

An Ordinance Regulating Wireless Telecommunications Facilities (Webmaster's note – Town of Duxbury posted 8/02)

1.1 Title

This Ordinance shall be known as the Wireless Telecommunications Facilities Ordinance of the Town of Duxbury. Wireless Telecommunications Facilities shall include all wireless telecommunications service providers, licensed and/or regulated by the Federal Communications Commission, and associated equipment and buildings.

1.2 Purposes

The purpose of this bylaw is to protect the public health, safety and general welfare of the Town of Duxbury while accommodating the communication needs of residents and businesses. This bylaw shall:

- A. Preserve the character and appearance of the Town of Duxbury while allowing adequate wireless telecommunications services to be developed.
- B. Protect the scenic, historic, environmental, and natural resources of the Town of Duxbury.
- C. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of adequate wireless telecommunications facilities and towers.
- D. Minimize tower and antenna proliferation by requiring the sharing of existing communications facilities, towers and sites where possible and appropriate.
- E. Facilitate the provision of adequate wireless telecommunications services to the residences and businesses of the Town of Duxbury.
- F. Minimize the adverse visual effects of towers through careful design and siting standards.
- G. Encourage, through performance standards and incentives, the location of towers and antennas in non-residential areas and away from other sensitive areas such as schools, hospitals and childcare facilities.

1.3 Authority

Under authority granted in 24 V.S.A. § 2291(19) and 24 V.S.A. Chapter 59, the Selectboard of the Town of Duxbury hereby adopts the following civil ordinance concerning wireless telecommunications facilities. Under this Ordinance, the Duxbury Selectboard is authorized to review, approve, conditionally approve, and deny applications for wireless telecommunications facilities, including sketch, preliminary and final plans, decommissioning or dismantling, and installation. Pursuant to 24 V.S.A. § 4407, the Selectboard is authorized to hire qualified persons to conduct an independent technical review of applications and to require the applicant to pay for all reasonable costs thereof. Additional costs, at the applicant's expense, may include the Selectboard hiring a facilitator to assist the Selectboard in coordinating all the information necessary for review of the application.

1.4 Consistency With Federal Law

In addition to other findings required by this ordinance, the Board shall find that its decision regarding an application is intended to be consistent with federal law, particularly the Telecommunications Act of 1996. The ordinance does not:

- A. Prohibit or have the effect of prohibiting the provision of personal wireless services;
- B. Unreasonably discriminate among providers of functionally equivalent services; or
- C. Regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

1.5 Definitions

[See Glossary of Telecommunications Terms included with this packet .]

1.6 Permitted and Prohibited Locations

Wireless telecommunications facilities or towers or facilities may be permitted upon compliance with the provisions of this ordinance in the following zoning districts of the Town of Duxbury: Timber and Wildlife Management, Forest-Recreation, Village and State Farm Districts, and Rural-Agricultural I or II. They shall not be permitted in the Ecological Reserve Lands as consistent with the Duxbury Town Plan. Additionally, telecommunications towers or facilities may not be located in any of the following locations:

- A. Within 100' of a State or Federally designated wetland.
- B. The habitat of any State listed Rare or Endangered Species.
- C. Within 500' horizontally from any Historic District or property eligible to be listed on the Federal Historic Register.
- D. Closer than 100', plus the height of the facility, horizontally to the boundary of the property on which the tower is located.
- E. Closer than 1,000' horizontally to any structure existing at the time of the application which is the property of any school.
- F. Closer than 50' plus the height of the facility, the likely fall zone, horizontally to any structure existing at the time of the application which is used as either a primary or secondary residence or to any other building.
- G. Within 200' horizontally of any river or perennial stream.
- H. Within 500' horizontally of any known archeological site.
- I. Within 2,000' horizontally of a designated scenic road or highway
- J. Due to the changes in technology, the Selectboard may consider changes to the setback requirements, but is not required to change requirements, with supporting documentation from the appropriate professionals of the applicant and the Selectboard's consultants.

1.7 Small Scale Facilities

The placement of a personal wireless telecommunications antenna and/or tower for personal use on existing buildings, structures, roofs, or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be approved by the Selectboard, provided the antennas meet the applicable requirements of this ordinance, upon submission of:

- A. A final site and building plan.

The Selectboard may consider and may approve installations for personal non-commercial uses that do not meet the restrictions set above if the Selectboard determines that the project will not unduly effect the surrounding property and neighborhood.

1.8 Application Requirements

An applicant for a permit must be a personal wireless service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Selectboard at the time of that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.

No construction, alteration, modification (including the installation of antennas for new uses) or installation of any personal wireless services wireless telecommunications tower or facility shall commence without a conditional use permit first being obtained from the Selectboard.

Information required in the Town of Duxbury, applicants for telecommunications towers or facilities shall include the following supplemental information:

- A. The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
- B. The name, address and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.
- C. The names and addresses of the record owners of all abutting property.
- D. A report from the appropriate qualified engineers that:

- i. Describes the facility height, design and elevation. *[a structural engineer for this section.]*
- ii. Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas.
- iii. Describes the tower's proposed capacity, including the number, height and type(s) of antennas that the applicant expects the tower to accommodate.
- iv. In the case of new tower proposals, demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within the Search Area of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the Town of Duxbury. The documentation shall include, for each facility site or proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.
- v. Demonstrates that the applicant has analyzed the feasibility of using "repeaters" or micro-cells in conjunction with all facility sites listed in compliance with Section 1.9 . D. v (above) to provide coverage to the Town of Duxbury-
- vi. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage.
- vii. Describes the output frequency, number of channels and power output per channel for each proposed antenna.
- viii. Includes a written five-year plan for use of the proposed telecommunications facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town. If the applicant is unable to provide a five-year plan, than a full explanation of what is needed now and what is likely in the near future for the use of the proposed facility.
- ix. Demonstrates the tower's compliance with the municipality's structural standards and setbacks for towers and support structures.
- x. Provide assurance that at the proposed site the applicant will establish and maintain compliance with all FCC rules and regulations, particularly to radio frequency exposure. The Selectboard may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards and requirements on an annual basis at unannounced times.
- xi. Includes other information required by the Selectboard that is necessary to evaluate the request.
- xii. Includes an engineer's stamp and registration number where appropriate.
- E. A letter of intent committing the tower owner and his or her successors to permit shared use of the tower if the additional user agrees to meet reasonable terms and conditions for shared use.
- F. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.
- G. To the extent required by the National Environmental Policy Act (NEPA) administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
- H. A copy of the application or draft application for an Act 250 permit, if applicable.
- I. A written five-year plan for the utilization of the proposed facilities. This plan should include justification for capacity in excess of immediate needs, as well as plans for further development within the Town.

The permit application shall be signed under the pains and penalties of perjury.

1.9 Site Plan Requirements

In addition to site plan requirements found in the Town of Duxbury's Zoning Bylaws/Subdivision Regulations/Master Plan, site plans for telecommunications facilities shall include the following supplemental information:

- A. Location Map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two-mile radius of the proposed facility site.
- B. Vicinity Map showing the entire vicinity within a 2500-foot radius of the tower site, including the telecommunications facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights of way needed for access from a public way to the facility.
- C. Proposed site plans of the entire development indicating all improvements including landscaping, utility lines, guy wires, screening and roads.
- D. Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.
- E. Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening. **Note:** If the final structure does not resemble the photo simulations and representations of the applicant solely in the opinion of the Selectboard, then the permit shall be considered null and void and the structure shall be removed. The structure shall not be used during any litigation.
- F. In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
- G. Construction sequence and time schedule for completion of each phase of the entire project.

Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet.

1.10 Collocation Requirements

An application for a new wireless telecommunications facility shall not be approved unless the Selectboard finds that the facilities planned for the proposed tower cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

- A. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
- B. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.
- C. The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create excessive radiofrequency exposure.
- D. Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.
- E. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- F. There is no existing or approved tower in the area in which coverage is sought.
- G. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally, and in all other respects to accommodate both the applicant's antennas and additional antennas when overall permitted height allows.

1.11 Access Roads and Above Ground Facilities

Where the construction of new telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land, and be constructed or improved within 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 to the scenic character or beauty of the area. The Town may require closure of access roads to vehicles following tower construction where it is determined that site conditions warrant the same and where maintenance can reasonable access the tower site on foot..

1.12 Tower and Antenna Design Requirements

Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for its intended use and public safety.

- A. Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth design, including those which imitate natural features, shall be required in all locations
- B. In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall be not more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Selectboard that the additional height is necessary in order to provide adequate coverage in the Town of Duxbury or to accomplish collocation of facilities, provided that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
- C. Towers, antennas and any necessary support structures shall be designed to avoid having an undue adverse impact aesthetic impact on prominent ridgelines and hilltops. In determining whether a tower's aesthetic impact would be undue and adverse, the Board will consider:
 - i. the period of time during which the proposed tower would be viewed by the traveling public on a public highway;
 - ii. the frequency of the view experienced by the traveling public;
 - iii. the degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
 - iv. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
 - v. the distance of the proposed tower from the view point and the proportion of the facility that is visible above the skyline;
 - vi. the sensitivity or unique value of a particular view affected by the proposed tower;
 - vii. significant disruption of a viewshed that provides context to a historic or scenic resource.

The Selectboard shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. Furthermore, the Board may designate an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's communication objectives.

- D. All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than the height of the tower, including antennas and other vertical appurtenances.
- E. Ground mounted equipment or antennas as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted or vegetative screen shall be a minimum of ten feet in depth with a minimum height of six

feet and shall have the potential to grow to a height of at least 15 feet at maturity. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

1.13 Amendments to Existing Wireless Telecommunications Facility Permit

An alteration or addition to a previously approved wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

- A. Change in the number of buildings or facilities permitted on the site;
- B. Addition or change of any equipment resulting in greater visibility or structural windloading, or additional height of the tower, including profile of additional antennas, not specified in the original application.

1.14 Tower Lighting and Signage; Noise Generated by Facility

No lighting of towers is permitted, In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Heights may be reduced to eliminate the need for lighting or another location selected.

No commercial signs or lettering shall be placed on a tower or facility. Signage shall be limited to that required by federal or state regulation.

Noise at the site perimeter from the operation of any machinery or equipment shall be minimized.

1.15 Antennas Mounted on Structures, Roofs and Walls, and on Existing Towers Governed by Section 1.10

The placement of wireless telecommunications antennas on existing buildings, structures, roofs, or walls (in conformance with section 1.2 of this bylaw) may be approved by the Selectboard, provided the antennas meet the requirements of this ordinance, upon submission of:

- A. A final site and building plan.
- B. A report prepared by a qualified engineer, licensed to practice in the State of Vermont, indicating the structure's suitability for the telecommunications facility, and that the proposed method of affixing the antenna to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.
- C. The Selectboard may hire experts at the applicant's expense to verify the applicant's information.

1.16 Temporary Wireless Communication Facilities

Any wireless telecommunications facility designed for temporary use is subject to the following:

- A. Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Town of Duxbury.
- B. Temporary telecommunications facilities are permitted for no longer than five days use during a special event.
- C. The maximum height of a temporary facility is 50 feet from grade.
- D. Temporary facilities must comply with all applicable portions of these regulations.

1.17 Continuing Obligations

Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding RFR, and provide the basis for his or her representations.

1.18 Tower Removal

Abandoned, unused, obsolete, or noncompliant towers and their facilities governed under this ordinance shall be removed as follows:

- A. The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Duxbury's Selectboard certifying the continuing safe operation of every facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.
- B. Abandoned or unused towers or facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Selectboard. In the event the tower or facility is not removed within 180 days of the cessation of operations at a site, the municipality shall notify the owner and may remove the tower and all associated facilities. Costs of removal shall be assessed against the property or tower owner.
- C. Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of cessation of operations at the site unless a time extension or negotiated solution is approved by the Selectboard. In the event the tower is not removed within 180 days of notification of such a violation, the municipality may remove the tower and all associated facilities. Costs of removal shall be assessed against the property or tower owner.
- D. An owner who has failed to file an annual declaration with the Administrative Officer by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.
- E. The Applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of Duxbury and acceptable to the Selectboard to cover the cost of removal of the telecommunications facility and remediation of the landscape, should the above clauses be invoked.

1.19 Maintenance Requirements

The Applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity and landscaping. In the event the applicant fails to maintain the the facility, the Town of Duxbury may undertake such maintenance at the expense of the applicant or landowner.

1.20 Insurance Requirements

The telecommunications facility owner shall maintain adequate insurance on all telecommunications facilities. All facility sites shall be properly fenced or protected .

1.21 Enforcement and Penalties

Any person who violates this Ordinance after it has been adopted shall be fined not more than fifty dollars for each offense, No action may be brought unless the alleged offender has had at least seven days' notice by certified mail that a violation exists. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of this Ordinance shall be paid to the Town of Duxbury.

1.22 Fees

Fees for filling an application under 1.7 shall be \$27.00 (Twenty-seven Dollars).

Fees for filing an application to build or alter a telecommunications facility shall be \$200.00 (Two Hundred Dollars). Additional fees may include the reasonable costs of an independent technical assessment(s) of the application that may be incurred during the review and permitting process. All recording costs for records to be recorded by the Town of Duxbury shall be in addition to this fee. Additional costs, at the applicant's expense, may include the Selectboard hiring a facilitator to assist the Selectboard in coordinating all the information necessary for review of the application.

1.23 Enforcing Agent

The Zoning Administrator shall be the agent to enforce the provisions of this ordinance.

1.24 Severability

If any portion of this bylaw is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this bylaw shall not be affected.

1.25 Appeals

All appeals will be directed to the Environmental Court.

1.26 Effective Date

This bylaw shall be effective on July 20, 2001

FEDERAL TELECOMMUNICATIONS ACT OF 1996 (Excerpt)

SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY.—Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

“(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

“(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

“(B) LIMITATIONS.—

“(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

“(I) shall not unreasonably discriminate among providers of functionally equivalent services;

and

“(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

“(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

“(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

“(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission’s regulations concerning such emissions.

“(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

“(C) DEFINITIONS.—For purposes of this paragraph—

“(i) the term ‘personal wireless services’ means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

“(ii) the term ‘personal wireless service facilities’ means facilities for the provision of personal wireless services; and

“(iii) the term ‘unlicensed wireless service’ means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v)).”.