

HAMPSHIRE COUNTY

Telecommunications Ordinance

Adopted October 8, 2002
Hampshire County, WV
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HAMPSHIRE COUNTY
WIRELESS TELECOMMUNICATIONS FACILITIES
ORDINANCE

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WIRELESS TELECOMMUNICATIONS FACILITY

Section 1. Title

These regulations shall be known and cited as the “Wireless Telecommunications Facilities Ordinance” of Hampshire County, West Virginia (hereinafter referred to as the “ordinance”).

Section 2. Authority

The authority of this ordinance is provided for under WV Code Chapter 8A and section 7-1-3KK and the Hampshire County Comprehensive Plan.

2.1 Grant of Power

After adoption by the Hampshire County Commission (also referred to as the County) and a certified copy of the ordinance has been filed with the County Clerk, the Hampshire County Commission and its assigned agency, the Hampshire County Planning Commission, shall have control over wireless telecommunications facilities.

2.2 Territorial Limits

The ordinance contained herein shall apply within the unincorporated parts of Hampshire County under the jurisdiction of Hampshire County, West Virginia.

Section 3. Purpose

In order to ensure that the placement, construction, and modification of Wireless Telecommunications Facilities protects the County's health, safety, public welfare, environmental features, the nature and character of the community and neighborhood and other aspects of the quality of life specifically listed elsewhere in this Ordinance, the County hereby adopts an overall policy with respect to a Special Use Permit for Wireless Telecommunications Facilities for the express purpose of achieving the following goals:

1. Implementing an application process for person(s) seeking a Special Use Permit for Wireless Telecommunications Facilities;
2. Establishing a policy for examining an application for and issuing a Special Use Permit for Wireless Telecommunications Facilities that is both fair and consistent;
3. Establishing an Ordinance Promoting and encouraging, wherever possible, the sharing and/or co-location of Wireless Telecommunications Facilities among service providers;
4. Promoting and encouraging, wherever possible, the placement, height and quantity of Wireless Telecommunications Facilities in such a manner, including but not limited to use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities.

Section 4. Applicability

This regulation applies to all construction and expansion of wireless telecommunications Facilities, except as provided in Section 4.1.

4.1 Exemptions

A. Wireless Telecommunications Facility. Wireless telecommunication facilities for communications by government and/or public safety agencies.

B. Amateur (ham) Radio Stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).

C. Maintenance or repair. Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.

D. Temporary wireless telecommunications facility. Temporary wireless telecommunications facility, in operation for a maximum period of one hundred twenty (120) days.

E. Antennas as accessory uses. An antenna that is an accessory used at a residential dwelling unit.

Section 5. Review and Approval Authority

5.1 Approval Required

No person shall construct or expand a wireless telecommunication facility without submitting an application to the Planning Office and approval of the County Commission as follows:

A. Expansion of an Existing Facility. Approval by the County Commission is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 40 feet; or co-location on an existing wireless telecommunications facility including, but not limited to, an existing structure.

B. New Construction. Approval of the County Commission is required for construction of a new wireless telecommunications facility and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 40 feet.

Section 6. Approval Process

6.1 Pre-Application Conference

All persons seeking approval of the County under these regulations should meet with the Planning Commission no less than thirty (30) days before the filing deadline. At this meeting, the Planning Commission shall explain to the applicant the regulations, as well as application forms and submissions that will be required under these regulations.

6.2 Application for County Approval

All persons seeking approval of the County under these regulations shall submit an application as provided below. The Planning Commission shall be responsible for ensuring notice of the application has been published in a newspaper of general circulation in the community.

An application for approval by the County must be submitted to the Planning Office. The application must include the following information:

1. Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
2. The owner of the facility's name shall be placed on the structure.
3. If a facility will have co-location capability all lessee's names shall be placed on the structure.
4. Evidence of any easements necessary to access the property as shown on the site plan.
5. All facility locations shall have posted street signs at the cross-street intersection. Signs shall have a minimum of 3.5" reflective letters.
6. A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
7. A USGS topographical map showing the location of all wireless telecommunications facilities above 150 feet in height, above ground level, except antennas located on rooftops, within a two (2) mile radius of the proposed facility, unless this information has been previously made available to the county. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
8. A site plan:
 - a. prepared and certified by a professional engineer indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of

- access, and all applicable American National Standards Institute (ANSI) technical and structural codes;
 - b. a storm and erosion control plan for the access road to the site, unless there will be no changes implemented with regards to any existing roads.
 - c. Certification by the applicant that the proposed facility complies with all FCC standards for radio emission is required;
 - d. A boundary survey for the lease hold area and/or owned area for the project performed by land surveyor licensed by the state of West Virginia, including the access road and vicinity map
9. A scenic assessment for the project area consisting of the following:
- a. elevation drawings of the proposed facility, showing height above ground level;
 - b. a landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features, the proposed lighting method;
 - c. photo simulations of the proposed facility taken from perspectives determined by the compliance officer, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken.
 - d. A narrative discussing:
 - 1. the extent to which the proposed facility would be visible from a residential area,
 - 2. the tree line elevation of vegetation within 100' of the facility; and
 - 3. the distance to the proposed facility from the designated scenic resources and noted viewpoints.
10. A propagation map, before and after, of how the proposed facility fits in the Applicant's telecommunications network. The applicant must provide written evidence of a tenant for the proposed wireless telecommunications facility. Such evidence may include a lease or letter of intent from the tenant. This submission requirement does not require disclosure of confidential business information.

11. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

- a. evidence that no existing facilities are located within the targeted market coverage area is required to meet the applicant's engineering requirements,
- b. evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
- c. evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment.

Specifically:

1. planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 2. the applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment with the existing facility would cause interference with the applicant's proposed antenna.
 3. existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
- d. for facilities existing prior to the effective date of the ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

- e. evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure, and has been denied access.

12. The applicant will comply with all applicable State and Federal Historic Preservation laws and regulations.
13. A form of surety approved by the Planning Commission between the Special Use Permit Applicant (including any future permit holders) and the landowner to pay for the costs of removing the facility to a depth of 3' below ground level if it is abandoned.
14. Signage-Wireless Telecommunications facilities shall contain a sign no larger than four (4) square feet in order to provide adequate notification to persons in the immediate area of the presence of an antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet owned by the applicant and be visible from the access point of the site and must identify the equipment owner(s) of the shelter or cabinet. The sign shall not be lighted unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted other than signage specifically required by the FAA.

15. Liability Insurance

- a. A holder of a Special Use Permit for Wireless Telecommunications Facilities shall secure and at all times maintain public liability insurance for personal injuries, death, property damage and umbrella insurance coverage, for the duration of the Special Use Permit in amounts set forth below:
 1. Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 2. Automobile Coverage: \$1,000,000 per occurrence/\$2,000,000 aggregate;
 3. Workers Compensation and Disability: Statutory amounts

- b. The Commercial General Liability insurance policy shall specifically include the County and its officers, boards, employees, committee members, attorney’s agents and consultants as additional Named insureds.
- c. The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the state and with a Best’s rating of at least an A.
- d. The insurance policies shall contain an endorsement obligating the insurance company to furnish the county with at least thirty (30) days prior written notice in advance of the cancellation of insurance.
- e. Renewal or replacement policies or certificates shall be delivered to the county at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
- f. Before construction of a permitted Wireless Telecommunications Facilities is initiated, the holder of the Special Use Permit shall deliver to the county a copy of each of the policies or certificates representing the insurance in the required amounts.

6.3 Submission Waiver

The County may waive any of the submission requirements based upon a written request of the applicant submitted at the time of the application. A waiver of any submission requirement may be granted only if the county finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

6.4 Fees

The building permit fees for wireless telecommunications facilities are as follows:

New Tower	(\$0-\$50,000)	\$1,000
	(\$50,001+)	\$1,000 + \$5.00 per thousand over \$50,001

Co-Location	flat fee	\$1,500.00
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Upgrade of Equipment

\$0-\$30,000	\$50.00
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\$30,001 + \$1000.00 + \$5.00 per thousand over \$30,001

6.5 Notice of Complete Application

Upon receipt of an application, the Planning Office shall provide the applicant with a dated receipt. Within ten (10) working days after receipt of an application, the Planning Office shall review the application and determine if the application meets the submission requirements. The Planning Office shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the Planning Office shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Office.

If the application is incomplete, the Planning Office shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, and requires Planning Office review, the Planning Office should attempt to notify all property owners within 300' of the leased site as shown on the Assessor's records, by first-class mail, that a public hearing has been scheduled. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location, a copy of the application available for inspection, and provide the date, time, and place of the public hearing before the Planning Commission. Failure on the part of any property owners within the 300' to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

6.6 Public Hearing

For applications for Planning Commission approval under Section 5.1, a public hearing shall be held within thirty (30) days of the notice of the complete application.

6.7 County Approval

Within ninety (90) days after receipt of a complete application for approval under Section 5.1, the County shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The County shall approve the application if the Planning Office finds that the application complies with the provisions in Section 6.2 of this ordinance.

Section 7. Standards of Review

To obtain approval from the County, an application must comply with the standards in this section.

7.1 County Approval Standards

An application for approval by the county under Section 6.2 must meet the following standards.

- A.** The proposed facility is an expansion, accessory use, or co-location to a structure existing at the time the application is submitted.
- B.** The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C.** The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practical.
- D.** The applicant will comply with all State and Federal Historic Preservation laws and regulations.
- E.** These standards apply to any new facility whether on public or private property.
- F.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practical. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practical.
- G.** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal standards. However, security lighting may be used as long as it is shielded to be down directional to retain light within the boundaries of the site, to the maximum extent practical.
- H.** A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revised Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
- I.** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the County, as identified in the Comprehensive Plan, or by a State or Federal agency.
 - 1. In determining the potential unreasonable adverse impact of the proposed facility, the Planning Commission shall consider the following factors:

- a. The type, number, height, and proximity of existing structures and proximity of existing structures and features, and background features within the same line of sight as the proposed facility.
 - b. The extent to which the proposed facility would be visible from the viewpoint.
 - c. The amount of vegetative screening.
 - d. The distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource.
 - e. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- J.** A new or expanded wireless telecommunications facility must comply with the buffer zone of 60% of its height from the adjoining property lines. The distance shall be measured from the center of the tower. The following exemptions may apply; (1) the buffer zone may be reduced by the Planning Commission upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property, private or public, or (2) upon a showing of the lessor or landowner's agreement to waive any provisions of this requirement and the adjoining property owners that fall within the 60% buffer zone.

7.2 Standard Conditions

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the County. Where necessary to ensure that an approved project meets the criteria of this ordinance, the County can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

1. Upon request by the county, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

Section 8. Amendment to an Approved Application

Any changes to an approved application must be approved by the County, in accordance with Section 6.

Section 9. Abandonment

A wireless telecommunications facility that is not operated for a continuous period of eighteen (18) months shall be considered abandoned. The Planning Commission shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the Planning Commission that the facility has not been abandoned. However, if negotiations are pending with a service provider a letter of intent shall be provided to the Planning Commission prior to the expiration of the eighteen (18) months.

If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the County may remove all or part of the facility at the tower owner's and/or landowners expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its preconstruction condition, including the removal of roads, and reestablishment of vegetation.

Section 10. Administration and Enforcement

The Compliance Officer, as appointed by the Planning Commission, shall enforce this ordinance. If the Compliance Officer finds that any provision of this ordinance has been violated, the Compliance Officer shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The Compliance Officer shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Hampshire County Commission, or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a result of erroneous advice given by an authorized county official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Section 11. Penalties

Any person who owns or controls any building or property that violates this ordinance shall be fined not less than \$300.00 per day. Each day such violation continues after notification by the Compliance Officer shall constitute a separate offense.

Section 12. Conflict and Severability

12.1 Conflicts with other Ordinances

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

12.2 Severability

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 13. Definitions

The terms used in this ordinance shall have the following meanings:

"Antenna" means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

"Antenna Height" means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. 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.

"County" means the Hampshire County Commission or its designee(s)

"Co-location" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

"Expansion" means the addition of antennas, towers, or other devices to an existing structure.

"FAA" means the Federal Aviation Administration, or its lawful successor.

"FCC" means the Federal Communications Commission, or its lawful successor.

"Height" means, when referring to a tower or structure, the distance measured from the pre-existing grade level to the highest point of the tower or structure, even if said highest point is an antenna or lightning protection device.

"Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the county's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places.

"Historic Landmark" means any improvement, building or structure of particular historic or architectural significance to the community relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the county's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Telecommunications" means the transmission or reception of audio, video, data and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.