of the Planning board's approval of the site plan. If the cost has increased more than fifteen percent (15%) then the owner of the facility shall provide additional security in the amount of the increase. It shall be a condition of any approval granted under this ordinance that the name and address of the facility owner shall be accurately reported to the Town at all times during the life of the facility. All transfers of ownership shall be reported in to the Town before such transfers occur.

## 8. Abandonment or Discontinuation of Use

- A. Notification: At such time that a carrier plans to abandon or discontinue operation of a wireless telecommunications facility, such carrier will notify the Town by certified U.S. Mail of the proposed date of abandonment or discontinuation of operations.

- B. Such notice shall be given no less than thirty (30) days prior to abandonment of operations.
- C. Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the wireless telecommunications facility within ninety (90) days from the date of abandonment or discontinuation of use. This shall include, but not be limited to:
  - 1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.
  - 2. Proper disposal of the waste materials from site in accordance with local and state solid waste disposal regulations.
  - 3. Restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain in the after-condition.
- D. If the owner of the facility does not remove the facility upon the Board of Selectmen's order, the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is no removed within ninety (90) days, the Town may execute the security to pay for this action. The carrier shall be fined \$100 per day starting on the 91<sup>st</sup> day after declaration until the facility is removed.

## 9. Application Procedure

- A. Application to erect wireless telecommunications facilities in Thornton shall be made to the Planning Board of the Town of Thornton and will be subject to a Site Plan Review. If approved, the Planning Board will make recommendations to the Board of Selectmen to issue a Wireless Telecommunications Facility Permit.
- B. The applicant shall contain a scaled plan including a scaled elevation view, surrounding topography , surrounding tree cover and natural vegetation, radio frequency coverage, setbacks, fall zone, design of the facility and construction materials, design characteristics that will avoid visual obtrusiveness, landscaping, fencing, parking access roads, adjacent uses and any other information the Planning Board deems necessary to assess compliance with this Ordinance.

In addition, the applicant shall provide the following information:

1. The applicant shall submit written proof that the proposed use/facility complies with FCC regulations on radio frequency (RF) exposure guidelines.
2. The applicant shall submit written proof of legal authority to use the proposed site.
3. The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirement of the National Environmental Impact Statement (EIS) is required under the FCC Rules and NEPA, submission of the EA or EIS to the Planning Board prior to the beginning of the federal 30 day comment period and the Town process, shall become part of the application requirements.
4. Each applicant for a facility shall provide to the Planning Board an inventory or its existing facilities that are within the jurisdiction of Town and those within two (2) miles of the border thereof, including specific information about the location height, design of each facility as well as economic and technological feasibility for co-location on the inventoried facilities. The Planning Board may share such information with other applicants applying for approvals of conditional use permits under this Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, that the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
5. Each applicant for a facility shall provide a list of additional towers which may be required in Thornton for completion of their planned wireless telecommunications coverage.

C. If the applicant is proposing to build a tower or other ground mounted structure,

the applicant shall submit written evidence demonstrating why no structure can accommodate the applicant's proposed facility. This evidence must be substantial and can accommodate the applicant's proposed facility. This evidence must be substantial and can address such issues as location within required geographic area required height, electromagnetic interference, unreasonable financial requirements etc.

D. The applicant proposing to build a tower or ground mounted structure shall submit an agreement with the Town that allows for co-location of additional facilities upon the new structure by a future applicant to the extent such co-location of additional facilities upon the new structure by a future applicant to the extent such co-location can exist while minimizing adverse impacts noted. This statement shall, at a minimum, require the applicant to supply available co-

location for reasonable fees and costs to other telecommunications providers. Failure to provide such an agreement is grounds for Denial.

- E. The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Planning board may have any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitation and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant.

## 10. Waivers

- A. Where the Zoning Board of Adjustment finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the terms of Section 4, or that the purpose of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The Zoning Board of Adjustment 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 or injurious to other property and will promote the public interest,
  - 2. The waiver will not, in any manner, be inconsistent with the provisions of the Thornton Zoning Ordinance or the Thornton Master Plan.
  - 3. Such waiver (s) will substantially secure the objectives, standards, and requirements of these regulations.
  - 4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver.
- B. In approving waivers, the Zoning Board of Adjustment may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
- C. A petition for any such waiver shall be submitted in writing by the applicant with the application for Zoning Board of Adjustment review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit a petition in writing shall require automatic denial.

## 11. Enforcement

Enforcement of this section shall be in accordance with Chapter 676 of the New Hampshire Revised Statutes Annotated and the Thornton Zoning Ordinance.

## 12. Saving Clause

If any provision of this Ordinance is found to be unenforceable or unlawful by a Court of competent jurisdiction, the Ordinance shall be considered savable and such a finding shall not be construed to invalidate the remainder of the Ordinance.