



City of Keene
New Hampshire

**PLANNING, LICENSES AND
DEVELOPMENT COMMITTEE
AGENDA
Council Chambers A
January 8, 2020
7:00 PM**

Kate M. Bosley, Chair
Mitchell H. Greenwald, Vice Chair
Philip M. Jones
Gladys Johnsen
Catherine Workman

-
1. Body & Soul Road Runners - Request to Use City Property - Community Sponsored Event
 2. Continued Discussion: Relating to Small Wireless Facility Deployments in the Public Right-of-Way
Ordinance O-2019-18

MORE TIME ITEMS:

- A. Relating to Social Service and Congregate Care Uses and License
Ordinance O-2019-13
Ordinance O-2019-14
- B. Tad Schrantz/The Colonial Theatre Group – Various Licenses Needed for the Renovation and Addition to the Colonial Theatre

Non Public Session
Adjournment



City of Keene, N.H.
Transmittal Form

January 4, 2020

TO: Planning, Licenses and Development Committee

FROM: Vicki Bacon, Body & Soul Roads Runners

THROUGH: Patricia A. Little, City Clerk

ITEM: 1.

SUBJECT: Body & Soul Road Runners - Request to Use City Property - Community Sponsored Event

ATTACHMENTS:

Description

Communication - Red Cap Run

BACKGROUND:

This is the annual request from the Body and Soul Road Runners Club for use of City property for the Red Cap Run on February 8, 2020.

Body & Soul Road Runners' Club

303 Park Avenue

Keene, NH 03431

January 2, 2020

George Hansel, Mayor

City Council Members

3 Washington St.

Keene, NH 03431

Dear Mayor Hansel & City Council Members,

I am writing to request permission to hold this year's 6th annual Red Cap Run on February 8th in downtown Keene. The course remains the same as last year as suggested by the council. We will not run on Community Way.

It is my understanding that as the race has been granted Community Event Status we will need to attend a PLD meeting and the typical protocol meeting. Please let us know a date when you would like us to be in attendance.

Thank you,

A handwritten signature in cursive script, appearing to read "Vicki L. Beese", followed by a long horizontal flourish.

On behalf of the Body and Soul Road Runners

And Sara Alderfer – RCR race director



CITY OF KEENE

Ordinance O-2019-18

Nineteen

In the Year of Our Lord Two Thousand and
 Relating to Small Wireless Facility Deployments in the Public Rights of Way

AN ORDINANCE

Be it ordained by the City Council of the City of Keene, as follows:

That the City Code of the City of Keene, New Hampshire, as amended, is hereby further amended by adding the text in the following article to Chapter 82 of the City of Keene Code of Ordinances as follows:

ARTICLE VIII. SMALL WIRELESS FACILITY DEPLOYMENTS IN THE PUBLIC RIGHTS OF WAY

Section 82-201. Purpose and Intent

1. The purpose of this article is to establish reasonable standards and procedures for the siting, construction, installation, collocation, modification, operation, relocation and removal of SWFs (SWF) in the city's public rights-of-way, consistent with and to the extent permitted under federal and state law.
2. The standards and procedures of this Article are intended to protect and promote public health, safety and welfare. They are also intended to reflect and promote the community interest by:
 - a. protecting and preserving the city's public rights-of-way and municipal infrastructure;
 - b. maintaining the balance between public and private interests;
 - c. protecting the city's visual character from potential adverse impacts;
 - d. protecting and preserving the city's environmental resources; and,
 - e. promoting access to high-quality, advanced wireless services for the city's residents, businesses and visitors.
3. This Article is intended to establish procedures for application intake and completeness review, and encourage applicants to timely respond to incomplete notices.

Section 82-202. Applicability

1. Except as expressly provided otherwise, the provisions in this Article shall be applicable to all SWFs constructed and in operation as of the date of the adoption of this Article, and to all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy SWFs within the public rights-of-way after the date of the adoption of this Article.
2. To the extent that other infrastructure deployments involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements within the public rights-of-way, the Director or other official responsible to review and approve or

deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this Article, unless specifically prohibited by applicable law or ordinance.

Section 82-203. Required license and approvals

1. **SWF License.** A “SWF License,” subject to the Director’s review and approval in accordance with this Article, shall be required for all SWFs and other infrastructure deployments located in whole or in part within the public rights-of-way.
 - a. **Indemnification Requirement.** The SWF License shall contain the City’s usual and customary indemnification provisions.
2. **Other Licenses and Approvals.** In addition to a SWF License, an applicant must obtain all other licenses, permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.

Section 82-204. Exemptions.

1. Notwithstanding anything in this Article to the contrary, a SWF License shall not be required for the following:
 - a. Wireless facilities or other infrastructure deployments owned and operated by the city,
 - b. Over-the-air reception device (OTARD) facilities.
 - c. Requests for approval to collocate, modify, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to 47 U.S.C. § 1455(a).
2. An exemption from the SWF License requirement under this Section does not exempt the SWFs or other infrastructure deployments from any other permits or approvals as may be required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.

Section 82-205. Location standards

1. **Location Preferences.** To better assist applicants and decision makers in understanding and responding to the community’s aesthetic preferences and values, this section sets out listed preferences for locations to be used in connection with SWFs in an ordered hierarchy. An applicant is required to demonstrate with clear and convincing evidence that the higher priority locations are not technically feasible in order for the Director to approve a SWF in a lesser-preferred location.
 - a. The order of preference for locating SWFs from most preferred to least preferred is as follows:
 - i. locations within non-residential districts;
 - ii. any location within 400 feet from an existing small cell;
 - iii. any location within 400 feet from any structure approved for a residential use;
 - iv. any location on Central Square or on Main Street between Central Square and

the Marlboro Street/Winchester Street intersection.

2. **Prohibited Support Structures.** SWFs shall not be permitted on the following support structures:
 - a. new wood poles, unless it is a replacement for an existing wood pole
 - b. existing City-owned decorative poles
3. **Encroachments Over Private Property.** No SWF antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's written consent.
4. **No Interference with Other Uses.** SWFs and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any:
 - a. above-ground or underground infrastructure;
 - b. street furniture;
 - c. fire hydrant or water valve; or
 - d. doors, gates, stoops, fire escape, windows, or other ingress and egress points to any building appurtenant to the rights-of-way.
5. **Replacement Pole Location.** All replacement poles must:
 - a. be located within five feet of the removed pole; and
 - b. be aligned with the other existing poles along the public rights-of-way.
6. **Additional Placement Requirements.** In addition to all other requirements in this Article, SWFs, other infrastructure deployments and all related equipment and improvements shall:
 - a. be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
 - b. be placed so as to not obstruct a 200 foot all-season safe sight distance at any intersection;
 - c. be placed at least 5 feet away from any driveway;
 - d. be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities.

Section 82-206. Design standards

1. **Height.** New support structures for SWFs shall not be more than 35 feet in height, or 10% taller than nearby structures within the public right of way, whichever is greater. In no instance shall the overall height of an existing or new structure, including any antennas, exceed 50 feet.
2. **Colors and Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in muted, non-reflective hues that match the underlying support structure and blend with the surrounding environment; provided, however, that SWFs located on Central Square or Main Street between Central Square and the Marlboro Street/Winchester Street intersection shall be black in color. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.
3. **Lights.** All lights and light fixtures must be fully shielded, dark skies compliant, and directed

downwards so that their illumination effects are confined entirely within the public rights-of-way in a manner consistent with specifications by the Director. All antennas, accessory equipment and other improvements with indicator or status lights shall be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.

4. **Trees and Landscaping.** SWFs and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. SWFs and other infrastructure deployments may not displace any existing tree or landscape features unless:
 - a. such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director, and
 - b. the applicant submits and adheres to a landscape maintenance plan.Replacement trees must be installed under the supervision of a NH licensed arborist. Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director.
5. **Signs and Advertisements.** All SWFs and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs and other infrastructure deployments may not bear any other signage or advertisements, including logos, unless expressly approved by the city, required by law, or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
 - a. RF warning signs, if required, shall be located as close to the antenna as possible and must face towards the street. Unless otherwise required by law or regulation, the background color of the sign must match the color of the pole or surface to which it is attached.
6. **Site Security Measures.** SWFs and other infrastructure deployments may incorporate reasonable and appropriate site security measures subject to approval by the Director. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.
7. **Compliance with State and Federal Regulations.** All SWFs and other infrastructure deployments must comply with all applicable State and federal regulations, including without limitation all applicable regulations for human exposure to RF emissions and the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.). In the event that applicable federal or State laws or regulations conflict with the requirements of this ordinance, the applicant shall comply with the requirements of this ordinance to the maximum extent possible without violating federal or State laws or regulations.
8. **Antennas.** The following provisions in this subsection are generally applicable to all antennas.
 - a. **Shrouding / Concealment.** All antennas and associated equipment, including but not limited to cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware, must be concealed from view within a single shroud or radome that is finished to match the color of the support structure.

- i. For pole-top antennas, the shroud shall not exceed one and half-times the median pole diameter and must taper down to pole.
- ii. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.

b. **Antenna Volume.** Each individual antenna associated with a single SWF shall not exceed 3 cubic feet. The cumulative volume for all antennas on a single small SWF shall not exceed:

- i. 3 cubic feet in residential districts; or
- ii. 6 cubic feet in nonresidential districts.

c. **Overall Antenna Height.**

- i. Antennas placed on new structures may not extend more than 5 feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
- ii. Antennas placed on existing structures that meet the definition of a collocation or modification application as defined in NH RSA 12-K shall not increase the height of the structure by more than 10% or 5 feet, whichever is greater.

d. **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project:

- i. more than 18 inches from the support structure;
- ii. over any roadway for vehicular travel; or
- iii. over any abutting private property.
- iv. If applicable laws require a side-mounted antenna to project more than 18 inches from the support structure, the projection shall be no greater than required for compliance with such laws.

9. **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single SWF or other infrastructure deployment shall not exceed:

- a. 9 cubic feet in residential districts; or
- b. 17 cubic feet in nonresidential districts.

The volume limits in this subsection do not apply to any undergrounded accessory equipment.

10. Undergrounded Accessory Equipment.

a. **Where Required.**

- i. For proposed facilities on Central Square or on Main Street between Central Square and the Marlboro Street/Winchester Street intersection, accessory equipment (other than any electric meter emergency disconnect switch, where permitted) shall be placed underground.
- ii. In all other locations, accessory equipment shall be placed underground unless the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.

b. **Vaults.** All undergrounded accessory equipment must be installed in a vault that is load-rated to meet the city's standards and specifications.

11. **Pole-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all pole-mounted accessory equipment in connection with SWFs and other infrastructure deployments.

- a. **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment, which does not project over the travel way, shall be a minimum of 10 feet above ground level adjacent to the pole.
- b. **Horizontal Projection.** All pole-mounted accessory equipment shall be mounted flush to the pole surface. Pole-mounted accessory equipment shall not project:
 - i. more than 18 inches from the pole surface; or
 - ii. over any abutting private property.
- c. **Orientation.** Unless concealed in a manner approved by the Director, all pole-mounted accessory equipment shall be oriented so as to reduce visibility from the nearest abutting properties. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting property. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

12. **Ground-Mounted or Base-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all ground-mounted and base-mounted accessory equipment in connection with SWFs and other infrastructure deployments.

- a. **Concealment.** Where permitted, ground-mounted accessory equipment shall be completely concealed/shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets. Exterior colors shall be muted, non-reflective, and blend with the colors of the surroundings.
- b. **Visibility.** No individual ground-mounted accessory equipment cabinet may exceed a height or width of 4 feet. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square feet.

13. **Support Structure Attachments.** The following provisions in this subsection are applicable to all support structure attachments (other than pole-mounted accessory equipment) and other related improvements that serve SWFs and other infrastructure deployments.

- a. **Overhead Lines.** The Director shall not approve any new overhead utility lines in areas within which wires, cables, cabinets and other equipment associated with SWFs or infrastructure deployment are primarily located underground. In areas with existing overhead lines, no new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.
- b. **Vertical Cable Risers.** All cables, wires, conduit attachments and other connectors must be routed through conduits within the support structure to conceal from public view. If this is technically infeasible, applicants shall route through a single external conduit or shroud that has been finished to match the underlying pole.

- c. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- d. **Electric Meters.** The Director shall not approve a separate ground-mounted electric meter pedestal. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet.
- e. **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants shall use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the city shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city's infrastructure and/or prevent interference with the city's municipal functions and public health and safety.

Section 82-207. Application Requirements

1. **All Applications.** All applicants for a SWF License must include the following information and materials as part of a formal SWF License application to the city:
 - a. **Application Form.** The applicant shall submit a complete, duly executed SWF License application on the then-current form prepared by the city.
 - b. **Application Fee.** The applicant shall submit the applicable SWF License application fee established in Appendix B of City Code. Batched applications must include the applicable SWF license application fee for each SWF in the batch.
 - c. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a "SWF" as defined in this Article. A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met. As part of the written statement, the applicant must also include the following:
 - i. Whether and why the proposed support is a "structure" as defined by this Article.
 - ii. Whether and why the proposed wireless facility meets each required finding for a SWF License as provided in Sec. 82-209, subsection (2), "Required Findings for Approval."
 - d. **Construction drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a New Hampshire licensed engineer that depict all the existing and proposed improvements, equipment and conditions related to the proposed project. This includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholds, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must:

- i. contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions;
 - ii. identify all potential support structures within 400 feet from the proposed project site and call out such structures' overall height above ground level; and
 - iii. depict the applicant's preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection.
 - e. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the SWF from a vantage point approximately 50 feet from the proposed support structure or location.
 - f. **Radio Frequency Compliance Report.** The applicant shall submit a Radio Frequency (RF) exposure compliance report that certifies that the proposed SWF will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. If the applicant submits a batched application, a separate RF report shall be prepared for each facility associated with the batch, unless the same SWF and equipment is proposed for each location within the batch.
 - g. **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and state law to provide the services and construct the SWF proposed in the application.
2. **Collocation Applications.** In addition to the application requirements listed in Sec. 82-207 subsection (1), all applicants proposing to place a SWF on an existing structure must include the following information and materials as part of a formal SWF License application to the city:
- a. **Property Owner's Authorization.** For any SWF proposed to be installed on an existing support structure not owned or controlled by the city, whether in whole or in part, and which is not owned by the applicant, the applicant must submit a written authorization from the support structure owner(s).
3. **Applications to install a SWF on a New Support Structure.** In addition to the application requirements listed in Sec. 82-207 subsection (1), all applicants proposing to install a SWF on a new or replacement support structure must include the following information and materials as part of a formal SWF License application to the city:
- a. **Public Notices.** For applications to locate a SWF on a new or replacement structure, the applicant shall include with the application a list that identifies all persons entitled to notice, including all owners of record and legal occupants of

properties within a 300-foot radius of the proposed SWF. In addition, the applicant shall submit two sets of mailing labels and pay a fee to cover the cost of mailing to each person entitled to notice.

- b. **Site Survey.** For applications to locate a SWF on a new or replacement structure, the applicant shall submit a survey prepared, signed and stamped by a New Hampshire licensed surveyor. The survey must identify and depict all existing boundaries, encroachments and other structures within 75 feet from the proposed project site and any new improvements, which includes without limitation all:
 - i. traffic lanes;
 - ii. all private properties and property lines;
 - iii. above and below-grade utilities and related structures and encroachments;
 - iv. fire hydrants, roadside call boxes and other public safety infrastructure;
 - v. streetlights, decorative poles, traffic signals and permanent signage;
 - vi. sidewalks, driveways, parkways, curbs, gutters and storm drains;
 - vii. benches, mailboxes, kiosks and other street furniture; and
 - viii. existing trees, planters and other landscaping features.

Section 82-208. Application Review Procedures

1. **Presubmittal Conference.** The City encourages applicants to schedule and attend a presubmittal conference with the Director and other City staff. This presubmittal conference does not cause the FCC Shot Clock or NH Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments implicated by the proposed project; and application completeness issues.
 - a. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form.
2. **Application Submittal Date.** All applications must be submitted to the city on the monthly application submittal date, which shall generally be the second Tuesday of every month unless specified otherwise by the Director. Prospective applicants may submit up to 5 individual applications at one time as a batch. Any purported application received on a date other than the application submittal date, whether delivered in-person, by mail or through any other means, will be considered filed as of the next applicable application submittal date.
3. **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend license application requirements and technical standards that the Director finds necessary, appropriate or useful for processing any application governed under this Article, not otherwise inconsistent with the requirements of this Article. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the

Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form, on file with the Director, and publicly released, to provide all interested parties with prior notice.

4. Incomplete Applications.

a. **Initial Completeness Review.** Within fifteen (15) calendar days following the application submittal date, the Director shall complete an initial review of each application to evaluate whether the submission requirements set forth in Sec. 82-207 have been met. If the Director determines that an application is incomplete, the Director shall notify the applicant in writing of the application's nonconformance, including the specific deficiencies in the application, which, if cured, would make the application complete.

b. **Shot Clock Extensions**

i. *Collocation Applications.* Applicants proposing to collocate a SWF on an existing structure shall have fifteen days to cure all deficiencies in the application.

1. If the applicant submits all information required for an application to be deemed complete by the Director within 15 days, the shot clock shall not be suspended.

2. If the applicant submits all information required for an application to be deemed complete after fifteen days, the shot clock shall be extended by the number of days beyond the 15-day period that it takes for the applicant to submit this information in accordance with NH RSA 12-K:10.

ii. *Applications to install a SWF on a new structure.* Applicants proposing to install a SWF on a new or replacement structure shall have fifteen days to cure all deficiencies in the application. On the date of the issuance of a written incomplete notice, the shot clock shall be suspended until the applicant submits all information required for an application to be deemed complete by the Director.

c. **Incomplete Application Deemed Denied.** Any application governed under this Article shall be automatically denied when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. A "substantive response" must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.

5. Application Submittal Notice for SWFs Proposed on New Structures. Within 15 calendar days after a complete application is received and prior to any approval, conditional approval or denial, the city shall mail public notice to all persons entitled to notice, including all owners of record and legal occupants of properties within a 300-foot radius of the proposed SWF. The notice must contain:

a. A general project description;

b. The applicant's identification and contact information as provided on the application submitted to the city;

- c. Contact information for the Director for interested parties to submit comments; and
 - c. The date by which comments must be submitted to the Director.
6. **Application Decision Notice.** Within five calendar days after the Director acts on a SWF License application, the Director shall provide written notice to the applicant. If the Director denies an application (with or without prejudice) for a SWF, the written notice must also contain the reasons for the denial.

Section 82-209. Decisions

1. **Decision Deadlines.**
- a. The Director shall make a final decision to approve, approve with conditions, or deny a completed application to collocate a SWF on an existing structure within 45 days of application submittal, unless the NH Shot Clock was extended according to Sec. 82-208 subsection (4)(b).
 - b. The Director shall make a final decision to approve, approve with conditions, or deny an application to place or install a SWF on a new support structure within 90 days after the application is determined to be complete.
2. **Required Findings for Approval.** The Director may approve or conditionally approve a complete application for a SWF License when the Director finds that the proposed project:
- a. meets the definition for a “SWF” as defined in this Article, if it involves a wireless facility,
 - b. complies with all applicable location standards in this Article;
 - c. complies with all applicable design standards in this Article;
 - d. would not be located on a prohibited support structure identified in this Article; and
 - e. will be in planned compliance with all applicable FCC regulations and guidelines.
3. **Conditional Approvals / Denials Without Prejudice.** Subject to any applicable federal or state laws, nothing in this Article is intended to limit the Director’s ability to conditionally approve or deny without prejudice any SWF License application as may be necessary to ensure compliance with this Article.
4. **Appeals.** Any decision by the Director shall not be subject to any administrative appeals, but may be appealable to a court of competent jurisdiction.

Section 82-210. Conditions of Approval

1. **Standard Conditions.** Except as may be authorized in subsection (2) of this section, all SWF Licenses issued under this Article shall be automatically subject to the conditions in this subsection (1).
- a. **License Term.** This license will automatically renew 1 year from its issuance, and each year thereafter, conditional upon receipt of the annual license fee established in Appendix B of City Code prior to the date of license expiration.
 - b. **Post-Installation Certification.** Within 60 calendar days after the final inspection for any building permit associated with a SWF, the applicant shall provide the Director with documentation reasonably acceptable to the Director that the SWF or

other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.

- c. **Build-Out Period.** This SWF License will automatically expire 12 months from the approval date (the “build-out period”) unless the applicant obtains all other permits and approvals required to install, construct and/or operate the approved SWF or other infrastructure deployment. Upon written request, the Director may grant up to three extensions to the build-out period in 90-day increments if the applicant demonstrates justifiable cause. If the build-out period and any extension finally expires, the license shall be automatically revoked.
- d. **Site Maintenance.** The applicant shall keep the site, which includes without limitation all licensed improvements, in a safe condition in accordance with the approved construction drawings and all conditions in the SWF License. The applicant, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the applicant receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.
- e. **Compliance with Laws.** The applicant shall maintain compliance at all times with all federal, state and local statutes, regulations, orders, permits or other rules (“laws”) applicable to the applicant, the subject property, the SWF or other infrastructure deployment or any use or activities in connection with the use authorized in this SWF License. The applicant expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the applicant’s obligations to maintain compliance with all laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable law shall be deemed to relieve, waive or lessen the applicant’s obligation to comply in all respects with all applicable laws.
- f. **Adverse Impacts on Other Properties.** The applicant shall avoid, or immediately remedy if necessary, any adverse impacts on nearby properties that may arise from the applicant’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site.
- g. **Inspections; Emergencies.** The applicant expressly acknowledges and agrees that local, state, and federal officers, officials, staff, emergency personnel, agents, contractors or other designees may inspect the licensed improvements and equipment to disable or remove any licensed improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons.
- h. **Applicant’s Contact Information.** Within 10 days from the date of approval of the SWF License, the applicant shall furnish the city with accurate and up-to-date contact information for a person responsible for the SWF or other infrastructure deployment, which includes without limitation such person’s full name, title, direct

telephone number, mailing address and email address. The applicant shall keep such contact information up-to-date at all times and promptly provide the city with updated contact information if either the responsible person or such person's contact information changes.

- i. **Performance Security.** Before the city issues any permits required to commence construction in connection with this license, the applicant shall post a security in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The preferred forms of security are certified checks made out to the City of Keene and letters of credit.
- j. **Truthful and Accurate Statements.** The applicant acknowledges that the city's approval relies on the written and/or oral statements by applicant and/or persons authorized to act on applicant's behalf. In any matter before the city in connection with the SWF License or the SWF or other infrastructure approved under the SWF License, neither the applicant nor any person authorized to act on applicant's behalf shall, in any written or oral statement, intentionally provide information that is materially and/or factually incorrect or omit any material information necessary to prevent any material factual statement from being incorrect or misleading. Failure to comply with this condition shall be grounds for license revocation.
- k. **License Revocation.** The Director may revoke a license granted under this Article when the Director finds substantial evidence that the facility is not in compliance with the requirements of this Article, and with any applicable laws, which includes without limitation, any license or permit issued in connection with the facility and any associated conditions required by such license(s) or permits.
 - i. Before any decision to revoke a license granted under this Article, the Director must issue a written notice to the applicant that specifies the facility, the violation(s) to be corrected, the timeframe within which the applicant must correct such violation(s), which shall be a minimum of 30 days, and that the Director may revoke the license for failure to correct such violation(s).
 - ii. If the applicant does not correct the violations as specified in the written notice within the timeframe stated, the Director may issue a decision to revoke the license. Within five (5) business days after Director makes a decision to revoke a license, the Director shall provide the applicant with a written notice that specifies the revocation and the reasons for such revocation.
- l. **Records.** Any and all documentation or data submitted to the City in connection with a SWF License application and license is a public record subject to the requirements of NH RSA 91-A, unless otherwise claimed to be confidential by the applicant and agreed to by the City in accordance with state law. In the event of a public record request for confidential information, the city shall notify the Licensee within 5 calendar days of receipt of the request, and the Licensee may, at its sole cost and expense, seek an immediate protective order from the NH Superior Court. In the event that the Licensee does not take such action within 30 days of notification, the city shall release the record subject to redactions required by law.

- m. **Abandoned Facilities.** The SWF or other infrastructure deployment authorized under this SWF License shall be deemed abandoned if not operated under a valid license for any period of time that is 90 days or longer. The City shall notify the applicant in writing of the abandonment. Once deemed abandoned, the applicant and/or SWF owner shall completely remove the SWF or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition substantially similar to the condition at the time the license was initially granted. In the event that neither the applicant nor the SWF owner complies with the removal and restoration obligations under this condition within a 30-day period after the notice by the City, the city shall have the right (but not the obligation) to perform such removal and restoration without further notice, and the applicant and SWF owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities.
- n. **Trees and Landscaping.** The applicant shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the applicant or at the applicant's direction on or about the site. If any trees are damaged or displaced, the applicant shall hire and pay for a NH licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city.
- o. **Utility Damage Prevention.** The applicant shall comply with the requirements of NH RSA 374:48 – 56, and any adopted administrative rules.
- p. **Rearrangement and Relocation.** The applicant acknowledges that the city, in its sole discretion and at any time, may perform any work deemed necessary, useful or desirable by the city (collectively, "city work") in the City right-of-way. If the Director determines that any city work will require the applicant's SWF located in the public rights-of-way to be rearranged and/or relocated, the Director shall issue written notice to the applicant of the work to be performed, and the action to be taken by the applicant. The applicant shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation within 10 days after the Director's notice. If the applicant fails or refuses to either permanently or temporarily rearrange and/or relocate the applicant's SWF or other infrastructure deployment within 10 days after the Director's notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant's sole cost and expense.
 - i. The city may exercise its rights to rearrange or relocate the applicant's SWF or other infrastructure deployment without prior notice to applicant when the Director determines that city work is immediately necessary to protect public health or safety.
 - ii. The applicant shall reimburse the city for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.

- 2. **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any SWF License as may be necessary or required to ensure compliance with

the City of Keene Code of Ordinances, this Article or other applicable law. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to SWFs are no more burdensome than those applied to other similar infrastructure deployments. The Director shall provide written notice to the applicant of any required alteration to the license.

Section 82-211. Preapproved designs

1. **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more preapproved designs for SWFs and other infrastructure deployments. This Section sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
2. **Adoption.** The Director may, in the Director's discretion, establish a preapproved design when the Director finds that a proposed preapproved design meets or exceeds the design standards in this Article. The Director shall make preapproved designs publicly available at the offices of the Director and at the time of application.
3. **Repeal.** The Director may repeal any preapproved design by written notice posted at Keene City Hall and at the offices of the Director. The repeal shall be effective to any application received after the date of the repeal.
4. **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sec. 82-209 subsection (2)(c). of this Article are satisfied and shall evaluate the application for compliance with the remaining findings for approval listed in Sec. 82-209 subsection (2).
5. **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

Section 82-212. Definitions

The definitions in this Section shall be applicable to the terms, phrases and words in this Article. If any definition assigned to any term, phrase or word conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

"Accessory equipment" means equipment other than antennas used in connection with a SWF or other infrastructure deployment. The term includes "transmission equipment" as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

"Antenna" means an apparatus designed for the purpose of transmitting or receiving electromagnetic radio frequency signals used in the provision of personal wireless service and any comingled information services.

“Antenna facility” means an antenna and associated accessory equipment.

“Applicant” means any person who submits an application and is a wireless provider.

“Batched application” means more than one application submitted at the same time.

“Collocation” means mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure, as defined by the FCC in 47 C.F.R. § 1.6102(g) (as may be amended or superseded). "Collocation" does not include a "substantial modification."

“Decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

“Director” means the Public Works Director or their designee.

“FCC” means the Federal Communications Commission or its duly appointed successor agency.

“FCC Shot Clock” means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

“Height” means the distance measured from ground level to the highest point on the structure, even if such highest point is an antenna. The term "ground level" means the average existing grade or elevation of the ground surface within the footprint of the structure prior to any alterations such as grading, grubbing, filling, or excavating.

“NH Shot Clock” means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined in NH RSA 12-K:10 and as may be amended or superseded.

“Nonresidential district” means any zoning district that is not included in the definition of “Residential district.”

“OTARD” means an “over-the-air reception device” and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

“Personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. See 47 U.S.C. § 332(c)(7)(C)(i).

“Personal wireless service facilities” means facilities for the provision of personal wireless services as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“Persons entitled to notice” means the record owners and legal occupants of all properties within a 300-foot radius of the proposed SWF. Notice to the legal occupants shall be deemed given when sent to the property’s physical address.

“Public right-of-way” or “Public rights-of-way” means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes, or other public access.

“Residential district” means a zoning district that is intended primarily for residential uses. This term includes the following zoning districts:

1. Rural
2. Low Density
3. Low Density-1
4. Medium Density
5. High Density
6. High Density-1
7. Residential Preservation

“RF” means radio frequency or electromagnetic waves.

“Shot clock days” means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock or NH Shot Clock. The term “shot clock days” does not include any calendar days on which the Shot Clock is tolled (i.e., “paused”).

“Small Wireless Facility” or “SWF” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, except as modified in this Article. A SWF meets each of the following conditions:

1. The facility is mounted on a structure that:
 - a. is 50 feet or less in height including the antenna; or
 - b. is no more than 10 percent taller than other adjacent structures; or
 - c. does not extend the existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
2. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet.
3. All other wireless equipment attached directly to a structure associated with the facility is cumulatively no more than 28 cubic feet in volume.

“Support structure” means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded. This section states that a “structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of

services).

“Technically infeasible” means a circumstance in which compliance with a specific requirement within this Article is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

Kendall W. Lane, Mayor

ARTICLE VII. - TELECOMMUNICATIONS TOWERS AND ANTENNAS

Sec. 102-1261. - Authority.

This article is adopted by the city, on June 7, 2001, in accordance with the authority as granted in RSA 674:16 and 674:21 and procedurally under the guidance of RSA 675:1, II.

(Code 1970, § 2327.1; Ord. No. O-2000-19A, § 2327.1, 6-7-2001)

Sec. 102-1262. - Purpose and goals.

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

- (1) Preserve the authority of the city to regulate and to provide for reasonable opportunity for the siting of telecommunications facilities, by enhancing the ability of providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently.
- (2) Reduce adverse impacts such facilities may create, including but not limited to impacts on aesthetics, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.
- (3) Permit the construction of new ground-mounted towers only in designated zones where all other reasonable opportunities have been exhausted, and to encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas.
- (4) Provide constant maintenance and safety inspections for any and all facilities.
- (5) Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and code compliance; provide a mechanism for the city to remove these abandoned towers to protect the citizens from imminent harm and danger.
- (6) Provide for the removal or upgrade of facilities that are technologically outdated.

(Code 1970, § 2327.2; Ord. No. O-2000-19A, § 2327.2, 6-7-2001)

Sec. 102-1263. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alternative telecommunication facilities means innovative siting techniques that shall include manmade trees, clock towers, bell steeples, light poles or flagpoles, architecturally screened roof-mounted antennas, and similar alternative design mounting structures, which camouflage or conceal the presence of antennas.

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 bandwidth, which is used as a telecommunication facility.

Antenna array means a collection of antennas attached to a mount to send and receive radio signals.

Average tree crown height means an average height found by inventorying the crown height at above-ground level of all trees over 20 feet in height for a defined area, such as the area delineated in section 102-1266(1).

Carrier means a company that provides telecommunication services, also sometimes referred to as a "provider."

Camouflaged means a telecommunication facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure. Camouflaged facilities include manmade trees.

Collocation means the use of a single mount on the ground by more than one carrier (vertical collocation) or the same carrier with multiple licenses, and/or the use of several mounts on an telecommunication facility by more than one carrier or the same carrier with multiple licenses. Collocation also refers to the attachment of additional antenna to an preexisting mount which does not increase the size, visibility or height of the structure.

Equipment shelter means an enclosed structure, cabinet, shed, vault, or box near the base of the mount within which is housed equipment for telecommunication facilities such as batteries and electrical equipment. Equipment shelters are sometimes referred to as "base transceiver structures."

Existing structure means a structure that was lawfully erected, installed, or constructed for purposes other than the siting of telecommunication facilities at least two years prior to the date of application for a building permit and conditional use permit to site telecommunication facilities thereon.

FAA means the Federal Aviation Administration.

Fall zone means the area on the ground from the base of a ground-mounted telecommunication facility that forms a circle with a diameter equal to twice the height of the facility. The fall zone is the area within which there is a potential hazard from falling debris, such as ice, or collapsing material.

FCC means the Federal Communications Commission. Any references in this article to Federal Communications Commission standards or governing law are to standards or law then prevailing or in effect.

Guyed tower means a monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

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 such highest point is an antenna. The term "ground level" means the average existing grade or elevation of the ground surface within the footprint of the structure prior to any alterations such as grading, grubbing, filling, or excavating.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places by the state office of historic preservation; or
- (4) Individually listed on a local inventory of historic places that has been either certified by:
 - a. The state office of historic preservation; or
 - b. The Secretary of the Interior.

Lattice tower means a type of mount with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding.

Mast means a thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole means a thicker type of mount than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

Mount means the structure or surface upon which antennas are mounted, including the following four types of mounts:

- (1) Roof-mounted. Mounted on the roof of a building.
- (2) Side-mounted. Mounted on the side of a building.
- (3) Ground-mounted. Mounted on the ground.
- (4) Structure-mounted. Mounted on a structure other than a building.

Planning board and *board* mean the city planning board and the regulator of this article.

Preexisting towers and antennas means any tower or antenna lawfully constructed or permitted prior to the adoption of the ordinance from which this article derives; also means any tower or antenna lawfully constructed in accordance with this article that predates an application currently before the board.

Radio frequency radiation (RFR) means the emissions from telecommunication facilities.

Security barrier means a wall, fence, or berm that restricts an area from unauthorized entry or trespass.

Separation means the distance between one carrier's array of antennas and another carrier's array.

Telecommunications facilities means any structure, antenna, tower, or other device, which provides commercial mobile wireless services, unlicensed wireless services, cellular telephone services, specialized mobile radio communications (SMR), and personal communications service (PCS), and common carrier wireless exchange access services or other similar services.

Tower means any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and alternative tower structures.

(Code 1970, § 2327.3; Ord. No. O-2000-19A, § 2327.3, 6-7-2001; Ord. No. O-2002-20, § 2327.3, 2-6-2003)

Cross reference— Definitions generally, § 1-2.

Sec. 102-1264. - Applicability.

- (a) *Public property.* Antennas or towers located on property owned, leased, or otherwise controlled by the city may be exempt from the requirements of this article, except that users are only permitted in the zones and areas as delineated in section 102-1265(b). This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the city council and the city council elects, subject to state law and local ordinance, to seek the partial exemption from this article.
- (b) *Amateur radio.* This article shall not govern private use residential satellite dishes, antennas for wireless Internet access, private wireless ham communication antennas, or any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally licensed amateur radio

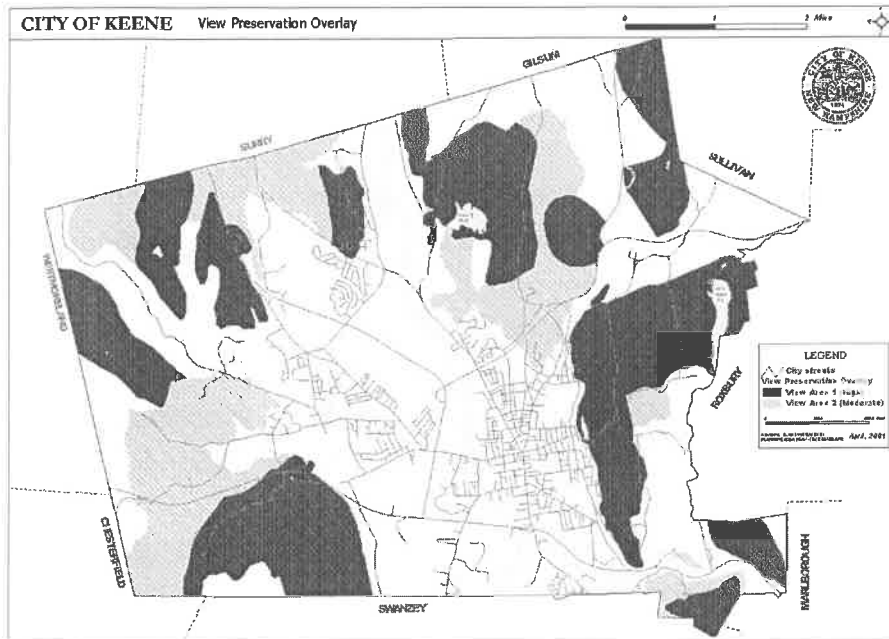
station operator. This application adopts the provisions and limitations as referenced in RSA 674:16, IV. This exemption does not apply to the building code.

- (c) *Essential services and public utilities.* Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in this Code or the city's ordinances and regulations. Siting for telecommunication facilities is a use of land and is addressed by this article.
- (d) *Federal requirements.* All towers must meet or exceed current standards and regulations of the Federal Aviation Administration, Federal Communications Commission, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, the owners of the towers and antennas governed by this article shall bring such towers and antennas into compliance with such revised standards and regulations within six months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with sections 102-1271 and 102-1272, at the owner's expense, through execution of the posted security.
- (e) *Building codes and safety standards.* To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes. If, upon inspection, the city concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons and property, upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal, in accordance with section 102-1272, at the owner's expense, through execution of the posted security.
- (f) *Deployment of telecommunication facilities.* The provisions of RSA 12-K are incorporated in this article by reference.

(Code 1970, § 2327.4)

Sec. 102-1265. - District regulations.

- (a) *View preservation overlay.* Incorporated as part of this article, the view preservation overlay as described in the view preservation overlay map, is hereby adopted as an overlay to the official zoning map of the city. The view preservation overlay includes two view areas: view area 1 (high) and view area 2 (moderate). Each of the view areas as shown on the following map are depicted according to the state plane coordinate system, Datum NAD 83, North American Datum 1983, Units: U.S. feet.



View Preservation Overlay Map

- (b) *Use regulations.* The telecommunication facilities listed in this subsection are deemed to be permitted uses subject to the requirements of this article. The telecommunication facilities listed in this subsection may require further review under this article in accordance with section 102-1269 pertaining to conditional use permits and the planning board's subdivision and site plan regulations. Modifications or alterations to ground-mounted towers in existence prior to the adoption of the ordinance from which this article derives which would increase the visibility, height and size of the tower shall be subject to site plan review and the issuance of a conditional use permit. However, in all cases telecommunication facilities shall require a building permit and must comply with other applicable sections of this Code and city ordinances and regulations, including site plan review, as applicable.
- (1) *Concealed telecommunication facilities located inside buildings and structures.* The installation of telecommunication facilities inside buildings or structures (completely concealed from view) is encouraged and may occur within all zones of the city. These facilities consist mainly of antennas or other devices which can transmit through structures or walls. The placement of concealed telecommunication facilities inside buildings or structures is subject to the issuance of a building permit only and this article.
 - (2) *Collocation of facilities.* The installation of telecommunication facilities attached to or mounted upon existing telecommunication facilities is encouraged and may occur on any ground-mounted telecommunication tower, guyed tower, lattice tower, mast or monopole in existence prior to the adoption of the ordinance from which this article derives, or on any ground-mounted telecommunication facility previously approved under this article. Collocation of facilities is subject to the issuance of a building permit only, except under the following situations:
 - a. The location of the ground-mounted telecommunication tower or facility is within view area 1 of the view preservation overlay;
 - b. There is a change in access to the existing facility; and
 - c. There is a change in the area of the security barrier of the existing facility.

Under the situations in this subsection, site plan review and the issuance of a conditional use permit by the planning board shall be required.

- (3) *New telecommunication facilities mounted on existing structures.* The placement of telecommunication facilities attached or mounted to existing structures such as water towers, utility poles and towers, and other similar structures may occur within all zones of the city. These facilities consist mainly of antennas or other devices which can be vertically or horizontally mounted to a structure and may include facilities which are designed to blend into the surrounding environment or are painted to match the existing structure. Such facilities shall require the issuance of a building permit and a conditional use permit in accordance with this article. The term "existing structure" is defined in section 102-1263.
 - (4) *New telecommunication facilities mounted on existing buildings.* The placement of telecommunication facilities attached or mounted to existing buildings may occur within all zones of the city. These facilities consist mainly of antennas or other devices, which can be mounted to the roof or attached to the side of a building. They can also include architecturally screened roof-mounted antennas, which are integrated into the architectural elements of the building, and building-mounted antennas painted to match the existing building and antennas. Such facilities shall require the issuance of a building permit and a conditional use permit in accordance with this article.
 - (5) *Camouflaged and alternative telecommunication facilities.* The installation of alternative telecommunication facilities, such as clock towers, bell steeples, light poles or flagpoles and other similar facilities, may be located within all zones of the city. New ground-mounted towers and antennas if camouflaged may occur within view area 2 as shown on the map of the city's view preservation overlay. All alternative and camouflaged facilities shall require the issuance of a building permit and a conditional use permit in accordance with this article. Site plan review shall also be required under the planning board's site plan/subdivision regulations.
 - (6) *New ground-mounted towers and antennas.* If an applicant demonstrates that none of the telecommunication facilities identified in subsections (b)(1) through (5) of this section are possible, new ground-mounted towers and antennas may be permitted subject to the issuance of a building permit and a conditional use permit in accordance with this article. Site plan review shall also be required under the planning board's site plan/subdivision regulations. However, new ground-mounted towers and antennas shall be prohibited from locating in those areas identified as view area 1 and view area 2 as shown on the map of the city's view preservation overlay. Additionally, new ground-mounted telecommunication facilities shall not be located within any existing or approved historic district.
- (c) *Siting policy.* Applicants seeking approval for new ground-mounted telecommunication towers and antennas shall first evaluate the availability of existing structures and buildings for the concealment of telecommunication facilities, as well as collocation at existing telecommunication structures or towers. After exhausting these options, applicants shall consider next the availability of existing structures or buildings for the installation of telecommunication facilities, as well as the use of camouflaged or alternative telecommunication facilities.
 - (d) *Burden of proof policy.* Only after finding that none of the telecommunication facilities options identified in subsections (b)(1) through (5) of this section are possible can an applicant consider or propose a new ground-mounted tower or antenna. When considering a new ground-mounted tower or antenna, the applicant shall have the burden of proving to the planning board that none of options identified in subsections (b)(1) through (5) of this section are possible. To meet this burden, the applicant shall take all the following actions to the extent applicable:

- (1) The applicant shall submit to the planning board a list of all contacts made with owners of potential sites re; availability of potential space for a telecommunication facility. If the planning board informs the applicant that existing structures or buildings may be satisfactory, the applicant shall contact the property owners of those buildings.
- (2) The applicant shall provide to the planning board copies of all letters of inquiry made to owners of existing structures or buildings and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered return receipt requested forms from the U.S. post office shall be forwarded for each owner of the existing structure or building that was contacted.
- (3) If the applicant claims that a structure or building is not capable of physically supporting a telecommunication facility, a licensed professional civil or structural engineer must certify this claim to the planning board. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the telecommunication facility without unreasonable costs.

If the applicant demonstrates to the planning board that it is not feasible to conceal telecommunication facilities inside an existing structure or building, collocate facilities at existing ground-mounted telecommunication towers or antennas, install or mount telecommunication facilities onto existing structures or buildings, or construct camouflaged or alternative telecommunication facilities, new ground-mounted towers and antennas can be considered subject to this article.

(Code 1970, § 2327.5; Ord. No. O-2000-19A, § 2327.5, 6-7-2001; Ord. No. O-2002-20, § 2327.5.2, 2-6-2003)

Sec. 102-1266. - Dimensional requirements.

The following dimensional requirements and limitations shall preempt all other dimensional limitations as required by this chapter and shall apply only to telecommunications facilities approved under this article, except for concealed telecommunication facilities located inside a building or structure as described in section 102-1265(b):

- (1) *Maximum height.* In no case shall new ground-mounted towers, ground-mounted camouflaged or alternative towers, or preexisting reconstructed ground-mounted towers or antennas project higher than 20 feet above the average tree crown height within a 150-foot perimeter of the mount, security barrier, or designated clear area for access to equipment, whichever is greater. A licensed landscape architect, certified arborist or forester shall determine the average tree crown height. The height of towers shall be determined by measuring the vertical distance from the tower or telecommunication facility's lowest point of contact with the ground to the highest point of the tower, including all antennas or other attachments. Antennas on top of the tower may be added provided the total height of the tower and antennas does not project higher than 20 feet above the average crown height.
- (2) *Height of existing structures and utility poles.* Telecommunication facilities mounted on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures by no more than 15 feet. No telecommunication facility may be placed on any structure less than 40 feet in height. The height of the structure is measured by including the mount of the proposed telecommunication facility.
- (3) *Height of existing buildings.* Telecommunication facilities attached to or mounted on existing buildings, including smokestacks attached to buildings, shall not increase the height of the existing building by more than 15 feet, unless the facility is completely camouflaged; for example, a facility completely

concealed within a flagpole, steeple, or chimney. The increase in height of the structure shall be in scale and proportion to the building as originally configured. Telecommunication facilities may locate on a building that is legally nonconforming with respect to height, provided that the sections of this article are met. No telecommunication facility may be placed on any structure less than 40 feet in height. The height of the building is measured by including the mount of the proposed telecommunication facility.

- (4) *Height for reconstruction of preexisting ground-mounted tower/antenna.* An existing ground-mounted guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of the ordinance from which this article derives may be reconstructed provided the standards of this article are met and provided the tower and any antenna placed on top of the tower do not project higher than 20 feet above the average tree crown height. The mount shall be replaced with a similar mount that does not significantly increase the visual impact on the community.
- (5) *Setbacks.* Telecommunication facilities, guys and accessory equipment shelters shall comply with the building setback requirements of the zoning district in which the facility is located, except for facilities installed within existing structures and buildings or mounted to the exterior of existing structures or buildings, such as a church steeple, light standard, power line support device (e.g., power line tower). Fences shall comply with the setback provisions of the zoning district in which the facility is located if the fence is six feet or more in height.
- (6) *Tower setbacks and separation.* Towers must be set back a distance equal to 125 percent of the height of the tower from any off-site residential structure, public road or street. New towers shall not be located within the public rights-of-way of any roads.
- (7) *Fall zone for ground mounts.* In order to ensure public safety, the minimum distance from the base of any ground-mounted telecommunication facility to any property line, public road, residential dwelling, business or institutional use, or public recreational areas shall be, at a minimum, the distance to the fall zone, as defined by this article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owners. The area and terms of the easement shall be shown on all applicable plans submitted to the city.
- (8) *Fall zone for non-ground mounts.* If an existing structure or building is proposed as a mount for a telecommunication facility, a fall zone shall not be required, but the setback provisions of the zoning district shall apply. For preexisting nonconforming structures or buildings, telecommunication facilities and their related equipment shelters shall not increase any nonconformity.

(Code 1970, § 2327.6.1; Ord. No. O-2000-19A, § 2327.6.1, 6-7-2001; Ord. No. O-2002-20, § 2327.6, 2-6-2003)

Sec. 102-1267. - Other minimum requirements.

The following minimum requirements apply to all telecommunication facilities approved under this article, except for concealed telecommunication facilities located inside a building or structure as described in section 102-1265(b).

- (1) *Lighting.* Telecommunication facilities shall not be illuminated by artificial means and shall not display strobe lights of any kind, except for aviation caution lights shielded from sight from the ground, unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a specific facility. Light fixtures used to illuminate ballfields, parking lots, or other similar areas may be attached to an approved ground-mounted facility. Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Footcandle measurements at the property line shall be zero initial footcandles.

- (2) *Signage and advertising.* The use of any portion of a telecommunication facility for any permanent or temporary writing, symbols, logos, or any graphic representation of any kind, other than warning or equipment information, shall be prohibited. These signs shall be limited to those needed to identify the property and the owner and warn of hazards. Signs shall comply with the city sign code in chapter 74.
- (3) *Noise.* Telecommunication facilities shall not generate noise in excess of that permitted under the city noise ordinance.
- (4) *Radio frequency radiation (RFR) standards.* All equipment proposed for a telecommunication facility shall be fully compliant with the Federal Communications Commission Guidelines for Evaluating the Environmental Effects of Radio Frequency Radiation (FCC Guidelines), under Report and Order, Federal Communications Commission 96-326, published on August 1, 1996, and all subsequent amendments.

(Code 1970, § 2327.6.2; Ord. No. O-2000-19A, § 2327.6.2, 6-7-2001)

Sec. 102-1268. - Design standards and conditional use permit review criteria.

- (a) *Application of standards and criteria to facility type.* The following tables show the application of standards and criteria to the facility type:

A:	Concealed telecommunication facilities located inside buildings and structures
B:	Collocation of facilities
C:	New telecommunication facilities mounted on existing structures
D:	New telecommunication facilities mounted on existing buildings
E:	Camouflaged and alternative telecommunication facilities
F:	New ground-mounted towers and antennas

	Facility Type					
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>
Standards and criteria:	A	B	B	B	B	B
	B	C	C	C	C	C
	C	D	D	D	D	D
	D	E	E	E	E	E

		F	F	F	F	F
		G	G	G	G	G
		H	H	H	I	H
			I	I	L	L
			J	J	M	M
				K	N	N
					O	O

(b) *List of standards and conditional use permit criteria.* the following is a list of standards and conditional use permit criteria:

- (1) *Concealment.* Any telecommunication facility located inside a building or structure must be completely concealed from public view.
- (2) *Location.* There are no restrictions upon the location of concealed telecommunication facilities mounted inside a building or structure. No telecommunication facility may be mounted on any structure or building facing or fronting on Main Street (between and including Central Square and Route 101), unless the facility is designed to be incorporated into the structure or building such as a clock tower, bell steeple, light pole or flagpole or other similar alternative facility. New ground-mounted camouflaged facilities, towers and antennas shall not be located within residential areas or open areas that are clearly visible from abutting public roads, recreational areas and properties. Manmade trees and other similar camouflaged or ground-mounted towers and antennas must be located in areas containing a dense tree growth that extends continuously for a distance of 150 feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greater. The 150-foot area of dense tree growth shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the existing trees shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons and property.
- (3) *Historic structure.* Any telecommunication facility located inside or upon an existing historic structure shall not alter the historic character-defining features, distinctive construction methods, or original historic materials of the structure. Any alteration made to a historic structure to accommodate a telecommunication facility shall be fully reversible. Telecommunication facilities mounted on the top of a historic building shall be concealed behind the existing architectural features of the building or shall be so located so that they are not visible from public roads and viewing areas.
- (4) *Mechanical and electrical equipment.* All mechanical and electrical equipment associated with any telecommunication facility located inside a structure or building must be concealed within the structure or building or shall be located so that the equipment and wires are not visible from public roads or viewing areas.

- (5) *Scale.* All telecommunication facilities must be consistent with community scale, as exhibited in relative height proportion with the supporting structure or building and/or the immediate surroundings as applicable.
- (6) *Color and finish.* New ground-mounted towers and antennas shall either maintain a nonreflective finish, subject to any applicable standards of the Federal Aviation Administration, or be painted a neutral color, so as to reduce glare and visual obtrusiveness. Camouflaged or alternative telecommunication facilities and supporting electrical and mechanical equipment must be identical to, or closely compatible with, the color and finish of the surrounding environment, structures and buildings so as to make the facility and related equipment as visually unobtrusive as possible. If a telecommunication facility is mounted on an existing structure or building, the facility and supporting electrical and mechanical equipment shall be a neutral color or one that is identical to, or closely compatible with, the color of the supporting structure or building so as to make the facility and related equipment as visually unobtrusive as possible. If a telecommunication facility is installed on an existing tower or antenna or a new tower or antenna approved under this article for the purpose of collocation, the facility must be constructed of a nonreflective finish, subject to any applicable standards of the Federal Aviation Administration. Additionally, it must be painted a neutral color which blends with the background and immediate surroundings or match the color of the existing tower or antenna so as to reduce glare and visual obtrusiveness.
- (7) *Contrast.* All telecommunication facilities, except concealed facilities located inside buildings or structures, shall not stand out in terms of color and materials, scale, height, mass or proportion against a contrasting background.
- (8) *Antenna type.* Narrow profile antenna arrays are recommended and required for new ground-mounted facilities, the collocation of facilities, and facilities mounted on existing structures and buildings.
- (9) *Smokestacks.* Only camouflaged or alternative telecommunication facilities are permitted to be mounted on smokestacks.
- (10) *Side mounts.* Facilities, which are side mounted to an existing or proposed new structure, shall blend or match as closely as possible with the design features and materials of the existing structure. Facilities mounted to the side of an existing or proposed new building shall blend or match as closely as possible with the architectural design features of the building and must be painted or shielded with material consistent with the design features and materials of the building.
- (11) *Roof mounts.* Facilities mounted on a roof shall be stepped back from the front facade in order to limit the visual impact of the facility on the building's silhouette. All roof-mounted facilities with supporting electrical and mechanical equipment shall be screened from view or camouflaged.
- (12) *Security fencing.* New ground-mounted towers and antennas shall be enclosed by security fencing not less than six feet in height, and towers shall be equipped with an appropriate anticlimbing device. The planning board shall have final authority on whether a camouflaged or alternative telecommunication facility should be surrounded by a security fence or barrier of some sort.
- (13) *Equipment shelters.* All equipment for a camouflaged or ground-mounted alternative telecommunication facility shall be located in an underground vault. All equipment for new ground-mounted towers or antenna shall be located in an underground vault or equipment shelter. The equipment shelters shall be architecturally consistent with respect to materials and appearance, with the buildings in the area of the facility, or equipment shelters shall be camouflaged behind an effective yearround landscape buffer,

equal to the height of the proposed building, as determined by the planning board. All equipment shelters, utility buildings and structures accessory to a ground-mounted facility shall meet the minimum building setback requirements of the underlying zoning district.

- (14) *Driveways.* If available, existing entrances and driveways to serve a camouflaged or ground-mounted alternative telecommunication facility or a new ground-mounted tower or antenna shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic and environmental impact. New driveways to serve a ground-mounted facility shall not exceed 12 feet in width. A gravel or stone surface is encouraged and the driveway must comply with the city's driveway regulations.
- (15) *Ground mounts.* New ground-mounted towers and antennas or new towers and antenna constructed as part of a reconstruction project permitted under sections 102-1265(b) and 102-1266(4) shall be of a lattice, guyed or mast-type mount, unless the planning board determines that an alternative design would better blend into the particular site and surrounding environment. Monopoles are expressly prohibited. New ground-mounted towers and antennas must be designed structurally, electrically, and in all other respects, to allow for future rearrangement of antennas upon the tower, to accept antennas mounted at varying heights, and to accommodate antennas from at least two users.

(Code 1970, § 2327.7; Ord. No. O-2000-19A, § 2327.7, 6-7-2001)

Sec. 102-1269. - Conditional use permits.

- (a) *Generally.* All applicants for telecommunication facilities as required under this article shall apply to the planning board for site plan review in accordance with the requirements as provided for in the city's site plan review regulations. As required under this article, applicants shall also be required to submit the information provided for in this section.
- (b) *Issuance.* In granting the conditional use permit, the planning board may impose conditions to the extent the board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this article.
 - (1) *Procedure on application.* The planning board shall act upon the application in accordance with the procedural requirements of the site plan review regulations and RSA 676:4.
 - (2) *Decisions.* Possible decisions rendered by the planning board include approval, approval with conditions, or denial. All decisions shall be rendered in writing, and a denial shall be in writing and based upon substantial evidence contained in the written record.
 - (3) *Factors considered in granting decisions.* In the review of conditional use permit applications, the applicant and the planning board shall address all applicable design standards and conditional use permit review criteria as provided for in section 102-1268 and the general requirements of sections 102-1266 and 102-1267. In addition, the planning board shall consider the following additional factors:
 - a. Height of proposed tower or other structures. The planning board shall have the final authority to increase the allowable height of all new, altered, modified or reconstructed ground-mounted towers or antennas based on site conditions in nonresidential areas, provided:
 1. If the structure is readily visible to residential properties, it does not exceed a maximum height of 75 feet; and
 2. If the structure is not readily visible to residential properties, it does not exceed a maximum height of 150 feet.

- b. Availability of alternative facility types and sites as discussed in the siting policy in section 102-1265(c).
 - c. Visual impacts on view sheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
 - d. Compliance with the burden of proof policy in section 102-1265(d).
- (c) *Information required.* Each applicant requesting a conditional use permit under this article shall submit a scaled site plan in accordance with the planning board's subdivision/site plan regulations and further information including a scaled elevation view, topography, existing vegetation and tree crown coverage, radio frequency coverage, height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses up to 200 feet away, global positioning (latitude and longitude as referenced to the state plan coordinate system, NAD 83 North American Datum, U.S. feet) and any other information deemed necessary by the planning board to establish compliance with this article. Furthermore, the applicant shall submit the following information as part of the conditional use permit request:
 - (1) The applicant shall submit written proof that the proposed telecommunication facility complies with the Federal Communications Commission regulations on radio frequency (RF) exposure guidelines.
 - (2) The applicant shall submit written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable Federal Communications Commission rules. If an environmental assessment (EA) or an environmental impact statement (EIS) is required under the Federal Communications Commission rules and NEPA, submission of the EA or EIS to the board prior to the beginning of the federal 30-day comment period, and the city process, shall become part of the application requirements.
 - (3) Each applicant for a new ground-mounted tower or antenna shall provide to the planning board an inventory and map of all existing ground-mounted towers and antennas that are located within the city's jurisdiction and those within two miles of the border thereof, including specific information about the location, height, design of each tower and/or antenna, as well as economic and technological feasibility for co-location on the inventoried towers and/or antennas. The planning board may share such information with other applicants applying for approvals or conditional use permits under this article or other organizations seeking to locate telecommunication facilities within the jurisdiction of the governing authority; provided, however, that the planning board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable. If the applicant is proposing to build a new ground-mounted tower or antenna, the applicant shall submit written evidence demonstrating that no existing ground-mounted tower or antenna can accommodate the applicant's proposed telecommunication facilities. This evidence can consist of substantial evidence that:
 - a. No existing ground-mounted towers or antennas are located within the geographic area required to meet the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
 - b. Existing ground-mounted towers or antennas are not of sufficient height to meet the applicant's engineering requirements, and why.
 - c. The existing ground-mounted towers or antennas do not have sufficient structural strength to support the applicant's proposed telecommunication facility's related equipment.
 - d. The applicant's proposed telecommunication facilities would not cause electromagnetic interference with the telecommunication facilities located on the existing ground-mounted towers or antennas, or the telecommunication facilities located on the existing towers or antennas would cause interference with the applicant's proposed telecommunication facilities.

- e. The fees, costs, or contractual provisions required by the owner in order to share the existing ground-mounted antenna are unreasonable. Costs exceeding new ground-mounted tower development are presumed to be unreasonable.
 - f. The applicant can demonstrate other limiting factors that render existing ground-mounted towers and antennas unsuitable.
- (4) The applicant proposing to build a new ground-mounted tower or antenna shall submit an agreement with the city that allows for the maximum allowance of co-location upon the new structure. 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 the city, and grounds for a denial.
 - (5) The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The planning board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Cost for this review shall be borne by the applicant in accordance with RSA 676:4I(g).
 - (6) Appeals. An appeal of a planning board decision relative to a conditional use permit under this section shall be to superior court in accordance with RSA 677:15.

(Code 1970, § 2327.8; Ord. No. O-2000-19A, § 2327.8, 6-7-2001)

Sec. 102-1270. - Waivers.

- (a) *Generally.* Where the planning board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing sections of this article or the purposes of this article may be served to a greater extent by an alternative proposal, it may approve waivers to this article. The purpose of granting waivers under this article shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by this article. The board shall not approve any waiver unless a majority of those present and voting find that all of the following apply:
 - (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.
 - (2) The waiver will not, in any manner, vary the provisions of this chapter, the city master plan, or official maps.
 - (3) Such waiver will substantially secure the objectives, standards and requirements of this article.
 - (4) A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include but not be limited to the following:
 - a. Topography and other site features.
 - b. Availability of alternative site locations.
 - c. Geographic location of the property.
 - d. Size/magnitude of the project being evaluated and availability of collocation.
 - (5) In no case shall ground-mounted towers, ground-mounted camouflaged or alternative towers, or preexisting reconstructed ground-mounted towers or antennas be greater than 125 feet in height.
- (b) *Conditions.* In approving waivers, the board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of this article.
- (c) *Procedures.* A petition for any such waiver shall be submitted in writing by the applicant with the application

for board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. Failure to submit the petition in writing shall require an automatic denial.

- (d) *Appeals.* An appeal of a planning board decision relative to a waiver shall be to the zoning board of adjustment in accordance with RSA 674:33.

(Code 1970, § 2327.9; Ord. No. O-2000-19A, § 2327.9, 6-7-2001)

Sec. 102-1271. - Maintenance, monitoring and security.

- (a) *Maintenance.* The owner of an approved telecommunication facility shall maintain the facility in good condition. Such maintenance shall include but shall not be limited to painting, structural integrity of the mount and security fencing, and maintenance of the buffer areas and landscaping.
- (b) *Monitoring.* As part of the issuance of a building permit or conditional use permit, the property owner agrees that the city may enter the subject property to inspect the telecommunication facility or obtain RFR or noise measurements at the expense of the owner of the facility. The city shall provide reasonable written notice to the property owner and the owner of the facility and provide an opportunity to accompany city representatives when the inspection and/or measurements are conducted.
- (c) *Security for removal.* Recognizing the extremely hazardous situation presented by abandoned and unmonitored telecommunication facilities, the planning board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunication facilities if a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with section 102-1272. The amount of the security shall be based upon the removal cost, plus 15 percent, provided by the applicant and certified by a professional engineer licensed in the state every five years from the date of the issuance of a building permit or the date of planning board approval, whichever is applicable. If the cost has increased more than 15 percent, the owner of the facility shall provide additional security in the amount of the increase. Furthermore, the owner shall submit as part of the issuance of a building permit proof of adequate insurance covering accident or damage.

(Code 1970, § 2327.10; Ord. No. O-2000-19A, § 2327.10, 6-7-2001)

Sec. 102-1272. - Abandonment or discontinuance of use.

- (a) *Notification.* At such time that an owner or carrier plans to abandon or discontinue operation of a telecommunication facility, such owner or carrier shall notify the city manager by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. If an owner or carrier fails to give such notice, the telecommunication facility shall be considered abandoned upon such discontinuation of operations.
- (b) *Removal.* Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the facility within 90 days from the date of abandonment or discontinuation of use. The term "physically remove" shall include but not be limited to the following:
 - (1) Removal of antennas, mount, equipment shelters and security fencing as applicable from the subject property.
 - (2) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
 - (3) Restoring the location of the facility to its natural condition, except that any landscaping and grading shall remain as finished.

- (c) *Failure to remove.* If the owner of the facility does not remove the facility upon order of the superintendent of code enforcement, the superintendent of code enforcement shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within 90 days of receipt of the declaration of abandonment. If the abandoned facility is not removed within 90 days, the city shall execute the security to pay for removal. If there are two or more users of a single tower or antenna, this subsection shall become effective until all users cease using the tower or antenna.

(Code 1970, § 2327.11; Ord. No. O-2000-19A, § 2327.11, 6-7-2001)

Sec. 102-1273. - Facilities installed prior to effective date.

All telecommunication facilities, towers and antennas legally installed prior to the effective date of the ordinance from which this article derives shall be considered permitted, nonconforming uses and structures and may be utilized for siting consistent with the terms of this article.

(Code 1970, § 2327.12; Ord. No. O-2000-19A, § 2327.12, 6-7-2001)

Secs. 102-1274—102-1279. - Reserved.