

**SECTION III**  
**ESTABLISHMENT OF DISTRICTS AND USES**

**3.1 ESTABLISHMENT OF DISTRICTS**

For the purpose of this Ordinance, the Town of Hopkinton is hereby divided into the following districts:

**District Name and Abbreviation**

Residential/Agricultural	R-4
Low Density Residential	R-3
Medium Density Residential	R-2
High Density Residential	R-1
Commercial	B-1
Industrial	M-1
Wetlands Conservation (overlay)	W-1
Village High Density Residential	VR-1
Village Commercial	VB-1
Village Industrial	VM-1

**3.2 LOCATION**

The location and boundaries of the Zoning Districts are hereby established as shown on a map titled "Zoning Map of the Town of Hopkinton, New Hampshire" dated 11/8/88 which accompanies and is hereby declared to be a part of this Ordinance. The authenticity of the Zoning Map shall be identified by the signature of the Town Clerk, and the imprinted seal of the Town under the following words: "This is to certify that this is the Zoning Map of the Town of Hopkinton, New Hampshire, referred to in the Zoning Ordinance of the Town of Hopkinton, New Hampshire, which was approved by the Town on 11/8/88." It may be reissued by the Planning Board to incorporate such amendments as may be made by the Town Meeting and be re-certified by the Town Clerk in the method stated above. The official Zoning Map shall be the final authority as to the current zoning status of land in the Town.

**3.3 MAP SCALE**

The Zoning Map shall be drawn to scale with ink on stable material, and shall be located in the Town Hall. Copies are on file and may be obtained in the Town Hall. Photographic reductions of this large-scale map may serve as copies of the Zoning Map.

**3.4 INTERPRETATION OF DISTRICT BOUNDS**

Where any uncertainty exists with respect to the boundary of any district as shown on the Zoning Map, the following rules apply.

**3.4.1** Where a boundary is shown as following a street or utility, the boundary shall be the centerline thereof unless otherwise indicated.

**3.4.2** Where a boundary is shown outside of a street or utility and is approximately parallel thereto, it shall be deemed parallel to the nearest line thereof and the figure placed on the Zoning Map between the boundary and such line shall be the distance in feet between them, as measured at a right angle from such line unless otherwise indicated.

**3.4.3** Where a dimensioned boundary coincides within ten (10) feet or less with a lot line, the boundary shall be construed to be the lot line.

**3.4.4** Where a boundary apparently follows a property line, it shall be interpreted as such. Such property line shall be interpreted as the one existing at the time of enactment of this Ordinance.

**3.4.5** Where a boundary is indicated as intersecting the centerline of a street, railroad, watercourse or other water body, it shall be construed to intersect at right angles to said centerline, or in the case of a curved centerline, at right angles to the tangent to the curve at the point of intersection.

**3.4.6** When a lot is transected by a zoning district boundary, the regulations of this Zoning Ordinance applicable to the larger part by area of such lot may at the option of the owner be deemed to govern in the smaller part beyond such district boundary but only to an extent not more than forty (40) linear feet in depth beyond such district boundary.

**3.4.7** In case of uncertainty, the Planning Board shall determine the exact location of the boundary.

### **3.5 DISTRICT PURPOSES**

The following purposes are hereby established for each of the districts:

**3.5.1 Residential/Agricultural (R-4):** The intent of this district is to provide for open space conservation, agricultural use, and predominantly very low density residential development on individual lots or in conservation subdivisions, which can be accommodated on the land without major disruptions of the natural terrain, vegetation, watercourses or surface drainage and which would not customarily have Precinct water and sewer systems.

**3.5.2 Low Density Residential (R-3):** The intent of this district is to provide for open space conservation, some agricultural use, and predominantly very low density residential development on individual lots or in conservation subdivisions which can be accommodated on the land without major disruptions of the natural terrain, vegetation, watercourses or surface drainage and which would not customarily have Precinct water and sewer systems.

**3.5.3 Medium Density Residential (R-2):** The intent of this district is to provide for open space conservation and predominantly medium density residential development on individual lots or in conservation subdivisions which can, because of the natural terrain, vegetation, watercourses or surface drainage, be permitted to occur at more intense levels of development and which may or may not have Precinct water and sewer service.

**3.5.4 High Density Residential (R-1):** The intent of this district is to provide for open space conservation and predominantly high density residential development on individual lots or in conservation subdivisions which can, because of the natural terrain, vegetation, watercourse or surface drainage or because of the availability of Precinct water and sewer service, be permitted to occur at more intense levels of development and which may have or be planned to have Precinct water and sewer service.

**3.5.5 Commercial (B-1):** The intent of this district is to provide limited commercial, institutional, professional and personal service uses along with residential uses.

**3.5.6 Industrial (M-1):** The intent of this district is to provide areas for research and development, manufacturing, processing, assembly, wholesaling, and transportation-oriented activities and related services as trucking and warehousing provided that such uses are determined not to be injurious or hazardous to the public health, safety, and/or welfare.

**3.5.7 Wetlands Conservation (overlay) (W-1):** The intent of this overlay district is to provide protection for and appropriate use of lands as delineated in Section XII of this Ordinance.

**3.5.8 Village High Density Residential (VR-1):** The intent of this district is to provide for open space conservation and predominantly high density residential development on individual lots or in conservation subdivisions which can, because of the natural terrain, vegetation, watercourse or surface drainage or because of the availability of Precinct water and sewer service, be permitted to occur at more intense levels of development providing that such uses are determined not to be injurious or hazardous to the public health, safety, and/or welfare, and they reside within the village center as shown on the zoning maps. Specifically, this district was created to be consistent with the goal that the village be resident and pedestrian friendly while allowing the historic character of the area to be preserved.

**3.5.9 Village Commercial (VB-1):** The intent of this district is to provide limited commercial, institutional, professional and personal service uses along with residential uses, and they reside within the village center as shown on the zoning maps. Specifically, this district was created to be consistent with the goal that the Village be resident and pedestrian friendly while allowing the historic character of the area to be preserved.

**3.5.10 Village Industrial (VM-1):** The intent of this district is to provide areas for research and development, manufacturing, processing, assembly, wholesaling, and transportation-orientated activities and related services as trucking and warehousing providing that such uses are determined not to be injurious or hazardous to the public health, safety, and/or welfare, and they reside within the village center as shown on the zoning maps. Specifically, this district was created to be consistent with the goal that the village be resident and pedestrian friendly while allowing the historic character of the area to be preserved.

### **3.6 USE REGULATIONS**

**3.6.1** The Table of Uses, Section 3.6, specifies the uses that are permitted by right, are permitted by special exception, or are prohibited. Permitted uses are designated in the Table with a P; uses which require the granting of a special exception by the Board of Adjustment are designated with an S; and prohibited uses are designated with an X. The Wetlands Conservation District is an overlay district and information is in Section XII.

Any use not specifically listed as a permitted use shall not be allowed unless the Board of Adjustment determines it is substantially similar to a use listed as a permitted use in the applicable zone by virtue of an Administrative Appeal to the Board. A use shall not be deemed substantially similar to a permitted use unless it is substantially similar in all aspects to a permitted use; otherwise the use shall be deemed to be a prohibited use. Any use deemed by the Board to be a prohibited use, and any use explicitly prohibited by this Ordinance, shall only be allowed in the event that the Board of Adjustment grants a variance allowing the use.

**3.6.2** All uses illustrated in Section 3.6 shall be subject to the limitations delineated in other Sections of this Ordinance. In case of conflict, the more restrictive interpretation shall apply.

**3.6.3** All buildings or structures hereafter erected, reconstructed, altered, enlarged, or moved, or all future uses of premises in the Town of Hopkinton shall be in conformity with the provisions of this Ordinance. Any building, structure, or land shall not be used for any manner other than is permitted in the district in which it is located.

**3.6.4** A permit for the construction, alteration, enlargement, moving, or demolition or use of a building or structure shall not be issued by the Building Inspector unless it complies with this Ordinance and/or has been granted a variance or special exception by the Board of Adjustment.



**3.6 TABLE OF USES**

**C. OUTDOOR/RECREATIONAL USES**

	<b><u>DISTRICTS</u></b>									
	<b>R-4</b>	<b>R-3</b>	<b>R-2</b>	<b>R-1</b>	<b>B-1</b>	<b>M-1</b>	<b>VR-1</b>	<b>V B-1</b>	<b>VM-1</b>	<b>W-1</b>
3. Commercial riding stables and riding trails.	S	S	S	X	X	X	X	X	X	
4. Historic building or site open to public.	P	P	P	P	P	P	P	P	P	
5. Recreational camping/tenting parks and recreational camping vehicles.	S	S	S	X	X	X	X	X	X	

**D. AGRICULTURAL/FORESTRY USES**

1. Agriculture, horticulture and floriculture except a greenhouse or stand for retail sale, including customary accessory structures and uses.	P	P	P	S	S	P	S	S	P	
2. Farming including dairying, livestock, animal and poultry raising, and crop production including customary accessory structures and uses.	P	P	S	S	S	P	S	S	P	
3. Year-round greenhouse or farm stand.	S	S	S	S	S	P	S	P	P	
4. Tree farming and commercial timbering.	P	P	P	S	S	S	S	S	S	
5. Non-commercial harvesting of forest products.	P	P	P	P	P	P	P	P	P	
6. Agricultural silage storage exceeding the maximum zone height.	S	S	S	S	S	S	S	S	S	

**E. INSTITUTIONAL USES/COMMUNITY FACILITIES**

1. Private schools, nursery through college.	S	S	S	S	S	X	S	S	X	
2. Public schools.	P	P	P	P	P	P	P	P	P	
3. Child Care Day Care Nursery, Child Care Group Day Care Center, Child Care Pre-School Program, and Child Care School-Age Program in accord. with Section III, paragraph 3.7.7.	S	S	S	S	S	S	S	P	P	
4. Senior Citizen Centers.	S	S	S	P	P	X	P	P	X	
5. Non-profit lodges, fraternal and membership organizations.	S	S	S	S	S	X	S	S	S	
6. Museums, historical association or society.	S	S	P	P	P	X	P	P	S	
7. Hospitals, clinics and nursing homes, convalescent homes and rehabilitation centers.	X	X	S	S	P	X	S	P	X	

**3.6 TABLE OF USES**

	<b><u>DISTRICTS</u></b>									
	<b><u>E. INSTITUTIONAL USES/COMMUNITY FAC.</u></b>	R-4	R-3	R-2	R-1	B-1	M-1	VR-1	VB-1	VM-1
8. Place of worship including customary ancillary religious facilities.	P	P	P	P	P	X	S	P	X	
9. Non-profit recreational facility.	S	S	P	P	P	S	S	P	S	
10. Non-profit country, hunting, fishing, tennis, or golf club without liquor license.	S	S	S	S	S	S	S	S	S	
11. Municipal power plant, water filter plant, sewage treatment plant, refuse facility, or recycling facility.	S	S	S	S	S	S	S	S	S	
12. Cemetery.	S	S	S	S	S	S	S	S	S	
13. Public utilities except those listed in No. E 11. See also E 14.	P	P	P	P	P	P	S	P	P	
14. Buildings necessary for the furnishing of non-essential service by such public utility for the public health, safety and general welfare.	X	X	X	S	P	P	S	P	P	
15. Town bldgs., except garage and utilities, subject to Site Plan Review approval by the Planning Board.	S	S	P	P	P	X	S	P	X	
16. Town equipment garage, subject to Site Plan Review approval by the Planning Board.	S	S	S	X	X	P	X	X	X	
17. Essential Services as defined in Paragraph 2.1.E.1.	P	P	P	P	P	P	P	P	P	
<b><u>F. COMMERCIAL USES</u></b>										
1. Retail establishment selling convenience goods (including but not limited to foods, drugs and proprietary goods) and general merchandise (including but not limited to dry goods, apparel and accessories, furniture and home furnishings, home equipment, small wares and hardware) including discount and limited price variety store.	X	X	X	X	P	S	X	P	S	
2. Business Offices.	X	X	X	X	P	P	S	P	P	
3. Professional Offices.	X	X	X	S	P	P	S	P	P	
4. Banks and Lending Institutions.	X	X	X	X	P	X	X	P	X	
5. Restaurants.	X	X	X	X	P	S	X	P	S	
6. Drive-in eating establishments.	X	X	X	X	S	S	X	X	X	

**3.6 TABLE OF USES****F. COMMERCIAL USES (cont.)**

	<b><u>DISTRICTS</u></b>									
	<b>R-4</b>	<b>R-3</b>	<b>R-2</b>	<b>R-1</b>	<b>B-1</b>	<b>M-1</b>	<b>VR-1</b>	<b>VB-1</b>	<b>VM-1</b>	<b>W-1</b>
7. Filling station, service station (with or without convenience store).	X	X	X	X	S	S	X	S	S	
8. Motor vehicle dealership, repair garage, body shop, paint shop.	X	X	X	X	S	S	X	X	S	
9. Veterinary hospital/kennel.	S	S	S	X	X	S	X	X	S	
10. Pet Grooming.	X	X	X	X	P	S	X	P	S	
11. Convenience Store (without gas pumps).	X	X	X	S	P	S	X	P	S	
12. Airports, heliports, runways, control towers, administration bldgs., hangers.	X	X	X	X	X	S	X	X	X	
13. Indoor motion picture establishment.	X	X	X	X	P	X	X	P	X	
14. Indoor and outdoor for profit recreation establishment or clubs.	X	X	X	X	S	S	X	S	S	
15. Commercial parking lot/structure.	X	X	X	X	P	S	X	X	X	
16. Funeral home or parlor.	X	X	S	S	S	X	S	S	X	
17. Beauty parlor, barber shop.	X	X	X	X	P	S	S	P	S	
18. Uses, Adult in accordance with Section III, paragraph 3.9.	X	X	X	X	S	X	X	S	X	

**G. INDUSTRIAL USES**

1. Manufacturing, assembly, fabricating operations.	X	X	X	X	X	S	X	X	S	
2. Research and development corporate, and business offices.	X	X	X	X	P	P	S	P	P	
3. Warehousing and wholesaling.	X	X	X	X	X	P	X	X	S	
4. Freight and trucking terminals.	X	X	X	X	X	S	X	X	X	
5. Bulk storage and distribution of goods, except fuels.	X	X	X	X	X	P	X	X	P	
6. Bulk storage of fossil fuels.	X	X	X	X	X	S	X	S	S	
7. Earth products removal subject to provisions of Section XI.	S	S	X	X	X	S	X	X	X	
8. Commercial sawmills.	X	X	X	X	X	S	X	X	S	
9. Junk yards, recycling centers.	X	X	X	X	X	X	X	X	X	
10. Laundry, dry cleaning plant.	X	X	X	X	S	P	X	S	P	

**3.6 TABLE OF USES**

**G. INDUSTRIAL USES (cont.)**

	<b><u>DISTRICTS</u></b>									
	<b>R-4</b>	<b>R-3</b>	<b>R-2</b>	<b>R-1</b>	<b>B-1</b>	<b>M-1</b>	<b>VR-1</b>	<b>VB-1</b>	<b>VM-1</b>	<b>W-1</b>
11. Open storage of raw materials, finished goods, or construction equipment.	X	X	X	X	X	S	X	X	X	
12. Closed storage of raw materials, finished goods or construction equipment.	X	X	X	X	S	S	X	X	S	

**H. ACCESSORY USES**

1. Accessory bldgs. such as private garage, playhouse, woodshed, greenhouse, tool shed, private swimming pool, or similar structures or additions thereto, normally associated with a residence or residential use, subject to provisions of Section IV.	P	P	P	P	P	P	P	P	P	
2. Accessory private garage for not more than three non-commercial motor vehicles and, except on a farm, not more than one half-ton rated or less in size commercial motor vehicle, subject to the provisions of Section IV.	P	P	P	P	P	S	P	P	S	
3. Accessory storage of trailer, unregistered automobile or boat provided: it shall either be stored within a principal or accessory building or not less than 25 feet from any front lot line and 10 feet from any side lot line, and it shall not be used for dwelling or sleeping purposes.	P	P	P	P	P	S	P	P	S	
4. Travel trailer of a visitor provided that the trailer is located to comply with setbacks of the district and provided no travel trailers are located on the property for greater than 60 days per year.	P	P	P	P	P	S	P	P	S	
5. Accessory repair and storage facilities in any retail sales or consumer establishment provided: It shall not occupy more than 25 percent of the gross floor area.	X	X	X	X	P	X	X	P	X	
6. Accessory building for storage or outside storage clearly necessary to the operation and conduct, of a permitted principal wholesale, transportation, industrial and/or commercial use.	X	X	X	X	S	S	X	S	S	

**3.6 TABLE OF USES**

**H. ACCESSORY USES (cont.)**

	<u>DISTRICTS</u>									
	R-4	R-3	R-2	R-1	B-1	M-1	VR-1	VB-1	VM-1	W-1
7. Newsstand, barbershop, dining room or cafeteria and similar accessory services primarily for occupants or users thereof within a hotel, office, industrial building, hospital or transportation terminal facility.	X	X	S	S	P	P	S	P	P	
8. Accessory off-street parking loading spaces as required in Section VI.	P	P	P	P	P	P	P	P	P	
9. Filling of water or wet area (see Section XII)	S	S	S	S	S	S	S	S	S	
10. Seasonal greenhouse or farm stand selling goods primarily raised on the premises.	S	S	S	S	S	P	S	S	P	
11. Construction trailer(s) for a construction project provided a permit is secured from the Board of Selectmen under conditions they may prescribe.	P	P	P	P	P	P	P	P	P	
12. Temporary housing as a result of an emergency situation provided a permit is secured from the Board of Selectmen under conditions they may prescribe.	P	P	P	P	P	P	P	P	P	
13. Child Care Family Home in accord. with Section III, Paragraph 3.7.7.	P	P	P	P	P	P	S	S	S	
14. Child Care Family Group Home in accordance with Section III, paragraph 3.7.7.	S	S	S	S	S	S	S	S	S	
15. Small Wind Energy Systems in accordance with paragraph 3.11.	P	P	P	P	P	P	P	P	P	

**3.7 SPECIAL PROVISIONS**

The following provisions shall apply, as appropriate, to the Table of Uses, Section 3.6, of this Ordinance.

**3.7.1 Other Provisions:** All uses permitted by right or by special exception are subject to all other pertinent provisions of this Ordinance.

**3.7.2 Special Exception:** All special exceptions are subject to the provisions of Section 15.8.2 of this Ordinance.

**3.7.3 Home Business:** In addition to meeting the requirements of Section XV, paragraph 15.8.2 of this Ordinance, the applicant must agree to and demonstrate compliance with the following conditions in order to receive a special exception for a Home Business:

- (a) The use shall be carried out entirely within the dwelling or an accessory building located on the same premises as the dwelling, subject to the area limitations set forth in Section II, paragraph 2.1.H.1.
- (b) There shall be no display of goods or wares visible from the street.

- (c) The dwelling or accessory building in which the Home Business is conducted shall not be rendered objectionable to the neighborhood because of exterior appearance, emission of odors, gas, smoke, dust, noise, electrical disturbance, hours of operation or in any other way.
- (d) In a multi-family dwelling, the Home Business use shall in no way become objectionable or detrimental to any residential use within the multi-family dwelling. It shall include no features of design not customary in buildings for residential use.
- (e) The use shall not create a traffic safety hazard, nor shall it result in a substantial increase in the level of traffic congestion in the vicinity of the dwelling.
- (f) No outside storage of equipment will be allowed in connection with the Home Business.
- (g) Any special exception for a Home Business (i) shall be nontransferable, (ii) shall be issued to the individual applicant(s) only, and (iii) shall automatically expire when such applicant(s) is no longer the resident owner(s) of the dwelling.
- (h) Not more than one commercial vehicle in connection with the Home Business shall be stored on the premises. Parking areas associated with or needed for the Home Business, if any, shall be effectively screened from abutting and facing residential properties by appropriate fencing, four (4) feet in height, or by an evergreen planting at least three (3) feet in height, at the time of planting.
- (i) Site plan review by the Planning Board shall be required.

**3.7.4 Bed and Breakfast Home:** In addition to meeting the requirements of Section XV, Paragraph 15.8.2 of this Ordinance, if applicable, the applicant must agree to and demonstrate compliance with the following conditions to the Zoning Board of Adjustment or Board of Selectmen, as applicable, in order to operate a Bed and Breakfast Home:

- (a) The number of proposed Lodging Units (i) shall be compatible with the surrounding area, and (ii) shall be reasonable, taking into consideration the floor size and configuration of the Dwelling Unit and the size of the Lot on which such Dwelling Unit is located; provided, however, that in no event shall a Bed and Breakfast Home contain more than three (3) Lodging Units.
- (b) There shall be adequate off-street parking for the owner(s) and guests of the Bed and Breakfast Home in accordance with Article VI of this Ordinance. The physical and aesthetic impact of off-street parking shall not be detrimental to the existing character of the Lot and the surrounding neighborhood.
- (c) Breakfast shall be the only meal served to guests of a Bed and Breakfast Home and such meal may only be served to overnight guests of the Bed and Breakfast Home.
- (d) The septic system shall be adequate to accommodate the use.
- (e) The applicant shall comply with all applicable State statutes and regulations.
- (f) The maximum length of stay for guests of the Bed and Breakfast Home shall not exceed five (5) days in any thirty (30) day period.
- (g) Adequate guest records shall be maintained in accordance with the requirement of State regulations.
- (h) Site plan review shall be required.

**3.7.5 Telecommuting and Home Occupation:** In order for Telecommuting, as defined in Section II, Paragraph 2.1.T.1, or a Home Occupation, as defined in Section II, Paragraph 2.1.H.2, to be conducted as a permitted use, the following conditions must be met:

The use shall be carried out entirely within the dwelling.

There shall be no display of goods or wares or signs.

No outside structures not typically associated with residential telephone lines shall be allowed unless such structures are otherwise permitted under this Ordinance.

The use shall not create a traffic safety hazard, nor shall it result in a substantial increase in the level of traffic congestion in the vicinity.

The use shall not constitute a Home Business, as defined in Section II, Paragraph 2.1.H.1.

All Home Occupations shall be registered with the Board of Selectmen.

**3.7.6 Bed and Breakfast Inn:** In addition to meeting the requirements of Section XV, Paragraph 15.8.2 of this Ordinance, if applicable, the applicant must agree to and demonstrate compliance with the following conditions to the Zoning Board of Adjustment or Board of Selectmen, as applicable, in order to operate a Bed and Breakfast Inn:

- (a) The minimum lot size shall be that applicable to the zoning district for which the use is sought, with the exception that an existing Dwelling Unit which is non-conforming by reason of lot size restrictions may be converted to a Bed and Breakfast Inn, provided that there shall be no substantial modifications to the exterior of the buildings then existing on the lot.
- (b) Existing single Family Dwelling Units, Duplexes and Multi-Family Dwelling Units may be converted to a Bed and breakfast Inn provided that such a Dwelling Unit, or such a Dwelling Unit combined with any existing accessory buildings thereto, have a minimum heated floor area of 3,500 square feet and a maximum heated floor area of 5,000 square feet. Bed and Breakfast Inns built as new construction must likewise have a minimum heated floor area of 3,500 square feet and a maximum heated floor area of 5,000 square feet.
- (c) The number of Lodging Units proposed for a Bed and Breakfast Inn (i) shall be compatible with the surrounding area, and (ii) shall be reasonable, taking into consideration the floor size and configuration of the Dwelling Unit (and any existing accessory structures) and the size of the Lot on which such Dwelling Unit (and any accessory structure) are located; provided, however, that in no event shall a Bed and Breakfast Inn contain more than seven (7) Lodging Units.
- (d) The Dwelling Units for the owner(s) of the Bed and Breakfast Inn shall be adequate for the number of owner(s) and his, her or their family(ies).
- (e) There shall be adequate off-street parking for the owner(s) and guests of the Bed and Breakfast Inn in accordance with Article VI of this Ordinance. The physical and aesthetic impact of off-street parking shall not be detrimental to the existing character of the Lot and the surrounding neighborhood.
- (f) Breakfast shall be the only meal served to guests of a Bed and Breakfast Inn and such meal may only be served to overnight guests of the Bed and Breakfast Inn.
- (g) The applicant shall provide evidence that there are adequate sanitary facilities to accommodate the proposed number of Lodging Units and that the septic system complies with all applicable State statutes and regulations for the total number of proposed Lodging Units and the Dwelling Unit for the owner(s).
- (h) The applicant shall comply with all applicable State statutes and regulations.
- (i) The maximum length of stay for guests of the Bed and Breakfast Inn shall not exceed fourteen (14) days in any thirty (30) day period.

- (j) Adequate guests records shall be maintained in accordance with the requirements of State regulations.
- (k) Site plan review by the Planning Board shall be required.

**3.7.7 Child Care:** Applicant proposing to provide any child care services as defined in Section II of this Ordinance shall:

- Provide a minimum of 35 sq. ft. of indoor floor space per child (excluding hallways, lockers, wash and toilet rooms, unheated rooms, cooking areas of the kitchen, closets or offices as child care space);
- Provide a minimum of 50 sq. ft. of outdoor play space per child (with adequate fencing if located near roads, streams, ponds, rivers, or other dangerous areas);
- Meet the requirements of Section XV, Paragraph 15.8.2 of this Ordinance if a special exception is required;
- Obtain site plan review from the Planning Board; and
- Obtain a license from the State of New Hampshire in accordance with the Administrative Rule He-C 4000 and RSA 170-E, as necessary or as amended.

**3.7.8 Unoccupied Utility Structure:** Unoccupied structures up to two hundred (200) square feet, erected by a public utility or government agencies, and which are necessary for the furnishing of utility service for the public health, safety or general welfare, are permitted in all zones. The Planning Board may exempt such structures from any requirements of the Zoning Ordinance or other municipal regulations if the applicant demonstrates that the siting option is limited by virtue of said structure being a physically integrated component of the utility's transmission or distribution apparatus. Prior to the issuance of a building permit, the applicant must demonstrate to the Planning Board that such structures and their sites do not adversely affect the character of the area or create a hazard to the public or interfere with the surrounding area.

Any exemption shall terminate without further action of the Planning Board, if said structure ceases to be used for the provision of utility services. In addition, such structures must be removed and the sites restored to their original condition at the expense of the utility within 90 days of the discontinuance of use for such purpose.

### **3.8 FAIR DISTRICT (OVERLAY)**

**3.8.1 District Created:** There is hereby created an overlay zoning district which shall be known as the "Fair District".

**3.8.2 Overlay District:** The Fair District shall be an overlay district such that all land contained therein shall also be located in some other zoning district. The allowed uses for the land located in the Fair District shall be those allowed in the underlying zoning district and those allowed by the provisions of the Fair District.

**3.8.3 District Lines Described:** The property contained in the Fair District consists of properties identified on the Hopkinton Tax Maps as Map 222, Lots 57.2, 59, 60, 61, and 79.

**3.8.4 Fair Uses Permitted:** Property in the Fair District may be used for the purpose of conducting the agricultural fair historically known as the Hopkinton State Fair ("Fair"). The Fair will be held for a period not to exceed six (6) days over Labor Day weekend, with substantial setup activities being conducted for not more than ten (10) days prior to the Fair and substantial post-Fair activities being conducted for not more than ten (10) days after the close of the Fair. This use shall include the right to conduct the ordinary and typical activities that are generally carried on during an agricultural fair and which have been conducted at the Hopkinton State Fair in recent years, as well as any additional uses not inconsistent with such an event as may become common as this type of event evolves over the years.

This use is intended to include but not necessarily be limited to the following: agricultural shows, exhibits and sales, educational exhibits and events, temporary food sales, temporary retail and commercial sales, harness racing, motor sports events, concerts or other grandstand entertainment shows, a circus, a midway, a parade, musters, craft and antique shows, sales and camping for exhibitors and participants, and all other appurtenant activities normally associated with such an event during the specified period.

**3.8.4.1 Conditions:** As a condition precedent to the use of the property for the uses set forth in Section 3.8.4 above, the owner or other person or entity responsible for the carrying on of the Fair (“the owner/operating entity”) shall present to the Selectmen, no later than April 1<sup>st</sup>, an estimate of the number of persons anticipated to attend the event and an indication of the nature of uses that will be carried on, in order that the same can be communicated to the agencies of the Town responsible for Fire/Police/Emergency Medical Services (EMS) functions.

**3.8.4.2 Agency Response:** The various agencies identified herein shall, within twenty (20) days of the receipt of the information provided pursuant to this section respond to the Selectmen with the following:

- I. An indication of the amount of additional manpower, including identification of any special skills that they deem will be required for the proper and safe management of the event as well as the proper, safe and effective provision of the particular health or safety service to the event.
- II. An outline of the plan for implementation of and provision of the service in question.
- III. An estimate of the anticipated labor and equipment (purchase/rental/use) cost of the provision of such service.

**3.8.4.3 Bond/Security for Expense:** The Selectmen shall, within fifteen (15) days of the receipt of the information provided pursuant to Sections 3.8.4.1 and 3.8.4.2 above, notify the owner/operating entity of the information so received, and of the anticipated expenses to be incurred by the Town. The owner/operating entity shall provide adequate security for the payment of such expenses in accordance with a timetable provided by the Selectmen to the owner/operating entity; said security shall be reasonable and is intended to secure to the Town the payment of the anticipated expenses. The Selectmen may also identify any additional conditions which the owner/operating entity shall adhere to in order to adequately provide for the safe conduct of the Fair in a manner that will minimize risk to the public and property.

**3.8.4.4 Additional Expenses:** Notwithstanding the foregoing, the Town shall have the right to recover from the owner/operating entity all actual expenses incurred by the Town as a result of the Fair. The owner/operating entity of the Fair shall remit payment to the Town for all such expenses no later than thirty (30) days after receipt of the bill.

**3.8.5 Non-Fair Uses Permitted without Special Use Permit:** In addition to the uses permitted under Section 3.8.4 above, land in the Fair District may be used for other events at other times of the year. Such events for which land in the Fair District may be used shall include ordinary and typical activities that are generally conducted on the property owned by an agricultural fair, which shall be limited to 4-H and other youth events, livestock shows and sales, horse shows, grange events, community events, arts and educational events, crafts and antique shows, school events, training clinics, and other similar events whose primary purpose is to benefit non-profit organizations. The duration of any individual non-fair use shall not exceed more than six (6) consecutive days. These uses shall be conducted under the following conditions:

**3.8.5.1** The owner/operating entity shall provide the Selectmen with information identifying the nature of the use or uses that will be conducted, and an estimate of the number of persons anticipated to attend the event, at least forty (40) days prior to the event.

**3.8.5.2** The anticipated attendance at any such event shall be no greater than one thousand (1000) persons per day. The owner/operating entity shall present to the Selectmen sufficient data

to assure that its estimate of attendance is reliable and supported by realistic assumptions or historical data.

**3.8.6 Non-Fair Uses Permitted by Special Use Permit:** In addition to the use permitted in Section 3.8.5, and pursuant to the authority of the Town to promulgate innovative land use controls as set forth in RSA 674:21, land in this district may be used for additional events, provided the same is approved by the ZONING BOARD OF ADJUSTMENT as a SPECIAL USE PERMIT, after a finding that the proposed use meets all criteria listed below, made after due notice and hearing. Such hearing shall be conducted in the same manner as provided for hearings for a special exception.

**3.8.6.1** The party requesting the proposed permit shall demonstrate that the proposed use will be conducted in a manner that meets all the standards for the grant of a SPECIAL EXCEPTION set forth in this ordinance in Section 15.8.2.

**3.8.6.2** The proposed use shall not contemplate the anticipated attendance at the event of a number greater than 26,000 persons per day and the applicant shall present to the Board sufficient data to assure that their estimates of attendance are reliable and supported by realistic assumptions or historical data.

**3.8.6.3** Concurrent with the filing of an application to the Zoning Board of Adjustment for a Special Use Permit, the applicant shall provide the Selectmen the same information indicated in Section 3.8.4.1, at which time the Selectmen shall proceed to conduct the same review contemplated in Section 3.8.4.1 through 3.8.4.4. Failure to comply with a reasonable order regarding the provision of such information or the security contemplated in said Sections will invalidate the special use permit request.

**3.8.6.4** Any request for a Special Use Permit pursuant to this Section shall be filed at least thirty (30) days before the Zoning Board of Adjustment meeting at which the application will be heard, and at least sixty (60) days before the anticipated event, in order to insure sufficient time for hearings and the Selectmen's review process outlined above.

**3.8.7 Temporary Use of Recreational Camping Vehicles:** Annually, upon application by the owner/operating entity, the Board of Selectmen may approve and issue a permit for the temporary use of recreational vehicles within the Fair District as offices or for occupancy by individuals traveling with such units, their families, and persons traveling with them, as may be necessary or convenient to the participation of such persons at events permitted under the provisions of this Section 3.8, provided that such use shall not extend beyond a reasonable period of time not to exceed ten (10) days before and ten (10) days after each approved event. Further, such use shall conform to the requirements of the State Department of Health related to sanitation facilities.

**3.9 USE, ADULT:** In addition to meeting the requirements of Section XV, Paragraph 15.8.2 of this Ordinance, the applicant must agree to and demonstrate compliance with the following conditions in order to receive a special exception for an Adult Use:

- (a) No adult use shall be located within 1,000 feet of the property line of a church, cemetery, school, day care center, or within 500 feet of a property line of a residence.
- (b) No sexually explicit materials shall be visible from outside the building.
- (c) No private viewing rooms or booths shall be constructed unless one side is always open to a public central area.
- (d) No one under the age of 18 shall be permitted inside an area containing such a use and a procedure shall be developed to keep those under 18 from entering.

### **3.10 PERSONAL WIRELESS SERVICE FACILITIES**

**3.10.1 - Authority:** This Ordinance is adopted by the Town of Hopkinton on March 13, 2001, in accordance with the authority granted in New Hampshire Revised Statutes Annotated 674:16, 674:21, and 12-K.

**3.10.2 - Purposes:** These regulations have been enacted in order to establish general guidelines for the siting of personal wireless service facilities ("PWSFs"), including towers and antennas and to enhance and fulfill the following goals:

- (a) Preserve the authority of the Town of Hopkinton to regulate and to provide for reasonable opportunity for the siting of personal wireless service facilities, by enhancing the ability of providers of personal wireless services to provide such services to the community quickly, effectively, and efficiently.
- (b) Reduce adverse impacts such personal wireless service facilities may create, including, but not limited to: impacts on aesthetics, environmental sensitive areas, conservation lands, historically significant locations, ridgelines, scenic areas and vistas, flight corridors, health and safety by injurious accidents to person and property, and prosperity through protection of property values.
- (c) Provide for co-location and minimal impact siting options through an assessment of technology, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- (d) Permit the construction of new personal wireless service facilities only where all other reasonable opportunities have been exhausted, and to encourage the construction of new PWSFs in a way that minimizes the adverse visual impact of such facilities.
- (e) Require cooperation and co-location, to the highest extent possible, between competitors in order to reduce cumulative negative impacts upon the Town of Hopkinton.
- (f) Provide constant maintenance and safety inspections for any and all personal wireless service facilities.
- (g) Provide for the removal of abandoned personal wireless service facilities that are no longer inspected for safety concerns and code compliance. Provide a mechanism for the Town to remove these abandoned facilities to protect the citizens from imminent harm and danger.
- (h) Provide for the removal of personal wireless service facilities that are technologically outdated.

#### **3.10.3 - Definitions:**

**Antenna** shall mean any exterior apparatus designed for telephonic, radio, television, personal communications service (PCS), pager network, or any other communications through the sending and/or receiving of electromagnetic waves of any bandwidth.

**Average tree canopy height** shall mean the average height above ground level of all trees over a specified height within a fifty (50) foot radius of the center of the mount of a PWSF, such average to be determined by inventorying the trees to remain after the construction of the PWSF.

**Camouflaged** shall mean a personal wireless service facility that is disguised, hidden, part of an existing or proposed building or structure, or placed within an existing or proposed building or structure.

**FAA** shall mean the Federal Aviation Administration.

**FCC** shall mean the Federal Communications Commission.

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

**Mount** shall mean the structure or surface upon which antennas are mounted and include roof-mounted, side-mounted, ground-mounted, and structure-mounted types.

**Personal Wireless Service Facility(ies) or PWSF(s) or facility(ies)** shall mean 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, which for purposes of this Ordinance shall also include, as the context may require, all towers and antennas used in connection therewith.

**Personal Wireless Services** shall mean any wireless telecommunications services, and commercial mobile services including cellular telephone services, personal communications services, and mobile and radio paging services as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332 (c)(7)(C)(i).

**Planning Board or Board** shall mean the Town of Hopkinton Planning Board, which shall be the regulator of this Ordinance.

**Pre-existing Facilities** shall mean any PWSF, tower or antenna lawfully constructed or permitted prior to the adoption of this Ordinance, as well as the replacement of any such PWSF, tower or antenna, provided that such replacement meets the requirements of Paragraph 3.10.6(A). Pre-existing Facilities shall also mean any PWSF, tower or antenna lawfully constructed in accordance with this Ordinance that predates an application currently before the Board.

**Radio frequency radiation** shall mean the emissions from personal wireless service facilities.

**Stealth Facility/Stealth Technology** shall mean any PWSF designed to look like a structure which may commonly be found in the area surrounding such proposed facilities such as, but not limited to, flagpoles, farm silos, ranger or forest fire watch towers, or artificial trees.

**Tower** shall mean any structure that is designed and constructed primarily for the purpose of supporting one or more antennas. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, stealth facilities, and the like.

#### **3.10.4: - Overlay District:**

- (a) **General.** Personal wireless service facilities shall be permitted as a principal or accessory (secondary) use in all zoning districts within the Town of Hopkinton governed by this Ordinance only after obtaining a Conditional Use Permit as provided in this Ordinance.
- (b) **Existing Uses or Structures.** The existence of a permitted use on a site shall not preclude the addition of a PWSF as a secondary use provided all other provisions of this Ordinance are satisfied. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on such lot. For purposes of determining whether the installation of a PWSF, tower or antenna complies with district development regulations, including but not limited to set-back requirements, lot-coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the PWSF, tower or antenna may be located on an easement or leased parcel within such lot. PWSF, towers that are constructed, and antennas that are installed, in accordance with the provisions of this Ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.

#### **3.10.5: - Applicability:**

- (a) **General.** The terms of this Ordinance shall apply to all personal wireless service facilities proposed to be located within the Town of Hopkinton whether on property owned by the Town

of Hopkinton, on privately owned property, or on property owned by another governmental entity that acts in a proprietary capacity to lease such property to a carrier.

(b) Exceptions.

1. **Amateur Radio / Receive-Only Antennas.** This Ordinance shall not govern any tower, or the installation of any antenna that is under 70 feet in height and is owned and operated by a federally- licensed amateur radio station operator or is used exclusively for receive only antennas. This Ordinance adopts the provisions and limitations as referenced in RSA 674:16, IV.
2. **Essential Services & Public Utilities.** Personal wireless service facilities shall not be considered infrastructure, essential services, or public utilities, as defined or used elsewhere in the Town's ordinances and regulations. Siting for personal wireless service facilities is a use of land, and is addressed by this Paragraph 3.10.

**3.10.6 - Location, Construction, and Performance Requirements:**

- (a) **Setbacks.** All personal wireless service facilities, including equipment compounds, utility buildings, structures, towers and antennas must meet the minimum setback requirements of this Ordinance. Further, freestanding facilities must be set back from all lot lines and public rights-of-way a minimum distance equal to 125% of the tower's height; provided, however, that this requirement shall not apply to PWSFs and appurtenant facilities (1) located on or within existing buildings or structures; or structures less than thirty-five (35) feet in height from surrounding grades, and (2) camouflaged as otherwise required by this Ordinance.

(b) **Height Limitations.**

1. **General.** Subject to any stricter standards as set forth below, a personal wireless service facility shall not exceed ninety (90) feet in height, measured as the vertical distance from the average finished grade surrounding the facility, to its highest point, including all attachments.
2. **PWSFs in Wooded Areas.** A personal wireless service facility located in a wooded area shall not project higher than twenty (20) feet above the average tree canopy height of the proposed site. Further, a PWSF located in a wooded area must be camouflaged to blend in with the natural character of such area and must employ stealth technology in order to make the site less obtrusive to surrounding properties and the community. Appropriate stealth technologies for wooded areas include: ranger or forest fire watch towers of a size typically found in the State of New Hampshire, artificial trees, or other structures acceptable to the Planning Board.
3. **PWSFs in Fields or Agricultural Areas.** A personal wireless service facility located in a field or other open area without a tree canopy shall employ stealth technology. Appropriate stealth technologies for fields or open areas include agricultural silos, windmills, or other structures acceptable to the Planning Board and of a size typically found in the State of New Hampshire.
4. **PWSFs in or on Existing Structures.** A PWSF may be located on or within an existing building or structure provided that such facilities shall employ stealth technologies and shall be architecturally compatible with the host building or structure.
5. **New PWSF Structures.** A PWSF may be located in a new building or structure provided that such building or structure (a) shall not exceed the maximum building height in the zoning district where a PWSF is proposed, and (b) shall be architecturally compatible with the buildings in the immediately surrounding area.

- (c) **Location Prioritization.** Any new personal wireless service facility shall be located in accordance with the following priorities:

1. Concealed or camouflaged on or within an existing building or structure, including but not limited to an historic building, an agricultural building or structure, a water tank, a utility transmission pole, an outdoor lighting structure, or a church steeple.
  2. On or within a new building or structure having a height not greater than the maximum building height in the zoning district where the PWSF is proposed.
  3. On an existing PWSF (co-location);
  4. On a new facility which is camouflaged using stealth technologies subject to the height limitations set forth above.
- (d) **Easements or Leased Areas.** If a PWSF is to be located on an easement or leased area, said easement or leased area shall have a minimum area equal to an area having a radius of 125% of the tower's height plus additional area for accessory structures and access, if required.
- (e) **Tower Construction.** Traditional lattice, guyed, and monopole towers are prohibited. All new PWSFs must employ appropriate stealth technologies that are visually compatible and in scale with the rural character of the Town and its villages and shall satisfy the following additional requirements:
1. The design of the tower, buildings and related structures on a PWSF site shall, to the maximum extent possible, use materials, colors, textures, screening, and landscaping that will blend such facilities with the natural setting and built environment. These facilities shall also be subject to all other requirements of the Zoning Ordinance and Site Plan Review Regulations.
  2. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
  3. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the governing authority may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
  4. Towers shall not contain any permanent or temporary signs, writing, symbols, or any graphic representation of any kind, except as required by law for such facilities.
  5. An applicant constructing a PWSF in a wooded area shall utilize appropriate construction techniques to minimize damage to trees and other vegetation within the PWSF site and surrounding areas. Moreover, all trees used to determine the average tree canopy height for the PWSF site shall not be damaged or removed during construction, maintenance, repair and operation of the PWSF.
- (f) **Viewshed Analysis.** As part of the review process the applicant shall conduct a viewshed analysis to include, at a minimum, (1) a mapped viewshed delineation; and (2) a test balloon or crane extension moored at the site to indicate the visibility of proposed towers and/or antennas. Photographs or video footage of the balloon or crane test shall be provided to the Planning Board and shall provide views of the tower from the PWSF site and other vantage points as determined by the Planning Board.
- (g) **Landscaping.** The following landscaping requirements shall apply to personal wireless service facilities constructed under this ordinance.
1. Towers and all accessory buildings and fencing shall be landscaped with a buffer of plant materials that effectively screens the view of the tower compounded from adjacent

residential property. The standard buffer shall consist of a landscaped strip at least ten (10) feet wide outside the perimeter of the compound. Natural vegetation is preferred.

2. In locations where the visual impact of the tower would be minimal, the landscaping requirement may be reduced or waived entirely.
  3. Existing mature tree growth and natural landforms on the site shall be preserved to the maximum extent possible. In some cases, PWSFs sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
- (h) **Federal Requirements.** All PWSFs must meet or exceed current standards and regulations of the FAA, FCC, and any other agency of the federal government with the authority to regulate such facilities. If such standards and regulations are changed, the owners of the PWSFs governed by this Ordinance shall bring such facilities into compliance with such revised standards and regulations within six (6) months of the effective date of such revised standards and regulations, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring a PWSF into compliance with such revised standards and regulations shall constitute an abandonment and grounds for the removal of the PWSF in accordance with Paragraph 3.10.10 at the owner's expense through the execution of the posted security.
- (i) **Building Codes-Safety Standards.** To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable local building codes and the applicable standards for towers that are published by the Electronic Industries Association, as amended from time to time. If, upon inspection, the Town concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the tower, the owner shall have 30 days to bring such tower into compliance with such standards. If the owner fails to bring such tower into compliance within 30 days, such action shall constitute an abandonment and grounds for the removal of the tower in accordance with Paragraph 3.10.10 at the owner's expense through execution of the posted security.

### **3.10.7 - Conditional Use Permits:**

- (a) **General.** Any person seeking to construct a personal wireless service facility shall apply to the Planning Board for Site Plan Review in accordance with the requirements set forth in the Town's Site Plan Review Regulations. In addition, such applicant shall submit the information required in this Paragraph 3.10.7.
- (b) **Issuance of Conditional Use Permits.** In granting a Conditional Use Permit, the Planning Board may impose such conditions as the Board determines are necessary to minimize any adverse effect of the proposed PWSF on adjoining properties, and to preserve the intent of this Ordinance.
1. **Procedure on Applications.** The Planning Board shall act upon an application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4. In addition, applicants shall submit a list of all communities within twenty (20) miles of the town, and the local newspapers used by the towns, with mailing addresses for each, as required by RSA 12-K. Applicants shall also pay all fees required to notify each community.
  2. **Decisions.** Possible decisions that may be rendered by the Planning Board include approval, approval with conditions, disapproval without prejudice, or disapproval. All decisions shall be rendered in writing, in accordance with RSA 676:3. Further, in accordance with the National Wireless Telecommunications Siting Policy - Section 332(c)(47 U.S.C. 332(c)), a denial shall be based upon substantial evidence contained in the written record. Pursuant to RSA 676:5, any decision made under this ordinance cannot be appealed to the Board of Adjustment, but may be appealed under State or Federal law.

3. **Application Requirements.** All applications shall meet the standards set forth in Paragraph 3.10.6.
4. **Other Factors.** Other factors to be considered by the Board in reviewing applications shall include:
  - (a) The height of the proposed tower or other structure shall not exceed that which is essential for its intended use and public safety.
  - (b) The proximity of a PWSF to residential developments or zones.
  - (c) Nature of uses on adjacent and nearby properties.
  - (d) Surrounding topography.
  - (e) Surrounding tree coverage and foliage.

Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.

Proposed ingress and egress to the site.

Availability of suitable existing towers and other structures as discussed in Section 3.10.6.C.

Visual impacts on view-sheds, ridgelines, public parks, natural scenic vistas, historic buildings, major view corridors and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.

5. **Plan Requirements.** Each applicant requesting a Conditional Use Permit under this Ordinance shall submit a scaled plan in accordance with the Site Plan Review Regulations and further information including:
    - a) A scaled elevation view;
    - b) Topography;
    - c) Propagation Maps;
    - d) Radio frequency coverage;
    - e) Setbacks;
    - f) Adjacent uses (up to 400 feet away);
    - g) The location of all buildings and structures within 500 feet of the proposed tower;
    - h) Diagram of the average tree canopy height determined for the proposed PWSF site;
    - i) Driveways and parking;
    - j) Fencing; and
    - k) Landscaping.
- (c) **Other Information Required.** In order to assess compliance with this Ordinance, the Planning Board shall require the applicant for a PWSF to submit the following information prior to any decision by the Board:

1. The applicant shall submit written proof that the proposed use/facility complies with the FCC regulations on radio frequency (RF) exposure guidelines.
  2. The applicant shall submit written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed wireless telecommunication facility, tower or antenna, as may be required under applicable FCC rules, and the results of any such evaluation. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and/or NEPA, the applicant shall submit the EA or EIS to the Board prior to the beginning of the federal thirty (30) day comment period, and the Town proceedings with respect to the proposed wireless telecommunication facility, tower or antenna shall become part of the FCC application requirements.
  3. The applicant shall submit written proof that it has complied with the requirements of Section 106 of the National Historic Preservation Act.
  4. Each applicant for a PWSF shall provide to the Planning Board an inventory of all existing personal wireless service facilities and towers that are within the jurisdiction of the Town and those within two miles of the border thereof, including specific information about the location, height, design of each tower, as well as economic and technological feasibility for co-location on the inventoried towers. The Planning Board may share such information with other applicants applying for approvals or conditional use permits under this Ordinance or other organizations seeking to locate antennas within the jurisdiction of the governing authority, provided, however, the Planning Board is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.
- (d) If an applicant proposes to build a new PWSF, the applicant shall submit written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna. The evidence shall consist of:
1. Substantial evidence that no existing PWSFs, towers or structures are located within the geographic area which meets the applicant's engineering requirements, provided that a description of the geographic area required is also submitted.
  2. Substantial evidence that existing towers in the Town are not of sufficient height to meet the applicant's engineering requirements, with supporting reasons.
  3. Substantial evidence that the existing towers or structures do not have sufficient structural strength to support applicant's proposed antenna and related equipment.
  4. Substantial evidence that the applicant's proposed antenna or structures would not cause electromagnetic interference with other antennae on the existing towers, and visa versa.
  5. Substantial evidence that the fees, costs, or contractual provisions required by the owner in order to share the existing tower or structure are unreasonable. Costs exceeding new tower development are presumed to be unreasonable.
  6. Substantial evidence that the applicant can demonstrate other limiting factors that render existing towers and structures unsuitable.
  7. Information on the number of sites for PWSFs each provider will require.
  8. Information on sites outside of the Town of Hopkinton that are being considered.
  9. Information on how future technology may reduce or eliminate the need for towers.

10. Information on the impact, if any, of the PWSF on a competitor's facility on the same property.
  11. Information on whether it is feasible for carriers to locate base station equipment underground.
- (e) The applicant proposing to build a new PWSF shall submit an agreement with the Town that allows for the maximum allowance of co-location upon the new facility. Such statement shall become a condition to any approval. This statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other personal wireless service providers. Failure to provide such an agreement is evidence of the applicant's unwillingness to cooperate with the orderly and well-planned development of the Town of Hopkinton and grounds for a denial.
- (f) The applicant shall submit the engineering information detailing the size and coverage required for the facility location. The Board may retain the services of a consultant qualified in personal wireless services to review the application and all associated information submitted by the applicant. The Board may further require, pursuant to RSA 676:4, I (g), that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full.

#### **3.10.8 - Waivers:**

- (a) **General.** The Planning Board may grant waivers to these regulations provided that a majority of the Board finds that the criteria set forth in Article 15.8.3 of the Zoning Ordinance regarding "variances" have been satisfied.
- (b) **Conditions.** In approving waivers, the Board may impose such conditions, as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.
- (c) **Procedures.** A petition for any such waiver shall be submitted in writing by the applicant for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

**3.10.9 - Bonding and Security Insurance:** In recognition of the extremely hazardous situation presented by abandoned and unmonitored PWSFs, towers and antennas, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of such abandoned facilities in the event that such facility is abandoned and the owner thereof is incapable and unwilling to remove the facility in accordance with Paragraph 3.10.10. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed PWSF, tower or antenna prior to the construction of such facilities.

**3.10.10 - Removal of Abandoned PWSFs:** Any PWSF, tower or antenna that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said facility provides proof of quarterly inspections. The owner shall remove the abandoned structure within ninety (90) days of receipt of a declaration of abandonment from the Town notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the tower. If the abandoned PWSF, tower or antenna is not removed within ninety (90) days of the determination of abandonment, the Town may execute on the security posted in accordance with Paragraph 3.10.9 and have the facility removed. If there are two or more users of a single facility, this provision shall not become effective until all users cease using the facility.

**3.10.11 – Requirement to Maintain Stealth Technology:** Where stealth technology has been employed to reduce the aesthetic impact of a PWSF, said technology or camouflaging techniques must be maintained in perpetuity for the life of the PWSF. Failure to maintain said technology/techniques shall be considered abandonment and grounds for removal of said facility in accordance with paragraph 3.10.9 and 3.10.10 of this Ordinance.

### **3.11 SMALL WIND ENERGY SYSTEMS**

**3.11.1 Authority:** This Ordinance is adopted by the Town of Hopkinton on March 10, 2009, in accordance with the authority granted in New Hampshire Revised Statutes Annotated 674:21, 674:62-66, and the purposes outlined in RSA 672:1-III-a.

**3.11.2 Purpose:** The purpose of this Small Wind Energy Systems Ordinance is to accommodate small wind energy systems in appropriate locations, while protecting the public's health, safety and welfare. In addition, this ordinance provides a permitting process for small wind energy systems to ensure compliance with the provisions of the requirements and standards established herein.

#### **3.11.3 Definitions:**

**Meteorological tower (met tower).** Includes the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment for anemometers and vanes, data loggers, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. For the purpose of this ordinance, met towers shall refer only to those whose purpose are to analyze the environmental factors needed to assess the potential to install, construct or erect a small wind energy system.

**Modification.** Any change to the small wind energy system that materially alters the size, type or location of the small wind energy system. Like-kind replacements shall not be construed to be a modification.

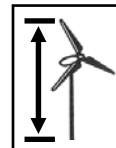
**Net metering.** The difference between the electricity supplied to a customer over the electric distribution system and the electricity generated by the customer's small wind energy system that is fed back into the electric distribution system over a billing period.

**Power grid.** The transmission system, managed by ISO New England, created to balance the supply and demand of electricity for consumers in New England.

**Shadow flicker.** The visible flicker effect when rotating blades of the wind generator cast shadows on the ground and nearby structures causing a repeating pattern of light and shadow.

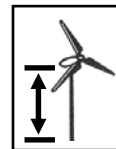
**Small wind energy system.** A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics, which has a rated capacity of 100 kilowatts or less and will be used primarily for onsite consumption.

**System height.** The vertical distance from ground level to the tip of the wind generator blade when it is at its highest point.



**Tower.** The monopole, guyed monopole or lattice structure that supports a wind generator.

**Tower height.** The height above grade of the fixed portion of the tower, excluding the wind generator.



**Wind generator.** The blades and associated mechanical and electrical conversion components mounted on top of the tower whose purpose is to convert kinetic energy of the wind into rotational energy used to generate electricity.

#### **3.11.4 Procedure for Review:**

1. **Building Permit.** Small wind energy systems and met towers are an accessory use permitted in all zoning districts where structures of any sort are allowed. No small wind energy system shall be erected, constructed, or installed without first receiving a building permit from the building inspector. A building permit shall be required for any physical modification to an existing small wind energy system. Met towers that receive a building permit shall be permitted on a temporary basis not to exceed 3 years from the date the building permit was issued.
2. **Application.** Applications submitted to the building inspector shall contain a site plan with the following information:
  - (a) Property lines and physical dimensions of the applicant's property.
  - (b) Location, dimensions, and types of existing major structures on the property.
  - (c) Location of the proposed small wind energy system, foundations, guy anchors and associated equipment.
  - (d) Tower foundation blueprints or drawings.
  - (e) Tower blueprints or drawings.
  - (f) Setback requirements as outlined in this ordinance.
  - (g) The right-of-way of any public road that is contiguous with the property.
  - (h) Any overhead utility lines.
3. Small wind energy system specifications, including manufacturer, model, rotor diameter, tower height, tower type, nameplate generation capacity.
4. Small wind energy systems that will be connected to the power grid shall include a copy of the application for interconnection with their electric utility provider.
5. Sound level analysis prepared by the wind generator manufacturer or qualified engineer.
6. Electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the NH State Building Code.
7. Evidence of compliance or non-applicability with Federal Aviation Administration requirements.
8. List of abutters to the applicant's property.
  - (a) **Abutter and Regional Notification.** In accordance with RSA 674:66, the building inspector shall notify all abutters and the local governing bodies by certified mail upon application for a building permit to construct a small wind energy system. The public will be afforded 30 days to submit comments to the building inspector prior to the issuance of the building permit. The building inspector shall review the application for regional impacts per RSA 36:55. If the proposal is determined to have potential regional impacts, the building inspector shall follow the procedures set forth in RSA 36:57, IV.

#### **3.11.5 Standards:**

1. The building inspector shall evaluate the application for compliance with the following standards;

- (a) **Setbacks.** The setback shall be calculated by multiplying the minimum setback requirement number by the system height and measured from the center of the tower base to property line, public roads, or nearest point on the foundation of an occupied building.

<b>Minimum Setback Requirements</b>			
Occupied Buildings on Participating Landowner Property	Occupied Buildings on Abutting Property	Property Lines of Abutting Property and Utility Lines	Public Roads
0	1.5	1.1	1.5

- i) Small wind energy systems must meet all setbacks for principal structures for the zoning district in which the system is located.
  - ii) Guy wires used to support the tower are exempt from the small wind energy system setback requirements.
- (b) **Tower:** The maximum tower height shall be restricted to 35 feet above the tree canopy within 300 feet of the small wind energy system. In no situation shall the tower height exceed 150 feet.
- (c) **Sound Level:** The small wind energy system shall not exceed 60 decibels using the A scale (dBA), as measured at the site property line, except during short-term events such as severe wind storms and utility outages.
- (d) **Shadow Flicker:** Small wind energy systems shall be sited in a manner that does not result in significant shadow flicker impacts. Significant shadow flicker is defined as more than 30 hours per year on abutting occupied buildings. The applicant has the burden of proving that the shadow flicker will not have significant adverse impact on neighboring or adjacent uses. Potential shadow flicker will be addressed either through siting or mitigation measures.
- (e) **Signs:** All signs including flags streamers and decorative items, both temporary and permanent, are prohibited on the small wind energy system, except for manufacturer identification or appropriate warning signs.
- (f) **Code Compliance:** The small wind energy system shall comply with all applicable sections of the New Hampshire State Building Code.
- (g) **Aviation:** The small wind energy system shall be built to comply with all applicable Federal Aviation Administration regulations including but not limited to 14 C.F.R. part 77, subpart B regarding installations close to airports, and the New Hampshire Aviation regulations, including but not limited to RSA 422-b and RSA 424.
- (h) **Visual Impacts:** It is inherent that small wind energy systems may pose some visual impacts due to the tower height needed to access wind resources. The purpose of this section is to reduce the visual impacts, without restricting the owner's access to the optimal wind resources on the property.
- i) The applicant shall demonstrate through project site planning and proposed mitigation that the small wind energy system's visual impacts will be minimized for surrounding neighbors and the community. This may include, but not be limited to information regarding site selection, wind generator design or appearance, buffering, and screening of ground mounted electrical and control equipment. All electrical conduits shall be underground, except when the financial costs are prohibitive.
  - ii) The color of the small wind energy system shall either be the stock color from the manufacturer or painted with a non-reflective, unobtrusive color that blends in with the

surrounding environment. Approved colors include but are not limited to white, off-white or gray.

- iii) A small wind energy system shall not be artificially lit unless such lighting is required by the Federal Aviation Administration (FAA). If lighting is required, the applicant shall provide a copy of the FAA determination to establish the required markings and/or lights for the small wind energy system.
- (i) Approved Wind Generators: The manufacturer and model of the wind generator to be used in the proposed small wind energy system must have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or a similar list approved by the state of New Hampshire, if available.
- (j) Utility Connection: If the proposed small wind energy system is to be connected to the power grid through net metering, it shall adhere to RSA 362-A:9.
- (k) Access: The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- (l) Clearing: Clearing of natural vegetation shall be limited to that which is necessary for the construction, operation and maintenance of the small wind energy system and as otherwise prescribed by applicable laws, regulations, and ordinances.

#### **3.11.6 Abandonment:**

1. At such time that a small wind energy system is scheduled to be abandoned or discontinued, the applicant will notify the building inspector by certified U.S. mail of the proposed date of abandonment or discontinuation of operations.
2. Upon abandonment or discontinuation of use, the owner shall physically remove the small wind energy system within 90 days from the date of abandonment or discontinuation of use. This period may be extended at the request of the owner and at the discretion of the building inspector. "Physically remove" shall include, but not be limited to:
  - a. Removal of the wind generator and tower and related above-grade structures.
  - b. Restoration of the location of the small wind energy system to its natural condition, except that any landscaping, grading or below-grade foundation may remain in its same condition at initiation of abandonment.
3. In the event that an applicant fails to give such notice, the system shall be considered abandoned or discontinued if the system is out-of-service for a continuous 12-month period. After the 12 months of inoperability, the building inspector may issue a Notice of Abandonment to the owner of the small wind energy system. The owner shall have the right to respond to the Notice of Abandonment within 30 days from Notice receipt date. After review of the information provided by the owner, the building inspector shall determine if the small wind energy system has been abandoned. If it is determined that the small wind energy system has not been abandoned, the building inspector shall withdraw the Notice of Abandonment and notify the owner of the withdrawal.
4. If the owner fails to respond to the Notice of Abandonment or if, after review by the building inspector, it is determined that the small wind energy system has been abandoned or discontinued, the owner of the small wind energy system shall remove the wind generator and tower at the owner's sole expense within 3 months of receipt of the Notice of Abandonment. If the owner fails to physically remove the small wind energy system after the Notice of Abandonment procedure, the building inspector may pursue legal action to have the small wind energy system removed at the owner's expense.

**3.11.7 Violation:**

It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this ordinance. Small wind energy systems installed prior to the adoption of this ordinance are exempt from this ordinance except when modifications are proposed to the small wind energy system.

**3.11.8 Penalties:**

Any person who fails to comply with any provision of this ordinance or a building permit issued pursuant to this ordinance shall be subject to enforcement and penalties as allowed by NH Revised Statutes Annotated Chapter 676:17.