

Personal Wireless Service Facilities Ordinance

for the Town of

Tamworth, New Hampshire

Effective Date March 12, 2002

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1. TITLE

This Ordinance shall be known and may be cited as the "Town of Tamworth Personal Wireless Service Facility Ordinance". It is hereafter referred to as "this Ordinance".

2. PURPOSE, AUTHORITY AND APPLICABILITY

2.1 Purpose

It is the express purpose of this Ordinance to protect public health, safety and welfare of the community with land use regulations that permit carriers to locate personal wireless service facilities (hereafter as PWSF or PWSF's) within the Town of Tamworth only when all other reasonable opportunities have been exhausted and only where construction of a new PWSF will serve the public interest and provide a service benefit to the citizens of Tamworth. This Ordinance enables the review of the locating and siting of PWSF's by the Town of Tamworth.

2.2 Authority

This Ordinance is adopted pursuant to the authority of RSA 674:16. If any provision of this Ordinance differs or appears to conflict with any other Ordinance or regulation of the Town of Tamworth, the provision imposing the greater restriction or stringent standard shall be controlling.

2.3 Applicability

The terms of this Ordinance and the site plan review regulations established by the Planning Board pursuant to this Ordinance under the authority of RSA 674:43 shall apply to PWSF's proposed to be located on privately owned property, on property owned by the Town of Tamworth, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.

3. DEFINITIONS

For the purpose of this Ordinance, the following terms shall have the meaning given herein:

3.1 Antenna

The surface from which wireless radio signals are sent and/or received by a PWSF.

3.2 Antenna Array

A collection of antennas attached to a mount to send and receive radio signals.

3.3 Average Tree Canopy Height

An average height found by inventorying the height at above ground level (AGL) of all trees over thirty (30) feet in height within a 150-foot radius of the proposed facility site.

3.4 Camouflaged

A PWSF that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

3.5 Carrier

A Company that provides personal wireless services also sometimes referred to as a provider.

3.6 Co-location

The use of a single tower on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several towers on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

3.7 Environmental Assessment (EA)

An EA is a document required by the Federal Communications Commission and the National Environmental Policy Act when a PWSF is placed in certain designated areas.

3.8 Equipment Shelter

An enclosed structure, cabinet, shed, vault, or box near the base of the tower within which are housed equipment for PWSF's such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

3.9 Facility

See Personal Wireless Service Facility.

3.10 Fall Zone

The area on the ground from the base of a ground mounted PWSF that forms a circle with a radius equal to the height of the facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

3.11 Guyed Tower

Any tower that is secured to the ground or other surface by diagonal cables for lateral support.

3.12 Height

The height above ground level from the natural grade of a site to the highest point of a structure.

3.13 Historic Structure

A historic structure is any structure and/or building as having historic significance. Examples include: Cook Memorial Library, Tamworth Congregational Church and Tamworth Town House.

3.14 Lattice Tower

A type of tower with multiple legs and structural cross bracing between the legs that are self-supporting and freestanding or may be guyed.

3.15 Mast

A thin pole that resembles a streetlight standard or a telephone pole. A dual polarized antenna is typically deployed on a mast.

3.16 Monopole

A thicker type of tower than a mast that is self-supporting with a single shaft of wood, steel or concrete, or other material, that is designed for the placement of antennas and arrays along the shaft.

3.17 Mount

The structure or surface upon which antennas are mounted, including the following types of mounts:

- Roof-mounted. Mounted on the roof of a building.
- Side-mounted. Mounted on the side of a building.
- Ground-mounted. Mounted on the ground.
- Structure-mounted. Mounted on a structure other than a building.

3.18 Personal Wireless Service Facility (PWSF or PWSF's)

Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. PWSF's include a mount, antenna, equipment shelter, and other related equipment.

3.19 Personal Wireless Services

The three types of services regulated by this Ordinance: Commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services as described in the Telecommunications Act of 1996, as amended.

3.20 Radio Frequency Radiation (RFR)

The emissions from PWSF's.

3.21 Security Barrier

A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

3.22 Tower

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers or monopole towers. The terms include radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

4. LOCATION REGULATIONS

4.1 Location

PWSF's shall be permitted throughout Tamworth.

4.2 Existing Structures

PWSF's can be located on existing structures, including but not limited to buildings, water towers, existing telecommunications facilities, utility poles or towers, and related facilities, provided that such installation preserves the character and integrity of those structures.

4.3 Ground Mounted Facilities

PWSF's may be ground mounted provided they are camouflaged to the greatest extent possible, including but not limited to, use of compatible building materials and colors, screening, landscaping, and placement in the midst of trees.

5. USE REGULATION

A PWSF shall require the approval of the Planning Board with site plan review in all cases and may be permitted as follows, provided the Planning Board determines that construction of the PWSF will not adversely impact the designated areas of any required Environmental Assessment:

5.1 Existing Tower Structures

Carriers may locate a PWSF on any guyed tower, lattice tower, mast, or monopole in existence prior to the adoption of this Ordinance, or on any PWSF previously approved under the provisions of this Ordinance so long as the co-location complies with the approved site plan and all the standards of this Ordinance are met. This provision shall apply only so long as the height of the facility is not increased, a security barrier already exists, the area of the security barrier is not increased, and that such installation preserves the character and integrity of those structures.

5.2 Reconstruction of Existing Tower Structures

An existing guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Ordinance may be reconstructed with a maximum twenty (20) foot increase in height so as to maximize co-location so long as the standards of this Ordinance are met, that this twenty (20) foot increase in height does not cause a facility previously existing at less than two hundred (200) feet to exceed two hundred, (200) feet in height, and that such installation preserves the character and integrity of those structures. The tower and mount shall be replaced with a similar tower and mount that does not significantly increase the visual impact on the community.

5.3 Existing Structures

A carrier may locate a PWSF on an existing structure, building, utility tower or pole, or water tower so long as all the standards of this Ordinance shall be met.

5.4 Ground Mounted Facility

A carrier may locate a PWSF involving construction of a ground mount, subject to the provisions of this Ordinance and so long as all the standards of this Ordinance shall be met.

6. DIMENSIONAL REQUIREMENTS

PWSF'S SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

6.1 Height When Using Ground-Mounted Facilities

Ground-mounted PWSF's shall not project higher than (10) ten feet above the average tree canopy height within a one hundred and fifty (150) foot perimeter of the tower, security barrier, or designated clear area for access to equipment, whichever is greatest.

6.2 Height When Using Existing Structures and Utility Poles

Carriers that locate new PWSF's on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles may be permitted to increase the height of those structures no more than ten (10) feet, if the additional height will not cause visual impact as described in Section 7. This increase in height shall only be permitted once for each structure.

6.3 Height When Using Other Existing Structures

The height of a PWSF shall not increase the height of a structure by more than fifteen (15) feet, unless the facility is completely camouflaged; for example a facility completely within a flagpole, steeple, or chimney. The increase in the height of the structure shall be in scale and proportion to the structure as originally configured.

6.4 Maximum Height

Special Exceptions to the tower heights set forth above can be granted by the Zoning Board of Adjustment pursuant to the Special Exception review process.

6.5 Setbacks

All PWSF's and their equipment shelters shall be at least (50) fifty feet from property boundaries. Fences wholly or partially surrounding personal wireless facilities that are five (5) feet or more in height shall be located at least (40) forty-feet from property boundaries.

6.6 Fall Zone

In order to ensure public safety, the minimum distance from the base of any ground-mount of a PWSF to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Ordinance. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the site plan review. In the event that an existing structure is proposed as a mount for a PWSF, a fall zone shall not be required.

7. PERFORMANCE AND DESIGN STANDARDS

7.1 Visibility

In order to limit or mitigate the visual impact on view corridors, vistas, and view-sheds, all PWSF's shall comply with the following requirements:

7.1.1 Camouflage for Facilities on Existing Buildings or Structures - Roof Mounts:

When a PWSF extends above the roof height of a building on which it is mounted, every reasonable effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways.

7.1.2 Camouflage for Facilities on Existing Buildings or Structures - Side Mounts:

PWSF's that are side mounted shall blend with the existing building's architecture and, if individual antenna panels are over five (5) square feet, the panels shall be painted or shielded with material consistent with the design features and materials of the building.

7.1.3 Camouflage for Ground Mounted Facilities: All ground-mounted PWSF's shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of fifty (50) feet from the tower, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions. These trees must be existing on the subject property, planted on site, or be within a landscape easement on an adjoining site. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on-site conditions. The fifty (50) foot vegetative buffer area shall be protected by a landscape easement or be within the area of the carrier's lease. The easement or lease shall specify that the trees within the buffer shall not be removed or topped, unless the trees are dead or dying and present a hazard to persons or property.

7.2 Color

To the extent that any PWSF extends above the height of the vegetation immediately surrounding it, it shall be of a color that blends with the background or surroundings.

7.3 Equipment Shelters

Equipment shelters for PWSF's located on or within buildings shall be concealed or camouflaged so that the shelter either is not visible at grade or appears to be a part of the original structure.

7.4 Historic Buildings

Any PWSF located on or within an historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building. Any alteration made to an historic structure to accommodate a PWSF shall be fully reversible. PWSF's authorized by this subsection shall be concealed within or behind existing architectural features, and shall be located so that they are not visible from public roads and viewing areas.

7.5 Lighting, Signage, and Security

7.5.1 Lighting: The mounts of PWSF's shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment, structures and any other facilities on site shall be shielded from abutting properties.

7.5.2 Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger.

7.5.3 Security Barrier. The Planning Board shall determine whether in the interest of public safety a ground mounted PWSF's should be surrounded by a security barrier.

7.6 Scenic Landscapes and Vistas

Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted PWSF's shall be surrounded by a buffer of dense tree growth as per Section 7.1.3.

7.7 Driveways

If available, existing entrances and driveways shall be utilized to serve a PWSF, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. New driveways to serve a PWSF shall not exceed twelve (12) feet in width.

7.8 Antenna Types

Any antenna array placed upon an existing or proposed ground mount, utility pole, or transmission line mount shall have a diameter of no more than four (4) feet, exclusive of the diameter of the mount. A larger diameter antenna array may be permitted after a finding by the Planning Board that the visual impacts of a larger antenna array are negligible.

7.9 Ground and Roof Mounts

All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof-mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project permitted under Section 5.2.

7.10 Hazardous Waste

No hazardous waste shall be discharged or stored on the site of any PWSF. If any hazardous materials are to be used on site, there shall be provisions for full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten percent (110%) of the volume of the hazardous materials stored or used on the site.

7.11 Radio Frequency Radiation (RFR) Standards

All equipment proposed for a PWSF shall be fully compliant with the FCC Guidelines for Evaluating the Environmental Effects of Radio frequency Radiation (FCC Guidelines), under Report and Order, FCC 96-326, published on August 1, 1996, and all subsequent amendments.

8. MONITORING AND MAINTENANCE

8.1 Maintenance

The owner of the facility shall maintain the PWSF in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the tower, mount and security barrier, and maintenance of the buffer areas and landscaping.

8.2 Monitoring

As part of the issuance of the site plan approval, the property owner shall agree that the persons designated by the Town of Tamworth may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provide them the opportunity to accompany the Town representatives when the measurements are conducted.

8.3 Security for Removal

Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned telecommunications facilities in the event that a facility is abandoned and the facility owner is unwilling or unable to remove the facility in accordance with Section 9.2. The amount of the security shall be based upon the estimated removal cost plus fifteen percent (15%). The removal cost estimate shall be provided by the applicant and certified by a professional civil engineer licensed in New Hampshire. Every five (5) years from the date of the Planning Board's approval of the site plan, the owner of the facility shall provide the Planning Board with a structural evaluation and a revised removal cost estimate prepared by a professional civil engineer licensed in New Hampshire. If the estimated removal cost has increased more than fifteen percent (15%), then the owner of the facility shall provide additional security in the amount of the increase.

9. ABANDONMENT OR DISCONTINUATION OF USE

9.1 Notification

At such time that a carrier plans to abandon or discontinue operation of a PWSF, such carrier will notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than thirty (30) days prior to abandonment or discontinuation of operations. In the event that a carrier fails to give such notice, the PWSF shall be considered abandoned upon such discontinuation of operations.

9.2 Removal

Upon abandonment or discontinuation of use, the owner of the facility shall physically remove the PWSF within ninety (90) days from the date of abandonment or discontinuation of use. "Physically remove" shall include, but not be limited to:

- Removal of antennas, tower, mount, equipment shelters and security barriers from the subject property.
- Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.
- Restoring the location of the PWSF to its natural condition, except that any landscaping and grading shall remain in the after-condition.

9.3 Completion of Removal

Only when removal of the PWSF is completed to the satisfaction of the Planning Board will the security be returned to the carrier.

9.4 Failure to Remove

If the owner fails to remove the facility the Board of Selectmen shall have the authority to issue a declaration of abandonment after holding a public hearing with notice to the owners and abutters. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Town Council. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.

10. ADMINISTRATION, ENFORCEMENT AND PENALTIES

10.1 Enforcement

It shall be the duty of the Board of Selectmen, or its appointed representative, to enforce the provisions of this Ordinance. The Selectmen may appoint a Tower Inspector to carry out all or any such specific duties as the Selectmen might determine. The Selectmen are authorized to institute in the name of the Town any legal action by way of injunctive relief or otherwise to enforce this Ordinance or to restrain, prevent or abate any violations thereof, as authorized by RSA 676: 15, and shall further be entitled to all of the reimbursement and restitutionary relief and penalties granted to municipalities by RSA 676:17, and by any other provision of the law.

10.2 Personal Wire Service Facility Building Permit

A Personal Wireless Service Facility Building Permit must be applied for and issued by the Selectmen before any work on a personal wire service facility is undertaken. It shall be the duty of the Selectmen to adopt a form or set of standards and fees specifying the contents of a completed application for a Building Permit, which shall include at a minimum an approved site plan review by the Planning Board. Upon submission of a completed application, the Selectmen shall act to accept or deny an application within sixty (60) days. The Selectmen shall examine every application for a Building Permit and shall ascertain whether the application conforms to the provisions of this Ordinance and any other applicable ordinance of the Town of Tamworth. If the Selectmen find that any application for a Building Permit fails to conform with this Ordinance or any other applicable ordinance and/or regulation of the Town, they shall deny the permit, stating in writing the reasons for their action. Appeal of denial of a Personal Wireless Service Facility Building Permit shall be to the Zoning Board of Adjustment as provided by RSA 676:5

10.3 Penalties

Penalties for violation of this Ordinance shall be as set forth in RSA 676:17.

10.4 Application Fee and Other Expenses

A fee of \$100 shall be paid for each application submitted to the Planning Board seeking approval under this Ordinance. Additionally, the applicant will be required to reimburse the Town for any reasonable expenses incurred by the Planning Board, Selectmen, and their designated officials to evaluate the application before the facility is constructed and to monitor the facility after construction, including but not limited to, expenses incurred to hire qualified engineers to measure radio frequency and evaluate the structural integrity of a facility.

11. ZONING BOARD OF ADJUSTMENT

11.1 Powers

The Zoning Board of Adjustment (ZBA) was created upon adoption of the Town of Tamworth Floodplain Development Ordinance (effective August 13, 1991, amended March 8, 1994). The ZBA shall have such powers as assigned to it by RSA 674:33 and any powers assigned to it by ordinance or by vote of the Town Meetings. The ZBA shall hear and decide Administrative Appeals arising out of decisions pursuant to this Ordinance, Special Exceptions, Variances, and any other such duties as shall be required or prescribed by law.

11.2 Procedures

The Zoning Board of Adjustment procedures shall conform to the provisions of RSA 676 and this Ordinance.

11.2.1 Meetings and Hearings: Meetings of the ZBA and public hearings on appeals being heard by the ZBA shall be held as required by the Bylaws of the ZBA. The concurring vote of three (3) members shall be necessary to decide in favor of any appeal or to reverse any action appealed for (RSA 674:33, III). Notice of public hearing shall be given at least ten (10) days before the hearing date by certified mail to the Appellant and every Abutter, and by placing Notice in a newspaper of general circulation, as required by RSA 676:7, and also be provided to the Selectmen, Planning Board, Conservation Commission, and any other appropriate Board or Town Official. It shall be the responsibility of the Appellant to submit a list of the abutters' names and addresses to the ZBA. All costs of such notice shall be borne by the person submitting the request (the Appellant).

11.2.2 Notice of Decision: The ZBA shall issue a final written decision on each appeal heard. The decision shall state the reasons for approval or disapproval (RSA 676:3, I). Notice of the ZBA's decision shall be placed in a newspaper of general circulation in the Town, mailed to the Appellant, and posted in two (2) public places. Cost of providing such notice shall be borne by the Appellant.

11.3 Special Exceptions

The ZBA may authorize a special exception from the terms of this Ordinance. To obtain a Special Exception, the ZBA must find all of the following:

- The specific site is an appropriate location for such a use.
- That on the balance, the proposed use will not reduce the value of surrounding properties.
- No nuisance or undue hazard will be created.
- Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including, but not limited to, access and drainage.
- Operations in connection with the use shall not violate any provisions of this Ordinance.
- No threat to public health or safety will be created.

11.4 Variances

The ZBA may authorize a variance from the terms of this Ordinance. To obtain a Variance, the ZBA must find all of the following:

- No decrease in the value of the surrounding properties would be suffered.
- Granting the Variance would not be contrary to the public interest.
- Denial of the Variance would result in an unnecessary hardship due to special conditions.
- By granting the Variance, substantial justice would be done.
- Granting the Variance will not be contrary to the spirit and intent of the Ordinance.

11.5 Rehearings and Appeals

Any person aggrieved by any order or decision of the Zoning Board of Adjustment may appeal that order or decision in accordance with the procedures set out in RSA Chapter 677 and other applicable law.

12. MISCELLANEOUS PROVISIONS

12.1 Separability

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or illegal, such invalidity shall not affect the remaining valid portion of this Ordinance.

12.2 Amendments

This Ordinance may be amended in accordance with the procedures set out in RSA Chapter 675.

12.3 Effective Date

This Ordinance shall take effect immediately upon its adoption by a Town Meeting.