

## **SECTION 10      GENERAL REGULATIONS**

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### **10.1 CORNER VISIBILITY**

Between the lines of streets intersecting at an angle of less than one hundred thirty-five (135) degrees and a line joining points on such lines twenty-five (25) feet distant from that point of intersection, no building or structure may be erected and no vegetation may be maintained between a height of three (3) feet and a height of eight (8) feet and above the plane through their average grades.

### **10.2 LANDSCAPED BUFFER STRIPS**

**10.2.1** A landscaped buffer strip is intended to provide within a reasonable period of time a visual barrier between different land uses. Except for pedestrian and vehicular passways, the area shall be used only for the planting of deciduous and evergreen trees and shrubs, with lawn or other suitable and appropriate ground cover. Suitable existing growth may be incorporated into the planting. A planting plan showing the types, sizes, and location of material to be used shall be submitted.

**10.2.2** The Special Permit Granting Authority may waive the requirements of the visual barrier where it deems it to be advisable, for example, where a street is the dividing line between different land uses. Proper maintenance of a required landscaped buffer strip shall be the responsibility of the owner, and shall be a condition of conformance with the Zoning By-law. Where considered appropriate, walls and/or fences may be used in lieu of plantings upon issuance of a special permit.

### **10.3 GAS AND OIL PIPE LINES**

No building used for human habitation or human occupancy shall be located less than 40 feet from the right-of-way of any high pressure liquid petroleum transmission pipe line. Any pressure of one hundred (100) Pounds per Square Inch (P.S.I.) or greater shall be considered to be high pressure.

## **10.4 EARTH REMOVAL REGULATIONS**

The purpose of this section is to preserve a cover-crop on the land to prevent erosion, and to control any excavation operations that may create a safety or health hazard to the public or the adjacent property owners, or be detrimental to the immediate neighborhood or to the Town of Wilbraham. The covering of excavations may be done with the top six (6) inches of soil removed therefrom, and furnishing new top soil or loam from off the premises will not be required. Excavations which uncover ledge or rock outcrops need not be covered or seeded.

### **10.4.1\* Earth Removal Permits**

Except as otherwise provided in this section, there shall be no removal from the premises of earth, loam, sand, gravel, clay or quarry stone in any zoning district except as follows.

- A.** The Building Commissioner may issue a permit for the removal of not more than 250 cubic yards of surplus material from a single lot in any Residential Zoning District, provided such material results from the excavation of a foundation for a residence, swimming pool, driveway or similar accessory residential structure for which a building permit has been issued.
- B.** The Zoning Board of Appeals may, after a public hearing, issue a special permit for the removal of surplus material resulting from other bona fide construction, landscaping or site work being executed on the premises, provided that no rock crushing will be permitted in a Residential Zoning District. The Zoning Board of Appeals shall impose the conditions set forth in Section 10.4.2 where appropriate and necessary for the protection of the health, safety and welfare of the inhabitants of the Town.
- C.** The Zoning Board of Appeals may, after a public hearing at which the Planning Board and Conservation Commission may submit a report, issue a special permit for the removal and/or processing of earth, loam, sand, gravel, clay or quarry stone in any zone other than a Residence District subject to the conditions in Section 10.4.2.
- D.** The Planning Board shall be the special permit granting authority for the export, import and/or re-grading of earth material on any parcel of land in connection with the construction of streets and the installation of municipal services as shown on a subdivision plan or a plan submitted pursuant to Section 4.6 Flexible Subdivision; Section 4.7, Flexible Nonsubdivision; Section 4.8, Planned Unit Residential Development; Section 5, Residential Multiple Development; and Section 8, Adult Care Facilities.

### **10.4.2 Standards and Conditions**

- A.** The applicant shall submit a plan prepared by a registered professional engineer and registered land surveyor. This plan must show existing grades on the parcel of land from which the

above material is to be removed, and essential grades on abutting parcels of land, together with proposed grades at the conclusion of the operation.

- B.** The plan shall provide for proper drainage of the area during the period of operation and after completion. In residence districts, every slope or bank above or below natural grade must be prepared at the end of each working day so that it does not exceed one foot of vertical distance in each two feet of horizontal distance. In other districts, on completion of the operation, no bank shall exceed a slope of one foot of vertical distance in each two feet of horizontal distance.
- C.** At the conclusion of the operation, or of any substantial portion thereof, the whole area where removal takes place shall be covered with not less than six (6) inches of top soil and seeded with a suitable cover crop.
- D.\*** No stone crusher or other machinery not required for actual removal of the material shall be used, unless permitted by the Zoning Board of Appeals.
- E.** Before a permit is granted under this section the applicant shall post a bond in an amount approved by the Zoning Board of Appeals as sufficient to guarantee conformity with the provisions of the permit issued hereunder.
- F.** In passing on such applications, the Zoning Board of Appeals shall consider the effect of such removal on surrounding property and the future usefulness of the premises when the operation is completed.
- G.** The Zoning Board of Appeals shall impose such additional conditions as may in its sole judgment be for the protection of health, safety, and welfare of the inhabitants of the Town. Such conditions may include restrictions on use of roads and routing of vehicles; hours of operation; storage of operating equipment; restrictions on impoundment of water and slopes of banks; minimum distance of the operation from any residential lot line; and fences and other safety measures required during the period of operation.
- H.** The Town Engineer or other agent designated by the Zoning Board of Appeals shall inspect each operation at least once a month and report on his inspection to the Zoning Board of Appeals. The costs to the Town of such inspections shall be billed to and paid for by the holder of the permit.

**10.4.3\* [deleted]**

**10.4.4 Expiration**

Earth removal permits shall be issued for a period of one year. A public hearing shall be held before a permit is renewed by the Zoning Board of Appeals.

## **10.5\* WIRELESS COMMUNICATIONS FACILITIES REGULATIONS**

The purpose of this subsection of the Zoning By-Law is to establish appropriate siting criteria and standards for wireless communications facilities, to minimize the adverse impact on adjacent properties, to preserve scenic views, to limit the number and height of such facilities, to promote the shared use of existing facilities to reduce the need for new facilities, and to provide maximum wireless coverage as mandated by Section 704 of the Federal Telecommunications Act of 1996, while protecting the historic and residential character of the Town of Wilbraham, the property values of the community and the health and safety of citizens.

### **10.5.1 General Use Restrictions**

- A.** No wireless communications facilities as defined in section 1.3 shall be erected or installed except by Special Permit from the Planning Board, acting as the Special Permit Granting Authority, in accordance with the procedures specified in section 10.5 and section 13.6 as well as such rules and regulations as officially promulgated by the Planning Board.
- B.** Any proposed modification to an existing wireless communications facility erected or installed by Special Permit from the Planning Board including but not limited to the addition or replacement of cells, antennae or panels shall be subject to these provisions and shall require a new application. The Planning Board may waive, at its discretion, any application requirements for such modifications.
- C.** Wireless communications facilities in existence at the time of adoption of these Regulations including guyed towers, lattice towers and utility towers may be reconstructed, altered, extended or replaced on the same site by Special Permit, provided that the Planning Board finds that such reconstruction, alteration, extension or replacement will not be substantially more detrimental to the neighborhood and/or the Town than the existing structure. In making such a determination, the Planning Board shall consider whether the proposed reconstruction, alteration, extension or replacement will create public benefits such as opportunities for co-location, improvements in public safety, and/or reduction in visual and environmental impacts.

### **10.5.2 Design Guidelines**

The following guidelines shall be used when preparing plans for the siting and construction of wireless communications facilities.

- A.** To the extent feasible, wireless communications facilities shall be located on existing structures, including but not limited to buildings, water towers, telecommunications towers, utility poles and related facilities, provided that such installation preserves the character and integrity of those structures. The applicant

shall have the burden of proving that there are no feasible existing structures upon which to locate.

- B.** To the extent feasible, wireless communications facilities shall be located so as to be as visually unobtrusive as possible from all views to the greatest extent possible. An applicant proposing a wireless communications facility shall demonstrate to the satisfaction of the Planning Board that the applicant has endeavored to minimize the visual and aesthetic impacts of the proposed facility on residential abutters; and, that the facility must be located at the proposed site due to technical, topographical or other unique circumstances.
- C.** To the extent feasible, wireless communications facilities shall be designed to accommodate the maximum number of users technologically practical. The intent of this requirement is to reduce the number of towers which will be required within the community. New towers shall be considered only upon a finding by the Planning Board that existing or approved towers cannot adequately fulfill the applicant's service requirements or accommodate the wireless communications equipment planned for the proposed tower.
- D.** All building-mounted facilities shall be designed and located so to appear as an integral part of the existing architecture of the building. No such facility shall project more than ten feet above the existing roof line of the building, or more than ten feet above the top of the existing structure upon which it is mounted, or more than five feet out from the plane of the existing wall or facade to which it is attached, provided that such projections do not otherwise violate existing yard dimensions or setback requirements.
- E.** Only free standing monopoles, with associated antennae and panels are allowed in new locations. Lattice style towers or any tower requiring guy wires for support are not allowed unless pre-existing on the location.
- F.\*** No new wireless communications tower shall be located closer than two miles to any other existing tower location unless the Applicant demonstrates to the satisfaction of the Planning Board that:
  - 1. The proposed tower placement is critical to the provision of services and co-location is not feasible on existing towers for technical reasons; or
  - 2. The proposed tower placement will result in a significantly lower tower, will significantly facilitate co-location on the tower or will significantly improve protection of the viewshed in furtherance of the purposes of this section.

- G.\*** All wireless communications towers shall be constructed to the minimum height necessary to accommodate the immediate proposed use but shall be designed with a supporting base structure that is capable of accommodating any further increase in height associated with the anticipated future expansion in use, if any, approved by the Planning Board, provided that:
1. In residential zoning districts, wireless communications facilities shall not exceed one hundred (100) feet in height as measured from ground level at the base of the tower, unless the Applicant demonstrates to the satisfaction of the Planning Board that a taller tower will permit multiple users without significantly increasing the impact upon the viewshed and/or that the Applicant will be unable to provide service with a shorter tower. However, in no event shall the tower height exceed one hundred fifty (150) feet.
  2. In the Ridgeline and Hillside Overlay Zoning District, wireless communications facilities shall not project above the height of the existing tree canopy unless camouflaged or otherwise screened from public view.
- H.** All wireless communications towers shall be pre-engineered to fail at a pre-determined height and "fold in half" in the event of catastrophic failure.
- I.\*** The setback of a wireless communications tower from the property line of the lot on which it is located shall be at least equal to the tower's height. Further, the tower shall be located a minimum of 500 feet from any existing building that is used as a residence, school, or child care facility.
- J.** All wireless communications facilities shall be painted, colored, and/or constructed of materials that minimize the visual impact of the wireless communications facilities on adjacent abutters, residential neighbors and other areas of Town, and owners of wireless communications facilities shall endeavor to install said facilities in a manner that blends them into the structure, building, tower and/or landscape where they are located. The Planning Board may impose reasonable conditions to ensure this result including but are not limited to structural design, painting, lighting, and landscaping standards.
- K.** Fencing shall be provided to control unauthorized access by the public to wireless communications facilities and shall be compatible with the scenic character of the Town and of abutting properties and shall not be of barbed or razor wire unless completely blocked from view by shrubs or other landscaping. A landscape buffer of evergreen shrubs or tree planting shall be provided on the outside of the fenced area. All landscape plantings must be continually maintained.

- L. Lighting shall be limited to the lighting required for emergency and for Federal Aeronautics Administration (FAA) compliance. All lighting shall be shielded to prevent undue impact on surrounding properties.
- M.\* Accessory structures housing support equipment for wireless communications facilities shall be designed and constructed to be as unobtrusive as possible in accordance with the following guidelines:
  - 1. If feasible, equipment shelters may be located in underground vaults.
  - 2. Equipment shelters located above grade shall not exceed four hundred (400) square feet in area and fifteen (15) feet in height, and if more than one such building are placed on-site they shall be designed and constructed to be architecturally similar and compatible with each other.
  - 3. If mandated by the Planning Board, equipment shelters shall be screened from view behind an effective year-round landscaped buffer and/or wooden fence to lessen adverse visual impacts on the surrounding neighborhood.
  - 4. If mandated by the Planning Board, equipment shelters shall be designed and constructed to be consistent with traditional New England architectural styles and materials (pitched roof and wood clapboard or shingle siding) to preserve the architectural and historic character of the surrounding neighborhood.
- N. Signs shall be restricted to warning/no-trespassing signs and an identification sign displaying the Federal Communications Commission (FCC) registration number of the facility, the owner/operator, and an emergency telephone number where the owner/operator can be reached on a twenty-four (24) hour basis. All signs shall comply with the requirements of the Wilbraham Zoning Bylaw.
- O.\* To the extent feasible, all network interconnections from the communications site shall be via land lines and all utility lines serving the facility shall be installed underground.
- P. Existing on-site vegetation shall be preserved to the maximum extent practicable. Clearing of land shall be performed in a manner, which will maximize preservation of natural beauty and conservation of natural resources.

#### **10.5.3\* Submission Requirements**

The applicant or co-applicant for a Wireless Communications Facilities special permit must be a licensed carrier who has authority from the Federal Communications Commission to provide wireless communications services for the facility being proposed. Other co-applicants shall include the company proposing to construct the

facility, other licensed carriers and tenants for the facility, and the landowner of the subject property. The applicant shall submit to the Planning Board a written application on the prescribed form containing all of the following information:

- A.** A site plan in accordance with the requirements of this section and section 13.3, which shall show all property lines, the exact location of the proposed facilities, streets, landscape features, residential dwellings and buildings within five hundred (500) feet of the facility.
- B.** A color photograph or rendition of the proposed wireless communications facilities including, but not limited to, the proposed tower with its antenna and/or panels. A rendition shall also be prepared illustrating a view of the facility from the nearest street or streets.
- C.** A technical report prepared by a radiofrequency engineer, professional engineer or other appropriate professionals containing:
  - 1. "coverage maps" detailing the applicant's plans for providing wireless communications service to the Town of Wilbraham;
  - 2. a description of the proposed wireless communications facility including the technical, economic and other reasons for the proposed location, height and design;
  - 3. a survey of all pre-existing structures, buildings or towers which are capable of supporting the equipment necessary to provide the intended service, and a technical report which demonstrates why any such structure, building or tower cannot be used by the applicant;
  - 4. a description of the capacity of the proposed facility including the number and type of panels, antenna and/or transmitter receivers that it can accommodate and the basis for these calculations;
  - 5. a description of the special design features utilized to minimize the visual impact of the proposed wireless communications facilities; and
  - 6. certification of compliance with all applicable state and federal standards.
- D.** A landscape plan showing the proposed site before and after development including topography and screening proposed to protect abutters.
- E.** If required by the Planning Board, after submitting an application for any new tower or extension in height thereto, the applicant shall schedule with the Planning Board a "crane test" at the proposed site, at the expense of the applicant, to illustrate the height and visibility of the proposed facility in accordance with

the following procedures. The applicant shall arrange to erect a crane (or alternate temporary mast) to the maximum height at the location of the proposed tower and shall arrange to fly a balloon upon the crane (or temporary mast) at the maximum height at the location of the proposed tower. The balloon shall be of size (minimum three-foot diameter) and bright color that is capable of being seen for a distance of one (1) mile. In cases where topography, forest cover or other site conditions make a crane test impractical, the Planning Board may allow the floating of a tethered balloon (a "balloon test") in lieu of the crane test. Such test shall be conducted prior to the public hearing on a weekend day beginning at 8 AM and continuing for a minimum of 8 consecutive hours. The date, time and location of the field test (and an alternative date in case of unsuitable weather conditions) shall be posted with the Town Clerk and advertised at the applicant's expense in a newspaper of general circulation in Wilbraham at least seven (7) days before the field test. In addition, written notice shall be provided to all abutters of record.

- F.** If the proposed facility will extend above the tree canopy, the applicant shall prepare a visual impact analysis of the proposed facility which report shall include:
  - 1. A viewshed map. For the purposes of this section, viewshed shall mean the areas in Wilbraham which are likely to have views of the proposed facility. The viewshed shall be delineated through analysis of topographic contours to determine line-of-sights surrounding the proposed facility under the assumption that existing vegetation and structures do not exist.
  - 2. Identification of key viewpoints of the proposed facility. Said viewpoints shall, to the extent feasible, be taken from existing vantage points commonly used by the public, such as nearby residences, public buildings, noteworthy scenic or historic resources, public roads, etc.
  - 3. Photographic analysis of the key viewpoints of the proposed facility using unaltered photographs taken from eye level (five feet above grade) which show the existing (baseline) condition of these viewpoints, as well as accurate scale perspective elevation drawings, computer-altered photographs or other accurate representation showing said viewpoints with the facility in place.
- G.** Proof of ownership of the proposed site, or proof of a contract or lease with the owner of the site establishing the applicant's right to construct a facility on the site.
- H.** Documentation of the Carrier's legal right to install and use the proposed facility in the form of a license from the Federal Communications Commission (FCC).

- I. In addition to the application fee, the Planning Board retains the right to commission independent consultants to review and analyze the application for compliance with zoning requirements. The cost for retaining such experts shall be paid by the applicant and the applicant shall pay a project review fee if so required by the Planning Board in accordance with the Rules and Regulations for Special Permits of the Planning Board.

#### **10.5.4\* Monitoring and Maintenance**

- A. Pre-testing. Prior to beginning operation of the facility, the applicant shall hire a qualified independent professional to monitor the background levels of electromagnetic frequency (EMF) radiation around the proposed facility site. A report of monitoring results shall be prepared by the independent consultant and submitted to the Planning Board and the Building Inspector.
- B. Post-Testing. Within thirty (30) days from the date of operation of the facility and at annual intervals from the date of issuance of the special permit, the Planning Board shall require that the applicant hire a qualified independent professional to measure existing levels of electromagnetic frequency (EMF) radiation from the facility. A report of the monitoring results shall be submitted to the Planning Board stating whether the results are accurate and in compliance with the standards of the Federal Communications Commission and the American National Standards Institute.
- C. The applicant shall operate and maintain the facility in good condition and in compliance with the requirements of this section and the conditions of the special permit issued hereunder.
- D. The Building Inspector may annually require proof of certification demonstrating compliance with the standards of the Federal Communications Commission, Federal Aviation Administration, and the American National Standards Institute and required maintenance.
- E. Failure to comply with the provisions of this section 10.5 or special permit granted under this section shall be grounds for revocation of the special permit.

#### **10.5.5\* Cessation of Use and Obsolescence**

- A. Providers of wireless Communications service shall report to the Building Inspector, any cessation in the use or operation of any wireless communications facility that exceeds thirty (30) days, and such facilities shall be dismantled and removed at the owner's expense within one (1) year of cessation of use or operation.
- B. Prior to issuance of a building permit for a Wireless Communications Tower, the applicant shall post with the Town

performance security in the amount set by the Planning Board. The amount shall be sufficient to cover demolition, removal and disposal of the tower and its accessories as well as the remediation of the landscape in the event the Building Inspector condemns the tower or any part accessory thereto, or deems it unused for more than one year. The applicant shall authorize and, as necessary, shall obtain the authorization of the owner of the property to allow the Town to enter upon the subject property to remove the facility in the event of condemnation or cessation of use. The Building Inspector shall give the tower's owner forty-five (45) days written notice by registered mail before demolition commences. In the event that the posted amount of performance security does not cover the cost of demolition and/or removal, the Town may place a lien upon the property covering the difference in cost.

#### **10.5.6\* Waivers & Modifications**

- A.** The Planning Board may waive one or more of the application filing requirements of this section if it finds that such information is not needed for a thorough review of a proposed wireless communications facility.
- B.** The Planning Board may modify any provision or requirement of this section if it can be demonstrated (1) that it is technically infeasible to meet said requirement or (2) that its effect is to prohibit the proposed use throughout the Town or (3) that such modification will promote public benefits such as opportunities for co-location, improvements in public safety, reductions in visual and environmental impacts and/or otherwise promote the purposes of this section.