

**CONCORD WIRELESS
TELECOMMUNICATIONS FACILITIES
ORDINANCE**

Adopted FEBRUARY 6, 2009

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1.1 Title

This ordinance shall be known as the Wireless Telecommunications Facilities Ordinance of the Town of Concord. Wireless telecommunications facilities shall include all wireless telecommunications providers, licensed and/or regulated by the Federal Communications Commission, and associated equipment and buildings. Nothing in this bylaw shall be construed to restrict amateur ham radio operators and town municipal services, beyond that already covered by the Concord Zoning Regulations.

1.2 Purposes

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

- A. Preserve the character and appearance of the Town of Concord while allowing adequate wireless telecommunications services to be developed.
- B. Protect the scenic, historic, environmental, and natural resources of the Town of Concord.
- C. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of wireless telecommunications facilities and towers.
- D. Minimize tower and antenna proliferation by requiring the sharing of existing and future communications facilities, towers, and sites where possible and appropriate.
- E. Promote the use of existing structures to provide these services.
- F. Facilitate the provision of telecommunications services to the residents and businesses of the Town of Concord and neighboring communities.
- G. Minimize the adverse visual effects of towers and other facilities through careful design and siting standards.
- H. Encourage through performance standards and incentives, the location of towers away from higher density residential areas and from other sensitive areas such as schools, hospitals and childcare facilities.
- I. Follow the guidelines and regulations set forth in the Concord Town Plan, Zoning Bylaws, and other zoning regulations.

1.3 Authority

Pursuant to 24 V.S.A. §4401 et seq. the Selectboard of the Town of Concord is authorized to review, approve, conditionally approve, and deny applications for wireless telecommunications facilities, including sketch, preliminary and final plans, and installation. Upon submission of an application for a Wireless Telecommunications Facility permit, the Selectboard may retain independent consultants whose services shall be paid for by the applicant. These consultants shall be qualified professionals in telecommunications engineering, structural engineering, monitoring of electromagnetic fields and other such fields as determined by the Selectboard. The consultant(s) shall work at the Selectboard's direction and shall provide the Selectboard such reports and assistance as the Selectboard deems necessary to review an application.

1.4 Consistency With Federal Law

In addition to other findings required by this bylaw, the Selectboard shall find that its decision regarding an application is intended to be consistent with federal law, particularly the Telecommunications Act of 1996. The bylaw 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 Terms included with this packet.]

1.6 Permitted and Prohibited Locations

Wireless telecommunications towers or facilities may be permitted as conditional uses upon compliance with the provisions of this bylaw in the Low Density "LD" and Rural Lands "RL" zoning districts.

Within the High Density, Medium Density, and Lakeshore districts the only facilities that will be allowed will be the following:

- a) Facilities imposing no impact or merely a de minimus impact as defined in Section 1.7.3 below.
- b) Small scale facilities as described in Section 1.7.1 below.

Additionally, freestanding telecommunications towers or antennas not defined as small scale facilities may not be located in any of the following locations:

- A. Within 100' (one hundred feet) or the height of the tower, whichever is greater, of a State or Federally designated wetland.
- B. The habitat of any State listed Rare or Endangered Species.
- C. Within 300' (three hundred feet) horizontally from any historic district, historic landmark and structures listed on the state or national register of historic places or property eligible to be listed on the federal/state historic register.
- D. Closer than 200' (two hundred feet) horizontally, or the height of the tower, whichever is greater, to the boundary of the property on which the tower is located.
- E. Closer than 500' (five hundred feet) horizontally to any structure existing at the time of the application which is used as either a primary or secondary residence, to the property of any school, or to any other building.
- F. Within 100' (one hundred feet) or the height of the tower, whichever is greater, horizontally of any river or perennial stream.
- G. Within 500' (five hundred feet) horizontally of any known archeological site.
- H. Within 1000' (one thousand feet) horizontally of a designated scenic road or highway.

1.7 Simplified Procedures

1.7.1 Small Scale Facilities

No permit shall be required for placement of antennae used to transmit, receive, or transmit and receive communications signals on that property owner's premises (1) if the aggregate area of the largest faces of the antennae is not more than eight (8) square feet, and (2) if the antennae and any mast support do not extend more than twelve (12') feet above the roof of that portion of the building to which the roof is attached.

1.7.2 Facilities Less Than 35' (thirty five feet) in Height

The placement of wireless telecommunications antennae, repeaters or micro cells on existing buildings, structures, roofs, or walls, and not extending more than 12' (twelve feet) from the same, 8 (eight) square feet mast limitation, or the installation of ground based facilities less than 35' (thirty five feet) in height, may be approved by the Selectboard, provided the antennae meet the applicable requirements of this bylaw, upon submission of:

- A. A final site and building plan.
- B. A report prepared by a qualified engineer indicating the structure's suitability for the telecommunications facility, and that the proposed method of affixing the antenna or other device 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, as well as any additional supporting equipment or facilities.
- C. For a facility to be installed on or within an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.
- D. However, no such device in excess of 12' (twelve feet), may be located closer than 50' (fifty feet), or the height of the tower, whichever is greater, to any existing dwelling as listed under permitted or conditional uses.

1.7.3 De minimis Impact

The Selectboard shall grant a permit to a property owner to install a wireless telecommunications facility, if after a hearing and site visit the Selectboard determines that the facility will impose no impact or merely a de minimis impact on the surrounding area and the overall pattern of land development.

1.8 Application Requirements for Wireless Telecommunications Facilities not Covered Under Sections 1.7 through 1.7.3

In connection with a wireless telecommunications facility not covered under Sections 1.7 through 1.7.3 of this ordinance, 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 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 wireless telecommunications tower or facility shall commence without a conditional use permit first being obtained from the Selectboard after notice, site visit and hearing.

In addition to information otherwise required in the Town of Concord's Town Plan, Zoning Bylaws, or other zoning regulations, applicants for wireless 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 qualified engineers that:
 - I. Describes the facility height, design and elevation, from a structural engineer.
 - 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, from a radio frequency engineer.

- III. Describes the tower's proposed capacity, including the number, height and type(s) of antennas that the applicant expects the tower to accommodate, and any other equipment that is to be attached to the proposed tower, from a structural engineer.
- 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 5 (five) miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the Town of Concord. 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 1.8 D. IV (above) to provide coverage to the intended service area.
- 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, sector orientation and power per channel, as appropriate for each proposed antenna.
- VIII. Includes a written explanation for use of the proposed 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.
- IX. Demonstrates the tower's compliance with the municipality's structural standards and setbacks for towers and support structures.
- X. Provides assurance that at the proposed site the applicant will establish and maintain compliance with all FCC rules and regulations, particularly with respect to radio frequency exposure.

- 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.
- XIII. A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use.
- E. For a facility to be installed on an existing structure, a copy of the applicant's executed contract including option agreements with the owner of the existing structure (to be provided to the Selectboard at the time an application is submitted).
- F. To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
- G. A copy of the application or draft application for an Act 250 permit, if applicable.

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

1.9 Site Plan Requirements for Wireless Telecommunications Facilities not Covered Under Sections 1.7 through 1.7.3

In connection with a wireless telecommunications facility not covered under Sections 1.7 through 1.7.3 of this Ordinance, in addition to site plan requirements found elsewhere in the Town of Concord's Zoning Bylaws and other zoning regulations, site plans for wireless 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 (2) - mile radius of the proposed facility site.
- B. Vicinity map showing the entire vicinity within a 2500' (two thousand five hundred foot) radius of the facility site, including the 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 include 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.
- F. In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200' (two hundred 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 structure 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, alone or together with existing facilities, equipment or antennas, would create excessive radio frequency 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 reasonably provide 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 reasonably provide for 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 wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall take into consideration the contour of the land, and be constructed or improved within the forest fringe areas, along the edge of open fields, 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 facility construction where it is determined that site conditions warrant the same and where maintenance can reasonably access the facility 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 vistas, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.