

**Telecommunications Facility
Ordinance**

Piermont, NH

Adopted March 9, 1999

Piermont Telecommunications Facility Ordinance

I. AUTHORITY

This ordinance is adopted by the Town of Piermont on March 9, 1999 in accordance with the authority granted in New Hampshire RSA 674:16 and 674:21 and procedurally under the guidance of RSA 675:1, II.

II. PURPOSE AND GOALS

This ordinance is enacted in order to establish general guidelines for the siting of telecommunications towers and antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of Piermont to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities by enhancing the ability of providers of 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, environmentally 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 collocation and minimal impact siting options through an assessment of technology, current location options, future available locations, innovative siting techniques and siting possibilities beyond the political jurisdiction of the Town.
- D. Permit the construction of new towers only where 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 impact of the towers and antennas.
- E. Require cooperation and collocation to the highest extent possible between competitors in order to reduce the cumulative negative impacts upon the Town.
- F. Provide constant maintenance and safety inspections for any and all facilities.

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- 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 and to improve the visual appearance of the site.
- H. Provide for the removal or upgrade of facilities that are technologically outdated.

III. APPLICABILITY

Telecommunications facilities shall not be considered infrastructure, essential services or public services, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunications facilities is a use of land and is addressed by this Article.

IV. DEFINITIONS

"Alternative tower structure"

Innovative siting techniques that shall mean 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"

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.

"FAA"

Federal Aviation Administration

"FCC"

Federal Communications Commission

"Height"

The vertical distance of any tower or other structure measured from

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

"Board"

Piermont Zoning Board of Adjustment

"Preexisting towers and antennas"

Any tower or antenna lawfully constructed and permitted prior to the adoption of this ordinance. Also any tower or antenna lawfully constructed in accordance with this ordinance that predates an application currently before the Board.

"Telecommunications facilities"

Any structure, tower, antenna, access road or other device which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), personal communications services (PCS) and common carrier wireless exchange access services.

"Tower"

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

V. APPROVAL REQUIRED

No permit for the development of a telecommunications facility shall be granted without the applicant first receiving a Special Exception from the Zoning Board of Adjustment. Prior to granting such approval, the Board shall also make affirmative findings for each of the following criteria:

- A. Yard Requirements - Equipment, buildings, guy wires and other structures shall conform to the minimum front, side and rear setbacks for the District in which they are to be located. Towers must be set back a distance equal to 125% of the height of the tower from all property lines;

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- B. Height Limitations - The height limit for equipment buildings or similar structures shall not exceed 24 feet. The height limit for antennas and towers shall not exceed 100 feet above ground elevation at the base of the structure;
- C. Lighting - No lighting shall be permitted on antennas or towers except as may be specifically required by FAA regulations or where deemed necessary by the Board. All lighting incidental to that required above shall be shielded to minimize glare and, to the extent reasonable, shall be directed downward and inward towards the facility and not towards neighboring properties;
- D. Bulk, Height and Glare - All antennas and towers shall be constructed in such a manner as to minimize height, mass and guy wire supports. Materials utilized for the exterior of any structure shall be of the type, style and location so as to minimize glare and result in the least visual impact from public vantage points and abutting properties;
- E. Screening - Screening shall be required at the perimeter of the facility located 10 feet outside of the security fencing unless it can be demonstrated that natural foliage is adequate. A planted or natural vegetative screen shall be a minimum of 10 feet in depth with a minimum height of 6 feet and shall have a potential to grow to a height of at least 15 feet at maturity. Existing on-site vegetation outside the site of the facility shall be preserved or improved. Disturbance of existing topography shall be minimized, unless such disturbance would result in less visual impact of the facility from surrounding properties and areas;
- F. Security Fencing - Facilities shall be enclosed by security fencing not less than 6 feet in height and shall also be equipped with an appropriate anti-climbing device;
- G. Collocation - The principal of collocation shall be employed, where feasible, to minimize the number of towers necessary to transmit or receive legally authorized signals. This shall impose a burden upon the applicant to demonstrate that there are no existing towers which are suitable to the applicant's needs despite a due diligence search,

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and that if such a tower does exist, that it is either technically inadequate or that the owner, after a process of good faith negotiation, will not allow collocation. It shall be the burden of the applicant to perform a minimal analysis of technical feasibility. The applicant shall permit other wireless service providers to collocate on the proposed tower subject to reasonable terms and conditions. Notwithstanding, there shall be no affirmative obligation on the applicant to increase the height or width of the proposed tower in order to accommodate the equipment or facilities of another potential user; nor shall the applicant be required to engineer the tower to accommodate another potential user. The applicant shall provide evidence in writing on how they intend to comply with this requirement and to provide copies of any such proposed agreements;

- H. Access Roads and Above Ground Utilities - Where new wireless communication facilities require construction of, or improvement to, access roads, to the extent practicable, roads shall follow the contour of the land and shall be constructed or improved within existing forest or forest fringe areas and not in open fields. Utility or service lines shall be designed and located so as to minimize or prevent disruption of the scenic character or beauty of the area;
- I. Tower Appearance - Towers shall not contain any permanent or temporary signs, writing, symbols or graphic representations of any kind. Towers shall also have a galvanized steel finish, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual impact;
- J. Federal Requirements - All towers must meet current standards and regulations of the FAA, FCC and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then 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 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

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standards and regulations shall constitute grounds for the removal, in accordance with Section IX, of the tower or antenna as abandoned, at the owner's expense through the execution of the posted security;

- K. Safety Standards - To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that is maintained in compliance with standards for towers that are published by the Electronic Industries Association, as amended from time to time. If the Town concludes that the tower fails to comply with such 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 full compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and is grounds for the removal of the tower, , in accordance with Section IX, at the owner's expense through execution of the posted security.

VI. APPLICATION AND APPROVAL REQUIREMENTS

As required under this Section, an applicant shall include in the application at least the following information:

- A. Name and address of the record owner of the subject property and any duly appointed agents of the owner;
- B. Names and addresses of the record owners of all abutting properties;
- C. A description of the proposed development;
- D. Maps and plans of the subject property, prepared, stamped and signed by an engineer or land surveyor licensed and registered in New Hampshire, drawn to scale and showing the following:
 - 1. The location of the site and proposed structures, utility lines and access roads on a USGS Topographic Map;
 - 2. A plan showing proposed structures, utility lines, access roads, setbacks, parking, fencing, landscaping, approximate average height and nature of existing vegetation within 50 feet of the

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proposed tower location, adjacent uses within 200 feet of the fenced area and any other information deemed necessary by the Board to access compliance with this ordinance;

3. An overlay plan showing radio frequency coverage and tower height requirements;
- E. Written proof that the proposed use and facility complies with the FCC regulations on radio frequency (RF) exposure guidelines;
- F. Written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirement;
- G. An inventory of the owner/applicant of their existing towers and facilities 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 collocation on the inventoried towers. The Board may share such information with other applicants or organizations seeking to locate antennas within the jurisdiction of the Town, provided, however, that the Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable;

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. This evidence can consist of any or all of the following:

1. Substantial evidence that no existing towers or structures are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.

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2. Substantial evidence that existing towers are not of sufficient height to meet the applicant's engineering requirements, and why.
 3. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.
 4. Substantial evidence that the applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause similar interference with the applicant's proposed antenna.
 5. 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.
 6. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
- H. The applicant proposing to build a new tower, shall submit an agreement with the Town that provides for the maximum allowance of collocation upon the new structure. Such statement shall become a Condition of Approval. This statement shall, at a minimum, require the applicant to supply available collocation for reasonable fees and costs to other 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 Piermont, and grounds for a Denial.

VII. VERIFICATION OF DATA

The Board may hire a consultant to review and verify any data or engineering information submitted by the applicant detailing the size and coverage required for the facility location or any claims made by the applicant regarding technological limitations and feasibility for

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alternative locations. Cost for this review shall be borne by the applicant.

VIII. BONDING AND SECURITY AND INSURANCE

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the 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 IX. Bonding and surety shall be consistent with the provision in the Piermont Subdivision Regulations. Furthermore, the Board shall require the submission of proof of adequate insurance covering accident or damage.

IX. 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. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, properly warned and noticed, with notice to abutters and the last known owner/operator of the tower. If the abandoned tower is not removed within the 90 days the Town may use the security to pay for the cost of removing the tower. In the event the security is not sufficient, the owner shall reimburse the Town for the total amount of all expenses incurred over and above the security amount. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.