

**AN ORDINANCE REGULATING TELECOMMUNICATIONS FACILITIES
IN THE TOWN OF RUTLAND**

SECTION I: AUTHORITY

Under authority granted in 24 V.S.A. § 2291(19) and 24 V.S.A. Chapter 59, the Selectboard of the Town of Rutland (Selectboard) hereby adopts the following civil ordinance concerning telecommunications facilities. Under this Ordinance, the Selectboard shall have the power:

- A. to regulate the construction, alteration, development, decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements;
- B. to hire, at the expense of the applicant, qualified person(s) to conduct an independent technical review and evaluation of the application, including without limitation, to evaluate compliance with Federal Communication Commission (FCC) rules, regulations and standards; and
- C. to require the posting of a bond or other acceptable security in order to finance the future decommissioning or dismantling of a permitted telecommunication facility.

SECTION II: PURPOSES

The purposes of this Ordinance are to:

- A. Allow the development of adequate telecommunications services, while preserving the character and appearance of the Town of Rutland (Town) while ;
- B. Protect the scenic, historic, environmental and natural resources of theTown;
- C. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring and removal of telecommunications facilities and towers;
- D. Minimize tower and antenna proliferation by requiring the sharing of existing telecommunications facilities, towers and sites where possible and appropriate;
- E. Facilitate the provision of telecommunications services to the community;
- F. Minimize the adverse visual effects of telecommunications facilities and towers through careful design and siting standards;
- G. Encourage the location of towers and antennas in non-residential areas and away from other sensitive areas such as those that have schools and child care facilities;
- H. Advance the objectives of the Rutland Town Plan; and
- I. Protect the public health, safety and general welfare of the Town of Rutland.

SECTION III: DEFINITIONS

Adequate Capacity: Capacity is considered to be “adequate” if the grade of service is p.05 or better for a least 50% of the days in a preceding month, prior to the date of application, as measured using direct traffic measurement of the telecommunications facility in question, where the call blocking is due to frequency contention at the antenna(s).

Adequate Coverage: Coverage is “adequate” within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be a signal strength of at least -90dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

Alternative Design Tower Structure: Artificial trees, clock towers, bell steeples, light poles, silos and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna: A device which is attached to a tower or other structure for transmitting and receiving electromagnetic waves.

Antenna Height: The vertical distance measured from the base of the antenna support structure at grade to the highest point of the antenna. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Applicant: The telecommunication services provider and the owner of the property upon which the telecommunications facility is proposed to be located that submit an application for a permit pursuant to this Ordinance.

Base Station: The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

Cellular Service: A telecommunications service that permits customers to use wireless, mobile telephones to connect, via low-power radio transmission sites called cell sites, either to the public switched network or to other mobile cellular phones.

Channel: The segment of the radiation spectrum to or from an antenna, which carries one signal. An antenna may radiate on many channels simultaneously.

Collocation: Locating wireless communications equipment from more than one provider on a single site.

Engineer: An engineer who is licensed to practice in the State of Vermont and who is qualified in the relevant field of knowledge or engineering specialty (e.g., a structural engineer in questions of load-bearing, shear forces, etc.; an electrical engineer in questions of radiation effects, interference, etc.).

Facility Site: A property, or any part thereof, which is owned or leased by one or more telecommunications facility(s) and where required landscaping is located.

FCC: Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

Frequency: The number of cycles completed each second by an electromagnetic wave measured in Hertz (Hz).

GIS: Geographic Information Services.

Location: References to site location shall be the exact longitude and latitude, to the nearest tenth of a second. Bearing or orientation should be referenced to true North.

Monopole: A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal, or a wooden pole with below grade foundations.

Permit: Embodies the rights and obligations extended by the Town of Rutland to an operator to own, construct, maintain, and operate a telecommunications facility within the boundaries of the Town.

Personal Wireless Services: Commercial mobile services, unlicensed wireless exchange access services. These services include cellular services, personal communications services, specialized mobile radio services, and paging services.

Repeater: A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

Scenic Character: May include consideration of a field of sight or view corridor that may include natural and/or manmade structures and activities. The objects considered may be far away or nearby. The scenic character of an area may include consideration of the view from a stationary point or the view seen as one travels along a roadway, waterway, or path.

Telecommunications Facility: A land facility supporting antennas and microwave dishes that send and/or receive radio frequency signals, and all equipment (including repeaters) with which a telecommunications provider transmits and receives the waves which carry their services.. Communications facilities includes structures, towers or accessory buildings associated with the provision of telecommunication services.

Telecommunications Services Provider: An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

Telecommunications Tower: A guyed, monopole, or self-supporting vertical structure, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

USGS: United States Geological Survey.

VCGI: Vermont Center for Geographic Information.

View Corridor: A three-dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include a 360-degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect the view.

SECTION III: CONSISTENCY WITH FEDERAL LAW

In addition to other findings required by this Ordinance, the Board shall find that its decision regarding an application is intended to be consistent with federal law, particularly the Telecommunications Act of 1996. This Ordinance:

- A. Does not prohibit or have the effect of prohibiting the provision of personal wireless services;
- B. Does not unreasonably discriminate among providers of functionally equivalent services; and
- C. Does not regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated serves and facilities comply with Federal Communications Commission (FCC) regulations concerning such emissions.

SECTION IV: TELECOMMUNICATION FACILITY PERMITS

- A. No construction, alteration, addition, modification, installation or use of any telecommunications tower or facility shall commence until a telecommunications tower/facility permit (permit) has been issued by the Selectboard. This includes installation of antennas for new uses, change in the number of buildings or facilities, material change in technology used, or addition or change of any equipment resulting in greater visibility or structural wind-loading, or additional height of the tower or profile change of the facility due to additional antennas not included in the original application
- B. A pre-existing telecommunications facility may remain in place and in operation. No alteration, modification, repair, or upgrade of a pre-existing telecommunication tower and/or facility shall be commenced until the Selectboard has issued a permit required by this Ordinance.
- C. A telecommunications facility may be permitted upon compliance with this Ordinance and upon proof of compliance with all other local, state or federal laws applicable to land use and development and to such towers or facilities.
- D. The Selectboard may in the exercise of its discretion impose conditions upon the issuance of a permit. All permit conditions shall be written on or attached to the permit;
- E. The telecommunication services provider or FCC licensee must be an applicant for a permit. Where the telecommunication services provider or FCC licensee does not own the land upon which the telecommunication facility is located, the land owner(s) must also be an applicant on the permit application.
- F. If any other applicable regulation, bylaw, ordinance or statute which differs from this Ordinance, the most strict shall apply.
- G. In the event that the Town has incurred expenses for the review and evaluation of an application, no permit shall be issued until the applicant has paid the Town for the expenses incurred.

SECTION V: APPLICATION REQUIREMENTS

- A. Application for a permit for a telecommunications facility shall be made to the municipal official designated by the Selectboard by the telecommunication services provider and the owner of the property upon which the telecommunications is proposed to be located.
- B. An application for a telecommunications facility in the Town shall include at least the following information:
 - 1. The name(s) and address(es) of each applicant and of their agents. If any applicant is not a natural person, the name

and address of the business and the state in which it is incorporated and has its principle office;

2. The name(s) and address(es) of the record landowners and their agent(s);
3. The name(s) and address(es) of the record landowners of each abutting property;
4. The name(s), address(es), fax/telephone numbers and e-mail address(es) of the persons to be contacted who are authorized to act in event of an emergency regarding the structure or safety of the tower or facility;
5. A vicinity map showing the entire vicinity within a 2500 foot radius of the tower or facility site, including the location of the telecommunications facility or tower, topography, public and private roads and driveways, buildings and structures, utilities, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed tower site parcel and all easements or rights of way needed for access from a public way to the tower and/or other structures;
6. The location of the proposed structure on a USGS Topographic Map or Survey with 20-foot elevations or a GIS-generated map compatible with VCGI standards and encompassing the area within at least two-mile radius of the proposed tower site;
7. Elevations and proposed site plans of the entire development showing all facades and indicating all exterior materials and colors of towers, buildings and associated facilities, as well as all proposed landscaping, utility wires, guy wires and screening. (All plans shall be drawn at a minimum scale of 1 inch = 50 feet);
8. In the case of a proposed site which is forested, the approximate average height of the existing vegetation within 200 feet of the tower base;
9. Construction sequence and time schedule for completion of each phase of the entire project;

10. A copy of any executed contracts to provide land, tower access, or facilities to the applicant;
11. A copy of the application or draft application for an Act 250 permit, if applicable; and
12. A report from an engineer that:
 - a. Describes the tower height, design and elevation;
 - b. Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower and the minimum separation distances between antennas;
 - c. Describes the tower's proposed capacity, including the number, height and types of antennas that the tower is proposed to accommodate;
 - d. Documents the steps the applicant will take to avoid interference with any established public safety telecommunications;
 - e. In the case of new tower proposals, demonstrates that existing telecommunications towers and other existing structures within 5 miles of the proposed site cannot reasonably be modified to provide adequate coverage and adequate capacity to the community;
 - f. Describes potential changes or additions to those existing structures or towers that would enable them to provide adequate coverage and adequate capacity;
 - g. Describes the output frequency, number of channels and the power output per channel for each proposed antenna;
 - h. Includes a written five-year plan for use of the proposed telecommunications facility, including reasons for seeking capacity in excess of immediate needs (if applicable), as well as plans for additional development and coverage within the Town;
 - i. Demonstrates the proposed tower's, facility's and other structure's compliance with the standards set forth in this Ordinance or other applicable standards;

j. Provides proof that at the proposed site the applicant will be in compliance with all FCC regulations, standards and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards and requirements regarding both radio frequency interference (RFI) and radio frequency radiation (RFR);

k. Includes such other information required by the Board or its consultants necessary to evaluate the application; and

l. Includes each engineer's stamp and registration number;

C. A letter of intent committing the tower or facility owner and his or her successors to permit shared use of the tower if the additional user(s) agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provisions of this Ordinance and all other applicable laws; and

D. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.

E. Each application shall be signed by the applicant(s) and the contributing engineer(s) under the pains and penalties of perjury.

F. The Selectboard shall establish application fees for small scale facilities and all other telecommunication facility.

SECTION VI: COLLOCATION

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

B. The Selectboard may deny an application for a new telecommunications tower or facility where the Selectboard finds that the antennas and other equipment planned for the proposed tower or facility can be accommodated on an existing or approved tower or facility.

SECTION VII: MINIMUM LOT SIZE, HEIGHT AND SETBACK

- A. In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall be not more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Selectboard that the additional height is necessary in order to provide adequate coverage in the or to accomplish collocation of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
- B. The minimum lot size for a telecommunication facility shall be one acre.
- C. The minimum distance from any freestanding telecommunications tower or facility to any property line, dwelling or other occupied structure shall be no less than the height of the tower, including antennas or other vertical appurtenances, plus an additional 20 feet.
- D. Where a telecommunications facility 15 feet or greater in height is mounted on an existing structure such as a silo, church steeple or utility pole, and thereby extends the overall height of the structure as measured from ground level to the top of the telecommunication facility, including antennas and other vertical appurtenances, the minimum distance from the base of the existing structure to any property line, dwelling or other occupied structure shall be no less than the distance from ground level to the top of the telecommunication facility, including antennas and other vertical appurtenances.
- E. Where a telecommunications facility less than 15 feet in height is mounted on an existing structure such as a silo, church steeple or utility pole, and thereby extends the overall height of the structure as measured from ground level to the top of the telecommunication facility, including antennas and other vertical appurtenances, minimum distance from the base of the existing structure to any property line, dwelling or other occupied structure shall be no less than the distance from ground level to the top of the existing structure.
- F. Where a telecommunications facility is mounted on an existing structure such as a silo, church steeple or utility pole, but the highest vertical appurtenance thereof does not extend above the top of the existing structure, there shall be no required minimum distance to any property line, dwelling or other occupied structure.
- G. The Selectboard may impose conditions to minimize the effect of noise from the operation of telecommunication facility upon adjacent properties.

SECTION VIII: LIGHTING AND SIGNAGE

- A. Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by FAA or other federal or state law. If any lighting is required solely because of the height of a tower, the Selectboard may review the plan to determine if the lighting requirement can be eliminated by a reduced height or a change in location of the tower.
- B. No commercial signs or lettering shall be placed on the tower or its appurtenances.
- C. Signage shall be limited to that required by state or federal law.

SECTION IX: TOWER AND FACILITY DESIGN

- A. The Selectboard may require telecommunications towers, equipment, antennas and their support structures to be designed to blend into the surrounding environment through the use of color camouflaging, architectural design, and other alternative design tower structures as well as by minimal disruption of existing vegetation.
- B. The Selectboard may require materials used for the exterior of any telecommunications facility or structure shall be of a type, color and location so as to minimize glare and the impact on any scenic or historic areas, public vantage points or abutting properties.

SECTION XI: SCREENING

The Selectboard may require screening at the perimeter of the site by existing natural foliage or by planted new foliage or other means approved by the Selectboard.

SECTION XII: ACCESS ROADS AND UTILITIES

- A. Where telecommunications facilities require construction of a new access road or improvement to existing access roads, the Selectboard may, without limitation, require such roads to follow the contour of the land, to be constructed or improved within existing forest or forest fringe areas and not in open fields.
- B. The Selectboard may, without limitation, require utility or service lines to be designed and located so as to minimize or prevent disruption of the scenic character and beauty of the area, or that the underground installation of utility and service lines.

SECTION XIII: PROTECTION OF SCENIC RIDGES AND HILLSIDES

The Selectboard, in consultation with the applicant and others, may consider the likely visual impact of any proposed telecommunications facility or tower and may require the applicant to provide photographs, simulations, conduct tests and supply any other necessary,

helpful and relevant information. Based on the information presented, the Selectboard may designate an alternative location for the facility or tower or may request a redesign in order to minimize the visual impact on the scenic character and beauty of the area. In determining whether or not a facility or tower would have an undue adverse visual impact and when setting conditions in the permit, the Selectboard may consider:

- A. The period of time during which it would be viewed by persons traveling on public highways;
- B. The frequency with which persons traveling on public highways will view the facility;
- C. The degree to which it will be screened by existing vegetation, the topography of the land, and existing structures;
- D. Background features that will either obscure it or make it more conspicuous;
- E. Its distance from key vantage points and the proportion of it which will be visible above the skyline or tree line;
- F. The number of members of the traveling public or residents of the Town and neighboring municipalities who will be affected by the alteration of the scenic character and beauty of the area;
- G. The sensitivity or unique value of the particular view affected by it; and
- H. Significant disruption of a viewshed that provides context to a historic or scenic resource.

SECTION XIV: SMALL SCALE TELECOMMUNICATION FACILITIES

- A. The placement of wireless telecommunications antennas, repeaters, or micro-cells on existing buildings, structures, roofs, or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be approved by the designated municipal official, provided the antennas, repeaters, or micro-cells meet the requirements of this Ordinance.
- B. An application for a small scale telecommunication facility shall include:
 - 1. A final site and building plan;
 - 2. A report prepared by a qualified engineer which documents the proposed telecommunication use's compliance with state and federal regulations, the structure's suitability for the telecommunications antenna, repeater, or micro-cell, and the proposed method of affixing same to the structure

complies with standard engineering practices, and provides complete details of the fixtures, couplings and points of attachment to the existing structure;

3. Where the applicant does not own the existing structure, a copy of the applicant's executed contract with the owner of the existing structure authorizing the proposed use of the structure.

SECTION XV: EXEMPTIONS

- A. The following telecommunication facilities are exempt from the requirements of this Ordinance: police, fire, ambulance and othe emergency dispatch; amateur (ham) radio, citizen's band radio, single-use local business radio dispatch, and television antennas for home use.
- B. No FCC-licensed telecommunications facility shall be considered exempt from this Ordinance for any reason, whether or not said facility is proposed to share a tower or other structure with such exempt uses.

SECTION XVI: CONTINUING OBLIGATIONS

- A. Upon receiving a permit, the applicant shall annually demonstrate that it is in compliance with all FCC standards and requirements regarding RFR, the basis for its representations and the date that the most recent actual readings of RFR were performed at the site. The applicant shall provide a list of RFR readings, their distances from the tower/transmitter, dates of the readings and names of the person or company who took the readings.
- B. The telecommunications facility or tower owner shall maintain adequate insurance on the facility, tower and the entire site.
- C. All facility and tower sites shall be properly fenced and identified by signage that indicates the presence of RFR and any other appropriate warnings required by the permit conditions.

SECTION XVII: PERMIT AMENDMENTS

An alteration, modification, or addition to a previously permitted telecommunication facility shall require a permit amendment when any of the following are propped:

- A. A change in the number of telecommunication facilities permitted on the site;
- B. An addition or change of equipment resulting in greater visibility or structural wind loading;
- C. Any change, or proposed change in dimensions of an existing and permitted tower or other structure designed to support telecommunications transmission, receiving and/or relaying antennas and/or equipment; and

- D. Any change in power input or output, an increase in the height of an antenna, an increase in the number of antennas, change in antenna type(s) or model(s), repositioning of antenna(s), change in number of channels per antenna above the maximum number approved under an existing permit.

SECTION XVIII: REMOVAL OF ABANDONED, UNUSED, OBSOLETE DAMAGED OR DANGEROUS TOWERS OF OTHER PORTIONS OF FACILITIES

Abandoned or unused towers or other portions of telecommunication facilities shall be removed as follows:

- A. The owner of a tower shall annually, on January 15, file a declaration with the Selectboard certifying the continuing safe operation of the entire tower and other portions of the facility. Failure to file a declaration shall mean that it is no longer in use and the Selectboard shall declare it to have ceased operation and to be abandoned.
- B. Abandoned or unused towers and facilities shall be removed within 180 days of cessation of operations unless a time extension is approved by the Selectboard. If the tower is not removed within 180 days of cessation of operations at a site, the municipality shall notify the land owner and the permit holder that the Town may remove the tower and all associated facilities and assess the costs of removal against the permit holder and/or the land owner.
- C. Unused portions of towers shall be removed within 180 days of the time that such portion is no longer used. Replacement of portions of a tower previously removed shall require a new permit.
- D. An owner who has failed to file an annual declaration with the Selectboard by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use authorized by the permit.

SECTION XIX: PERMIT REVOCATION

- A. The Selectboard may revoke any permit issued pursuant to this Ordinance for the any of the following reasons:
 - 1. The provision of false, fraudulent, misleading or inaccurate information in connection with the permit application approval by the applicant or the engineer, or any representative or agent thereof;

2. The failure to install, construct, or complete work on the telecommunication facility in accordance with the requirements and/or conditions of any applicable permit;
3. The violation or failure to comply with the terms, requirements, or conditions of any applicable permit;
4. The alteration or modification of a telecommunication facility without obtaining a permit as required by this Ordinance; or
5. The violation of or failure to comply with the provisions of this Ordinance or any applicable state or federal laws or regulations.

SECTION XX: VIOLATIONS, ENFORCEMENT, AND PENALTIES

- A. A civil penalty of not more than \$500 may be imposed for a violation of this Ordinance. Each week that the violation continues shall constitute a separate violation of this Ordinance.
- B. An issuing municipal official is authorized to recover by the issuance of a municipal complaint, civil penalties in the following amounts for each violation of this Ordinance:

First Violation	\$100
Second Violation	\$200
Third Violation	\$400
Fourth and Subsequent Violations	\$500

- C. In lieu of the civil penalties provided in subsection B of this section, an issuing municipal official is authorized to recover a waiver fee in the following amount, from any person to whom a municipal complaint is issued, who declines to contest the municipal traffic complaint and pays the waiver fee:

First Violation	\$50
Second Violation	\$100
Third Violation	\$200
Fourth and Subsequent Violations	\$250

- D. Other Relief - In addition to the enforcement procedures available before the Traffic and Municipal Ordinance Bureau, the Town may pursue any remedy authorized by law, including without limitation, the maintenance of a civil action in superior court pursuant to 24 V.S.A. § 1974a(b) to obtain injunctive and other appropriate relief ; or the revocation of a permit or.

- E. Costs incurred by the Town pursuant to any enforcement action, including but not limited to attorney fees, court costs, and removal of the tower or facility or parts of the tower or facility shall be assessed against the permit holder and/or the land owner.

SECTION XXI: SEVERABILITY CLAUSE

The provisions of this Ordinance are severable. If any provision of this Ordinance, or its application to any person or circumstances or within any part of the Town of Rutland is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the invalidity shall not apply to any other portion of this Ordinance which can be given effect without the invalid provision or application thereof.

SECTION XXII: EFFECTIVE DATE

This Ordinance shall become effective sixty (60) days after its adoption by the Selectboard. If a petition is filed under 24 V.S.A. § 1973, that statute shall govern the taking effect of this Ordinance.

SIGNATURES

DATE
