

*The Waterbury Telecommunications Bylaws are
Article IX of the Zoning Ordinance*

ARTICLE IX

TELECOMMUNICATIONS FACILITIES

Section 901 Purpose

The purpose of this section shall be to regulate the placement, design, construction, removal, and modifications of wireless communication facilities so as to promote the economic viability of the Village and Town and to protect its historic, cultural, natural, and aesthetic resources.

Section 902 Consistency With Federal Law

These regulations are intended to be consistent with Section 704 of the 1996 Telecommunications Act. Accordingly, they shall not prohibit or have the effect of prohibiting the provision of personal wireless communication services; shall not unreasonably discriminate among providers of functionally equivalent services; shall not regulate personal wireless services based on the environmental effects of radio frequency emissions to the extent that these facilities comply with the Federal Communications Commission Regulations concerning such emissions.

Section 903 Permit Application Requirements

- (a) An applicant for a telecommunications tower or facility permit must be a telecommunications provider or must provide a copy of its executed contract to provide land or facilities to an existing telecommunications provider to the Zoning Administrator at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.
- (b) No permit for the development of a telecommunications tower or facility shall be granted by the Zoning Administrator without both Conditional Use Approval from the Zoning Board of Adjustment and Site Plan Approval from the Planning Commission. Telecommunications towers and facilities may be permitted as conditional uses in all districts except conservation. Telecommunications facilities are deemed to be structures, as defined and used in these bylaws; therefore they require site plan review. All proposed telecommunications facilities, whether new (non-colocated) or colocated, must be reviewed under the requirements of these bylaws.
- (c) In addition to information otherwise required in Section 301(b) and elsewhere in these bylaws, applicants for telecommunications towers or facilities shall include the following supplemental information in their filings for site plan approval:

- (1) Location Map. The location of the proposed structure on the most recent United States Geological Survey Quadrangle map, showing the area within at least a two-mile radius of the proposed tower site.
- (2) A map or sketch of the property proposed to be developed, professionally drawn to scale and with the area to be developed clearly indicated.
- (3) A report from qualified and licensed professional engineers that:
 - (A) Describes the facility height, design, and elevation.
 - (B) Documents the height above grade for all proposed mounting positions for antennas to be colocated on a telecommunications tower or facility and the minimum separation distances between antennas.
 - (C) Describes the tower's proposed capacity, including the number, height, and type(s) of antennas that the applicant expects the tower to accommodate.
 - (D) Documents steps the applicant will take to avoid interference with any established public safety telecommunications, and includes both an intermodulation study that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies.
 - (E) Describes existing coverage. In the case of new tower proposals, the applicant shall demonstrate that existing telecommunications facility sites and other existing structures within Waterbury, in abutting towns, and within a 30 mile radius of the proposed site cannot reasonably be modified to provide adequate coverage and/or adequate capacity to the Town of Waterbury.
 - (F) Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage, and provides a map that describes coverage of the existing and proposed facilities.
 - (G) Describes the output frequency, number of channels and power output per channel for each proposed antenna.
 - (H) 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 and Village.
 - (I) Demonstrates the tower's compliance with the municipality's setbacks for towers and support structures.
 - (J) Provides proof that at the proposed site the applicant will be in compliance with all FCC regulations, standards, and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards, and requirements regarding both radio frequency interference (RFI) and radio frequency radiation (RFR). The Commission may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards, and requirements on an annual basis at unannounced times. The Commission may allocate to the applicant those expenses incurred or authorized by it in retaining independent engineers to perform these evaluations.
- (4) Commitment to Share Space. 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, including compliance with all applicable FCC regulations, standards and requirements and the provisions of this bylaw.

- (5) Existing Structures. 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 (to be provided to the Zoning Administrator at the time an application is submitted).
 - (6) Environmental Assessment. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
 - (7) Act 250. A copy of the application or draft application for an Act 250 permit, if applicable.
 - (8) Vicinity Map. A 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. The map shall show the property lines of the proposed tower site parcel and all easements or rights of way needed for access from a public way to the tower.
 - (9) Proposed site plans of the entire development, professionally drawn to scale, showing all improvements including landscaping, utility lines, guy wires, screening and roads.
 - (10) Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.
 - (11) Where the proposed site is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
 - (12) Construction sequence and time schedule for completion of each phase of the entire project.
 - (13) Any additional information requested by the Planning Commission.
- (d) Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet. The permit application shall be signed under the penalties of perjury.

Section 904 Conditional Use Review Criteria

- (a) No telecommunications facility shall be erected, constructed, or installed without first obtaining a conditional use permit from either the Village or Town Zoning Board of Adjustment. A conditional use permit is required for new tower construction (or major modification of an existing tower) and for new telecommunications facilities (or major modification of existing facilities) to be mounted on a tower or structure.
- (b) In acting on the conditional use permit application, the Zoning Board of Adjustment shall proceed in accordance with Section 303 of the Bylaws of the Town and Village of Waterbury. Prior to granting such approval, the Board shall make affirmative findings for each of the criteria given in Section 303 of the bylaws.

Section 905 Project Requirements [Tower and Antenna Design Requirements]

(a) In addition to the site plan review criteria listed in Section 301, the Planning Commission shall consider the following additional review criteria:

- (1) 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 their intended use and public safety.
- (2) Bulk, Height, Glare. All telecommunications facilities, including towers, antennas and any necessary support structures shall be designed in such a manner as to minimize the visual impact of height, mass, and guy wire supports. Materials utilized for the exterior of any structure shall be of a type, color, and style so as to minimize glare and to blend into the surrounding environment, except in cases in which the Federal Aviation Authority, state or federal authorities have dictated color.
- (3) Height Limitations. 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 in all districts shall not exceed twenty (20) feet above the average height of the tree line within one hundred (100) feet of the base of the tower. Notwithstanding the above, additional height may be approved upon a finding by the Planning Commission that the additional height is necessary in order to provide adequate coverage, or to accomplish collocation as outlined in Section 1.7, and that the additional height will not have an undue visual impact on the scenic character or appearance of the area.
- (4) Setbacks and Fall Zones. All wireless communications facilities shall comply with the setback provisions of the zoning district in which the facility is located. There shall be no variances for fall zones except, if an existing structure such as a barn silo, church steeple, or utility pole is proposed as a mounting for a telecommunications tower, a fall zone shall not be required.
- (5) Landscaping and Screening. 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 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 (6) feet and shall have the potential to grow to a height of at least fifteen (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.
- (6) Lighting. Towers shall not be illuminated by artificial means and shall not display lights unless such lighting is specifically required by the FAA or other federal or state authority for a particular tower because of its height. Any lighting required solely as a result of height may be subject to review by the town. Heights may be reduced to eliminate the need for lighting or another location selected. All tower lighting shall be shielded to minimize glare and impact on neighboring properties.

- (7) Fencing and Signage. The area around the tower and communications equipment shall be completely fenced for security to a height of six (6) feet and gated. The use of razor wire is not permitted. A sign no greater than two (2) square feet stating the name of the facility's owner and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. In addition, "No Trespassing" or other warning signs and the federal tower registration plate, where applicable, may be posted on the fence or as required to meet federal requirements. No commercial signs or lettering shall be placed on a tower.
- (8) Noise. Noise at the site perimeter from the operation of any machinery or equipment shall be minimized.
- (9) Protection of Scenic Ridges and Hillsides. Towers shall, when possible, be sited off ridge lines and where their visual impact is least detrimental to scenic areas. In determining whether the proposed tower will have an undue adverse visual impact on the scenic beauty of a ridge or hillside, the Commission shall consider, among other things, the following:
 - (A) The period of time during which the proposed tower will be viewed by the traveling public on a public highway, public trail, or public body of water;
 - (B) The frequency of the view of the proposed tower by the traveling public;
 - (C) The degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;
 - (D) Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
 - (E) The distance of the tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
 - (F) The number of travelers or vehicles traveling on a public highway, public trail, or public body of water at or near the critical vantage point; and
 - (G) The sensitivity or unique value of the particular view affected by the proposed tower.

To assist the Planning Commission in its review, the Commission may require the applicant to fly or raise a three-foot diameter balloon at the maximum height of the proposed facility at a location within fifty (50) horizontal feet of the center of the proposed facility. The applicant shall provide photographs of the balloon test taken from at least four vantage points previously designated by the Commission.

The Commission may, at its sole discretion, waive any of the requirements of this subsection [(905(a)(9))] for the purpose of approving the development of a wireless communications facility utilizing innovative siting techniques that camouflage or conceal the presence of antennas or towers.

- (10) Access Roads and Above-Ground Utilities. Where new telecommunications facilities require construction of or improvement to access roads, to the extent practicable, roads shall follow the contours of the land. Access roads, when consistent with the purposes of this section and economically feasible, 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 to the scenic character or beauty of the area.

Section 906 Colocation Requirements

(a) An application for a new (non-colocated) telecommunications tower shall not be approved unless the Planning Commission finds that the telecommunications facilities planned for the proposed tower cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

- (1) 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.
- (2) 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 licensed to practice in the State of Vermont and such interference cannot be prevented at a reasonable cost.
- (3) The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create RFI in violation of federal standards or requirements.
- (4) The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create RFR in violation of federal standards or requirements.
- (5) 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 licensed to practice in the State of Vermont.
- (6) Aesthetic considerations make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- (7) There is no existing or approved tower in the area in which coverage is sought.
- (8) Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

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

Section 907 Amendments to Existing Telecommunications Facility Permit

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

- (1) A change in the number of buildings or facilities permitted on the site;
- (2) Changes in technology used by the telecommunications facility; or
- (3) An addition or change of any equipment or an increase in the height of the tower, including profile of additional antennas, not specified in the original application.

Section 908 Temporary Wireless Communication Facilities

(a) Any telecommunications facility designed for temporary use is exempt from the provisions above, but is subject to the following:

- (1) Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Town or Village of Waterbury.
- (2) Temporary telecommunications facilities are permitted for no longer than five days use during a special event.
- (3) The maximum height of a temporary facility is fifty (50) feet from grade.
- (4) Temporary facilities must comply with all applicable portions of these regulations.

Section 909 Interference With Public Safety Telecommunications

No new telecommunications facility shall be placed or constructed in such a way as to interfere with public safety telecommunications. All applications for new telecommunications facilities shall be accompanied by an intermodulation study that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies. Before testing or operating new service or changes in existing service, telecommunications providers shall notify the municipality at least ten calendar days in advance of such changes and allow the municipality to monitor interference levels during that testing process.

Section 910 Continuing Obligations

Upon receiving a permit, the permittee shall annually, by January 15, document that the facility is in compliance with all FCC standards. The permittee shall provide a list of the most recent RFR readings at the site, their distances from the tower/transmitter, dates of the readings and the name of the person or company who took the readings.

Section 911 Removal of Abandoned Antennas and Towers

(a) The owner of a facility/tower shall annually, by January 15, file a declaration with the Waterbury Zoning Administrator 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 will be considered abandoned. An owner who has failed to

file an annual declaration with the Zoning Administrator by January 15 may, by February 15, file a declaration of use or intended use and may request the authorization to continue use of the facility/tower.

(b) At the time of removal, the facility site shall be remediated such that all telecommunications facility improvements that have ceased to be utilized are removed. If all facilities on a tower have ceased to operate, the tower shall also be removed, and the site shall be remediated. Existing trees shall only be removed if necessary to complete the required removal of the telecommunications tower/facility.

(c) Abandoned or unused towers shall be removed as follows:

- (1) The owner shall remove abandoned or unused towers and associated facilities within 180 days of cessation of operations at the site unless the Planning Commission approves a time extension. In the event the tower is not removed within 180 days of the cessation of operations at a site, the Zoning Administrator shall issue a notice of abandonment to the last known owner/operator of the facility. If the tower is not removed within 90 days of the issuance of such notice, the Town or Village may remove the tower and all associated facilities. Costs of removal shall be assessed against the property or facility owner or both. As a condition of approval the Planning Commission may require the applicant to provide a financial surety bond payable to the Town or Village of Waterbury (as appropriate) to cover the costs of removal of the telecommunications facility and the remediation of the landscape, should the facility be deemed abandoned.
- (2) Unused portions of towers shall be removed within 180 days of the time that such portion is no longer used for antennas. The replacement of portions of a tower previously removed requires the issuance of a new telecommunications facility permit.

Section 912 Maintenance of Telecommunications Facilities Insurance

The telecommunications facility owner shall maintain adequate insurance on all telecommunications facilities. All facility sites shall be properly fenced and identified by signage that indicates presence of RFR and any other appropriate warnings required by permit conditions.

Section 913 Fees

The Select Board shall establish a schedule of fees to cover permitting and monitoring costs. Fees may include the reasonable costs of an independent technical assessment of the application.

Section 914 Enforcing Agent

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

Section 915 Severability

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