



Due to the COVID-2019 State of Emergency, the PLD Committee will be holding its meeting remotely using the web-based program, Zoom. City Councilors will be participating in this meeting remotely. Members of the public will be able to access this public meeting through a variety of options. To view the webinar visit the following link: <https://zoom.us/j/83740173038>. To listen via telephone, call 877 853 5257 and enter the meeting Webinar ID: 837 4017 3038. When the meeting is open for public comment, callers may press *9 if interested in commenting or asking questions. If you encounter any issues accessing this meeting, please call 603-357-0622 during the meeting.

**PLANNING, LICENSES AND
DEVELOPMENT COMMITTEE**
AGENDA
Council Chambers A
May 13, 2020
7:00 PM

Kate M. Bosley, Chair
Mitchell H. Greenwald, Vice Chair
Philip M. Jones
Gladys Johnsen
Catherine Workman

1. Ashley Sheehan/Modestman Brewing - Request to Serve Alcohol on City Property
2. Request to Sign on to the Clean Energy New Hampshire “Common Sense Net Metering Letter” - Energy and Climate Committee
3. Relating to Small Wireless Facility Deployments in the Public Rights-of-Way Ordinance O-2019-18-A

MORE TIME ITEMS:

- A. Relating to a Zone Change - Krif Road and Winchester Street - Industrial to Commerce Limited
Ordinance O-2020-04
- B. Relating to Social Service and Congregate Care Uses and License
Ordinance O-2019-13
Ordinance O-2019-14
- C. Pathways for Keene - Request to Use City Property – 4 on the 4th Race
- D. Tad Schrantz/The Colonial Theatre Group – Various Licenses Needed for the Renovation and Addition to the Colonial Theatre

Non Public Session

Adjournment



City of Keene, N.H.
Transmittal Form

April 6, 2020

TO: Mayor and Keene City Council

FROM: Ashley Sheehan/Modestman Brewing

THROUGH: Patricia A. Little, City Clerk

ITEM: 1.

SUBJECT: Ashley Sheehan/Modestman Brewing - Request to Serve Alcohol on City Property

COUNCIL ACTION:

In City Council April 16, 2020.

Referred to the Planning, Licenses and Development Committee

ATTACHMENTS:

Description

Communication_Modestman

Ordinance - Sidewalk Cafe

Ordinance - Alcohol on Public Property

Nano Brewery License State Law

BACKGROUND:

Modestman Brewing is requesting permission from the City Council for the service of alcohol on city property immediately in front of their business at 100 Main Street. The City Code requires that all first time applicants receive permission from the City Council in the first instance. After that, renewals of the license are handled administratively through the City Clerk's Office.

04/06/20

In City Council April 16, 2020.
Referred to the Planning, Licenses and Development
Committee.



City Clerk

CITY OF KEENE

3 WASHINGTON ST KEENE NH 03431

ATTN: CITY COUNCIL

This letter's intent is to ask permission to serve alcohol on the sidewalk patio of 100 Main St,
Keene, NH, directly in front of Modestman Brewing.

Thank you for consideration.

SINCERELY,



ASHLEY M SHEEHAN
MODESTMAN BREWING/ TACO ODELAY
100 MAIN ST, KEENE NH
03431

DIVISION 2. - LICENSE

Sec. 46-1191. - Required.

A "sidewalk café" is permitted as an extension of any restaurant in an area equal to or less than the width of its storefront in the central business district or central business limited district after written permission in the form of a license from the city clerk is received. Said license may be suspended with reasonable notice, if there are public safety concerns as determined by the police chief during those times when the central business district or central business limited district is licensed for a street fair or other community event as provided for in article XVIII of this chapter pertaining to street fairs or community events. Said licenses are not transferable.

(Ord. No. O-2003-05-E, 6-5-2003; Ord. No. O-2008-09-A, 11-20-2008)

Sec. 46-1192. - Application; agreement; insurance; issuance.

- (a) The application shall be accompanied by a plot plan, drawn to scale and fully dimensioned including the seating arrangement and layout of pedestrian corridors for sidewalk use and permitted access. The plan shall be reviewed by the code enforcement department to ensure unimpeded public use of the public way and maintenance of a minimum of six feet in width for public travel.
- (b) If the license is approved, a revocable license and indemnification agreement shall be required in addition to liability insurance listing the city as an additional insured in an amount specified by the city clerk.
- (c) Any owner of a restaurant requesting to use an area extending beyond the immediate area in front of their establishment must obtain permission from the abutting property owners for use of their areas as well as permission from the city clerk, which permission shall be limited to a single retail or vendor use.
- (d) Such license shall be issued in accordance with the requirements of this article and any guidelines established by the city clerk.

(Ord. No. O-2003-05-E, 6-5-2003; Ord. No. O-2008-09-A, 11-20-2008; Ord. No. O-2015-13-B, 12-17-2015)

Sec. 46-1193. - Term of license.

All licenses issued under this division shall expire on March 1 next following their date of issuance.

There shall be no pro-rated license fees to reflect sidewalk café dining for a portion of the year.

(Ord. No. O-2003-05-E, 6-5-2003; Ord. No. O-2008-09-A, 11-20-2008)

Sec. 46-1194. - Conditions of license.

- (a) A sidewalk café shall not obstruct snow removal equipment or impede winter maintenance operations in anyway. All obstructions shall be removed from the right-of-way on or before November 1 until the following March 1. Any fence or other barrier to the public way shall be erected in a non-invasive and non-destructive manner. The method of affixing the same shall be reviewed and approved by the public works department prior to installation.
- (b) Licensees holding a valid license from the state liquor commission may also serve alcoholic beverages or liquor at the sidewalk café when permitted to do so by the city clerk; provided however that if the application to serve alcohol is a first request by a licensee, then the initial license shall be granted by the city council. Any permission granted by the city clerk will be subject to any requirements of the state liquor commission.
- (c) Licensees, whether providing table service or selling take-out items, shall not allow more patrons than can be seated to congregate at the sidewalk café.
- (d) Sidewalk cafés must be kept clear of litter, food scraps, and soiled dishes, and shall be cleaned on a daily basis. Licensees which do not provide outside table service shall provide at least one waste storage container approved by the solid waste director or his designee for use by sidewalk café patrons, and the location of any such container shall be noted on the plot plan submitted with the sidewalk café application.
- (e) Plants shall be properly maintained and stressed or dying plants shall be promptly replaced.
- (f) Outdoor furniture and equipment including chairs, tables, planters, fences or barriers shall be maintained and suitable for their intended purpose.
- (g) At least 15 days prior to the expiration date of the insurance coverage, the licensee agrees to deliver to the city clerk a certificate of insurance naming the City of Keene as an additional insured.
- (h) Licensees with alcohol service shall comply with all state liquor commission rules.
- (i) Licensees shall not close for more than 45 consecutive days, unless the restaurant is seasonal in nature.

(j) Licensees shall comply with the approved plot plan and shall at all times allow for the unimpeded public use of the public way.

(k) Licensees shall comply with such other conditions as may be required by the city clerk.

(Ord. No. O-2003-05-E, 6-5-2003; Ord. No. O-2008-09-A, 11-20-2008; Ord. No. O-2015-13-B, 12-17-2015.)

Sec. 46-1195. - Reserved.

Editor's note— Ord. No. O-2015-13-B, adopted Dec. 17, 2015, repealed former § 46-1195 in its entirety which pertained to enforcement of this article and derived from Ord. No. O-2008-09-A, adopted Nov. 20, 2008.

Sec. 46-1196. - Fees.

A sidewalk café licensee shall pay the fee set forth in the schedule of fees in appendix B to this Code.

(Ord. No. O-2003-05-E, 6-5-2003; Ord. No. O-2008-09-A, 11-20-2008)

Secs. 46-1197—46-2022. - Reserved.

Sec. 46-2024. - Sale or service of alcohol on city property.

Permission for the sale or service of alcohol on city property shall be in compliance with the requirements of the state liquor commission.

(Ord. No. O-2015-13-B, 12-17-2015)

TITLE XIII

ALCOHOLIC BEVERAGES

CHAPTER 178

LIQUOR LICENSES AND FEES

Section 178:12-a

178:12-a Nano Brewery License. –

I. The commission may issue a nano brewery license to a business that manufactures beer or specialty beer, not exceeding, 2,000 barrels annually for sale in any quantity to the general public or licensees. The license shall entitle the licensee to sell at retail or wholesale only beverages manufactured by the licensee in a public building as defined in RSA 175:1, LV-a. In addition to the annual license fees provided in this section, a fee of \$.30 for each gallon of beverage sold or transferred for retail sale or to the public shall be required. On or before the tenth day of each month, a nano brewery licensee shall pay the license fees under this paragraph covering sales or transfers made during the preceding calendar month.

II. The annual fee for each license issued under this section shall be \$240. Except for licensees under paragraph VII, licensees shall comply with the following:

(a) No beverage or liquor shall be served or consumed on the premises except that which is manufactured by the licensee on the premises or manufactured by the licensee at a host brewer facility.

(b) The licensee may serve beverages to any visitor of legal drinking age by the glass or other suitable container.

(c) For the purpose of this section, food and non-alcoholic beverages may be provided by a properly licensed third party food vendor, prepared on or off the premises.

(d) The licensee shall not allow any beverage or liquor to be served or sold to any person under the age of 21 on the premises.

(e) Sales for consumption on the premises shall be limited to one 4-ounce glass per label per person.

III. A nano brewery licensee shall have the right to transport beverages it manufactures in barrels, kegs, bottles, or other closed containers within the state for sale to licensees and to the state border for transportation and sale outside the state.

IV. A nano brewery licensee may transport its products to a farmers' market, and may sell such products at retail in the original container.

V. No unopened container sold by the licensee shall be opened or consumed on the premises.

VI. Any nano brewery licensee meeting and maintaining the requirements of a restaurant under RSA 178:20, except RSA 178:20, IV and paying an additional fee of \$240, shall comply with the following:

(a) No beverage or liquor shall be served or consumed on the premises except that which is manufactured by the licensee on the premises or manufactured by the licensee at a host brewer facility.

(b) The licensee may serve beverages to any visitor of legal drinking age by the glass or other suitable container.

(c) The licensee shall not allow any beverage or liquor to be served or sold to any person under the age of 21 on the premises.

VII. A nano brewery licensee may be issued a tenant brewer license under RSA 178:12-b if the licensee meets the requirements of RSA 178:12-b. Beer or specialty beer produced or packaged by nano brewery licensee as a tenant brewer at a host brewer facility shall be included in the production limit in paragraph I.

VIII. For an additional annual fee of \$120, any nano brewery licensee may transport its products to a wine manufacturer's facility licensed under RSA 178:8, for the purpose of sampling or selling its products. Samples may be sold or given away. Retail sales made at the wine manufacturer's facility shall be limited to products in their unopened original containers and to customers and persons of legal drinking age. Nano breweries shall be subject to the following additional limitations under this section:

- (a) Nano brewery licensees shall be limited to one sampling event per day.
- (b) Sampling and sales of the nano brewery licensee's products shall conform to the normal business hours of the winery licensee.
- (c) Sample sizes shall be limited to one 16-ounce glass per person if no food is available and 2 16-ounce glasses if food is available.
- (d) Nano brewery licensee products brought to a sampling event shall be brought to the wine manufacturer's facility on the day of the event and all such products shall be removed at the end of the event.
- (e) Nano brewery licensees shall notify the commission of date, times, and location of each sampling event not less than 5 days before each event.

Source. 2011, 128:1. 2012, 140:1. 2013, 248:1, eff. Sept. 22, 2013. 2014, 200:6-8, eff. July 1, 2014. 2019, 34:1, eff. May 15, 2019.



City of Keene, N.H.
Transmittal Form

May 11, 2020

TO: Planning, Licenses and Development Committee

FROM: Energy and Climate Committee

THROUGH: Elizabeth A. Dragon, City Manager

ITEM: 2.

SUBJECT: Request to Sign on to the Clean Energy New Hampshire “Common Sense Net Metering Letter”
- Energy and Climate Committee

RECOMMENDATION:

“Mr. Bouchard made a motion for the Energy and Climate Committee to recommend to the City Council that the City of Keene sign the “Common Sense Net Metering Letter” shared by Clean Energy New Hampshire on May 5, 2020 in order to show support for expanding the net metering project cap size from 1 MW to 5 MW for political sub-divisions of the state and low-moderate income community solar projects. Vice Chair Hansel seconded the motion, which passed by a unanimous, roll-call vote.”

ATTACHMENTS:

Description

Draft “Common Sense Net Metering Letter” shared by Clean Energy New Hampshire on May 5, 2020

BACKGROUND:

At the May 5, 2020 Energy and Climate Committee meeting, committee members discussed a request from Clean Energy New Hampshire to sign a letter, referred to as the “Common Sense Net Metering Letter,” before the end of May. An excerpt of the discussion on this letter from the draft meeting minutes is included below, and the full text of the draft letter is attached. Because of the time-sensitive nature of this request, it has been sent directly to the PLD Committee so that the City Council may have the opportunity to act on it before the end of May.

“Chair Shedd reported that members of Clean Energy New Hampshire received an email asking for combined action on a letter to the State about net metering legislation.

Ms. Brunner stated that staff received this letter yesterday, from Clean Energy New Hampshire, requesting that communities sign on to a letter addressed to the State legislature – all of the State representatives, Senators, and Governor Sununu in support of “common sense net metering.” She continued that the letter asks the legislature to pass legislation that would expand the net metering project cap size. The letter argues that this issue is even more important because of the global pandemic and its economic impact. It is promoting a “common sense compromise approach” to increase the 1 megawatt cap to 5 megawatts for individual projects, specifically for political subdivisions of the state and low/moderate income community solar projects. The letter also states the signatories’ support for expanding the cap for businesses “after careful review by the PUC of the appropriate value of net metering credit for renewable projects that serve businesses.” She continued that the key takeaway is that this letter is specifically asking to increase the 1 megawatt cap to 5 megawatts for political subdivisions of

the state and that includes SAUs, municipalities, counties, and so on and so forth; and low/moderate income community solar projects.

An ECC member asked how they define “low/moderate income community solar projects.” Ms. Brunner replied that it is defined in State law, because they have had legislation passed in the past that talks about low/moderate income community solar projects. She continued that she believes that it is already defined and they are just referring to a program that already exists.

Councilor Clark asked if the compromise referred to in the letter is to exclude private ventures. Chair Shedd replied that the last bullet on the slide [which shows current signatories] does show vague support for expanding the cap for businesses, with PUC review, so it is a compromise at least for the time being that would cover the political subdivisions and low/moderate income community projects.

An ECC member asked if they know who the sponsor was of this particular bill. Ms. Brunner replied that she does not believe there is a specific bill referenced in the letter, but the letter was written by Clean Energy New Hampshire.

Chair Shedd asked if the intent of the letter to State representatives, Senators, and the Governor fits with the mission of the ECC. She continued that she would say yes. An ECC member replied that he thinks it is a strong fit, and another ECC member agreed.

Chair Shedd stated that she would welcome a motion.

Mr. Bouchard made a motion for the Energy and Climate Committee to recommend to the City Council that the City of Keene sign the “Common Sense Net Metering Letter” shared by Clean Energy New Hampshire on May 5, 2020 in order to show support for expanding the net metering project cap size from 1 MW to 5 MW for political sub-divisions of the state and low-moderate income community solar projects. Vice Chair Hansel seconded the motion, which passed by a unanimous, roll-call vote.”

The New Hampshire General Court
New Hampshire Statehouse
107 North Main Street
Concord, NH 03301

May 5, 2020

Dear State Representatives, State Senators, and Governor Sununu:

We represent a critical mass of New Hampshire city and town administrators, city and town managers, city councils, select boards, and local energy committees from communities across the Granite State. We share with you the common and honorable duty of public service: representing the interests of our communities, constituents, and taxpayers to ensure our great state is well-served and remains the best place in the nation to live and work. In addition, we have an added responsibility of communicating to you, our elected officials at the Statehouse, the important issues facing our respective cities and towns and provide the guidance and encouragement to move forward policies that will benefit our residents.

It is with this knowledge and intention that we reach out to you with this letter. Despite the unprecedented challenges facing our state and our nation from the COVID-19 virus, we have the great hope that, once the legislature reconvenes, you and your colleagues will work together to pass legislation to expand the net metering project cap size. This legislation is one of the greatest opportunities that communities have to lower costs, increase local energy independence, and meet sustainability goals by taking advantage of economies of scale to install renewable energy projects that meet our energy needs.

The global pandemic and associated economic impact we now face only cements this issue as a critical one for rebuilding workforce, lowering local property taxes, spurring outside investment into our treasured communities, and increasing in-state energy production that avoids the need for costly new transmission infrastructure and bolsters energy independence. We would like to express our support for a commonsense compromise approach that would allow political sub-divisions (cities, towns, counties, school administrative units) as well as low-moderate income community solar projects to net meter and group net meter any type of renewable energy projects up to 5MW under current programs and credits now available to projects up to 1MW. We also support and think it is necessary to make available the same opportunity for businesses after careful review by the Public Utilities Commission of the appropriate value of the net metering credit for renewable projects that serve businesses.

We therefore urge you to prioritize this issue when the legislature reconvenes. We ask you to put politics aside in favor of supporting the expressed needs of the communities you represent. We need to finally make progress on this issue now. Doing so will spur the economy following the COVID-19 pandemic by removing an arbitrary regulatory barrier to allow towns with shovel-ready projects the opportunity to move forward. By moving this policy forward you can truly make a difference by promoting workforce development, lowering local property taxes, empowering local communities, encouraging the investment of our energy spending locally, and increasing energy independence at a time when all are desperately needed.

Most Sincerely,

The Cities of:

- Berlin
- Claremont

The Towns of:

- Exeter
- Hanover
- Groveton
- Sugar Hill

The Energy Committees of:

- Ammonoosuc Regional Energy Team
- Franconia
- Shelburne



April 22, 2020

TO: Mayor and Keene City Council
FROM: Planning, Licenses and Development Committee
ITEM: 3.

SUBJECT: Relating to Small Wireless Facility Deployments in the Public Rights-of-Way

COUNCIL ACTION:

In City Council May 7, 2020.
The Mayor referred the Ordinance back to Committee.

RECOMMENDATION:

By a roll call vote of 5-0, the Planning, Licenses, and Development Committee recommends that City Council adopt Ordinance O-2019-18-A Relating to Small Wireless Facility Deployments in the Public Rights of Way, with the condition that the City Manager or her designee be directed to accept only applications for antenna and transmission equipment of up to a maximum of 4G until January 2, 2021.

ATTACHMENTS:

Description

Ordinance O-2019-18-A

Ordinance O-2019-18-A_relined

BACKGROUND:

Chair Bosley stated that they will be taking additional public comment tonight, limited to new information or conversation about the amendments to Ordinance O-2019-18 only. She continued that they have already had a public hearing about this topic and talked about it at several meetings.

Councilor Greenwald stated that they are not talking about the merits of 5G tonight, they are just discussing this ordinance which says 'If and when 5G ever comes to Keene, this is how it will be dealt with.' That is the only thing the City can control.

Councilor Jones stated that he loves the red line version of the ordinance; he is much happier with this than the other version. He thanked staff. He continued that his question is: there was a part about 5G coming into effect [being possible starting] January 2. What would the process be for that? A new ordinance, or an amendment to this ordinance?

Chair Bosley replied that the PLD Committee had made a motion to hold off on 5G applications, per Councilor Jones's letter, until January 2, 2021. They could issue 4G licenses under these standards but all 5G licenses would be held until January 2021.

Councilor Jones stated that his question is whether that would be a new ordinance or an amendment to this ordinance. Chair Bosley replied that she thinks it would be the same ordinance that just sunsets. She continued

that they will go through the amendments with staff tonight and have further discussion if Councilor Jones thinks it needs to be changed. She asked Mari Brunner to speak.

Mari Brunner, Planner, introduced herself and gave a PowerPoint presentation about the revised ordinance proposal. She stated that the original version was introduced in November and establishes a license that would be issued by the Public Works Director that would include location, siting, and design standards for small wireless facilities (SWFs). The Ordinance also establishes application intake and review procedures. She continued that they have since heard many public comments, mostly concerning potential health impacts of 5G, as well as concerns related to aesthetics and public safety. At the February 26 Planning, Licenses and Development Committee meeting this committee made a motion directing staff to craft a revised ordinance based on those comments, and the motion also included a recommendation to City Council that if this ordinance is adopted staff would be directed to hold off on accepting any 5G applications until January 2, 2021. The reason for that date is it is after the date when the report from the State's commission to study the environmental and health impacts of 5G is due. That was established by HB 522 last year.

Ms. Brunner continued that there are a few introductory provisions to the ordinance, including purpose and intent, applicability, required licenses and approvals, and exemptions. There were two changes made to these sections. The first, under the "Applicability" section, is a clause that was added, stating that if there are amendments, any such amendments will apply to future applications. Also, under "Required Licenses and Approvals," they added a "sunset clause," saying that if the FCC order gets overturned, this license becomes null and void and all licenses issued under this ordinance shall be revoked. It gives a time frame of 90 days for equipment and attachments to be removed, and if they are not, they will be deemed abandoned.

Ms. Brunner continued that the next section, "Location Preferences" establishes where the facilities can be located. A few highlights are: the section gives an ordered hierarchy of preferences, from most to least preferred locations. An applicant is required to demonstrate with clear and convincing evidence that higher preference locations are not technically feasible in order for the director to approve SWFs in a lesser preferred location. There were two changes made to this list: previously they just had the 400-foot spacing requirements, and now they added a 750-foot spacing requirement for residential districts. It will still be 400 feet in non-residential districts. They also added a 750-foot buffer from K-12 schools, preschools, and daycare centers, established as of the enactment of this ordinance.

Ms. Brunner continued that in addition this section lists some prohibited support structures: new wooden poles, unless they are replacements for existing structures; and existing, City-owned, decorative poles. Highlights from this section: the "Additional Requirements" subsection has a provision that states that SWFs shall be placed as close as possible to the property line between two parcels that abut the public right-of-way. The purpose is to place them between properties as much as possible, instead of right outside someone's window. There is also a provision geared toward public safety saying that SWFs shall be placed to not obstruct a 200-foot, all-season sight distance at any intersection so they are not a hazard to drivers. Also, it says SWFs shall be placed at least five feet from any driveway and 50 feet from any driveway for police stations, fire stations, or other emergency responder facilities.

Ms. Brunner continued that the ordinance also lists a number of design standards. This is a pretty large section. It includes standards for many items, such as height, colors and finishes, lights, trees and landscaping, signs and advertisements, and so on and so forth. There were no changes made to this section.

Ms. Brunner continued that what is new in the "Application Requirements and Review Procedures" is as follows: staff removed language, which stated that separate radio frequency (RF) reports are not required for batched applications when the same small cell wireless facility equipment is proposed for each location. This change was made in response to a comment they received from the public, asking why separate reports would not be required. It was a valid point so they decided to remove that language. Now, an RF report will be required for each facility, even if it is a batched application.

Ms. Brunner continued that the next section is “Decisions.” This outlines the process for issuing a decision on a license application, including the deadlines by which decisions need to be made. It is an important section, because the City has very short timeframes, which have been set for the City at the State and Federal level to act on these applications. In particular, for applications to locate SWFs on an existing structure. From the date someone applies, the City has to issue a decision within 45 days. That is a quick turn-around time, and it has driven some of the ways that this ordinance is set up. The “Decisions” section also includes required findings for approval. The Public Works Director has to be able to go through the list and make a finding on each item in order to issue a license.

Ms. Brunner continued that the “Conditions of Approval” section includes a list of 16 standard conditions that would apply to all licenses issued under this ordinance. It also includes a provision called “Modified Conditions,” which authorizes the Director to modify, add to, or remove any of those 16 standard conditions for any SWF license as may be necessary to ensure compliance with the City of Keene Code of Ordinances, this Article, or other applicable law.

Ms. Brunner continued that lastly, this ordinance creates the opportunity for the Public Works Director to establish Preapproved Designs. If someone submits a design to the Director and he is able to find that that design meets or exceeds the design standards in this Article, he can adopt it as a pre-approved design and make it publically available. The purpose of that is to streamline the review and reduce the burden on staff in reviewing these applications. If someone is going to propose several facilities and they use a pre-approved design, then when the Director is making those findings of approval, if the applicant is using a pre-approved design he can presume that the design standards are satisfied and he will only have to go through and make a finding on the other items.

Chair Bosley thanked Ms. Brunner and asked if other staff members wanted to speak to this.

Mr. Lamb stated that staff is in support of the ordinance and Ms. Brunner’s presentation and he did not have specific comments but was available to answer questions.

Councilor Jones stated that he understands why the decision would come from the Public Works Director, because it would not make it through the City Council with the 45-day deadline, but he would like to know what the process is if an applicant wants to appeal the Public Works Director’s decision. Ms. Brunner replied that the appeal would go to “a court of competent jurisdiction.”

The City Attorney stated that there are two potential courts of competent jurisdiction, depending on which part of the ordinance is appealed, keeping in mind that the ordinance melds the FCC Order and State law. If there was an issue with regard to the FCC Order it would go to the Federal District Court, but if it was something that arose under State law only it would probably go to the Superior Court. There is a possibility that the Federal Court would take jurisdiction of it but if it were strictly a State law question under RSA 12-K it would probably go to the Superior Court.

Councilor Jones stated that he is happy with the change to 750 feet in residential areas. He continued that the 400-foot requirement was one of the things he did not like about the ordinance, and he appreciates that change being made.

Chair Bosley stated that she agrees. She continued that she thinks staff has done a great job listening to public and committee comments. She likes the way this has shaped up.

Chair Bosley asked for comments from the public.

Beth Cooley, Assistant Vice President of State Legislative Affairs at CTIA, stated that CTIA is the trade

association for the wireless communications industry. She continued that she has been asked to express concerns about the City of Keene's proposed ordinance, on behalf of the wireless industry. As drafted, the ordinance violates both State and Federal law. CTIA also has concerns that the proposed ordinance "will deprive the residents of Keene of enhanced wireless services." Connectivity as we can see today is imperative for the world that we live in, from work to school to play, and the provisions of this ordinance will hinder wireless providers' ability to deploy and upgrade their networks.

Ms. Cooley continued that she will not go line by line but she wants to highlight a few things in the ordinance that are problematic in the CTIA's view. First, the ordinance violates State statute, RSA 12-K. That is an overarching problem, to the extent that the ordinance attempts to regulate facilities on utility poles, which violates that State statute. That was Senate Bill 101 in 2013, for reference. Section 82-205 of the proposed ordinance discusses prohibited support structures and this is, in effect, a prohibition. It flatly prohibits SWFs on new, non-replacement wooden poles. There appear to be no similar restrictions on other rights-of-way users, so imposing this restriction only on SWFs is discriminatory and violates Sections 253 and 332 of the Federal Communications Act.

Ms. Cooley continued that also, under 82-206-9, the "accessory equipment volume" definition conflicts with Federal law. The FCC order says that accessory equipment volume is 28 cubic feet for all antenna equipment, whereas this ordinance's language says 9 cubic feet in residential and 17 cubic feet in nonresidential. That is a conflict.

Ms. Cooley continued that finally, she would be remiss not to point out that although it is not in the ordinance, she heard reference to a moratorium on 5G applications being in effect until January 2, 2021. She is familiar with and sits on the NH 5G Commission; however, a moratorium on applications also violates Section 253 of the Federal Communications Act and recent FCC affirmations reaffirming that moratoriums are unlawful. She concluded that the CTIA respectfully requests that the ordinance not pass in its current form.

Chair Bosley thanked Ms. Cooley for her comments. She continued that they have made some decisions as a committee with the understanding that there could be ramifications, based on what they think is right for the citizens of Keene. There were some good points that were made. She asked the Community Development staff and/or the City Attorney if they have information or if those points have been looked into.

The City Attorney replied that the short answer is, yes, they have looked into those points. He continued that they are trying to balance what the City and City Council needs and expects, with the State law and FCC Order. He does not want to get into a debate with Ms. Cooley tonight, but staff believes they have crafted the ordinance in a manner that they are going to proceed on. If there are issues that arise from it, they will deal with the issues if they arise.

Councilor Clark stated that to comment to Ms. Cooley, they are all aware of the ramifications of the City Council's decision but they have decided that the health and safety of the Keene citizenry is more important and they are willing to take due diligence to protect them from harm. He continued that it is not unreasonable to craft the ordinance around the State commission's work. That commission was unanimously created by the legislature and the Governor so it is a prudent step to take and he thinks what the City Council is doing is right.

Chair Bosley stated that the City Council as a whole has been progressive in the decisions it has made throughout time. She continued that if the City Attorney feels they have crafted an ordinance that does keep them on this side of legal and they understand moratorium issues, they are all definitely aware of the sensitivity around these topics.

Mr. Lamb stated that part of the reason for this ordinance is that there has been interest on the part of developers of SWFs but he also wants to point out, when City staff have spoken to those folks, none of them have spoken about installing 5G. They say it is potentially several years away. So studying 5G, evaluating it,

and putting it into the ordinance when they are ready to do that is prudent. No one has made applications for 5G installations in the City of Keene. All applications have been for 4G using the SWF concept in the public right-of-way.

Councilor Jones stated that he thanks the committee and the City Council – he could not be at the February meeting as he was out of state. He thanks them for addressing his letter considering the moratorium until they can hear from the State committee. He thinks that was the right thing to do and he thanks them for their support.

Chair Bosley replied that he is welcome and everyone heard his point. She continued that she believes what Mr. Lamb was saying. They do not see immediate applications so there is no reason to not take the time with this process and have safety be a consideration.

Hearing no additional comments, Chair Bosley stated that she would entertain a motion.

Councilor Greenwald made the following motion, which was seconded by Councilor Jones.

By a roll call vote of 5-0, the Planning, Licenses, and Development Committee recommends that City Council adopt Ordinance O-2019-18-A Relating to Small Wireless Facility Deployments in the Public Rights of Way, with the condition that the City Manager or her designee be directed to accept only applications for antenna and transmission equipment of up to a maximum of 4G until January 2, 2021.



CITY OF KEENE

Ordinance O-2019-18-A

Nineteen

In the Year of Our Lord Two Thousand and

AN ORDINANCE Relating to Small Wireless Facility Deployments in the Public Rights of Way.....

Be it ordained by the City Council of the City of Keene, as follows:

That the City Code of the City of Keene, New Hampshire, as amended, is hereby further amended by adding the text in the following article to Chapter 82 of the City of Keene Code of Ordinances as follows:

ARTICLE VIII. SMALL WIRELESS FACILITY DEPLOYMENTS IN THE PUBLIC RIGHTS OF WAY

Section 82-201. Purpose and Intent

1. The purpose of this article is to establish reasonable standards and procedures for the siting, construction, installation, collocation, modification, operation, relocation and removal of SWFs (SWF) in the city's public rights-of-way, consistent with and to the extent permitted under federal and state law.
2. The standards and procedures of this Article are intended to protect and promote public health, safety and welfare. They are also intended to reflect and promote the community interest by:
 - a. protecting and preserving the city's public rights-of-way and municipal infrastructure;
 - b. maintaining the balance between public and private interests;
 - c. protecting the city's visual character from potential adverse impacts;
 - d. protecting and preserving the city's environmental resources; and,
 - e. promoting access to high-quality, advanced wireless services for the city's residents, businesses and visitors.
3. This Article is intended to establish procedures for application intake and completeness review, and encourage applicants to timely respond to incomplete notices.

Section 82-202. Applicability

1. Except as expressly provided otherwise, the provisions in this Article shall be applicable to all SWFs constructed and in operation as of the date of the adoption of this Article, and to all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy SWFs within the public rights-of-way after the date of the adoption of this Article.
2. To the extent that other infrastructure deployments involve the same or substantially similar

PASSED

structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements within the public rights-of-way, the Director or other official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall apply the provisions in this Article, unless specifically prohibited by applicable law or ordinance.

3. Any license issued pursuant to this Article may be subject to retroactive modification in the event of changes in applicable federal or state law or rule requiring such modification, or in the event of revisions to this Article necessitated for the protection of public health, safety and welfare. Any license issued subsequent to such change, or revision to this Article shall be required to conform to the requirements of such change or revision.

Section 82-203. Required license and approvals

1. **SWF License.** A “SWF License,” subject to the Director’s review and approval in accordance with this Article, shall be required for all SWFs and other infrastructure deployments located in whole or in part within the public rights-of-way.
 - a. **Indemnification Requirement.** The SWF License shall contain the City’s usual and customary indemnification provisions.
2. **Other Licenses and Approvals.** In addition to a SWF License, an applicant must obtain all other licenses, permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.
3. In the event that FCC Order WT Docket No. 17-79 and/or WC Docket No. 17-84 are rescinded, or determined by legal authority to be invalid or unenforceable, then this Article shall be deemed to be null and void, and any licenses issued under the terms and conditions of this Article shall be revoked upon written notice to Licensee effective 90 days after the effective date of such rescission or determination, and all equipment or appurtenances thereto shall be removed prior to the revocation date of the license. The failure to remove all equipment or appurtenances thereto prior to the revocation date of the license shall be deemed an abandonment under section 82-210(1)(m).

Section 82-204. Exemptions.

1. Notwithstanding anything in this Article to the contrary, a SWF License shall not be required for the following:
 - a. Wireless facilities or other infrastructure deployments owned and operated by the city,
 - b. Over-the-air reception device (OTARD) facilities.
 - c. Requests for approval to collocate, modify, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to 47 U.S.C. § 1455(a).
2. An exemption from the SWF License requirement under this Section does not exempt the SWFs or other infrastructure deployments from any other permits or approvals as may be

required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.

Section 82-205. Location standards

1. **Location Preferences.** To better assist applicants and decision makers in understanding and responding to the community's aesthetic preferences and values, this section sets out listed preferences for locations to be used in connection with SWFs in an ordered hierarchy. An applicant is required to demonstrate with clear and convincing evidence that the higher priority locations are not technically feasible in order for the Director to approve a SWF in a lesser-preferred location.
 - a. The order of preference for locating SWFs from most preferred to least preferred is as follows:
 - i. locations within non-residential districts;
 - ii. any location within 400 feet from an existing small cell in a non-residential district;
 - iii. any location within 750 feet from an existing small cell in a residential district;
 - iv. any location within 750 feet from a K-12 school, pre-school, or daycare provider, established as of the enactment of this ordinance; and
 - v. any location on Central Square or on Main Street between Central Square and the Marlboro Street/Winchester Street intersection.
2. **Prohibited Support Structures.** SWFs shall not be permitted on the following support structures:
 - a. new wood poles, unless it is a replacement for an existing wood pole
 - b. existing City-owned decorative poles
3. **Encroachments Over Private Property.** No SWF antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's written consent.
4. **No Interference with Other Uses.** SWFs and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any:
 - a. above-ground or underground infrastructure;
 - b. street furniture;
 - c. fire hydrant or water valve; or
 - d. doors, gates, stoops, fire escape, windows, or other ingress and egress points to any building appurtenant to the rights-of-way.
5. **Replacement Pole Location.** All replacement poles must:
 - a. be located within five feet of the removed pole; and
 - b. be aligned with the other existing poles along the public rights-of-way.
6. **Additional Placement Requirements.** In addition to all other requirements in this Article, SWFs, other infrastructure deployments and all related equipment and improvements shall:

- a. be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
- b. be placed so as to not obstruct a 200 foot all-season safe sight distance at any intersection;
- c. be placed at least 5 feet away from any driveway;
- d. be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities.

Section 82-206. Design standards

1. **Height.** New support structures for SWFs shall not be more than 35 feet in height, or 10% taller than nearby structures within the public right of way, whichever is greater. In no instance shall the overall height of an existing or new structure, including any antennas, exceed 50 feet.
2. **Colors and Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in muted, non-reflective hues that match the underlying support structure and blend with the surrounding environment; provided, however, that SWFs located on Central Square or Main Street between Central Square and the Marlboro Street/Winchester Street intersection shall be black in color. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.
3. **Lights.** All lights and light fixtures must be fully shielded, dark skies compliant, and directed downwards so that their illumination effects are confined entirely within the public rights-of-way in a manner consistent with specifications by the Director. All antennas, accessory equipment and other improvements with indicator or status lights shall be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.
4. **Trees and Landscaping.** SWFs and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. SWFs and other infrastructure deployments may not displace any existing tree or landscape features unless:
 - a. such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director, and
 - b. the applicant submits and adheres to a landscape maintenance plan.
 Replacement trees must be installed under the supervision of a NH licensed arborist. Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director.
5. **Signs and Advertisements.** All SWFs and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs and other infrastructure deployments may not bear any other signage or advertisements, including logos, unless expressly approved by the city, required by law, or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
 - a. RF warning signs, if required, shall be located as close to the antenna as possible

and must face towards the street. Unless otherwise required by law or regulation, the background color of the sign must match the color of the pole or surface to which it is attached.

6. **Site Security Measures.** SWFs and other infrastructure deployments may incorporate reasonable and appropriate site security measures subject to approval by the Director. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.
7. **Compliance with State and Federal Regulations.** All SWFs and other infrastructure deployments must comply with all applicable State and federal regulations, including without limitation all applicable regulations for human exposure to RF emissions and the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.). In the event that applicable federal or State laws or regulations conflict with the requirements of this ordinance, the applicant shall comply with the requirements of this ordinance to the maximum extent possible without violating federal or State laws or regulations.
8. **Antennas.** The following provisions in this subsection are generally applicable to all antennas.
 - a. **Shrouding / Concealment.** All antennas and associated equipment, including but not limited to cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware, must be concealed from view within a single shroud or radome that is finished to match the color of the support structure.
 - i. For pole-top antennas, the shroud shall not exceed one and half-times the median pole diameter and must taper down to pole.
 - ii. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.
 - b. **Antenna Volume.** Each individual antenna associated with a single SWF shall not exceed 3 cubic feet. The cumulative volume for all antennas on a single small SWF shall not exceed:
 - i. 3 cubic feet in residential districts; or
 - ii. 6 cubic feet in nonresidential districts.
 - c. **Overall Antenna Height.**
 - i. Antennas placed on new structures may not extend more than 5 feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
 - ii. Antennas placed on existing structures that meet the definition of a collocation or modification application as defined in NH RSA 12-K shall not increase the height of the structure by more than 10% or 5 feet, whichever is greater.
 - d. **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project:
 - i. more than 18 inches from the support structure;
 - ii. over any roadway for vehicular travel; or

- iii. over any abutting private property.
- iv. If applicable laws require a side-mounted antenna to project more than 18 inches from the support structure, the projection shall be no greater than required for compliance with such laws.

9. **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single SWF or other infrastructure deployment shall not exceed:
- a. 9 cubic feet in residential districts; or
 - b. 17 cubic feet in nonresidential districts.

The volume limits in this subsection do not apply to any undergrounded accessory equipment.

10. **Undergrounded Accessory Equipment.**

a. **Where Required.**

- i. For proposed facilities on Central Square or on Main Street between Central Square and the Marlboro Street/Winchester Street intersection, accessory equipment (other than any electric meter emergency disconnect switch, where permitted) shall be placed underground.
- ii. In all other locations, accessory equipment shall be placed underground unless the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.

- b. **Vaults.** All undergrounded accessory equipment must be installed in a vault that is load-rated to meet the city's standards and specifications.

11. **Pole-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all pole-mounted accessory equipment in connection with SWFs and other infrastructure deployments.

- a. **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment, which does not project over the travel way, shall be a minimum of 10 feet above ground level adjacent to the pole.

- b. **Horizontal Projection.** All pole-mounted accessory equipment shall be mounted flush to the pole surface. Pole-mounted accessory equipment shall not project:
- i. more than 18 inches from the pole surface; or
 - ii. over any abutting private property.

- c. **Orientation.** Unless concealed in a manner approved by the Director, all pole-mounted accessory equipment shall be oriented so as to reduce visibility from the nearest abutting properties. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting property. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

12. **Ground-Mounted or Base-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all ground-mounted and base-mounted accessory equipment

in connection with SWFs and other infrastructure deployments.

- a. **Concealment.** Where permitted, ground-mounted accessory equipment shall be completely concealed/shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets. Exterior colors shall be muted, non-reflective, and blend with the colors of the surroundings.
- b. **Visibility.** No individual ground-mounted accessory equipment cabinet may exceed a height or width of 4 feet. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square feet.

13. **Support Structure Attachments.** The following provisions in this subsection are applicable to all support structure attachments (other than pole-mounted accessory equipment) and other related improvements that serve SWFs and other infrastructure deployments.

- a. **Overhead Lines.** The Director shall not approve any new overhead utility lines in areas within which wires, cables, cabinets and other equipment associated with SWFs or infrastructure deployment are primarily located underground. In areas with existing overhead lines, no new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.
- b. **Vertical Cable Risers.** All cables, wires, conduit attachments and other connectors must be routed through conduits within the support structure to conceal from public view. If this is technically infeasible, applicants shall route through a single external conduit or shroud that has been finished to match the underlying pole.
- c. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- d. **Electric Meters.** The Director shall not approve a separate ground-mounted electric meter pedestal. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet.
- e. **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants shall use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the city shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city's infrastructure and/or prevent interference with the city's municipal functions and public health and safety.

Section 82-207. Application Requirements

1. **All Applications.** All applicants for a SWF License must include the following information and materials as part of a formal SWF License application to the city:

- a. **Application Form.** The applicant shall submit a complete, duly executed SWF License application on the then-current form prepared by the city.
- b. **Application Fee.** The applicant shall submit the applicable SWF License application fee established in Appendix B of City Code. Batched applications must include the applicable SWF license application fee for each SWF in the batch.
- c. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a “SWF” as defined in this Article. A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met. As part of the written statement, the applicant must also include the following:
 - i. Whether and why the proposed support is a “structure” as defined by this Article.
 - ii. Whether and why the proposed wireless facility meets each required finding for a SWF License as provided in Sec. 82-209, subsection (2), “Required Findings for Approval.”
- d. **Construction drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a New Hampshire licensed engineer that depict all the existing and proposed improvements, equipment and conditions related to the proposed project. This includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholds, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must:
 - i. contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions;
 - ii. identify all potential support structures within 400 feet from the proposed project site and call out such structures’ overall height above ground level; and
 - iii. depict the applicant’s preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection.
- e. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the SWF from a vantage point approximately 50 feet from the proposed support structure or location.
- f. **Radio Frequency Compliance Report.** The applicant shall submit a Radio Frequency (RF) exposure compliance report that certifies that the proposed SWF

presubmittal conference with the Director and other City staff. This presubmittal conference does not cause the FCC Shot Clock or NH Shot Clock to begin and is intended to streamline the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments implicated by the proposed project; and application completeness issues.

- a. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form.

2. **Application Submittal Date.** All applications must be submitted to the city on the monthly application submittal date, which shall generally be the second Tuesday of every month unless specified otherwise by the Director. Prospective applicants may submit up to 5 individual applications at one time as a batch. Any purported application received on a date other than the application submittal date, whether delivered in-person, by mail or through any other means, will be considered filed as of the next applicable application submittal date.

3. **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend license application requirements and technical standards that the Director finds necessary, appropriate or useful for processing any application governed under this Article, not otherwise inconsistent with the requirements of this Article. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form, on file with the Director, and publicly released, to provide all interested parties with prior notice.

4. **Incomplete Applications.**

- a. **Initial Completeness Review.** Within fifteen (15) calendar days following the application submittal date, the Director shall complete an initial review of each application to evaluate whether the submission requirements set forth in Sec. 82-207 have been met. If the Director determines that an application is incomplete, the Director shall notify the applicant in writing of the application's nonconformance, including the specific deficiencies in the application, which, if cured, would make the application complete.

b. **Shot Clock Extensions**

- i. *Collocation Applications.* Applicants proposing to collocate a SWF on an existing structure shall have fifteen days to cure all deficiencies in the application.

1. If the applicant submits all information required for an application to

- be deemed complete by the Director within 15 days, the shot clock shall not be suspended.
2. If the applicant submits all information required for an application to be deemed complete after fifteen days, the shot clock shall be extended by the number of days beyond the 15-day period that it takes for the applicant to submit this information in accordance with NH RSA 12-K:10.
 - ii. *Applications to install a SWF on a new structure.* Applicants proposing to install a SWF on a new or replacement structure shall have fifteen days to cure all deficiencies in the application. On the date of the issuance of a written incomplete notice, the shot clock shall be suspended until the applicant submits all information required for an application to be deemed complete by the Director.
 - c. **Incomplete Application Deemed Denied.** Any application governed under this Article shall be automatically denied when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. A “substantive response” must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.
5. **Application Submittal Notice for SWFs Proposed on New Structures.** Within 15 calendar days after a complete application is received and prior to any approval, conditional approval or denial, the city shall mail public notice to all persons entitled to notice, including all owners of record and legal occupants of properties within a 300-foot radius of the proposed SWF. The notice must contain:
- a. A general project description;
 - b. The applicant’s identification and contact information as provided on the application submitted to the city;
 - c. Contact information for the Director for interested parties to submit comments; and
 - c. The date by which comments must be submitted to the Director.
6. **Application Decision Notice.** Within five calendar days after the Director acts on a SWF License application, the Director shall provide written notice to the applicant. If the Director denies an application (with or without prejudice) for a SWF, the written notice must also contain the reasons for the denial.

Section 82-209. Decisions

1. **Decision Deadlines.**
 - a. The Director shall make a final decision to approve, approve with conditions, or deny a completed application to collocate a SWF on an existing structure within 45 days of application submittal, unless the NH Shot Clock was extended according to Sec. 82-208 subsection (4)(b).
 - b. The Director shall make a final decision to approve, approve with conditions, or deny an application to place or install a SWF on a new support structure within 90 days after the application is determined to be complete.

2. **Required Findings for Approval.** The Director may approve or conditionally approve a complete application for a SWF License when the Director finds that the proposed project:
 - a. meets the definition for a “SWF” as defined in this Article, if it involves a wireless facility,
 - b. complies with all applicable location standards in this Article;
 - c. complies with all applicable design standards in this Article;
 - d. would not be located on a prohibited support structure identified in this Article; and
 - e. will be in planned compliance with all applicable FCC regulations and guidelines.
3. **Conditional Approvals / Denials Without Prejudice.** Subject to any applicable federal or state laws, nothing in this Article is intended to limit the Director’s ability to conditionally approve or deny without prejudice any SWF License application as may be necessary to ensure compliance with this Article.
4. **Appeals.** Any decision by the Director shall not be subject to any administrative appeals, but may be appealable to a court of competent jurisdiction.

Section 82-210. Conditions of Approval

1. **Standard Conditions.** Except as may be authorized in subsection (2) of this section, all SWF Licenses issued under this Article shall be automatically subject to the conditions in this subsection (1).
 - a. **License Term.** This license will automatically renew 1 year from its issuance, and each year thereafter, conditional upon receipt of the annual license fee established in Appendix B of City Code prior to the date of license expiration.
 - b. **Post-Installation Certification.** Within 60 calendar days after the final inspection for any building permit associated with a SWF, the applicant shall provide the Director with documentation reasonably acceptable to the Director that the SWF or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
 - c. **Build-Out Period.** This SWF License will automatically expire 12 months from the approval date (the “build-out period”) unless the applicant obtains all other permits and approvals required to install, construct and/or operate the approved SWF or other infrastructure deployment. Upon written request, the Director may grant up to three extensions to the build-out period in 90-day increments if the applicant demonstrates justifiable cause. If the build-out period and any extension finally expires, the license shall be automatically revoked.
 - d. **Site Maintenance.** The applicant shall keep the site, which includes without limitation all licensed improvements, in a safe condition in accordance with the approved construction drawings and all conditions in the SWF License. The applicant, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the applicant receives notice or otherwise

becomes aware that such graffiti or other vandalism occurred.

- e. **Compliance with Laws.** The applicant shall maintain compliance at all times with all federal, state and local statutes, regulations, orders, permits or other rules (“laws”) applicable to the applicant, the subject property, the SWF or other infrastructure deployment or any use or activities in connection with the use authorized in this SWF License. The applicant expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the applicant’s obligations to maintain compliance with all laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable law shall be deemed to relieve, waive or lessen the applicant’s obligation to comply in all respects with all applicable laws.
- f. **Adverse Impacts on Other Properties.** The applicant shall avoid, or immediately remedy if necessary, any adverse impacts on nearby properties that may arise from the applicant’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site.
- g. **Inspections; Emergencies.** The applicant expressly acknowledges and agrees that local, state, and federal officers, officials, staff, emergency personnel, agents, contractors or other designees may inspect the licensed improvements and equipment to disable or remove any licensed improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons.
- h. **Applicant’s Contact Information.** Within 10 days from the date of approval of the SWF License, the applicant shall furnish the city with accurate and up-to-date contact information for a person responsible for the SWF or other infrastructure deployment, which includes without limitation such person’s full name, title, direct telephone number, mailing address and email address. The applicant shall keep such contact information up-to-date at all times and promptly provide the city with updated contact information if either the responsible person or such person’s contact information changes.
- i. **Performance Security.** Before the city issues any permits required to commence construction in connection with this license, the applicant shall post a security in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The preferred forms of security are certified checks made out to the City of Keene and letters of credit.
- j. **Truthful and Accurate Statements.** The applicant acknowledges that the city’s approval relies on the written and/or oral statements by applicant and/or persons authorized to act on applicant’s behalf. In any matter before the city in connection with the SWF License or the SWF or other infrastructure approved under the SWF

License, neither the applicant nor any person authorized to act on applicant's behalf shall, in any written or oral statement, intentionally provide information that is materially and/or factually incorrect or omit any material information necessary to prevent any material factual statement from being incorrect or misleading. Failure to comply with this condition shall be grounds for license revocation.

- k. **License Revocation.** The Director may revoke a license granted under this Article when the Director finds substantial evidence that the facility is not in compliance with the requirements of this Article, and with any applicable laws, which includes without limitation, any license or permit issued in connection with the facility and any associated conditions required by such license(s) or permits.
 - i. Before any decision to revoke a license granted under this Article, the Director must issue a written notice to the applicant that specifies the facility, the violation(s) to be corrected, the timeframe within which the applicant must correct such violation(s), which shall be a minimum of 30 days, and that the Director may revoke the license for failure to correct such violation(s).
 - ii. If the applicant does not correct the violations as specified in the written notice within the timeframe stated, the Director may issue a decision to revoke the license. Within five (5) business days after Director makes a decision to revoke a license, the Director shall provide the applicant with a written notice that specifies the revocation and the reasons for such revocation.

- l. **Records.** Any and all documentation or data submitted to the City in connection with a SWF License application and license is a public record subject to the requirements of NH RSA 91-A, unless otherwise claimed to be confidential by the applicant and agreed to by the City in accordance with state law. In the event of a public record request for confidential information, the city shall notify the Licensee within 5 calendar days of receipt of the request, and the Licensee may, at its sole cost and expense, seek an immediate protective order from the NH Superior Court. In the event that the Licensee does not take such action within 30 days of notification, the city shall release the record subject to redactions required by law.

- m. **Abandoned Facilities.** The SWF or other infrastructure deployment authorized under this SWF License shall be deemed abandoned if not operated under a valid license for any period of time that is 90 days or longer. The City shall notify the applicant in writing of the abandonment. Once deemed abandoned, the applicant and/or SWF owner shall completely remove the SWF or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition substantially similar to the condition at the time the license was initially granted. In the event that neither the applicant nor the SWF owner complies with the removal and restoration obligations under this condition within a 30-day period after the notice by the City, the city shall have the right (but not the obligation) to perform such removal and restoration without further notice, and the applicant and SWF owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities.

- n. **Trees and Landscaping.** The applicant shall replace any landscape features

damaged or displaced by the construction, installation, operation, maintenance or other work performed by the applicant or at the applicant's direction on or about the site. If any trees are damaged or displaced, the applicant shall hire and pay for a NH licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city.

- o. **Utility Damage Prevention.** The applicant shall comply with the requirements of NH RSA 374:48 – 56, and any adopted administrative rules.
 - p. **Rearrangement and Relocation.** The applicant acknowledges that the city, in its sole discretion and at any time, may perform any work deemed necessary, useful or desirable by the city (collectively, "city work") in the City right-of-way. If the Director determines that any city work will require the applicant's SWF located in the public rights-of-way to be rearranged and/or relocated, the Director shall issue written notice to the applicant of the work to be performed, and the action to be taken by the applicant. The applicant shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation within 10 days after the Director's notice. If the applicant fails or refuses to either permanently or temporarily rearrange and/or relocate the applicant's SWF or other infrastructure deployment within 10 days after the Director's notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant's sole cost and expense.
 - i. The city may exercise its rights to rearrange or relocate the applicant's SWF or other infrastructure deployment without prior notice to applicant when the Director determines that city work is immediately necessary to protect public health or safety.
 - ii. The applicant shall reimburse the city for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.
2. **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any SWF License as may be necessary or required to ensure compliance with the City of Keene Code of Ordinances, this Article or other applicable law. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to SWFs are no more burdensome than those applied to other similar infrastructure deployments. The Director shall provide written notice to the applicant of any required alteration to the license.

Section 82-211. Preapproved designs

- 1. **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more preapproved designs for SWFs and other infrastructure deployments. This Section sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- 2. **Adoption.** The Director may, in the Director's discretion, establish a preapproved design

when the Director finds that a proposed preapproved design meets or exceeds the design standards in this Article. The Director shall make preapproved designs publicly available at the offices of the Director and at the time of application.

3. **Repeal.** The Director may repeal any preapproved design by written notice posted at Keene City Hall and at the offices of the Director. The repeal shall be effective to any application received after the date of the repeal.
4. **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sec. 82-209 subsection (2)(c) of this Article are satisfied and shall evaluate the application for compliance with the remaining findings for approval listed in Sec. 82-209 subsection (2).
5. **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

Section 82-212. Definitions

The definitions in this Section shall be applicable to the terms, phrases and words in this Article. If any definition assigned to any term, phrase or word conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

“Accessory equipment” means equipment other than antennas used in connection with a SWF or other infrastructure deployment. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

“Antenna” means an apparatus designed for the purpose of transmitting or receiving electromagnetic radio frequency signals used in the provision of personal wireless service and any comingled information services.

“Antenna facility” means an antenna and associated accessory equipment.

“Applicant” means any person who submits an application and is a wireless provider.

“Batched application” means more than one application submitted at the same time.

“Clear and convincing evidence” means the presentation of objective facts which are sufficient to show that it is highly probable, and not merely likely, that the higher priority location is not technically feasible.

“Collocation” means mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure, as defined by the FCC in 47 C.F.R. § 1.6102(g) (as may be amended or superseded). “Collocation”

does not include a "substantial modification."

"Decorative pole" means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

"Director" means the Public Works Director or their designee.

"FCC" means the Federal Communications Commission or its duly appointed successor agency.

"FCC Shot Clock" means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

"Height" means the distance measured from ground level to the highest point on the structure, even if such highest point is an antenna. The term "ground level" means the average existing grade or elevation of the ground surface within the footprint of the structure prior to any alterations such as grading, grubbing, filling, or excavating.

"NH Shot Clock" means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined in NH RSA 12-K:10 and as may be amended or superseded.

"Nonresidential district" means any zoning district that is not included in the definition of "Residential district."

"OTARD" means an "over-the-air reception device" and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

"Person" means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

"Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. See 47 U.S.C. § 332(c)(7)(C)(i).

"Personal wireless service facilities" means facilities for the provision of personal wireless services as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

"Persons entitled to notice" means the record owners and legal occupants of all properties within a 300-foot radius of the proposed SWF. Notice to the legal occupants shall be deemed given when sent to the property's physical address.

"Public right-of-way" or "Public rights-of-way" means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes, or other public access.

“Residential district” means a zoning district that is intended primarily for residential uses. This term includes the following zoning districts:

1. Rural
2. Low Density
3. Low Density-1
4. Medium Density
5. High Density
6. High Density-1
7. Residential Preservation

“RF” means radio frequency or electromagnetic waves.

“Shot clock days” means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock or NH Shot Clock. The term “shot clock days” does not include any calendar days on which the Shot Clock is tolled (i.e., “paused”).

“Small Wireless Facility” or “SWF” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded, except as modified in this Article. A SWF meets each of the following conditions:

1. The facility is mounted on a structure that:
 - a. is 50 feet or less in height including the antenna; or
 - b. is no more than 10 percent taller than other adjacent structures; or
 - c. does not extend the existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
2. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet.
3. All other wireless equipment attached directly to a structure associated with the facility is cumulatively no more than 28 cubic feet in volume.

“Support structure” means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded. This section states that a “structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

“Technically infeasible” means a circumstance in which compliance with a specific requirement within this Article is physically impossible and not merely more difficult or expensive than a noncompliant alternative.

George S. Hansel, Mayor

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Relating to Small Wireless Facility Deployments in the Public Rights of Way

That the City Code of the City of Keene, New Hampshire, as amended, is hereby further amended by adding the text in the following article to Chapter 82 of the City of Keene Code of Ordinances as follows:

ARTICLE VIII. SMALL WIRELESS FACILITY DEPLOYMENTS IN THE PUBLIC RIGHTS OF WAY

Section 82-201. Purpose and Intent

1. The purpose of this article is to establish reasonable standards and procedures for the siting, construction, installation, collocation, modification, operation, relocation and removal of SWFs (SWF) in the city's public rights-of-way, consistent with and to the extent permitted under federal and state law.
2. The standards and procedures of this Article are intended to protect and promote public health, safety and welfare. They are also intended to reflect and promote the community interest by:
 - a. protecting and preserving the city's public rights-of-way and municipal infrastructure;
 - b. maintaining the balance between public and private interests;
 - c. protecting the city's visual character from potential adverse impacts;
 - d. protecting and preserving the city's environmental resources; and,
 - e. promoting access to high-quality, advanced wireless services for the city's residents, businesses and visitors.
3. This Article is intended to establish procedures for application intake and completeness review, and encourage applicants to timely respond to incomplete notices.

Section 82-202. Applicability

1. Except as expressly provided otherwise, the provisions in this Article shall be applicable to all SWFs constructed and in operation as of the date of the adoption of this Article, and to all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy SWFs within the public rights-of-way after the date of the adoption of this Article.
2. To the extent that other infrastructure deployments involve the same or substantially similar structures, apparatus, antennas, equipment, fixtures, cabinets, cables or improvements within the public rights-of-way, the Director or other official responsible to review and approve or deny requests for authorization in connection with such other infrastructure deployment shall

apply the provisions in this Article, unless specifically prohibited by applicable law or ordinance.

3. Any license issued pursuant to this Article may be subject to retroactive modification in the event of changes in applicable federal or state law or rule requiring such modification, or in the event of revisions to this Article necessitated for the protection of public health, safety and welfare. Any license issued subsequent to such change, or revision to this Article shall be required to conform to the requirements of such change or revision.

Section 82-203. Required license and approvals

1. **SWF License.** A “SWF License,” subject to the Director’s review and approval in accordance with this Article, shall be required for all SWFs and other infrastructure deployments located in whole or in part within the public rights-of-way.
 - a. **Indemnification Requirement.** The SWF License shall contain the City’s usual and customary indemnification provisions.
2. **Other Licenses and Approvals.** In addition to a SWF License, an applicant must obtain all other licenses, permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.
3. In the event that FCC Order WT Docket No. 17-79 and/or WC Docket No. 17-84 are rescinded, or determined by legal authority to be invalid or unenforceable, then this Article shall be deemed to be null and void, and any licenses issued under the terms and conditions of this Article shall be revoked upon written notice to Licensee effective 90 days after the effective date of such rescission or determination, and all equipment or appurtenances thereto shall be removed prior to the revocation date of the license. The failure to remove all equipment or appurtenances thereto prior to the revocation date of the license shall be deemed an abandonment under section 82-210(1)(m).

Section 82-204. Exemptions.

1. Notwithstanding anything in this Article to the contrary, a SWF License shall not be required for the following:
 - a. Wireless facilities or other infrastructure deployments owned and operated by the city,
 - b. Over-the-air reception device (OTARD) facilities.
 - c. Requests for approval to collocate, modify, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to 47 U.S.C. § 1455(a).
2. An exemption from the SWF License requirement under this Section does not exempt the SWFs or other infrastructure deployments from any other permits or approvals as may be required by any other federal, state or local government agencies, which includes without limitation any approvals issued by other city departments or divisions.

Section 82-205. Location standards

1. **Location Preferences.** To better assist applicants and decision makers in understanding and responding to the community's aesthetic preferences and values, this section sets out listed preferences for locations to be used in connection with SWFs in an ordered hierarchy. An applicant is required to demonstrate with clear and convincing evidence that the higher priority locations are not technically feasible in order for the Director to approve a SWF in a lesser-preferred location.
 - a. The order of preference for locating SWFs from most preferred to least preferred is as follows:
 - i. locations within non-residential districts;
 - ii. any location within 400 feet from an existing small cell in a non-residential district;
 - iii. any location within ~~750~~400 feet from an existing small cell in a residential district; any structure approved for a residential use;
 - ~~iv.~~ any location within 750 feet from a K-12 school, pre-school, or daycare provider, established as of the enactment of this ordinance; and
 - iv. any location on Central Square or on Main Street between Central Square and the Marlboro Street/Winchester Street intersection.
2. **Prohibited Support Structures.** SWFs shall not be permitted on the following support structures:
 - a. new wood poles, unless it is a replacement for an existing wood pole
 - b. existing City-owned decorative poles
3. **Encroachments Over Private Property.** No SWF antennas, accessory equipment or other improvements may encroach onto or over any private or other property outside the public rights-of-way without the property owner's written consent.
4. **No Interference with Other Uses.** SWFs and any associated antennas, accessory equipment or improvements shall not be located in any place or manner that would physically interfere with or impede access to any:
 - a. above-ground or underground infrastructure;
 - b. street furniture;
 - c. fire hydrant or water valve; or
 - d. doors, gates, stoops, fire escape, windows, or other ingress and egress points to any building appurtenant to the rights-of-way.
5. **Replacement Pole Location.** All replacement poles must:
 - a. be located within five feet of the removed pole; and
 - b. be aligned with the other existing poles along the public rights-of-way.
6. **Additional Placement Requirements.** In addition to all other requirements in this Article, SWFs, other infrastructure deployments and all related equipment and improvements shall:
 - a. be placed as close as possible to the property line between two parcels that abut the public rights-of-way;
 - b. be placed so as to not obstruct a 200 foot all-season safe sight distance at any

- intersection;
- c. be placed at least 5 feet away from any driveway;
- d. be placed at least 50 feet away from any driveways for police stations, fire stations or other emergency responder facilities.

Section 82-206. Design standards

1. **Height.** New support structures for SWFs shall not be more than 35 feet in height, or 10% taller than nearby structures within the public right of way, whichever is greater. In no instance shall the overall height of an existing or new structure, including any antennas, exceed 50 feet.
2. **Colors and Finishes.** All exterior surfaces shall be painted, colored and/or wrapped in muted, non-reflective hues that match the underlying support structure and blend with the surrounding environment; provided, however, that SWFs located on Central Square or Main Street between Central Square and the Marlboro Street/Winchester Street intersection shall be black in color. All surfaces shall be treated with graffiti-resistant sealant. All finishes shall be subject to the Director's prior approval.
3. **Lights.** All lights and light fixtures must be fully shielded, dark skies compliant, and directed downwards so that their illumination effects are confined entirely within the public rights-of-way in a manner consistent with specifications by the Director. All antennas, accessory equipment and other improvements with indicator or status lights shall be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas.
4. **Trees and Landscaping.** SWFs and other infrastructure deployments shall not be installed (in whole or in part) within any tree drip line. SWFs and other infrastructure deployments may not displace any existing tree or landscape features unless:
 - a. such displaced tree or landscaping is replaced with native and/or drought-resistant trees, plants or other landscape features approved by the Director, and
 - b. the applicant submits and adheres to a landscape maintenance plan.Replacement trees must be installed under the supervision of a NH licensed arborist. Any replacement tree must be substantially the same size as the damaged tree unless approved by the Director.
5. **Signs and Advertisements.** All SWFs and other infrastructure deployments that involve RF transmitters must include signage that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free number to the owner/operator's network operations center. SWFs and other infrastructure deployments may not bear any other signage or advertisements, including logos, unless expressly approved by the city, required by law, or recommended under FCC or other United States governmental agencies for compliance with RF emissions regulations.
 - a. RF warning signs, if required, shall be located as close to the antenna as possible and must face towards the street. Unless otherwise required by law or regulation, the background color of the sign must match the color of the pole or surface to which it is attached.

6. **Site Security Measures.** SWFs and other infrastructure deployments may incorporate reasonable and appropriate site security measures subject to approval by the Director. All exterior surfaces on SWFs shall be constructed from or coated with graffiti-resistant materials.
7. **Compliance with State and Federal Regulations.** All SWFs and other infrastructure deployments must comply with all applicable State and federal regulations, including without limitation all applicable regulations for human exposure to RF emissions and the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.). In the event that applicable federal or State laws or regulations conflict with the requirements of this ordinance, the applicant shall comply with the requirements of this ordinance to the maximum extent possible without violating federal or State laws or regulations.
8. **Antennas.** The following provisions in this subsection are generally applicable to all antennas.
 - a. **Shrouding / Concealment.** All antennas and associated equipment, including but not limited to cables, jumpers, wires, mounts, masts, brackets and other connectors and hardware, must be concealed from view within a single shroud or radome that is finished to match the color of the support structure.
 - i. For pole-top antennas, the shroud shall not exceed one and half-times the median pole diameter and must taper down to pole.
 - ii. For side-arm antennas, the shroud must cover the cross arm and any cables, jumpers, wires or other connectors between the vertical riser and the antenna.
 - b. **Antenna Volume.** Each individual antenna associated with a single SWF shall not exceed 3 cubic feet. The cumulative volume for all antennas on a single small SWF shall not exceed:
 - i. 3 cubic feet in residential districts; or
 - ii. 6 cubic feet in nonresidential districts.
 - c. **Overall Antenna Height.**
 - i. Antennas placed on new structures may not extend more than 5 feet above the support structure, plus any minimum separation between the antenna and other pole attachments required by applicable health and safety regulations.
 - ii. Antennas placed on existing structures that meet the definition of a collocation or modification application as defined in NH RSA 12-K shall not increase the height of the structure by more than 10% or 5 feet, whichever is greater.
 - d. **Horizontal Projection.** Side-mounted antennas, where permitted, shall not project:
 - i. more than 18 inches from the support structure;
 - ii. over any roadway for vehicular travel; or
 - iii. over any abutting private property.
 - iv. If applicable laws require a side-mounted antenna to project more than 18 inches from the support structure, the projection shall be no greater than

required for compliance with such laws.

9. **Accessory Equipment Volume.** The cumulative volume for all accessory equipment for a single SWF or other infrastructure deployment shall not exceed:

- a. 9 cubic feet in residential districts; or
- b. 17 cubic feet in nonresidential districts.

The volume limits in this subsection do not apply to any undergrounded accessory equipment.

10. **Undergrounded Accessory Equipment.**

a. **Where Required.**

- i. For proposed facilities on Central Square or on Main Street between Central Square and the Marlboro Street/Winchester Street intersection, accessory equipment (other than any electric meter emergency disconnect switch, where permitted) shall be placed underground.
- ii. In all other locations, accessory equipment shall be placed underground unless the applicant demonstrates by clear and convincing evidence that compliance with this section would be technically infeasible.

b. **Vaults.** All undergrounded accessory equipment must be installed in a vault that is load-rated to meet the city's standards and specifications.

11. **Pole-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all pole-mounted accessory equipment in connection with SWFs and other infrastructure deployments.

- a. **Minimum Vertical Clearance.** The lowest point on any pole-mounted accessory equipment, which does not project over the travel way, shall be a minimum of 10 feet above ground level adjacent to the pole.
- b. **Horizontal Projection.** All pole-mounted accessory equipment shall be mounted flush to the pole surface. Pole-mounted accessory equipment shall not project:
 - i. more than 18 inches from the pole surface; or
 - ii. over any abutting private property.
- c. **Orientation.** Unless concealed in a manner approved by the Director, all pole-mounted accessory equipment shall be oriented so as to reduce visibility from the nearest abutting properties. In general, the proper orientation will likely be toward the street to reduce the overall profile when viewed from the nearest abutting property. If more than one orientation would be technically feasible, the Director may select the most appropriate orientation.

12. **Ground-Mounted or Base-Mounted Accessory Equipment.** The following provisions in this subsection are applicable to all ground-mounted and base-mounted accessory equipment in connection with SWFs and other infrastructure deployments.

- a. **Concealment.** Where permitted, ground-mounted accessory equipment shall be

completely concealed/shrouded or placed in a cabinet substantially similar in appearance to existing ground-mounted accessory equipment cabinets. Exterior colors shall be muted, non-reflective, and blend with the colors of the surroundings.

- b. **Visibility.** No individual ground-mounted accessory equipment cabinet may exceed a height or width of 4 feet. Ground-mounted and base-mounted equipment cabinets shall not have any horizontal flat surfaces greater than 1.5 square feet.

13. **Support Structure Attachments.** The following provisions in this subsection are applicable to all support structure attachments (other than pole-mounted accessory equipment) and other related improvements that serve SWFs and other infrastructure deployments.

- a. **Overhead Lines.** The Director shall not approve any new overhead utility lines in areas within which wires, cables, cabinets and other equipment associated with SWFs or infrastructure deployment are primarily located underground. In areas with existing overhead lines, no new overhead utility lines shall be permitted to traverse any roadway used for vehicular transit.
- b. **Vertical Cable Risers.** All cables, wires, conduit attachments and other connectors must be routed through conduits within the support structure to conceal from public view. If this is technically infeasible, applicants shall route through a single external conduit or shroud that has been finished to match the underlying pole.
- c. **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- d. **Electric Meters.** The Director shall not approve a separate ground-mounted electric meter pedestal. If the proposed project involves a ground-mounted equipment cabinet, an electric meter may be integrated with and recessed into the cabinet.
- e. **Existing Conduit or Circuits.** To reduce unnecessary wear and tear on the public rights-of-way, applicants shall use existing conduits and/or electric circuits whenever available and technically feasible. Access to any conduit and/or circuits owned by the city shall be subject to the Director's prior written approval, which the Director may withhold or condition as the Director deems necessary or appropriate to protect the city's infrastructure and/or prevent interference with the city's municipal functions and public health and safety.

Section 82-207. Application Requirements

- 1. **All Applications.** All applicants for a SWF License must include the following information and materials as part of a formal SWF License application to the city:
 - a. **Application Form.** The applicant shall submit a complete, duly executed SWF License application on the then-current form prepared by the city.

- b. **Application Fee.** The applicant shall submit the applicable SWF License application fee established in Appendix B of City Code. Batched applications must include the applicable SWF license application fee for each SWF in the batch.
- c. **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail whether and why the proposed facility qualifies as a “SWF” as defined in this Article. A complete written narrative analysis will state the applicable standard and all the facts that allow the city to conclude the standard has been met. As part of the written statement, the applicant must also include the following:
 - i. Whether and why the proposed support is a “structure” as defined by this Article.
 - ii. Whether and why the proposed wireless facility meets each required finding for a SWF License as provided in Sec. 82-209, subsection (2), “Required Findings for Approval.”
- d. **Construction drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a New Hampshire licensed engineer that depict all the existing and proposed improvements, equipment and conditions related to the proposed project. This includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholds, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must:
 - i. contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions;
 - ii. identify all potential support structures within 400 feet from the proposed project site and call out such structures’ overall height above ground level; and
 - iii. depict the applicant’s preliminary plan for electric and data backhaul utilities, which shall include the anticipated locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection.
- e. **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed SWF in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the SWF from a vantage point approximately 50 feet from the proposed support structure or location.
- f. **Radio Frequency Compliance Report.** The applicant shall submit a Radio Frequency (RF) exposure compliance report that certifies that the proposed SWF will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the Director. If the applicant submits a batched application, a separate RF report shall

the review process through collaborative, informal discussion that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project and/or project site, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other city departments implicated by the proposed project; and application completeness issues.

- a. To mitigate unnecessary delays due to application incompleteness, applicants are encouraged (but not required) to bring any draft applications, plans, maps or other materials so that city staff may provide informal feedback and guidance about whether such applications or other materials may be incomplete or unacceptable in their then-current form.
2. **Application Submittal Date.** All applications must be submitted to the city on the monthly application submittal date, which shall generally be the second Tuesday of every month unless specified otherwise by the Director. Prospective applicants may submit up to 5 individual applications at one time as a batch. Any purported application received on a date other than the application submittal date, whether delivered in-person, by mail or through any other means, will be considered filed as of the next applicable application submittal date.
 3. **Additional Administrative Requirements and Regulations.** The City Council authorizes the Director to develop, publish and from time to time update or amend license application requirements and technical standards that the Director finds necessary, appropriate or useful for processing any application governed under this Article, not otherwise inconsistent with the requirements of this Article. The City Council further authorizes the Director to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments and/or submittals without appointments, as the Director deems necessary or appropriate to organize, document and manage the application intake process. All such requirements, materials, rules and regulations must be in written form, on file with the Director, and publicly released, to provide all interested parties with prior notice.
 4. **Incomplete Applications.**
 - a. **Initial Completeness Review.** Within fifteen (15) calendar days following the application submittal date, the Director shall complete an initial review of each application to evaluate whether the submission requirements set forth in Sec. 82-207 have been met. If the Director determines that an application is incomplete, the Director shall notify the applicant in writing of the application's nonconformance, including the specific deficiencies in the application, which, if cured, would make the application complete.
 - b. **Shot Clock Extensions**
 - i. *Collocation Applications.* Applicants proposing to collocate a SWF on an existing structure shall have fifteen days to cure all deficiencies in the application.
 1. If the applicant submits all information required for an application to be deemed complete by the Director within 15 days, the shot clock shall not be suspended.

2. If the applicant submits all information required for an application to be deemed complete after fifteen days, the shot clock shall be extended by the number of days beyond the 15-day period that it takes for the applicant to submit this information in accordance with NH RSA 12-K:10.
 - ii. *Applications to install a SWF on a new structure.* Applicants proposing to install a SWF on a new or replacement structure shall have fifteen days to cure all deficiencies in the application. On the date of the issuance of a written incomplete notice, the shot clock shall be suspended until the applicant submits all information required for an application to be deemed complete by the Director.
 - c. **Incomplete Application Deemed Denied.** Any application governed under this Article shall be automatically denied when the applicant fails to submit a substantive response to the Director within 60 calendar days after the Director deems the application incomplete by written notice. A “substantive response” must include, at a minimum, the complete materials identified as incomplete in the written incomplete notice.
5. **Application Submittal Notice for SWFs Proposed on New Structures.** Within 15 calendar days after a complete application is received and prior to any approval, conditional approval or denial, the city shall mail public notice to all persons entitled to notice, including all owners of record and legal occupants of properties within a 300-foot radius of the proposed SWF. The notice must contain:
- a. A general project description;
 - b. The applicant’s identification and contact information as provided on the application submitted to the city;
 - c. Contact information for the Director for interested parties to submit comments; and
 - c. The date by which comments must be submitted to the Director.
6. **Application Decision Notice.** Within five calendar days after the Director acts on a SWF License application, the Director shall provide written notice to the applicant. If the Director denies an application (with or without prejudice) for a SWF, the written notice must also contain the reasons for the denial.

Section 82-209. Decisions

1. **Decision Deadlines.**
 - a. The Director shall make a final decision to approve, approve with conditions, or deny a completed application to collocate a SWF on an existing structure within 45 days of application submittal, unless the NH Shot Clock was extended according to Sec. 82-208 subsection (4)(b).
 - b. The Director shall make a final decision to approve, approve with conditions, or deny an application to place or install a SWF on a new support structure within 90 days after the application is determined to be complete.
2. **Required Findings for Approval.** The Director may approve or conditionally approve a complete application for a SWF License when the Director finds that the proposed project:

- a. meets the definition for a “SWF” as defined in this Article, if it involves a wireless facility,
 - b. complies with all applicable location standards in this Article;
 - c. complies with all applicable design standards in this Article;
 - d. would not be located on a prohibited support structure identified in this Article; and
 - e. will be in planned compliance with all applicable FCC regulations and guidelines.
3. **Conditional Approvals / Denials Without Prejudice.** Subject to any applicable federal or state laws, nothing in this Article is intended to limit the Director’s ability to conditionally approve or deny without prejudice any SWF License application as may be necessary to ensure compliance with this Article.
4. **Appeals.** Any decision by the Director shall not be subject to any administrative appeals, but may be appealable to a court of competent jurisdiction.

Section 82-210. Conditions of Approval

1. **Standard Conditions.** Except as may be authorized in subsection (2) of this section, all SWF Licenses issued under this Article shall be automatically subject to the conditions in this subsection (1).
- a. **License Term.** This license will automatically renew 1 year from its issuance, and each year thereafter, conditional upon receipt of the annual license fee established in Appendix B of City Code prior to the date of license expiration.
 - b. **Post-Installation Certification.** Within 60 calendar days after the final inspection for any building permit associated with a SWF, the applicant shall provide the Director with documentation reasonably acceptable to the Director that the SWF or other infrastructure deployment has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, GIS data and site photographs.
 - c. **Build-Out Period.** This SWF License will automatically expire 12 months from the approval date (the “build-out period”) unless the applicant obtains all other permits and approvals required to install, construct and/or operate the approved SWF or other infrastructure deployment. Upon written request, the Director may grant up to three extensions to the build-out period in 90-day increments if the applicant demonstrates justifiable cause. If the build-out period and any extension finally expires, the license shall be automatically revoked.
 - d. **Site Maintenance.** The applicant shall keep the site, which includes without limitation all licensed improvements, in a safe condition in accordance with the approved construction drawings and all conditions in the SWF License. The applicant, at no cost to the city, shall remove and remediate any graffiti or other vandalism at the site within 48 hours after the applicant receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- e. **Compliance with Laws.** The applicant shall maintain compliance at all times with all federal, state and local statutes, regulations, orders, permits or other rules (“laws”) applicable to the applicant, the subject property, the SWF or other infrastructure deployment or any use or activities in connection with the use authorized in this SWF License. The applicant expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the applicant’s obligations to maintain compliance with all laws. No failure or omission by the city to timely notice, prompt or enforce compliance with any applicable law shall be deemed to relieve, waive or lessen the applicant’s obligation to comply in all respects with all applicable laws.
- f. **Adverse Impacts on Other Properties.** The applicant shall avoid, or immediately remedy if necessary, any adverse impacts on nearby properties that may arise from the applicant’s or its authorized personnel’s construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site.
- g. **Inspections; Emergencies.** The applicant expressly acknowledges and agrees that local, state, and federal officers, officials, staff, emergency personnel, agents, contractors or other designees may inspect the licensed improvements and equipment to disable or remove any licensed improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons.
- h. **Applicant’s Contact Information.** Within 10 days from the date of approval of the SWF License, the applicant shall furnish the city with accurate and up-to-date contact information for a person responsible for the SWF or other infrastructure deployment, which includes without limitation such person’s full name, title, direct telephone number, mailing address and email address. The applicant shall keep such contact information up-to-date at all times and promptly provide the city with updated contact information if either the responsible person or such person’s contact information changes.
- i. **Performance Security.** Before the city issues any permits required to commence construction in connection with this license, the applicant shall post a security in a form acceptable to the Director in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities or other infrastructure removal. The preferred forms of security are certified checks made out to the City of Keene and letters of credit.
- j. **Truthful and Accurate Statements.** The applicant acknowledges that the city’s approval relies on the written and/or oral statements by applicant and/or persons authorized to act on applicant’s behalf. In any matter before the city in connection with the SWF License or the SWF or other infrastructure approved under the SWF License, neither the applicant nor any person authorized to act on applicant’s behalf shall, in any written or oral statement, intentionally provide information that is

materially and/or factually incorrect or omit any material information necessary to prevent any material factual statement from being incorrect or misleading. Failure to comply with this condition shall be grounds for license revocation.

- k. **License Revocation.** The Director may revoke a license granted under this Article when the Director finds substantial evidence that the facility is not in compliance with the requirements of this Article, and with any applicable laws, which includes without limitation, any license or permit issued in connection with the facility and any associated conditions required by such license(s) or permits.
 - i. Before any decision to revoke a license granted under this Article, the Director must issue a written notice to the applicant that specifies the facility, the violation(s) to be corrected, the timeframe within which the applicant must correct such violation(s), which shall be a minimum of 30 days, and that the Director may revoke the license for failure to correct such violation(s).
 - ii. If the applicant does not correct the violations as specified in the written notice within the timeframe stated, the Director may issue a decision to revoke the license. Within five (5) business days after Director makes a decision to revoke a license, the Director shall provide the applicant with a written notice that specifies the revocation and the reasons for such revocation.
- l. **Records.** Any and all documentation or data submitted to the City in connection with a SWF License application and license is a public record subject to the requirements of NH RSA 91-A, unless otherwise claimed to be confidential by the applicant and agreed to by the City in accordance with state law. In the event of a public record request for confidential information, the city shall notify the Licensee within 5 calendar days of receipt of the request, and the Licensee may, at its sole cost and expense, seek an immediate protective order from the NH Superior Court. In the event that the Licensee does not take such action within 30 days of notification, the city shall release the record subject to redactions required by law.
- m. **Abandoned Facilities.** The SWF or other infrastructure deployment authorized under this SWF License shall be deemed abandoned if not operated under a valid license for any period of time that is 90 days or longer. The City shall notify the applicant in writing of the abandonment. Once deemed abandoned, the applicant and/or SWF owner shall completely remove the SWF or other infrastructure deployment and all related improvements and shall restore all affected areas to a condition substantially similar to the condition at the time the license was initially granted. In the event that neither the applicant nor the SWF owner complies with the removal and restoration obligations under this condition within a 30-day period after the notice by the City, the city shall have the right (but not the obligation) to perform such removal and restoration without further notice, and the applicant and SWF owner shall be jointly and severally liable for all costs and expenses incurred by the city in connection with such removal and/or restoration activities.
- n. **Trees and Landscaping.** The applicant shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the applicant or at the applicant's direction on or about the

site. If any trees are damaged or displaced, the applicant shall hire and pay for a NH licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Any replacement tree must be substantially the same size as the damaged tree or as otherwise approved by the city.

- o. **Utility Damage Prevention.** The applicant shall comply with the requirements of NH RSA 374:48 – 56, and any adopted administrative rules.
 - p. **Rearrangement and Relocation.** The applicant acknowledges that the city, in its sole discretion and at any time, may perform any work deemed necessary, useful or desirable by the city (collectively, “city work”) in the City right-of-way. If the Director determines that any city work will require the applicant’s SWF located in the public rights-of-way to be rearranged and/or relocated, the Director shall issue written notice to the applicant of the work to be performed, and the action to be taken by the applicant. The applicant shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation within 10 days after the Director’s notice. If the applicant fails or refuses to either permanently or temporarily rearrange and/or relocate the applicant’s SWF or other infrastructure deployment within 10 days after the Director’s notice, the city may (but will not be obligated to) cause the rearrangement or relocation to be performed at the applicant’s sole cost and expense.
 - i. The city may exercise its rights to rearrange or relocate the applicant’s SWF or other infrastructure deployment without prior notice to applicant when the Director determines that city work is immediately necessary to protect public health or safety.
 - ii. The applicant shall reimburse the city for all costs and expenses in connection with such work within 10 days after a written demand for reimbursement and reasonable documentation to support such costs.
2. **Modified Conditions.** The City Council authorizes the Director to modify, add or remove conditions to any SWF License as may be necessary or required to ensure compliance with the City of Keene Code of Ordinances, this Article or other applicable law. To the extent required by applicable FCC regulations, the Director shall take care to ensure that any different conditions applied to SWFs are no more burdensome than those applied to other similar infrastructure deployments. The Director shall provide written notice to the applicant of any required alteration to the license.

Section 82-211. Preapproved designs

- 1. **Purpose.** To expedite the review process and encourage collaborative designs among applicants and the city, the City Council authorizes the Director to designate one or more preapproved designs for SWFs and other infrastructure deployments. This Section sets out the process to establish or repeal a preapproved design and the expedited review procedures and findings applicable to these applications.
- 2. **Adoption.** The Director may, in the Director’s discretion, establish a preapproved design when the Director finds that a proposed preapproved design meets or exceeds the design standards in this Article. The Director shall make preapproved designs publicly available at

the offices of the Director and at the time of application.

3. **Repeal.** The Director may repeal any preapproved design by written notice posted at Keene City Hall and at the offices of the Director. The repeal shall be effective to any application received after the date of the repeal.
4. **Modified Findings.** When an applicant submits a complete application for a preapproved design, the Director shall presume that the findings for approval in Sec. 82-209 subsection (2)(c) of this Article are satisfied and shall evaluate the application for compliance with the remaining findings for approval listed in Sec. 82-209 subsection (2).
5. **Nondiscrimination.** Any applicant may propose to use any preapproved design whether the applicant initially requested that the Director adopt such preapproved design or not. The Director's decision to adopt a preapproved design expresses no preference or requirement that applicants use the specific vendor or manufacturer that fabricated the design depicted in the preapproved plans. Any other vendor or manufacturer that fabricates a facility to the standards and specifications in the preapproved design with like materials, finishes and overall quality shall be acceptable as a preapproved design.

Section 82-212. Definitions

The definitions in this Section shall be applicable to the terms, phrases and words in this Article. If any definition assigned to any term, phrase or word conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.

“Accessory equipment” means equipment other than antennas used in connection with a SWF or other infrastructure deployment. The term includes “transmission equipment” as defined by the FCC in 47 C.F.R. § 1.6100(b)(8), as may be amended or superseded.

“Antenna” means an apparatus designed for the purpose of transmitting or receiving electromagnetic radio frequency signals used in the provision of personal wireless service and any comingled information services.

“Antenna facility” means an antenna and associated accessory equipment.

“Applicant” means any person who submits an application and is a wireless provider.

“Batched application” means more than one application submitted at the same time.

“Clear and convincing evidence” means the presentation of objective facts which are sufficient to show that it is highly probable, and not merely likely, that the higher priority location is not technically feasible.

“Collocation” means mounting or installing an antenna facility on a pre-existing structure, and/or modifying a structure for the purpose of mounting or installing an antenna facility on that structure, as defined by the FCC in 47 C.F.R. § 1.6102(g) (as may be amended or superseded). "Collocation" does not include a "substantial modification."

“Decorative pole” means any pole that includes decorative or ornamental features, design elements and/or materials intended to enhance the appearance of the pole or the public rights-of-way in which the pole is located.

“Director” means the Public Works Director or their designee.

“FCC” means the Federal Communications Commission or its duly appointed successor agency.

“FCC Shot Clock” means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined by the FCC and as may be amended or superseded.

“Height” means the distance measured from ground level to the highest point on the structure, even if such highest point is an antenna. The term "ground level" means the average existing grade or elevation of the ground surface within the footprint of the structure prior to any alterations such as grading, grubbing, filling, or excavating.

“NH Shot Clock” means the presumptively reasonable timeframe, accounting for any tolling or extension, within which the city generally must act on a request for authorization in connection with a personal wireless service facility, as such time frame is defined in NH RSA 12-K:10 and as may be amended or superseded.

“Nonresidential district” means any zoning district that is not included in the definition of “Residential district.”

“OTARD” means an “over-the-air reception device” and includes all antennas and antenna supports covered by 47 C.F.R. § 1.4000(a)(1), as may be amended or superseded.

“Person” means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization.

“Personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. See 47 U.S.C. § 332(c)(7)(C)(i).

“Personal wireless service facilities” means facilities for the provision of personal wireless services as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.

“Persons entitled to notice” means the record owners and legal occupants of all properties within a 300-foot radius of the proposed SWF. Notice to the legal occupants shall be deemed given when sent to the property’s physical address.

“Public right-of-way” or “Public rights-of-way” means land or an interest in land which by deed, conveyance, agreement, easement, dedication, usage or process of law is reserved for or dedicated to or open to the use by the general public for road or highway purposes, or other public access.

“Residential district” means a zoning district that is intended primarily for residential uses. This term includes the following zoning districts:

1. Rural
2. Low Density
3. Low Density-1
4. Medium Density
5. High Density
6. High Density-1
7. Residential Preservation

“RF” means radio frequency or electromagnetic waves.

“Shot clock days” means calendar days counted toward the presumptively reasonable time under the applicable FCC Shot Clock or NH Shot Clock. The term “shot clock days” does not include any calendar days on which the Shot Clock is tolled (i.e., “paused”).

“Small Wireless Facility” or “SWF” means the same as defined by the FCC in 47 C.F.R. § 1.6002(1), as may be amended or superseded, except as modified in this Article. A SWF meets each of the following conditions:

1. The facility is mounted on a structure that:
 - a. is 50 feet or less in height including the antenna; or
 - b. is no more than 10 percent taller than other adjacent structures; or
 - c. does not extend the existing structure on which it is located to a height of more than 50 feet or by more than 10 percent, whichever is greater.
2. Each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three cubic feet.
3. All other wireless equipment attached directly to a structure associated with the facility is cumulatively no more than 28 cubic feet in volume.

“Support structure” means a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m), as may be amended or superseded. This section states that a “structure” means a pole, tower, base station, or other building, whether or not it has an existing antenna facility, that is used or to be used for the provision of personal wireless service (whether on its own or comingled with other types of services).

“Technically infeasible” means a circumstance in which compliance with a specific requirement within this Article is physically impossible and not merely more difficult or expensive than a noncompliant alternative.