

SECTION 14: COMMUNICATIONS TOWERS AND ANTENNAS

14.1 Purpose and Intent

This ordinance is enacted in order to permit the siting of Communications Towers and Antennas, including Personal Wireless Service Facilities, in the Town of Jackson consistent with the following:

14.1.1 Avoid and mitigate adverse impacts such facilities may create, including, but not limited to the following impacts: visual, auditory, environmental, historical, flight corridors, health, safety and prosperity.

14.1.2 Promote co-location for facilities when such co-location minimizes the adverse impacts described in 14.1.1 above through an assessment of technology, current locational options, future available locations, Innovative Siting Techniques, and siting possibilities beyond the political jurisdiction of the Town.

14.1.3 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.

14.1.4 Give preference to siting on designated Town-owned property permitting facilities in other designated areas.

14.1.5 Require that facilities be constructed and maintained safely.

14.1.6 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.

14.2 Definitions

The following definitions shall apply to this Section.

14.2.1 "Antenna" means any 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 frequency or bandwidth.

14.2.2 "Communications Antennas"/ "Communications Towers and/or Antennas" means all types of sending and receiving Antennas and the supporting towers.

14.2.3 "Equipment Shelter" means an enclosed structure, cabinet, shed, vault, or box near the base of a Communications Antenna within which are housed equipment for those facilities such as battery and electrical equipment.

14.2.4 "Fall Zone" means the area on the ground within a prescribed radius from the base of a Tower or other support structure. 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.

14.2.5 "Height" means, 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.

14.2.6 "Innovative Siting Techniques" means the mounting of Antennas 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.

14.2.7 "Personal Wireless Service Facilities" means any facility that provides commercial mobile wireless services, unlicensed wireless services and common carrier wireless exchange access services, as described by Section 332 of the Telecommunications Act of 1996.

14.2.8 "Preexisting Towers and Antennas" means any Tower or Antenna lawfully constructed or permitted prior to the adoption of this Ordinance, or lawfully constructed in

accordance with this Ordinance.

14.2.9 “Support Structure” means any structure to which any type of sending and receiving Antenna is attached.

14.2.10 “Tower” means any structure that is designed and constructed primarily for but not limited to the purpose of supporting one or more Antennas, including self-supporting lattice Towers, guyed Towers, “stealth tree” Towers, or monopole Towers.

14.3. Exemptions

This Section shall not apply to amateur facilities.

14.4 Permit required

All Communications Towers and Antennas shall require a building permit issued by the Board of Selectmen.

14.5 Regulations

All Communications Towers and Antennas shall comply with the following requirements. These requirements shall supersede any and all other applicable standards found elsewhere in the Jackson Zoning Ordinances and Regulations that are less strict.

14.5.1. Height. New Communications Antennas, media Antennas, and Personal Wireless Service Facilities located on any existing structures shall not increase the Height of the existing structure more than 20 feet. No Communications Tower or Antenna shall project higher than 20 feet above the average surrounding tree canopy height.

14.5.2 Setbacks. All Communications Towers and Antennas and equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located.

14.5.3 Fall Zone. In order to ensure public safety, the minimum distance from the ground mount of a communications Tower or Support Structure to any property line, road, habitable dwelling, business or institutional use or public recreational area shall be 125% of the Height of the facility, including any Antennas or other appurtenances. This setback is considered the "Fall Zone."

14.5.4 Visual Impact and Lighting. In order to preserve the character of the existing developed and natural environments within the Town of Jackson, and to minimize any detrimental visual impact that Communications Towers and Antennas might have, all such facilities will adhere to the following requirements.

14.5.4.1 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 setting and built environment.

14.5.4.2 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. Facilities shall not be artificially lighted, unless required by the Federal Aviation Administration (FAA) or other applicable authority. If lighting is required, the Board of Selectmen may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

14.5.4.3 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.

14.5.4.4 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 standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the Tower compound. Natural vegetation is preferred.

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

14.5.4.6 Towers shall not contain any permanent or temporary signs, writing, symbols or other graphic representation of any kind, except as may be allowed or required by the Board of Selectmen in the interests of public safety.

14.5.5 Fencing. Towers shall be enclosed by security fencing located inside the landscaped buffer. The fencing shall be at least 6 feet in height and equipped with appropriate anti-climbing devices. The Planning Board may waive the requirement for fencing if the Tower is designed in a way that makes climbing it impossible.

14.5.6 Building Codes. To ensure the safety and structural integrity of Communications Towers 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 for Communications Towers, support structures, and Antennas 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 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. If, upon inspection, the Town concludes that a facility fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the facility, the owner shall have 30 days to bring such facility into compliance with such standards. If the owner fails to bring such facility into compliance within 30 days such action shall constitute grounds for the removal of the facility in accordance with Section 14.9 at the owner's expense through execution of the posted security required by Section 14.8.

14.5.7 Federal Requirements. All Communications Towers and Antennas must meet or exceed current standards and regulations of the 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 this 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, in accordance with Section 14.9 of the facilities, at the owner's expense through the execution of the posted security required by Section 14.8.

14.5.8 A full written disclosure of all materials in the sealed transmitter's shelter or vault 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.

14.5.9 Access for motorized vehicles to sites where communications facilities are located shall conform to the Town requirements relating to Driveways.

14.6 Application Procedure

14.6.1 Application to erect Communications Towers and Antennas in Jackson shall be made to the Board of Selectmen of the Town of Jackson. The application will be reviewed by the Planning Board, who will make recommendations to the Board of Selectmen. The Board of Selectmen will have the authority to approve or deny the application, and issue the building permit.

14.6.2 The application 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 deemed necessary by the Board of Selectmen to assess compliance with this ordinance. In addition, the applicant shall provide the following information.

14.6.2.1 The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.

14.6.2.2 The applicant shall submit written proof of legal authority to use the proposed site.

14.6.2.3 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 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 of Selectmen prior to the beginning of the federal 30-day comment period and the Town process, shall become part of the application requirements.

14.6.2.4 Each applicant for a facility shall provide to the Board of Selectmen an inventory of its existing 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 facility, as well as economic and technological feasibility for co-location on the inventoried facilities. The Board of Selectmen may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate Antennas within the jurisdiction of the governing authority, provided however that the Board of Selectmen is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

14.6.2.5 Each applicant for a facility shall provide a list of any additional Towers which may be required in Jackson for completion of their planned wireless coverage.

14.6.3 In its consideration of an application to erect Communications Towers and Antennas, the Board of Selectmen shall adhere to the following prioritization.

14.6.3.1 Preference will be given to the siting of Communications Towers and Antennas on existing facilities including preexisting Towers and Antennas, where such co-location can exist while preserving the character and integrity of the existing structure and without other adverse impacts.

14.6.3.2 To the extent that there are no existing facilities which meet the requirements of the applicant, preference will be given to locating facilities on existing structures of other kinds, such as a water tower or utility poles where such co-location preserves the character and integrity of the existing structure, and does not create other adverse impacts.

14.6.3.3 To the extent that facilities under Paragraphs 14.6.3.1 and 14.6.3.2 are not available, preference will be given to siting a facility within the designated Telecommunications Overlay Zone, which shall consist of an area within 200 feet on either side of the traveled center line of NH Route 16 within the Jackson town limits.

14.6.4 Burden of Proof on Applicant Regarding Siting Priority. The burden of proof that there are no existing structures upon which the applicant may locate its Antennas and facilities and transmit or receive radio signals shall include, at a minimum:

14.6.4.1 The applicant shall submit a list of all owner contacts made with regard to the availability of co-location for the Antenna. If the Board of Selectmen or Town staff finds additional existing buildings and structures that may be satisfactory, the applicant shall contact the property owners.

14.6.4.2 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 not provided, at a minimum, unanswered "return receipt requested" forms from the US Post Office shall be provided for each

owner of existing structure that was contacted.

14.6.4.3 If the applicant claims that a structure is not structurally capable of supporting a Communications Antenna or facility, this claim must be certified by a registered, professional engineer licensed in the State of New Hampshire. This certification shall at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the facility.

14.6.5 If the applicant is proposing to build a new Tower or other ground-mounted support structure, the applicant shall submit written evidence demonstrating why no existing structure 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.

14.6.6 The applicant proposing to build a Tower or ground mounted structure shall submit an agreement with the Town that allows for the 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 in Section 14.1.1. Such statement shall become a condition to any approval. 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 evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of Jackson, and is grounds for a denial.

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

14.6.8 Prior to construction, the applicant shall submit the following:

- i) A radio frequency (RF) background survey (wide spectrum-lf-3xf) to establish a zero point for future evaluation. Cost for this survey shall be borne by the applicant.
- ii) A clear method of communication for concerns or complaints: contact name and address, telephone number.

14.6.9 At any time before, during, or after the construction of a communications facility, the applicant shall provide to the Board of Selectmen information about intentions to sell, assign, lease or sub-lease any part of the facility. Such notice shall be given in writing prior to execution of any sale, assignment, or lease agreement. Any owner, assignee, lessee or sub-lessee shall be bound by all of the regulations of this Ordinance.

14.7 Waivers

14.7.1 Where the Zoning Board of Adjustment finds that extraordinary hardships, or practical difficulties would result from strict compliance with the terms of Section 14.5, or that the purposes 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:

14.7.1.1 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.

14.7.1.2 The waiver will not, in any manner, be inconsistent with the provisions of the Jackson Zoning Ordinance or the Jackson Master Plan.

14.7.1.3 Such waiver(s) will substantially secure the objectives, standards, and requirements of these regulations.

14.7.1.4 A particular and identifiable hardship exists or a specific circumstance warrants the

granting of a waiver.

14.7.2 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.

14.7.3 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 petition in writing shall require automatic denial.

14.8 Bonding, Security and Insurance

Recognizing the extremely hazardous situation presented by inadequately maintained or abandoned and unmonitored facilities, the Board of Selectmen shall set the form and amount of security that represents the cost for removal and disposal of abandoned facilities in the event that the facility is abandoned or inadequately maintained and the facility owner is incapable and unwilling to remove or maintain it. The applicant shall bear the cost of the demolition. Furthermore, the Board of Selectmen shall require annual submission of proof of adequate liability insurance covering accident or damage.

14.9 Removal of Abandoned Antennas and Facilities

Any Antenna or facility that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety. 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, noticed per Town regulations, with notice to abutters and the last known owner/operator of the facility. If the abandoned facility is not removed within 90 days the Town may execute the security and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.