



TOWN OF UPTON, MASSACHUSETTS

PLANNING BOARD

ARTICLE 18: ZONING BYLAW - SMALL CELL ZONING BYLAW

To see if the Town will vote to amend the Town of Upton Zoning By-laws Section 300-10.1 Definitions, 300-3.1 Table of Principal Uses, 300-3.2 Accessory uses and structures, and Section 300-6.2 Wireless Data Transfer Facilities to regulate small wireless facilities and make related changes as follows, with additions indicated by underline and deletions indicated by strike through and to authorize the Town Clerk to make any necessary non-substantive corrections including renumbering to incorporate these changes into the Zoning By-laws, or take any other action relative thereto.

Article 10 Definitions

§ 300-10.1 Definitions and word usage.

Add the following two definitions, for consistency with federal regulation:

PERSONAL WIRELESS SERVICE FACILITY (or simply FACILITY)

A facility as defined in 47 CFR 1.6002(i), such as may from time to time be amended. This definition covers antennas of all sizes, and their attendant structures, used for the purpose of providing personal wireless services.

SMALL WIRELESS FACILITY

A facility as defined in 47 CFR 1.6002(l), such as may from time to time be amended. A Small Wireless Facility may without limitation be secured to a pole or suspended on a line that connects two poles.

Modify the following definition:

WIRELESS DATA TRANSFER FACILITY

Transmission, monitoring or receiving antennas systems, their support structure and any peripheral attached thereto, that allow transfer of data through the air without a physical connection, other than a Small Wireless Facility. It does not refer to the structures housing the electronic systems necessary to operate the antennas.

Article 3 Use Regulations

§ 300-3.1 Table of Principal Uses

C. Table of Principal Uses: See Table A, below –

Table of Principal Uses by District

Principal Use	SRA	SRB	SRC	SRD	AR	GB	C&I	MGF	UCBD
36 Personal wireless service Wireless data transfer facility facilities (see § 300-6.2 for additional regulations)	PB	PB	PB	PB	PB	PB	PB	PB	N

§ 300-3.2 Accessory uses and structures.

Add a new Section D.:

D. Accessory uses in all districts. Installation of a Small Wireless Facility is permitted in all districts, subject to the provisions of § 300-6.2, subsection G.

Article 6 Special Regulations

Amend nomenclature to distinguish different types of facility, and add a section regulating the installation of Small Wireless Facilities:

§ 300-6.2. Wireless data transfer facilities. Personal Wireless Service facilities.

A. Purpose and intent. The purpose of this section is to regulate wireless data transfer personal wireless service facilities (herein abbreviated “facility” or “facilities”) such that these services may be provided with the minimum harm to the public health, safety and general welfare by:

- (1) Protecting the general public from hazards associated with wireless data transfer such facilities.
- (2) Minimizing visual impact from wireless data transfer such facilities.
- (3) Preventing adverse impact on local property values.

- (4) Improving the ability of the carriers to maximize coverage while minimizing adverse impact on the community.
- B. Special permit granting authority. A wireless data transfer facility shall only be allowed by a special permit. The Planning Board shall act as the special permit granting authority (SPGA) for wireless data transfer facilities in the Town of Upton. The Planning Board is authorized to hear and decide upon applications for special permits for wireless data transfer facilities in accordance with the provisions of this Zoning Bylaw.
- C. Application in zoning districts. A wireless data transfer facility shall be allowed by special permit in all zoning districts in accordance with the requirements and regulations of the Town of Upton Zoning Bylaw.
- D. Applicability and exemptions.
 - (1) This section applies to any wireless data transfer facility. The following specific uses are exempt:
 - (a) Satellite dishes or antennas used exclusively for residential use.
 - (b) Police, fire, ambulance and other public emergency dispatch.
 - (c) Citizens band radio.
 - (d) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the FCC, provided that the tower is not used or licensed for any commercial purpose and the tower is removed upon loss or termination of said FCC license.
 - (2) A nonexempt wireless data transfer facility or repeater facility that shares a tower or other structure with any exemptions listed above shall not be considered exempt from this bylaw for any reason.
 - (3) Existing towers may be reconstructed, expanded and/or altered in all zoning districts subject to a special permit granted by the Planning Board, provided that they conform to all of the requirements set forth in this Zoning Bylaw.
 - (4) Wireless data transfer devices and wireless data transfer accessory buildings may be located totally within existing buildings and existing structures in all zoning districts, subject to a special permit granted by the Planning Board.
- E. Consistency with federal law. These regulations are intended to be consistent with the Telecommunications Act of 1996^[1]in that:
 - (1) They do not prohibit or have the effect of prohibiting the provision of personal wireless services.
 - (2) They are not intended to be used to discriminate unreasonably among providers of functionally equivalent services.

(3) They do not regulate personal wireless services on the basis of environmental effect of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC's regulations concerning emissions.

F. Wireless Data Transfer Facility: Design requirements and performance standards. All wireless data transfer facilities erected, installed and/or used shall comply with the following design requirements and performance standards:

(1) Shared use. Shared use of towers by commercial wireless data transfer carriers is required unless such shared use is shown by substantial evidence to not be feasible.

(2) Height.

(a) The maximum allowed height of a tower shall be 150 feet. The Planning Board may grant a waiver of the maximum allowed height limitation under this section for a tower not to exceed 200 feet in total if the Planning Board finds that the increased height is in the best interest of the Town.

(b) Data transfer devices located on a structure shall not exceed 10 feet in height above the roofline of the structure, unless the Planning Board finds that a greater height is essential to the proper functioning of the wireless communication services to be provided by the applicant at such location. For structures where it is difficult to determine the roofline, such as water tanks, the height of the data transfer devices shall not exceed 10 feet above the highest point of the structure.

(3) Co-location. In the event that the Planning Board finds that co-location is preferable in order to conform to the intent and purpose of this bylaw, then towers shall be designed to accommodate the maximum number of presently interested users that is technologically practical. In addition, if the number of proposed users is fewer than four, the applicant shall provide a plan showing how the proposed tower can be expanded to accommodate up to four users. In the event that the Planning Board finds that co-location is preferable, the applicant must agree to allow co-location pursuant to commercially reasonable terms to additional users.

(4) Proximity to existing residence. Towers shall be located a minimum of 750 feet from an existing residential dwelling or proposed dwelling in a permitted submission.

(5) Setback. A tower shall be set back from the property lines of the lot on which it is located by a distance equal to 1 1/2 times the overall vertical height of the tower and any attachments.

(6) Screening requirements.

- (a) All exterior wireless data transfer facilities equipment and fixtures shall be painted or otherwise screened or colored to minimize their visibility to abutters, adjacent streets and residential neighborhoods. Wireless data transfer facilities, equipment and fixtures visible against a building or structure shall be colored to blend with such building or structure. Wireless data transfer facilities, equipment and fixtures visible against the sky or other background shall be colored or screened to minimize visibility against such background. A different coloring scheme shall be used to blend the structure with the landscape below and above the tree or building line. Existing on-site vegetation shall be preserved to the maximum extent feasible.
- (b) Data transfer devices shall be situated on or attached to a structure in such a manner that they are screened, preferably not being visible from abutting streets and residences. Freestanding dishes or data transfer devices shall be located on the landscape in such a manner so as to minimize visibility from abutting streets and residences, and to limit the need to remove existing vegetation. All equipment shall be screened, colored, molded and/or installed to blend into the structure and/or the landscape.

(7) Fencing. Fencing shall be provided to control access to wireless data transfer facilities and shall be compatible with the scenic character of the Town and shall not be of razor wire and shall be subject to the approval of the Planning Board. Any entry to the proposed access road shall be gated (and locked) at the intersection of the public way, and a key to the lock provided to emergency response personnel.

(8) Lighting. Night lighting of towers shall be prohibited unless required by the Federal Aviation Administration. Lighting shall be limited to that needed for emergencies and/or as required by the Federal Aviation Administration.

(9) Parking. There shall be a minimum of one parking space for each facility, to be used in connection with the maintenance of the site, and not be used for the permanent storage of vehicles or other equipment.

(10) Access. For proposed tower sites, the width, grade, and construction of the access road shall be designed so that emergency response vehicles can get to the tower and wireless data transfer facility accessory buildings, and shall be designed to provide proper storm drainage.

G. Small Wireless Facility. This bylaw section is to permit regulation of the installation of small wireless facilities outside of public property.

- (1) No small wireless facility shall be placed, installed, constructed or modified without first obtaining Special Permit approval from the Planning Board.
- (2) The Planning Board shall adopt and may from time to time amend policies, rules and regulations relative to approval under this section 300-6.2(G). All policies and

amendments shall be subject to a public hearing. Adoption of policies and amendments shall require a simple majority vote of the Planning Board.

(3) A copy of the policies, rules and regulations shall be kept on file with the Town Clerk and shall apply to and set forth the following:

- a) The application process, including public hearing requirements, evaluation criteria and timing for action by the Planning Board.
- b) The form and contents of the application and application fee.
- c) Applicable design, placement, safety, and aesthetic criteria.
- d) Requirements for modification, abandonment and annual recertification.

(4) The policies described in section (2) shall be intended to preserve the aesthetic character of the Town; to safeguard public safety, health and welfare; protect the financial interests of the Town; and to protect against intangible public harm resulting from unsightly or out-of-character deployments.

(5) The Select Board shall adopt the policies, rules and regulations described in section 2 above, with necessary modifications applicable to rights-of-way and other lands under the control of the Select Board. These policies, rules and regulations shall also be kept on file with the Town Clerk.

G. H. General requirements.

(1) No wireless data transfer facility may be erected except upon the issuance of a special permit by the Planning Board and approval under site plan approval as set forth in § 300-9.4 of the Zoning Bylaw and subject to all of the provisions of this section. It is recommended to the applicant to undertake both the special permit and site plan approval procedures concurrently in order to expedite the permitting process. Multiple applicants for the same site/facility are also encouraged, provided there is one lead applicant responsible for all submissions and further provided that no application shall be considered complete and filed until all the applicants have complied with all of the submission requirements.

(2) All owners and operators of land used in whole or in part for a wireless data transfer facility and all owners and operators of such wireless data transfer facility shall, as a continuing condition of installing, constructing, erecting and using a wireless data transfer facility, permit other FCC-licensed commercial entities seeking to operate a wireless data transfer facility to install, erect, mount and use compatible wireless data transfer equipment and fixtures on the equipment mounting structure on reasonable commercial terms, provided that such co-location does not materially interfere with the transmission and/or reception of communication signals to or from the existing wireless data transfer facility, and provided that there are no structural or other physical

limitations that make it impractical to accommodate the proposed additional wireless data transfer equipment or fixtures.

- (3) Each proposed construction of a new wireless data transfer facility, tower, wireless data transfer device or wireless data transfer accessory building shall require an initial special permit. Any extension in the height of, addition of wireless data transfer accessory buildings or wireless data transfer devices to, or replacement of any wireless data transfer facility shall require an amendment to the special permit previously issued for that facility or, in the case where there is no special permit, an initial special permit.
- (4) New wireless data transfer facilities shall be considered by the Planning Board only upon a finding by the Planning Board that:
 - (a) The applicant has used reasonable efforts to co-locate its proposed wireless data transfer facilities on existing or approved facilities; and;
 - (b) The applicant either was unable to negotiate commercially reasonable lease terms with the owner of any existing or approved facility that could accommodate the proposed facilities from both structural engineering (i.e., the height, structural integrity, weight-bearing and wind-resistant capacity of the existing or approved facility) and radio frequency engineering (i.e., height, coverage area, etc.) perspectives; or there neither exists nor is there currently proposed any facility that could accommodate the proposed facilities from structural and radio frequent engineering perspectives. A report discussing this information entitled "New Wireless Data Transfer Feasibility Study" is to be submitted to the Planning Board as part of any special permit submission.
[Amended 5-8-2021 ATM by Art. 16]
- (5) The Planning Board may require the applicant to pay reasonable fees for professional review of the applicant's proposal by a professional or radio frequency engineer, attorney and/or other qualified professional.
- (6) A wireless data transfer facility may be located on the same lot by special permit with any other structures or uses lawfully in existence and/or lawfully undertaken pursuant to this bylaw.

H. I. Criteria for granting special permit.

- (1) Applications for special permits may be denied if the Planning Board finds that the petitioner does not meet or address the requirements of § 300-6.2 herein, § 300-9.4 of this Zoning Bylaw and MGL c. 40A, § 9.

- (2) When considering an application for a wireless data transfer facility, the Planning Board shall take into consideration the proximity of the facility to residential dwellings and its impact on these residences. New towers shall only be considered after a finding that existing (or previously approved) towers suitable for and available to the applicant on commercially reasonable terms cannot accommodate the proposed use(s), taking into consideration radio frequency engineering issues and technological constraints.
- (3) When considering an application for a proposed data transfer device to be placed on a structure, the Planning Board shall take into consideration the visual impact of the unit from the abutting residences and streets.

L. J. Conditions. The Planning Board shall impose, in addition to any reasonable conditions supporting the objectives of the Zoning Bylaw, such applicable conditions as it finds appropriate to safeguard the neighborhood or otherwise serve the purpose of § 300-6.2 herein, including, but not limited to screening, buffering, lighting, fencing, modification of the external appearance of the structures, limitation upon the size, method of access or traffic features, parking, removal or cessation of use, or other requirements. Such conditions shall be imposed, in writing, with the granting of a special permit or Site Plan approval. As a minimum, the following conditions shall apply to all grants of special permit relating to a wireless data transfer facility pursuant to this section:

- (1) Annual certification demonstrating continuing compliance with the standards of the Federal Communications Commission and Federal Aviation Administration, and required maintenance shall be filed with the Building Commissioner by the special permit holder, with a copy received by the Planning Board no later than January 31 of each year. [Amended 5-8-2021 ATM by Art. 16]
- (2) Removal of abandoned towers and facilities. Any wireless data transfer facility that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such tower and facility shall remove same within 90 days of receipt of notice from the Planning Board, notifying the owner of such abandonment. If such tower or facility is not removed within said 90 days, the Planning Board may cause such tower or facility to be removed at the owner's expense. If there are two or more users of a single tower, then this provision shall not become effective until all users cease using the tower.
- (3) For all towers, the applicant shall provide a performance bond or other security from a surety authorized to do business in Massachusetts and satisfactory to the Planning Board, in an amount equal to the cost of removal of any and all wireless data transfer facility from the premises and for the repair of such premises and restoration to the condition that the premises were in at the onset of the lease, said amount to be determined at the discretion of the Planning Board by either the applicant's engineer or professional hired by the Planning Board at the applicant's expense. The amount of the bond shall be the total estimate of restoration costs and anticipated fees (in today's dollars) by the applicant's engineer, plus an annual increase of 3% for the

term of the lease. The term of the bond shall be for the full term of any lease, plus 12 months. The Town must be notified of any cancellation or change in the terms or conditions in the bond.

- (4) For all towers, an agreement must be executed whereby the user will allow the installation of municipal data transfer devices at no cost to the Town of Upton, and which will allow other carriers to lease space on the tower so long as such use does not interfere with the user's use of the tower, or with any Town-controlled data transfer devices.
- (5) For all towers located on nonmunicipal property, a clause must be inserted in any lease that unconditionally permits the Town or contractors hired by the Town to enter the premises, at any time, whereupon towers are located, if any Town-wide or Town-controlled telecommunications are located thereon.
- (6) For all towers located on municipal property, a certificate of insurance for liability coverage in amounts determined by the Board of Selectmen must be provided, naming the Town as an additional insured.
- (7) For all towers located on municipal property, an agreement must be executed whereby the user indemnifies and holds the Town harmless against all claims for injury or damage resulting from or arising out of the use or occupancy of the Town-owned property by the user.
- (8) All permittees shall be required to file annually on or before February 1 with the Upton Planning Board a complete list of all wireless data transfer facility locations in the Town then used by the permittee, including data transfer devices mounted on the interior of a building or structure.
- (9) The special permit shall lapse in two years unless substantial use or construction has commenced by such date, unless for good cause shown a written request for an extension of time is made to the Planning Board before the two years has expired. Such construction, once begun, shall be actively and continuously pursued to completion within a reasonable time. This two-year period does not include such time as required to pursue or await the determination of an appeal from the granting of this special permit.
- (10) Any future extension or addition of a wireless data transfer facility or construction of new or replacement towers shall be subject to an amendment of the special permit, following the same procedure as for an original grant of a special permit.
- (11) Prior to construction, the permittee shall provide a recorded copy of a restrictive covenant prohibiting construction on all areas contained in the setback/fall areas.

L K. Severability. If any section of this bylaw is ruled invalid by any authority or a court of competent jurisdiction, such ruling will not affect the validity of the remainder of the bylaw.
