

**ARTICLE WCF**

**AMEND ZONING BYLAW  
WIRELESS COMMUNICATION FACILITIES**

To see if the Town will vote to amend the Zoning Bylaw to conform to Federal law and regulations regarding wireless communication facilities, including streamlining permitting processes and standards, adding design guidelines, or act in any other manner in relation thereto.

*(Inserted by the Select Board at the request of the Planning Board)*

**DESCRIPTION:**

This article would update the Zoning Bylaw to reflect changes in federal law and regulations relating to wireless communication facilities. These changes include streamlining permitting of wireless facilities on private property to meet federal ‘shot clock’ deadlines by not requiring special permits and expanding acceptable justifications for adding new facilities.

**PROPOSED MOTION:**

That the Zoning Bylaw of the Town of Lexington be amended as follows, where ~~struck through~~ text is to be removed and underlined text is to be added:

A. Amend row O.1.08 of Table 1, Permitted Uses and Development Standards, so that it reads:

		GC	RO	RS	RT	CN	CRS	CS	CB	CLO	CRO	CM	CSX
O.1.08	Wireless communication facility <del>*Yes if concealed as per § 6.4.4</del> <u>(See § 6.4.)</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>	<del>SP*</del> <u>Y</u>

B. Amend § 135-6.4 so that it reads:

**6.4 WIRELESS COMMUNICATION FACILITIES.**

**6.4.1 Purpose.** This section permits the use of wireless communication facilities within the Town, regulates their impacts and accommodates their location and use in a manner intended to:

1. Protect the scenic, historic, environmental and natural or man-made resources of the Town;
2. Protect property values;
3. Minimize any adverse impacts on the residents of the Town (such as, but not limited to, attractive nuisance, noise and falling objects) with regard to the general safety, welfare and quality of life in the community;
4. Provide standards and requirements for regulation, placement, construction, ~~monitoring~~, design, modification and removal of wireless communication facilities;
5. Provide a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communication facilities;
6. Encourage the use of certain existing structures and towers;
7. Minimize the total number and height of towers located within the community;
8. Require tower sharing and clustering of wireless communication facilities where they reinforce the other objectives in this section; and
9. Be in compliance with the ~~federal~~ Telecommunications Act ~~of 1996~~.

**6.4.2 Applicability.** The requirements of this section shall apply to all wireless communication facilities, except where federal or state law or regulations exempt certain users or uses from all or portions of the provisions of this section. No wireless communication facility shall be considered exempt from this section by sharing a tower or other structure with such exempt uses.

**6.4.3 Location of Facilities; Priorities.** Wireless communication facilities shall be located according to the following priorities. Applicants shall demonstrate that they have investigated locations higher in priority ranking than the one for which they are applying and whether such sites are available and, if applicable, under what conditions. The priorities are:

1. Within an existing structure concealed;
2. Within an existing structure and camouflaged;
3. Camouflaged on an existing structure, ~~such as~~ including but not limited to an existing utility pole electric transmission tower or an existing radio antenna, a water tower, or building, and of a compatible design;
4. Co-located with existing wireless communication ~~service~~ facilities;
5. On Town of Lexington owned land which complies with other requirements of this section and where visual impact can be minimized and mitigated;
6. ~~If adequately demonstrated to the SPGA in the special permit process that each of the priorities set forth above is not feasible, erection of a new facility that complies~~ On existing structures that comply with the other requirements of this section and where visual impact can be minimized and mitigated; and
7. On new towers.

~~**6.4.4 Facilities Permitted by Right.** A concealed wireless communication facility may be installed in a structure on a lot in a commercial district provided all the requirements for a wireless communication facility building permit are met.~~

~~**6.4.5 Facilities Authorized by Special Permit.** A wireless communication facility may be installed in the locations indicated in § 6.4.3, provided all prescribed conditions, listed below, are met and the SPGA grants a special permit:~~

- ~~1. Multifamily dwelling. A concealed wireless communication facility may be installed in a building or in a structure on a building on a lot on which a dwelling other than a one-family or two-family dwelling is the principal use provided all residents of such dwelling or facility receive 30 days' notice before the application for a special permit is submitted.~~
- ~~2. Institutional, agricultural, natural resource or commercial uses in residential districts.
  - a. A concealed wireless communication facility may be installed in a building or in a structure on a building on a lot on which an institutional, agricultural, natural resource or commercial use in a residential district (as provided in Table 1) is the principal use.
  - b. A wireless communication facility may be installed if it is co-located with an existing electrical power transmission line tower, an existing nonconforming transmitting or receiving tower, or a water tower, provided that the wireless communication facility is camouflaged and does not exceed the height of the tower.
  - c. For the purposes of this section, an electrical power transmission tower, an existing transmitting or receiving tower or antenna for commercial activities other than a wireless communication facility shall be considered to be a commercial use in a residential district.~~

- ~~3. Uses in commercial districts. A wireless communication facility may be installed on a lot in a commercial district provided the wireless communication facility is camouflaged and does not exceed the height requirements of § 4.4.~~

**6.4.6 Site Development Requirements.** The following standards shall apply:

1. Shelters and accessory buildings. Any communication equipment shelter or accessory building shall be designed to be architecturally similar and compatible with the surrounding area. Whenever feasible, a building shall be constructed underground.
2. Setbacks. Any new tower shall be set back at least one time the height of the tower plus 10 feet from each lot line of the site on which the tower is located. Any non-concealed antenna shall be set back at least one time the height of the antenna, as measured from the ground level, from each lot line of the site on which the antenna is located. However, if the antenna is being attached to an existing tower structure whose setback is already approved, either by right, by special permit or by variance, and ~~if the SPGA determines that~~ the addition of the antenna does not materially alter the basis of that prior approval, then no new, independent setback requirement shall be created by the addition of the antenna. ~~In nonresidential districts or on Town of Lexington owned land,~~ The SPGA may grant a special permit to allow a lesser setback if it makes a finding that such lesser setback provides adequate safety, promotes co-location or improves design, and will not negatively impact the appearance and character of the neighborhood.
3. Security and signs. ~~Except for small wireless facilities, the area around the~~ wireless communication facility shall be completely secure from trespass or vandalism; and a sign not larger than one square foot shall be posted adjacent to the entry gate indicating the name of the facility owner(s) and a twenty-four-hour emergency telephone number. Advertising on any antenna, tower, fencing, accessory building or communication equipment shelter is prohibited.
4. Lighting. Unless required by the Federal Aviation Administration, no exterior night lighting of towers or the wireless communication facility is permitted except for manually operated emergency lights for use when operating personnel are on site.
5. New towers. Any new ~~freestanding~~ tower shall be of a monopole construction. ~~New towers shall not exceed the minimum height necessary to provide adequate coverage within the Town of Lexington. Erection of a new tower that exceeds the height restrictions listed in § 6.4 is not permitted unless the applicant demonstrates in the special permit process that adequate coverage within the Town of Lexington cannot otherwise be provided met for the locations permitted under § 6.4 of § 4.3 is permitted if the restrictions materially inhibit provision of wireless services under the Telecommunications Act. New towers that are not small wireless facilities require site plan review under § 9.5.~~

**6.4.7 Justification of Need.** The following standards shall apply:

- ~~1. Coverage area. The applicant shall provide a map of the geographic area in which the proposed facility will provide adequate coverage.~~
- ~~2. Adequacy of other facility sites controlled by the applicant. The applicant shall provide written documentation of any facility sites in the Town and in abutting towns or cities in which it has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.~~
- ~~3. Capacity of existing facility sites. The applicant shall provide written documentation that it has examined all facility sites located in the Town and in abutting towns in which the applicant has no legal~~

or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.

- ~~4. Adequate coverage through the least disruptive means. The applicant shall provide written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as it may be developed subsequent to adoption of this bylaw) in which it can provide adequate coverage in conjunction with all facility sites listed above.~~

#### **6.4.8 Application; Procedures.**

1. The applicant or co-applicant for any permit for a wireless communication facility must be a ~~licensed carrier~~ wireless communication service provider who has authority from the FCC to provide wireless communication services for the facility being proposed. The applicant shall submit documentation of the legal right to install and use the proposed facility mount at the time of the filing of the application for the permit.
- ~~2. Review by the Design Advisory Committee. The Town of Lexington's Design Advisory Committee shall review an applicant's site plans and make recommendations to the Director of Inspectional Services for by right permit applications and to the SPGA for special permits. The Design Advisory Committee will make comment on whether the site plans show that a proposed wireless communication facility will be concealed for a by right permit if built according to the plans, or whether the site plans show that a proposed wireless communication facility will be concealed or sufficiently camouflaged for a special permit if built according to the plans.~~
3. Review by the Communications Advisory Committee. The Select Board's of Selectmen's Communications Advisory Committee shall review an applicant's application and make recommendations to the ~~Director of Inspectional Services~~ Building Commissioner for by right permit applications and to the SPGA for special permits. The ~~Communications Advisory Committee~~ will make ~~comment~~ as to the application's adherence to the provisions of this section. ~~The Committee may recommend that a consultant be hired by the SPGA (at the applicant's expense) if technical expertise is needed.~~
4. Permits. Each application for a permit must contain site plans with sufficient detail that would enable the Town to determine whether the proposed facility meets the requirements of this section.

~~**6.4.9** SPGA. The Board of Appeals shall be the SPGA for permits under § 6.4.~~

~~**6.4.10** Regulations. The SPGA shall maintain a set of regulations that contains the necessary policies, procedures, and standards to implement the provisions of this section. The Select Board may adopt regulations concerning the appearance of wireless communication facilities consistent with the Telecommunications Act.~~

~~**6.4.11** Special Permit Criteria. A special permit shall be granted under this section only if the SPGA shall find that the project is in harmony with the general purpose and intent of this section and the SPGA's regulations. In addition, the SPGA shall make the findings required by § 9.4 and the following additional findings:~~

- ~~1. That the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit;~~
- ~~2. That the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage;~~
- ~~3. That the proposed wireless service facility minimizes any adverse impact on historic resources, scenic views, residential property values, and natural or man-made resources;~~

- ~~4. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities;~~
- ~~5. That the facility shall comply with the appropriate FCC regulations regarding emissions of electromagnetic radiation and that the required monitoring program is in place and shall be paid for by the applicant; and~~
  
- ~~6. That the applicant has agreed to rent or lease available space on any tower it controls within Lexington or its contiguous towns, under the terms of a fair market lease, without discrimination to other wireless service providers.~~

~~**6.4.12** Conditions. If a special permit is granted, in addition to such terms and conditions as may be authorized by § 9.4 of this bylaw, the SPGA may impose such additional conditions and safeguards as public safety, welfare and convenience may require.~~

~~**6.4.13** Denial. Any decision by the SPGA to deny a special permit under this section shall be in conformance with the Telecommunications Act, in that it shall be in writing and supported by substantial evidence contained in a written record.~~

~~**6.4.14** Term of Permit. Each special permit shall be valid for a fixed or conditional period of time as determined by the special permit granting authority. A special permit for any wireless communication service facility that exceeds height provisions of § 6.4 shall be valid for a maximum of 15 years. At the end of the approved time period, the facility shall be removed by the carrier or a new special permit shall be required.~~

~~**6.4.15** Report. All permitted and special permitted wireless communication facility carriers shall periodically file with the Town, every five years (or sooner if specified in a special permit), on operational aspects of the facility including: power consumption; power radiation; frequency transmission; the number, location, and orientation of antennas; and types of services provided.~~

~~**6.4.16** Removal Requirements. Any wireless service facility that ceases to operate for a period of one year shall be removed. Cease to operate is defined as not performing the normal functions associated with the wireless service facility and its equipment on a continuous and ongoing basis for a period of one year. At the time of removal, the facility site shall be remediated such that all wireless communication facilities that have ceased to operate are removed. If all facilities on a tower have ceased to operate, the tower (including the foundation) shall also be removed and the site shall be revegetated by the owner. Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a financial surety or other form of financial guaranty acceptable to the SPGA, to cover the cost of removal of the facility and the remediation of the landscape, should the facility cease to operate.~~

C. Amend § 135-9.4.1.1.c so that it reads:

- c. When an activity or use requires both site plan review and one or more special permits, ~~except for a wireless communication facility.~~

D. In § 135-10.1, remove the definitions of:

1. "ADEQUATE COVERAGE (WIRELESS COMMUNICATIONS FACILITIES)",
2. "AVAILABLE SPACE",
3. "CARRIER",

4. "CHANNEL",
5. "FACILITY SITE",
6. "MODIFICATION OF AN EXISTING FACILITY (WIRELESS COMMUNICATIONS FACILITIES)",
7. "MONITORING (WIRELESS COMMUNICATIONS FACILITIES)", and
8. "REPEATER".

E. In § 135-10.1, amend the definition of "TELECOMMUNICATIONS ACT" as follows:

The Federal Telecommunications Act of 1996, as amended, and its implementing regulations.

F. In § 135-10.1, add a new definition "SMALL WIRELESS FACILITY" reading:

A type of Wireless Communication Facility where:

- The facility is mounted on a structure 50 feet or less in height including its antennas, is no more than 10 percent taller than other adjacent structures, or does not extend existing structures on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- Each antenna associated with the deployment, excluding associated antenna equipment, is no more than 3 cubic feet in volume; and
- All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

and further that non-substantive changes to the numbering of this bylaw be permitted in order that it be in compliance with the numbering format of the Code of the Town of Lexington.