

# **Article V: SPECIAL USE REGULATIONS**

## **SECTION 5.1 TELECOMMUNICATIONS FACILITY (Adopted 03/13/2001)**

### **5.1.2 AUTHORITY**

This ordinance is adopted by the Town of Kensington on March 13, 2001, in accordance with the authority as granted in New Hampshire Revised Statutes Annotated 674:16 and 674:21 and procedurally under the guidance of 675:1, II.

### **5.1.3 PURPOSE AND GOALS**

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

- A. Preserve the authority of Kensington 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.
- B. 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.
- C. Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques and siting possibilities beyond the political jurisdiction of the Town.
- D. Permit the construction of new towers only 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.
- E. Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon Kensington.
- F. Provide constant maintenance and safety inspections for any and all facilities.
- G. Provide for the removal of abandoned facilities that are no longer inspected for safety concerns and Code compliance. Provide a mechanism for Kensington to remove these abandoned towers to protect the citizens from imminent harm and danger.
- H. Provide for the removal or upgrade of facilities that are technologically outdated.

#### 5.1.4 DEFINITIONS

**Alternative tower structure** - innovative siting techniques that shall mean man-made trees, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

**Antenna** - shall mean any exterior 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.

**FAA** - an acronym that shall mean the Federal Aviation Administration.

**FCC** - an acronym that shall mean the Federal Communications Commission.

**Height** - shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

**Planning Board or Board** - shall mean the Town of Kensington Planning Board as the regulator of this ordinance.

**Pre-existing towers and antennas** - shall mean any tower or antenna lawfully constructed or permitted prior to the adoption of this ordinance. Shall also mean any tower or antenna lawfully constructed in accordance with this ordinance.

**Telecommunication Facilities** - shall mean any structure, antenna, tower, or other device, which provides commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), and personal communications services (PCS), and common carrier wireless exchange access services.

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

#### 5.1.5 SITING STANDARDS

##### A. General

The uses listed in this section are deemed to be permitted uses that may require further review under this ordinance in accordance with Section 5.1.8- CONDITIONAL USE PERMITS. However, all such uses must comply with other applicable ordinances and regulations of Kensington (including Site Plan Review). The following tables represent the siting standards for the listed uses as delineated by the districts in which they are located in Kensington.

1. Principal or Secondary Use.

Subject to this ordinance, an applicant who successfully obtains permission to site a tower under this ordinance as a secondary use to a permitted use may construct telecommunications facilities in addition to the existing permitted use. Antennas and towers may be considered either principal or secondary uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within such lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this ordinance, shall not be deemed to constitute the expansion of a nonconforming use or structure. Nor shall such facilities be deemed to be an “accessory use”.

2. Use District

	New Tower Construction <sup>[1]</sup>	Co-location on Pre-existing Tower <sup>[2]</sup>	Co-location on Existing Structure <sup>[3]</sup>
Commercial District	PCU	P	P
Wetland District	X	X	X
Residential/Agricultural District	X	P	PCU

P = Permitted Use without Conditional Use Permit  
 PCU = Permitted Use with Conditional Use Permit  
 X = Prohibited

B. Height Requirements

These requirements and limitations shall preempt all other height limitations as required by the Kensington Zoning Ordinance and shall apply only to telecommunications facilities. These height requirements may be waived through the Conditional Use Permit process only if the intent of the Ordinance is preserved (e.g. where a 200' tower would not increase adverse impacts but provide a greater opportunity for co-location) in accordance with 5.1.9 Waivers.

	New Tower Construction <sup>1</sup>	Co-location on Pre-existing Tower <sup>2</sup>	Co-location on Existing Structure <sup>3</sup>
Commercial District	180'	Current Height +15%	Current Height +30'
Wetland District	N/A	N/A	N/A
Residential/Agricultural District	N/A	Current Height	Current Height +30'

[1] An Antenna may be located on a tower, newly constructed, under this Ordinance.

[2] An Antenna may be located on a pre-existing tower, constructed prior to the adoption of this Ordinance.

[3] An antenna may be located on other existing structures with certain limitations (See § IV,B).

### **5.1.6 APPLICABILITY**

#### **A. Public Property**

Antennas or towers located on property owned, leased, or otherwise controlled by the Town may be exempt from the requirements of this ordinance, except that uses are only permitted in the zones and areas as delineated in 5.1.5 A-2. This partial exemption shall be available if a license or lease authorizing such antenna or tower has been approved by the governing body and the governing body elects subject to state law and local ordinance, to seek the partial exemption from this Ordinance.

#### **B. Amateur Radio; Receive-Only Antennas**

This ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by the federally-licensed amateur radio station operator or is used exclusively for receive only antennas. This application adopts the provisions and limitations as referenced in RSA 674:16, IV.

#### **C. Essential Services & Public Utilities**

Telecommunications facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for telecommunication facilities is a use of land, and is addressed by this Article.

### **5.1.7 CONSTRUCTION PERFORMANCE REQUIREMENTS**

#### **A. Aesthetic and Lighting**

The guidelines in this subsection (A), shall govern the location of all towers, and the installation of all antennas. However, the Planning Board may waive these requirements, in accordance with 5.1.9 Waivers, only if it determines that the goals of this ordinance are served thereby.

1. Towers shall either maintain a galvanized steel finisher, subject to any applicable standards of the FAA, or be painted a neutral color, so as to reduce visual obtrusiveness.
2. At a tower site, the design of the buildings and related structures shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend the tower facilities with the natural setting and built environment.

These buildings and facilities shall also be subject to all other Site Plan Review Regulation requirements.

3. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.

4. Towers shall not be artificially lighted, unless required by the FAA, Planning Board, or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
5. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind.

B. Federal Requirements

All towers must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate towers and antennas. If such standards and regulations are changed, then the owners of the towers and antennas governed by this ordinance shall bring such towers and antennas into compliance with such revised standards and regulations within six (6) months of the effective date of such standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agenda. Failure to bring towers and antennas into compliance with such revised standards and regulations shall constitute grounds for the removal, in accordance with 5.1.11, of the tower or antenna, as abandoned, at the owner's expense through the execution of the posted security.

C. Building Codes-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 and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the 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 5.1.11, of the tower or antenna, as abandoned, at the owners expense through execution of the posted security.

D. Additional Requirements for Telecommunications Facilities

These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict.

1. Setbacks and Separation
  - a. Tower, guys, and accessory facilities must satisfy the minimum zoning district setback requirements.
  - b. Towers over 90 feet in height shall not be located within one-quarter mile of any existing tower that is over 90 feet in height.
2. Security Fencing. Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing device.

3. Landscaping

- a. Towers shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compound from adjacent residential property. The standard buffer shall consist of a landscaped strip at least 10 feet wide outside the perimeter of the compound. Natural vegetation is preferred.
- b. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.
- c. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.

**5.1.8 CONDITIONAL USE PERMITS**

A. General

All applicants under this ordinance shall apply to the Planning Board for Site Plan Review, in accordance with the requirements as provided for in the Town's Site Plan Review Regulations. In addition, applicants under this ordinance shall also be required to submit the information provided for in this Section.

B. Issuance of Conditional Use Permits

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 Ordinance.

1. Procedure on application

The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations, RSA 676:4, and shall notify the local/regional office of the FAA, and owners of private airstrips/helipads.

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

- a. Height of proposed tower or other structure.
- b. Proximity of tower to residential development or zones.
- c. Nature of uses on adjacent and nearby properties.

- d. Surrounding topography.
- e. Surrounding tree coverage and foliage.
- f. Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- g. Proposed ingrees and egresses to the site.
- h. Availability of suitable existing towers and other structures as discussed in 5.1.8 C, 3.
- i. Visual impacts on view sheds, ridgelines, and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- j. Availability of alternative tower structures and alternative siting locations.
- k. Impact of tower on airstrip/helipad flight patterns.

C. Each applicant requesting a Conditional Use Permit under this ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including; a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, drives, parking, fencing, landscaping, adjacent uses (up to 200' away), and any other information deemed necessary by the Planning Board to assess compliance with this ordinance. Furthermore, the applicant shall submit the following prior to any approval by the Board:

1. The applicant shall submit written proof that the proposed use/facility complies with the FCC 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 FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the Board prior to the beginning of the federal 30 day comment period, and the Town process, shall become part of the application requirements.
3. Each applicant for an antenna and or tower shall provide to the Planning Board an inventory of its existing towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however that the 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 tower, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. This evidence can consist of:

- a. Substantial Evidence that no existing towers or structures 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. Substantial Evidence that existing towers are not sufficient height to meet the applicant's engineering requirements, and why.
  - c. Substantial Evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  - d. Substantial Evidence that applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna on the existing towers or structures would cause interference with the applicant's proposed antenna.
  - e. Substantial Evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
  - f. Substantial Evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
4. The applicant proposing to build a new tower shall submit an agreement with the Town 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 Kensington, 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 any submitted information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations, or any other matter required by the application. Cost for this review shall be borne by the applicant in accordance with 676:4, I(g).

### **5.1.9 WAIVERS**

#### **A. General**

Where the Board finds that extraordinary hardships, practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations. The purpose of granting waivers under provisions of these regulations shall be to insure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations. The Board shall not approve any waiver(s) unless a majority of those present and voting shall 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 the Kensington Zoning Ordinance, Kensington Master Plan, or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
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:

Topography and other Site features;

- a. Availability of alternative site locations;
- b. Geographic location of property;
- c. Size/magnitude of project being evaluated and availability of co-location.

**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 these regulations.

**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 petition in writing shall require an automatic denial.

**5.1.10 BONDING AND SECURITY AND INSURANCE**

Recognizing the extremely hazardous situation presented by abandoned and unmonitored towers, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned towers in the event the tower is abandoned and the tower owner is incapable and unwilling to remove the tower in accordance with 5.1.11, all security shall be maintained for the life of the tower. Bonding and surety shall be consistent with the provision in the Subdivision Regulations. Furthermore, the Planning Board shall require the submission of proof of adequate insurance covering accident or damage.

**5.1.11 REMOVAL OF ABANDONED ANTENNAS AND TOWERS**

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment.

A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the towers. If the abandoned tower is not removed within 90 days the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

#### **5.1.12 ENFORCEMENT**

Enforcement of this section shall be in accordance with Chapter 676 of the New Hampshire Revised States Annotated and Kensington Zoning Ordinance. Any person in violation of this section of the ordinance shall be subject to punishment in accordance with referenced provisions.

#### **5.1.13 SAVING CLAUSE**

Where any provision of this ordinance is found to be unenforceable it shall be considered savable and shall not be construed to invalidate the remainder of the ordinance.

### **SECTION 5.2 WIND ENERGY CONVERSION SYSTEMS** (Adopted 03/11/2008)

#### **5.2.1 INTENT**

In order to balance the need for clean, renewable energy resources and the necessity to protect the public health, safety and welfare of the community, the town of Kensington, NH, finds these regulations are necessary to ensure that wind energy conversion systems are appropriately designed and safely sited and installed.

This ordinance establishes the regulations and criteria which allow compatible accessory uses to be located within the various land use districts. Unless otherwise provided, all accessory uses are subject to the same regulations as the sponsoring primary use.

#### **5.2.2 DEFINITIONS**

**Residential Wind Energy Systems:** A wind energy conversion system consisting of a wind turbine, tower and associated control or conversion electronics, which has a rated capacity of not more than 10 kW and which is intended to primarily reduce on site consumption of utility power. A system is considered a residential wind energy system only if it supplies electrical power solely for on-site use, except that when a parcel on which the system is installed also receives electrical power supplied by a utility company, excess electrical power generated and not presently needed for on-site use may be used by the utility company.

**Tower:** The vertical component of a wind energy conversion system that elevates the wind turbine generator and attached blades above the ground.

#### **5.2.3 REGULATIONS**

Residential wind energy systems shall be a permitted use in all zoning classification where structures of any sort are allowed; subject to certain requirements as set forth below: