

Chapter 239, Article VI, Utilities, Poles, Wires and Equipment within Public Right-of-Ways.

Section 239-1 – Purpose

The purpose of this ordinance is to govern the placing of utilities, poles, wires and equipment, including personal wireless telecommunications facilities, within the Town’s public right-of-way, in order to lessen the danger to the traveling public, facilitate the maintenance of storm and surface water drainage systems, regulate underground and above ground utilities, protect the community’s investment in public streets and roads, and to protect the health, safety and welfare of the Town of Bedford. The purpose of the ordinance is also to minimize the negative and adverse visual and aesthetic impacts of utilities, including personal wireless telecommunication facilities in the right-of-way, to the maximum extent practicable.

Section 239-2 – Definitions

“Right-of-Way” shall mean the area of land which constitutes a public way under RSA 229:1. This area shall include, but not be limited to, the area of any road as laid out, the area within the property lines of any land deeded to the Town for highway purposes, or the extent (including reasonable adjoining areas) of any public way established by prescription.

“Town” shall mean the Town of Bedford, New Hampshire or any affiliate or political subdivision of the Town.

“Small Cell Installation” shall mean all equipment required for the operation and maintenance of so-called “small cell” wireless communications systems that transmit and/or receive signals, including antennas, microwave dishes, power supplies, transformers, electronics, and other types of equipment require for the transmission of telecommunication signals.

“Personal Wireless Telecommunication Facility” or "PWSF" or "facility" means any "PWSF" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services, including all small cell installations. A PWSF includes the set of equipment and network components, exclusive of the underlying tower or mount, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide personal wireless service.

“Utility pole” shall mean a structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

“FCC” Federal Communications Commission of the United States.

Section 239-3 – Authority

The placement, installation, and maintenance of all utilities, poles, wires, and equipment, including equipment for personal wireless telecommunications facilities in the right-of-way, shall be governed by the provisions of RSA 231:159 et. seq.

Section 239-4– Utilities, Poles, Wires and Equipment

- A. No utilities, poles, wires or associated equipment, including equipment for personal wireless telecommunications facilities, or other like structure shall be installed on, over, across or within any public right-of-way without first receiving approval of a permit as described below. No approval granted shall confer any exclusive right, privilege, license or franchise to occupy or use the public right-of-way for delivery of telecommunication services or any other purpose. No enjoyment by a person, co-partnership, or corporation for any length of time shall create an easement or raise any presumption of a grant thereof.
- B. The Town shall not be subject to a permit or any other requirements of this Chapter.
- C. Any utilities, poles, wires, and equipment, including personal wireless telecommunications facilities, and like structures, the location of which have already been approved by the Town, shall be deemed legally permitted or licensed without further proceedings under this Ordinance.
- D. Utilities, poles, wires, and equipment, including personal wireless telecommunications facilities installed on private property and town-owned land are subject to the requirements of the Bedford Zoning Ordinance and Land Development Control Regulations. All such permits required by the Bedford Planning Board and Zoning Board of Adjustment shall be issued before a permit under this Ordinance will be effective.
- E. The Town Council shall appoint a Utilities, Poles and Wires Committee to review and approve permit applications for all new installations of utilities, poles, and equipment, including personal wireless telecommunications facilities and equipment thereof, in the Town's right-of-way. The Committee shall approve such application if the public good so requires. *See* RSA 231:161, II. The Committee shall have the authority to waive application content if it is determined items are not applicable to the application. The Committee shall be comprised of three regular members. The Director of Public Works and the Planning Director, or their designee, and a Town Councilor shall be appointed to serve as regular members.
- F. The Utilities, Poles and Wires Committee shall publish a regular schedule of meeting dates and deadlines for the acceptance of new application and shall adopt standard rules procedures, and timelines for the review and approval of permits. The timeline for review

and approval of an application shall be in accordance with all federal and state requirements.

G. Application Fee. The Town Council may adopt a fee schedule relating to the review and issuance of permits. All fees shall be in accordance with all federal and state requirements.

H. Application Content. All permit applications for above or below ground utilities and equipment within the right-of-way, including personal wireless telecommunication facilities, must be made in writing to the Town and shall include the following:

- a. Completed application form with the full name and contact information of the owner, operator and agent (if applicable).
- b. Confirmation that all landowners within 200 feet of the proposed above ground installation have been notified by certified mail of the pending application.
- c. Detailed engineering plans, prepared by a NH licensed professional engineer or surveyor, for each proposed installation, including the exact location and dimension of the installation and construction details of all equipment necessary for operation.
- d. Visual impact analysis with photo simulations depicting the before and after view of all proposed above ground equipment at the location of the installation from at least three vantage points within the immediate vicinity of the proposed facility.
- e. An executed indemnification agreement and insurance certificate, in an amount approved by the Town. Applicant shall assume full liability for damage or injury caused to any person or property as a result of the installation.
- f. A written description of the timeline for installation and the intended areas of service.
- g. A roadway and pavement restoration plan and cost estimate for roadwork approved by the Public Works Director.
- h. Any additional information as reasonably required by the Town to analyze the impact the application may have on the use and safety of the public right-of-way.

I. The following additional information may be required, as applicable, for all permit applications, personal wireless telecommunications facilities, and any applications for colocations, if determined to be necessary by the Poles and Wires Committee:

- a. Master plan showing the geographic service area for the proposed installation, and all existing, proposed and anticipated installations in Bedford.
- b. Written description of the proposed stealth design and concealment techniques to be utilized to minimize the visual impact to the public right-of-way and surrounding properties. All proposed exterior equipment must be the minimum necessary to achieve the needed service and must be the most aesthetically pleasing alternative

for the location. Exterior equipment and antenna surfaces shall be painted a muted color and non-reflective hue to match the underlying support structure. Antennas and equipment shall be contained and concealed. To expedite the review and permitting process, the Utility, Poles and Wires Committee may adopt one or more preapproved designs for the placement and concealment of utilities and equipment.

- c. Certification by a radio-frequency engineer that personal wireless telecommunication facilities will be in compliance with the most recently adopted FCC standards for radio frequency (RF) emissions, as they relate to the general public, including aggregate emissions for all co-located equipment. The applicant shall be required to test the facility upon the commencement of operations, and annually thereafter. Copies of the reports shall be submitted to the Town within 30 days of the completion of testing. If there is reasonable cause to believe that a facility may emit a RF frequency that exceeds the FCC standards, the Town may retain a consultant to perform independent testing to verify compliance with current regulatory and operational standards, the consultant fees shall be paid for by the applicant.
 - d. Certification that the applicant has a right under New Hampshire State Law to install personal wireless telecommunications facilities in the public right-of-way.
 - e. If equipment is proposed to be placed on existing poles or equipment not owned by the applicant, written authorization from the owner stating the applicant has permission to utilize the existing poles and equipment shall be provided.
 - f. A financial guarantee shall be provided to ensure compliance with the provisions of this ordinance and shall remain in effect until the utilities are fully and completely removed and the site is returned to its original condition. The amount and terms of the financial guarantee shall be approved by the Town prior to the issuance of the permit and shall include funds for the removal of the utility and restoration of the site.
- J. Consultant Fee. The Town may require the payment of reasonable fees for the third party consultant review of any aspect of a permit application to ensure compliance with the provisions of the ordinance, as well as all applicable federal and state laws.
- K. Term of the Permit. The permit will automatically renew one year from its issuance, and each year thereafter, provided the applicant is compliance with all terms of the permit approval.
- L. Relocation, Removal or Abandonment. In the event of widening, repair or reconstruction of any roadway, the applicant shall move or remove any utility lines and equipment at no cost to the Town, should they be found by the Town to interfere with the roadway construction.
- M. Transfer, Sale or Assignment. A notice of transfer, sale, or assignment of the ownership of any infrastructure approved under the permit shall be filed with the Town within 30 days of transfer.

- N. **Maximum Pole Height and Spacing.** The maximum height of new utility poles or support structures in the public right-of-way shall not exceed 50 feet. In the case of colocations, attachments shall not exceed five feet above the existing pole structure. Poles shall be located not less than 150 feet apart along the same side of the street.
- O. Each individual piece of pole mounted equipment or antenna shall not exceed 6 cubic feet in dimension or shall not exceed the dimensional standards of any preapproved designs for specific equipment installations.
- P. Utilities shall be located so as not to cause any physical or visual obstruction to pedestrian or vehicular traffic, inconvenience to the public's use of the right-of-way or safety hazards to pedestrians and motorists.
- Q. **No Signage.** Applicants shall not place commercial signage on any poles, equipment or utilities within the public right-of-way.
- R. **Underground Areas.** Utilities and equipment, with the exception of antennas, shall be placed underground in areas where other utilities are required to be placed underground by action of the Town Planning Board or other Town ordinance or regulations, or where utilities are scheduled to be converted from overhead to underground. Underground placement shall apply to all applications unless the applicant presents clear and convincing evidence that compliance with this section would be technically infeasible.
- S. All new overhead utilities and equipment shall be installed at the outermost boundary of public right-of-way, or as otherwise recommended by the Public Works Director.
- T. **Annual Certification.** Each year on or before January 31, the applicant shall submit an affidavit to the Town which shall list, by location, all facilities it owns within the Town by location and shall certify 1) each such installation remains in use; 2) that such in-use facility remains covered by insurance; and 3) each such installation which is no longer in use shall be removed by the applicant within 90 days of delivery of affidavit.
- U. **Excavation Permit Required.** No construction, excavation, clearing, dredging, for the installation of underground utilities may be conducted on, over, or under a public right-of-way without express permission from the Public Works Director or his designee. In the case of emergency work, the person conducting the work shall obtain an excavation permit from the Department of Public Works.
- V. In accordance with the requirements of RSA 72:23, I(b), the owner of the installation shall be obligated to pay real and personal property taxes on the structures or improvements in the public right-of-way.
- W. After 90 days' notice in writing given by the Public Works Director, utilities and equipment, including equipment for personal wireless telecommunications facilities shall be removed when the public good so requires. Such notice may be served by the Public Works Director or agent thereof on such utility or any agent or officer thereof. The notice of removal shall designate the location in the highway to which the same shall be removed, and such notice, together with affidavit or acceptance of service thereof, shall be recorded

in the office of the Town Clerk in which such utility is located. The notice shall take effect when the same, with such affidavit or acceptance of service endorsed thereon, shall be thus recorded, and the 90 days shall run from the date of such record. All such utilities shall be removed within the time designated, and, if not removed by the date stated in such notice, may be forthwith removed by the Public Works Department at the expense of the owner. *See RSA 231:171-181.*

X. Temporary and emergency removal of utilities shall be in accordance with RSA 231:182.

Section 239-5 Interpretation, Administration and Appeal Procedure.

- A. The provisions of this chapter with respect to the meaning of technical terms and phrases, interpretation of the regulations and other technical matters shall be interpreted and administered by the Town Manager.
- B. Right of Appeal. Any party aggrieved by any decision, regulation, or provision under this chapter, as amended from time to time, shall have the right of appeal within 30 days of said decision to the Town Council who shall issue a decision within 30 days. An aggrieved party may appeal the Town Council's decision in accordance with RSA 231:166 to the Superior Court or a court of competent jurisdiction within 60 days of such decision.