TOWN OF HARRISON

TOWER

ORDINANCE

ENACTED: JUNE 9, 1999

A True Copy

ATTEST: _____
Judith E. Colburn, Town Clerk
TOWN OF HARRISON

Proposed Telecommunications Towers, Antennas and Associated Facilities Ordinance

This Ordinance is enacted pursuant to the Municipal Home Rule Authority (30A MRSA 2101 et seq), Municipal Ordinance Authority (30A MRSA 3001 et seq), and the Town of Harrison Comprehensive Plan.

SECTION 1. PURPOSE

This Ordinance is designed and intended to balance the interests of the residents of the Town of Harrison, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the Town. These purposes are also intended:

A. To minimize the adverse impact of such facilities including visual impacts, environmental impacts, impacts to historically significant areas, health and safety impacts and property value impacts.

B. To encourage co-location of carriers and minimize the total number of towers located

within the town.

C. To permit the construction of new towers only where all other reasonable opportunities have been exhausted.

D. To encourage the users of towers and antennas to configure them in a way that minimizes the need for additional towers in the Town of Harrison.

E. To provide for the removal of structures which are no longer being used for telecommunications purposes.

SECTION 2. DEFINITIONS

Alternative Tower Structure **- shall mean clock towers, bell steeples, light poles and water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.**

Antenna **- shall mean any exterior apparatus designed for commercial transmission of telephonic, radio, or television, or similar communications through the sending and/or receiving of electromagnetic waves.**

Co-Location **- shall mean the location of more than one telecommunications facility (use) on a tower or alternative tower structure.**

FAA **- shall mean the Federal Aviation Administration.**
FCC **- shall mean the Federal Communications Commission.**

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

Telecommunications Facility **- shall mean any structure, antenna, tower, or other**

device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services. Telecommunications Facilities shall be considered a principal use. Pre-existing accessory use towers/antennas shall be exempt from this definition.

Threshold Height **- shall mean the height, as defined above, below which a telecommunications facility does not need review and approval as a special exception, unless otherwise noted herein.**

Tower **- shall mean any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular towers, alternative tower structures, and similar structures.**

SECTION 3. PERMITS REQUIRED

A. All new telecommunications facilities which exceed 35 feet in height in the shoreland zone and all towers exceeding 70 feet in all other areas must apply for, acquire and conform to the requirements of a permit from the Planning Board as more particularly referred to in Section 4 below.

B. New telecommunications facilities below those threshold heights shall be considered a permitted accessory use, and shall need only to apply for and receive a building permit from the Code Enforcement Officer, if such telecommunications facility is

accessory to a principal use on the lot and is used for the private communications of the owner of or business location on the lot.

C. All telecommunications facilities proposing to locate on existing tower or alternative tower structures below the threshold heights as set forth above shall apply for and conform to the requirements of a building permit from the Code Enforcement Officer.

D. All other telecommunications facilities below the threshold heights as set forth above shall apply for and conform to the requirements of a building permit from the Code Enforcement Officer.

SECTION 4. APPLICATION PROCEDURE

A. All applications under this section shall be reviewed by the Planning Board of the Town of Harrison in accordance with the procedure, standards and submission requirements set forth below and of the Harrison Site Plan Review Ordinance and the Harrison Shoreland Zoning Ordinance as applicable.

B. All activities or construction that require a permit in accordance with this Ordinance shall be submitted in an application to the Code Enforcement Officer. The Code Enforcement Officer, after reviewing the application to determine if it contains

sufficient information as required below, will schedule the completed application for review at the next available meeting of the Planning Board.

C. Each application for a permit under this Ordinance shall submit a scaled plan and application in accordance with the following submission requirements:

1. Location of the proposed structure, including map/lot number and street address.

2. Name of owner or operator of the telecommunications facility and owner of property.

3. Proof of right, title and interest to use the property on which the telecommunications facility is proposed.

4. Name of company (ies) responsible for constructing and/or maintaining the telecommunications facility.

5. Date the telecommunication facility, in cases of co-location, was initially constructed or is proposed to be constructed.

6. A description and construction detail of the telecommunication facility, including: plot plan identifying location of the tower on the property; dimensions of the tower; structural supports, if any: lighting; color; and equipment located on the structure, if any. This description shall also identify any accessory structures that are essential to operation of the telecommunication facility.

7. A topographical map, drawn at a scale of 1 inch = 50 feet (or other appropriate scale as determined by the Planning Board) of the property proposed as location of the structure. The topographic map shall identify: accurate contours at not less than 5 foot intervals (or other dimensions of the property; appropriate scale as determined by the Planning Board) existing vegetation, particularly noting height, diameter, density, quality, and type (deciduous or evergreen) of existing trees, wetlands, floodplains, streams and open bodies of water; ledge outcrops; soils data, medium intensity; all existing structures on the property; and any right-of-ways, easements, or similar encumbrances on the property; and other significant features.

8. A locus map drawn at a scale of not less than 1 inch = 100 feet (or other appropriate scale as determined by the Planning Board) that identifies all properties, all residences, all non-residential structures, all roads and the natural topography (vegetation and contours at 20 foot intervals) of the area located within a radius of 1000 feet of the proposed telecommunication facility location.

9. A landscape plan prepared at a scale of 1 inch = 50 feet (or other appropriate scale as determined by the Planning Board) that identifies how the applicant shall satisfy

landscape, screening and buffering requirements.

10. A visual impact analysis prepared by a landscape architect or other qualified professional that quantifies the amount of visual impact on properties located within 500 feet, within 2,500 feet and within 2 miles of the proposed telecommunication structure. This analysis will include recommendations to mitigate adverse visual impacts on such properties.

11. An analysis prepared by a qualified professional that describes why this site and structure is critical to the operation for which it is proposed. The analysis shall address, at a minimum; existing and proposed service area maps; how this structure is integrated with other company operations, particularly other structures in Harrison and surrounding communities; future expansion needs in the area; the affect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location.

12. Certification by a structural engineer that construction of the structure shall satisfy all Federal, State and Local building code requirements as well as be able to satisfy the needs of maximum permitted co-location at the site (as approved by the Planning

Board) per the height limits of the applicable zoning district.

13. Payment of all required performance guarantees as a condition of plan approval - with
a note on the plan so stating.

D. The Planning Board has discretion to request additional information to proceed with
the review process the cost of producing such additional information to be borne solely
by applicant.

E. All applications shall be accompanied by fees as set by the Town of Harrison.

SECTION 5. <u>REVIEW PROCEDURES</u>

A. The Planning Board shall make its decision to approve, approve with conditions, or deny a permit within 90 days after review begins or within another time limit as may be mutually agreed to by the Board and the Applicant.

B. The Planning Board shall schedule a public hearing within forty-five (45) days of taking up the application. Notification of the hearing shall be provided:

1. By the Applicant in writing, at least ten (10) days prior to the hearing, to all owners of property that directly abut or are located within one thousand (1,000) feet of any property line of the property for which the permit is requested. (Notice to the owners within the first 500 feet shall be by certified mail the remaining notice shall be by first class mail). Notice shall also be given by certified mail to any town located within 1,000 feet of the proposed telecommunications facility. The applicant also shall present proof of such notification satisfactory to the Code Enforcement Officer. The notification shall include: the name of the applicant location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

2. By the Town posting notice of such hearings in the Municipal Office a minimum of ten (10) days in advance of the hearing.

3. By the Town advertising in a newspaper of general circulation within the Town notice of the hearing a minimum of ten (10) days in advance of the hearing.

C. The Planning Board will, after a public hearing and review of the application, issue Findings of Fact and Conclusions which outline the reasons it approves, approves with conditions, or denies the telecommunication structure application. The Board shall use the standards identified in the Harrison Site Plan Review Ordinance as well as those noted below (Section VI) to make its decision. The Planning Board may impose conditions in any permit issued hereunder to ensure conformity with the purposes of this Ordinance and the Town of Harrison Comprehensive Plan.

SECTION 6. REVIEW GUIDELINES

A. The Planning Board will be guided in its considerations by the following standards:

1. Height of proposed tower or other structure does not exceed that which is essential for its intended use and public safety.

2. Proximity of tower to residential development or zones does not create undue impact on the value or use of property (ies) in such residential areas.

3. Nature of uses on adjacent and nearby properties and the degree of incompatibility of the proposed construction or activity with such adjacent and nearby uses.

4. Surrounding topography of the proposed site and the degree to which any specific topographical features render the proposed site incompatible with the purposes of this Ordinance, or require special consideration (s) as to drainage, erosion and sedimentation control.

5. Surrounding tree coverage and foliage and the extent to which the proposed site or construction would disturb or diminish such coverage and foliage, or require special consideration (s) as to landscaping or buffering.

6. Design of the tower, antenna, or facility with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness including the need for landscaping or other site improvement (s).

7. The safety and utility of any proposed ingress and egress to the site.

8. Availability of suitable existing towers and other alternative tower structures or locations as discussed in Section 7.

9. Visual impacts on view sheds, ridge lines, and other impacts resulting from tower location, tree and foliage clearing and placement of incidental structures, powerlines and access roads.

10. Visual impacts on the view from any public park, natural scenic vista, historic building or major view corridor.

11. That the proposed facility/tower/dish be constructed in such a manner not to result in needless height, mass, and guy-wire supports with documentation having provided and review regarding the design capacity and/or the remaining co-location capacity of the tower/facility.

12. The proposed facility will minimize potential effects on wildlife.

B. The Planning Board may use any technical and professional services necessary to assist in their review of a Facility. Services may include but are not limited to: an analysis of shared use, an analysis of visual impact, an analysis of the structure satisfying federal and state requirements, an analysis of alternative sites, and other issues required to satisfying requirement of this section. The applicant shall be

required to pay all costs involved with these professional services.

C. The code Enforcement Officer may use professional and technical services to inspect construction of an approved project. The applicant shall pay all costs incurred for these inspection services.

SECTION 7. PERFORMANCE: STANDARDS/DIMENSIONAL REQUIREMENTS

A. *Height*

Towers, antennas and facilities shall not exceed a height of 150 feet except that where evidence of acceptable design and co-location is provided to the Planning Board, an additional 25 feet of height per each additional user is permitted, (based upon signed agreements to be filed with the Code Enforcement Officer prior to the issuance of any building permit). No telecommunications facility shall exceed a height of 200 feet.

B. *Setbacks*

1. All telecommunications towers shall be setback from the lot lines of any residential use or residential zoning district a distance equal to at least 125% of the tower height. The tower height used shall be the maximum design height approved for the site.

2. Tower, guys and accessory facilities shall meet the minimum zoning district setback requirements.

C. *Aesthetics, Landscaping, Buffers & Fencing*

1. Towers shall have a galvanized steel finish or be painted a neutral color so as to

reduce visual obstructiveness.

2. All telecommunications structures shall maintain the required setbacks as undisturbed vegetated buffers, except for the access road. The Planning Board may require additional plantings in the buffer area to enhance the quality and effectiveness of the buffer area to serve as a visual screen. The size and quantity of plantings shall be subject to Planning Board approval.

3. At a tower site, the design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screenings and landscaping that will blend the tower facilities to the natural settings and built environment.

4. Towers shall not be artificially lighted, unless required by the FAA or other Federal or State authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance of the surrounding properties and views.

5. Road access to the telecommunications structure shall be so located to minimum size necessary to allow safe access.

6. The base of a telecommunications tower may not be located in a wetland or floodplain.

7. A security fence or wall not less than eight (8) feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.

D. *Investigation of Existing Alternative Towers, Sites & Structures*

Applicants shall identify all existing and proposed (on file in the Municipal Office) towers, including their heights, located in the town within one mile of the town boundaries. Applicants must provide evidence of the lack of antenna space on all such towers, (except in cases where tower access is denied by tower owner), and

shall identify other tower structures and sites which have been investigated as an alternative to constructing a new tower. Applicant shall address the use of co-location and/or other alternative tower structures and shall demonstrate that they cannot provide adequate communication service utilizing such existing towers or structures.

E. *Co-Location*

The applicant and owner shall allow other future wireless service carrier, using functionally equivalent personal wireless technology to co-locate antennae, equipment and facilities on a telecommunication tower and site, unless satisfactory evidence is presented and the Planning Board concurs that technical constraints prohibit co-location. Space shall be provided at no charge to public agencies namely police, fire, ambulance, communications and Highway if requested at the time of review by the Planning Board.

F. *Other Requirements*

1. Building Code and Safety Standards - To ensure the structural integrity of telecommunications facilities, the owner shall ensure that it is designed, constructed and maintained in conformance with application Federal, State and Local building, electrical and safety codes.

2. Advertising - No advertising or signage is permitted on telecommunications facilities.

SECTION 8. PERFORMANCE GUARANTEES AND REMOVAL OF ABANDONED/UNUSED FACILITIES GENERAL GUARANTEE

A. No building permit may be issued until the applicant has filed a performance guarantee with the Town Manager equal to 100% of the cost of completing the following improvements;

1. The construction of any drainage systems involving piping, culverts, or retention or detention facilities; and

2. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this section; and

3. other site improvements requires by the Board to meet the standards of this section.

B. *Removal of Abandoned/Unused Facilities*

1. The owner of a telecommunications facility shall be required to remove the tower should it not be used for the use or uses approved for a period of twelve (12) consecutive months. An applicant for a permit under this sections shall post a performance guarantee with the Town prior to obtaining a permit that is equal to 125% of the cost of removing the structure.

2. The performance guarantee covering such removal shall be for a minimum term of five years. It must contain a mechanism, satisfactory to the Town, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.

SECTION 9. HAM RADIO

1. *Amateur Radio*

This ordinance shall not govern any tower, or the installation of any antenna that is owned and operated by a federally-licensed amateur radio station operator and the tower or antenna is used for the exclusive purpose of amateur radio operations.

2. *Citizen Band Radios*

This ordinance shall not govern the installation of any antenna that is used for the exclusive purpose of facilitating the use of a Citizen Band Radio.

3. *Receive-Only Antennas*

This ordinance shall not govern any tower, or the installation of any antenna that is used exclusively for receive only antennas, except any towers in this section shall be limited to (70) feet in height.

SECTION 10. ENFORCEMENT

Any construction of or on or use of any premises for telecommunications purposes as set forth above without first obtaining a permit as required hereunder, or any use of any site or facility not in compliance with the terms and conditions set forth in any permit issued hereunder, or any material misstatement of fact in any application or supporting documentation discovered subsequent to the issuance of any permit hereunder, or any failure to comply with and maintain the performance guaranties and/or removal requirements set forth hereunder, or any failure to observe and comply with any provision of this ordinance, shall be deemed a violation of this Ordinance. This Ordinance shall be enforced, and any violations hereof abated, by the municipal officers of the Town of Harrison or their duly authorized designees, and shall be enforceable by and under, and subject to all the terms, fines and penalties of 30A MRSA 4451 and 4452, as amended, which are incorporated herein by reference.

SECTION 11. APPEALS

Any appeal by the aggrieved party with standing from any decision of the Code Enforcement Officer or the Planning board to approve, approve with conditions or deny any application hereunder shall initially be to the Harrison Board of Appeals, said appeal to be filed within thirty (30) days of the decision, action or failure or refusal to take action complained of. Any appeal shall be governed by the provisions of 30A MRSA 2691.

SECTION 12. SEPARABILITY

If any section, part of a section or any provision of this Ordinance is declared by a court of competent jurisdiction, invalid or unenforceable such declaration shall not affect the validity or enforceability of the Ordinance as a whole, or any part or provision other than that specifically declared to be unconstitutional, invalid or unenforceable.

SECTION 13. NO RETROACTIVE EFFECT

This Ordinance does not render illegal any structure, facility or use which legally existed or was under active construction at the effective date of this Ordinance. Permits issued prior to the adoption of this Ordinance remain valid for a period of one year from the initial date of issuance.

SECTION 14. AMENDMENT

This Ordinance may be amended by a vote of a Town Meeting, upon a town meeting warrant article submitted by the Planning Board after public hearing.

SECTION 15. EFFECTIVE DATE

This Ordinance takes effect and is in force as of the date of its enactment by a duly called annual or special Town Meeting.