



89 Main Street, Suite 4  
Montpelier, Vermont  
05602-2948

Tel.: (802) 229-9111  
Fax: (802) 229-2211

e-mail:  
info@vlct.org

web:  
www.vlct.org

## MEMORANDUM

**To:** Selectboard Chairs, Municipal Managers and Administrators,  
Interested Persons

**From:** Dominic Cloud, Manager  
Jim Barlow, Staff Attorney

**Date:** February 16, 2005

**RE:** Revised Model Telecommunication Facilities Ordinance

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The Vermont League of Cities and Towns has revised its model telecommunication ordinance. The model is intended as a tool for the development or revision of a stand-alone municipal ordinance, adopted pursuant to 24 V.S.A. §2291(19). We believe the revised model is clearer, easier to use, and affords more flexibility to deal with evolving telecommunications technologies. We encourage you to give careful consideration to each element of the model in light of your community's needs and expectations. It should be remembered that a model is a starting point, not a final product.

One item you may consider is the option for expedited review of Small Scale Facilities. These are facilities that should have minimal impact under the criteria set forth in Section IX. While we believe that expedited review is appropriate, your community may want to subject such facilities to more complete review.

Another point to consider is the second criterion in Section IX, which requires that a facility not project more than 20 feet above the average elevation of the adjacent tree line. In our judgment, 20 feet provides an acceptable balance between environmental and aesthetic issues, collocation opportunities, and capacity concerns. In any case, a selectboard can allow additional height if an applicant demonstrates that additional height is "reasonably necessary to provide adequate capacity or coverage or to facilitate collocation."

While municipal officials are encouraged to modify the model to meet their community's particular needs, please be aware that federal law does set limits on local regulation of wireless telecommunications facilities. A local ordinance may not unreasonably discriminate among providers of functionally equivalent services and may not prohibit, or have the effect of prohibiting, personal wireless services. A municipality must act within a reasonable time on any application and provide a written decision, supported by substantial evidence. Finally, a municipality may not regulate a wireless

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telecommunication facility on the basis of the environmental effects of radio frequency emissions. 47 U.S.C. §332(c)(7)(A)-(C).

This revised model was developed with the assistance of several parties. VLCT would like to thank Chris Campbell, Vermont Department of Public Service, Telecommunication Consultant Mark Hutchins, Highgate Town Administrator Larry Kempton, Thomas Murray, Director of Telecommunications Infrastructure Advancement, Vermont Agency of Commerce and Community Development, Chris Walsh, Central Vermont Regional Planning Commission, and the many people who submitted their comments and suggestions.

If you would like an electronic version of this model, please contact [TFischer@VLCT.org](mailto:TFischer@VLCT.org)

**WIRELESS TELECOMMUNICATION FACILITY ORDINANCE**  
**TOWN OF \_\_\_\_\_, VERMONT**

**SECTION I: AUTHORITY**

Under authority granted by 24 V.S.A. Chapter 59, the selectboard of the Town of \_\_\_\_\_ hereby adopts this civil ordinance.

Pursuant to 24 V.S.A. § 2291(19), the selectboard shall have the authority to regulate construction, alteration, and development, decommissioning and dismantling of Wireless Telecommunication Facilities and Small Scale Facilities in the Town of \_\_\_\_\_.

**SECTION II: PURPOSE**

The purpose of this ordinance is to promote the public health, safety, welfare, and convenience of the residents of the Town of \_\_\_\_\_, while accommodating the telecommunication needs of the Town's residents.

**SECTION III: CONSISTENCY WITH FEDERAL AND STATE LAW; SEVERABILITY**

This ordinance is intended to be consistent with the Telecommunications Act of 1996 and 24 V.S.A. § 2291(19). If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this ordinance.

**SECTION IV: DEFINITIONS**

The following terms shall have the meanings indicated:

***Wireless Telecommunication Service*** Any commercial mobile service, wireless service, common carrier wireless exchange service, cellular service, personal communication service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

***Wireless Telecommunication Facility*** Any equipment that broadcasts or receives radio frequency waves carrying Wireless Telecommunication Services, including any tower or structure upon which such equipment may be installed, and any accompanying structure, building, access road, or service utility.

***Small Scale Facility*** Any Wireless Telecommunication Facility that is installed on the ground and does not exceed 20 feet in elevation and/ or that is installed on an existing building or structure and does not extend more than 20 feet from the building or structure.

***Wireless Telecommunication Service Provider*** Any person or entity providing Wireless Telecommunication Services.

**SECTION V: PERMIT REQUIRED; EXEMPTION**

No installation or construction of, or significant addition or modification to, any Wireless Telecommunication Facility or Small Scale Facility shall commence until a permit has been issued by the selectboard. However, no permit shall be required for a Wireless Telecommunication Facility or Small Scale Facility that:

1. is used exclusively for municipal radio dispatch service or emergency radio dispatch service and which does not exceed 50 feet in elevation; or
2. does not result in the construction of a new structure and which does not extend more than ten feet from an existing structure not used primarily for the provision of Wireless Telecommunication Services.

This ordinance shall not apply to amateur radio, citizens band radio, AM or FM radio, or broadcast television service.

## **SECTION VI: PERMIT APPLICATION REQUIREMENTS**

An original and five copies of the application shall be submitted. An application shall be signed under the pains and penalties of perjury.

The selectboard shall review each application to determine whether it is complete. An application that, in the opinion of the selectboard, is substantially incomplete shall not be accepted for filing, and shall not initiate the time and notice requirements of this ordinance. In the event that an application is deemed not to be complete, the selectboard shall promptly notify the applicant of the additional materials required and shall afford the applicant a reasonable period to supplement the application. The selectboard shall notify the applicant in writing when it has received a complete application.

Every Wireless Telecommunication Facility and Small Scale Facility permit application shall include:

1. The applicant's legal name, address and telephone number. If the applicant is not a natural person, the applicant shall provide the state in which it is incorporated and the name and address of its resident agent.
2. The name, title, address and telephone number of the person to whom correspondence concerning the application should be sent.
3. The name, address and telephone number of the owner or lessee of the property on which the Wireless Telecommunication Facility will be located.

A Small Scale Facility permit application shall also include:

1. A final site and building plan and, where applicable, a report indicating the structure's suitability for the telecommunications facility, and that the proposed method of affixing the antenna or other device to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.

A Wireless Telecommunication Facility permit application shall also include:

1. The names and addresses of all adjoining property owners. Adjoining property owners shall be determined without regard to any public right-of-way.
2. A vicinity map showing the entire vicinity within a 1,000 foot radius of the Facility, including the location of any tower, topography, public and private roads and driveways, buildings and structures, utilities, water bodies, wetlands, landscape features, historic sites and necessary

wildlife habitats. It shall indicate the property lines of the proposed Facility site parcel and all easements or rights-of-way needed for access from a public way to the Facility.

3. The location of the Facility on a USGS Topographic Map or a GIS-generated map compatible with Vermont Center for Geographic Information (VCGI) standards and encompassing the area within at least a two-mile radius of the proposed tower site.
4. Elevations and proposed site plans of the Facility showing all facades and indicating all exterior materials and colors of towers, buildings and equipment, as well as all landscaping, utility wires, guy wires and screening. (All plans shall be drawn at a minimum scale of 1 inch = 50 feet.)
5. In the case of a site that is forested, the approximate average elevation of the existing vegetation within 50 feet of any tower base.
6. Construction sequence and time schedule for completion of each phase of the entire project.
7. A report from a qualified engineer that:
  - a. Describes any tower's design and elevation.
  - b. Documents the elevation above grade for all proposed mounting positions for antennas to be collocated on a tower and the minimum distances between antennas.
  - c. Describes a tower's capacity, including the number, elevation and types of antennas that the tower is proposed to accommodate.
  - d. In the case of new Facilities, demonstrates that existing towers and structures within five miles of the site cannot reasonably be modified to provide adequate coverage and adequate capacity to the community.
  - e. Describes potential changes or additions to existing structures or towers that would enable them to provide adequate coverage.
  - f. Describes the output frequency, number of channels and the power output per channel for each antenna. In the alternative, a coverage map may be provided.
  - g. Demonstrates the Facility's compliance with the standards set forth in this ordinance or other applicable standards.
  - h. Provides proof that at the proposed Facility 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 for radio frequency radiation (RFR).
  - i. Includes such other information as determined by the selectboard to evaluate the application.
8. A letter of intent committing the Facility owner and its successors to permit shared use of any tower if the additional users 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.

9. In the case of an application for additional antennas or other equipment to be installed on an existing Facility, a copy of the executed contract with the owner of the existing structure.
10. 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 Facility, or a written statement by the applicant that an EA is not required for the facility.

## **SECTION VII: SMALL SCALE FACILITY PERMIT APPROVAL**

A Small Scale Facility permit may be issued by the selectboard without a hearing; however, in approving a Small Scale Facility permit, the selectboard shall have authority to impose permit conditions consistent with the purpose of this ordinance.

The selectboard shall issue a written decision approving, approving with conditions, or denying the application. Any decision by the selectboard to deny an application shall be in writing and supported by substantial evidence contained in a written record, in conformance with 47 U.S.C. § 332(c)(7)(B)(iii).

## **SECTION VIII: WIRELESS TELECOMMUNICATION FACILITY PERMIT APPROVAL**

- A. INDEPENDENT CONSULTANTS.** Upon submission of an application for a Wireless Telecommunication Facility permit, the selectboard may retain independent consultants whose services shall be paid for by the applicant. These consultants shall be qualified professionals in telecommunications engineering, structural engineering, monitoring of electromagnetic fields and such other fields as determined by the selectboard. The consultant(s) shall work at the selectboard's direction and shall provide the selectboard such reports and assistance as the selectboard deems necessary to review an application.
- B. BALLOON TEST AND SITE VISIT.** The selectboard may require the applicant to fly a four-foot diameter brightly colored balloon at the location and maximum elevation of any proposed tower. The balloon test shall occur within 30 days of submission of a complete application.

If a balloon test is required, the applicant shall advertise the date, time, and location of this balloon test at least seven days in advance of the test in a newspaper with a general circulation in the Town. The applicant shall also inform the selectboard, in writing, of the date, time and location of the test, at least 15 days in advance of the test.

The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to clearly see the balloon test, further tests may be required by the selectboard.

The selectboard may conduct a site visit. The site visit shall occur within 30 days of submission of a complete application.

- C. PUBLIC HEARING.** Within 45 days of the filing of a complete application, the selectboard shall hold a public hearing. Notice for the public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:
  1. Publication of the date, time, place, and purpose of the hearing in a newspaper of general circulation in the municipality affected.

2. Posting of the same information in three or more public places within the municipality in conformance with 1 V.S.A. §312(c)(2), including posting within view from the public right-of-way most nearby the property on which the Facility will be located.
3. Written notification to the applicant and to owners of all properties adjoining the property on which the Facility will be located, without regard to any public right-of-way.

The selectboard may recess the hearing on any application pending submission of additional information.

**D. FINDINGS.** Within 45 days after completion of the hearing, the selectboard shall issue a written decision approving, approving with conditions, or denying the application. Any decision by the selectboard to deny an application for a permit under this ordinance shall be in writing and supported by substantial evidence contained in a written record, in conformance with 47 U.S.C. § 332(c)(7)(B)(iii). In approving an application, the selectboard may impose permit conditions consistent with the purpose of this ordinance.

A written decision approving an application, or approving an application with conditions, shall constitute the permit for purpose of this ordinance.

## **SECTION IX: CRITERIA FOR APPROVAL AND CONDITIONS**

An application for a Wireless Telecommunication Facility permit shall be approved when the selectboard finds all the following criteria have been met

1. The Facility will not be built on speculation. If the applicant is not a Wireless Telecommunication Service Provider, the selectboard may require the applicant to provide a copy of a contract or letter of intent showing that a Wireless Telecommunication Service Provider is legally obligated to locate a Wireless Telecommunication Facility on lands owned or leased by the applicant.
2. The Facility will not project more than 20 feet above the average elevation of the tree line measured within 50 feet of the highest vertical element of the Wireless Telecommunication Facility, unless the proposed elevation is reasonably necessary to provide adequate Wireless Telecommunication Service capacity or coverage or to facilitate collocation of facilities.
3. The minimum distance from the base of any tower to any property line is not less than 100 % the total elevation of the tower, including antenna or equipment.
4. The Facility will not be illuminated by artificial means and will not display any lights or signs except for such lights and signs as required by Federal Aviation Administration, federal or state law, or this ordinance.
5. The applicant will remove the Facility, should the Facility be abandoned or cease to operate. The selectboard may require the applicant to provide a bond, or other form of financial guarantee acceptable to the selectboard, to cover the cost of removal of the Facility, should the Facility be abandoned or cease to operate.
6. The applicant demonstrates that the facility will be in compliance with all FCC standards and requirements regarding radio frequency radiation.
7. The applicant will maintain adequate insurance on the Facility.

8. The Facility will be properly identified with appropriate warnings indicating the presence of radio frequency radiation. The selectboard may condition a permit on the provision of appropriate fencing.
9. The proposed equipment cannot be reasonably collocated at an existing Wireless Telecommunication Facility. In determining this, the selectboard shall consider the following factors:
  - a. The proposed equipment would exceed the structural or spatial capacity of the existing facility and the existing facility cannot be reinforced, modified or replaced to accommodate planned equipment at a reasonable cost.
  - b. The proposed equipment would materially impact the usefulness of other equipment at the existing facility and such impact cannot be mitigated or prevented at a reasonable cost.
  - c. The proposed equipment, alone or together with existing equipment, would create radio frequency interference and/or radio frequency radiation in violation of federal standards.
  - d. Existing towers and structures cannot accommodate the proposed equipment at an elevation necessary to function reasonably or are too far from the area of needed coverage to function adequately.
  - e. Collocation of the equipment upon an existing tower would cause an undue aesthetic impact.
10. The Facility provides reasonable opportunity for collocation of other equipment.
11. The Facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.
12. The Facility will not have an undue adverse aesthetic impact. In determining this, the selectboard shall consider the following factors:
  - a. The results of the balloon test, if conducted.
  - b. The extent to which the proposed towers and equipment have been designed to blend into the surrounding environment through the use of screening, camouflage, architectural design, and/or imitation of natural features.
  - c. The extent to which access roads have been designed to follow the contour of the land and will be constructed within forest or forest fringe areas and not open fields.
  - d. The duration and frequency with which the Facility will be viewed on a public highway or from public property.
  - e. The degree to which the Facility will be screened by existing vegetation, topography, or existing structures.
  - f. Background features in the line of sight to the Facility that obscure or make the Facility more conspicuous.

- g. The distance of the Facility from the point of view and the proportion of the facility that is above the skyline.
  - h. The sensitivity or unique value of a particular view affected by the Facility.
  - i. Any significant disruption of a viewshed that provides context to an important historic or scenic resource.
13. The Facility will not destroy or significantly imperil necessary wildlife habitat or that all reasonable means of minimizing the destruction or imperilment of such habitat or species will be utilized.
14. The Facility will not generate undue noise.

## **SECTION X: CONTINUING OBLIGATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES**

The owner of a Wireless Telecommunication Facility shall, at such times as requested by the selectboard, file a certificate showing that it is in compliance with all FCC standards and requirements regarding radio frequency radiation, and that adequate insurance has been obtained for the Facility. Failure to file a certificate within the timeframe requested by the selectboard, shall mean that the Facility has been abandoned.

## **SECTION XI: REMOVAL OF ABANDONED OR UNUSED FACILITIES**

Unless otherwise approved by the selectboard, an abandoned or unused Wireless Telecommunication Facility or Small Scale Facility shall be removed within 90 days of abandonment or cessation of use. If the Facility is not removed within 90 days of abandonment or cessation of use, the selectboard may cause the Facility to be removed. The costs of removal shall be assessed against the Facility owner.

Unused portions of a Wireless Telecommunication Facility or Small Scale Facility shall be removed within 180 days of the time that such portion is no longer used. Replacement of portions of a Facility previously removed shall require a new permit, pursuant to Section V.

## **SECTION XII: ENFORCEMENT AND PENALTIES**

A violation of this ordinance shall be a civil matter enforced in the Vermont Judicial Bureau in accordance with the provisions of 24 V.S.A. §§ 1974a and 1977 et seq. The penalty for violation of this ordinance shall be \$\_\_\_\_\_ per violation. Each day that a violation continues shall be a separate violation. Costs incurred by the Town in any enforcement action, including but not limited to attorney fees, court costs, and removal of the Wireless Telecommunication Facility or parts of the Facility shall be assessed against the Facility owner. The chair of the selectboard shall be the enforcement officer.

## **SECTION XIII: EFFECTIVE DATE**

This ordinance shall become effective 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.

**ADOPTED** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SIGNATURES of SELECTBOARD:**

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