

Personal Wireless Service Facilities Ordinance

for the Town of
Haverhill, New Hampshire

Effective Date: March 12, 2002 At Town Meeting Passed by Yes 631 No 305

Bette Probst
Town Clerk

Town of Haverhill

PERSONAL WIRELESS SERVICE FACILITIES ORDINANCE

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1. TITLE

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

2. PURPOSE AND AUTHORITY

2.1 Purpose and Intent

It is the purpose of this Ordinance to permit the location of personal wireless service facilities (hereafter as PWSF or PWSFs) within the Town of Haverhill (hereafter as Town) that fulfill and enhance the general statement of objectives for the Town of Haverhill Master Plan including the goal to reduce adverse impacts such facilities may create, including, but not limited to: impacts on environmentally sensitive areas, wildlife, historically significant locations, health and safety, and prosperity through protection of property values.

2.2 Authority

This Ordinance is adopted pursuant to the authority of RSA 674:16, 674:21, and 676:5. If any provision of this Ordinance differs or appears to conflict with any other Ordinance or regulation of the Town of Haverhill, the provision imposing the greater restriction or more stringent standard shall be controlling.

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 PWSFs proposed to be located on privately owned property, on property owned by the Town of Haverhill, and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property.

4. LOCATION REGULATIONS

4.1 Location

PWSFs shall be permitted throughout the Town of Haverhill.

4.2 Existing Structures

PWSFs shall be located on or within existing structures when possible, 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

If the applicant demonstrates that the location on an existing structure is not feasible, PWSFs may be ground mounted provided they are camouflaged, hidden, or disguised including but not limited to, use of compatible building materials and colors, screening, landscaping, and placement in the midst of trees. Ground mounted facilities are not permitted in any historic district. New ground mounted facilities must be located at least two miles from existing and other proposed facilities.

5. USE REGULATIONS

In all cases a PWSF shall require site plan review, approval by the Planning Board, and a Building Permit from the Selectboard to assure conformity with all applicable Town ordinances and to assure that all applicable state and federal processes have been completed before construction begins, and to comply with any other requirements consistent with regulations adopted by the Planning Board. The Board shall require that the applicant submit all information to which the Town of Haverhill is entitled under RSA 12-K, as well as written evidence and written evaluations that all provisions of state and federal law respecting such installations have been met and all state and federal reviews completed before construction begins, including but not limited to RSA 12-K, and any amendments thereto, Section 106, of the National Historic Preservation Act of 1966, the Federal Telecommunications Act of 1996, the requirements of the National Environmental Policy Act (NEPA), and the requirements of the Federal Aviation Administration. If the Planning Board finds that any application for site plan approval fails to conform with the provisions of this ordinance, or any other applicable ordinance and/or regulation of the Town, they shall refuse their approval, stating in writing the reasons for their action.

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, so long as the PWSF 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, carrier capacity is not increased, a security barrier already exists, the area of the security barrier is not increased, and such installation preserves the character and integrity of those structures.

5.2 Reconstruction of Existing Tower Structures

A guyed tower, lattice tower, monopole, or mast in existence prior to the adoption of this Ordinance may be reconstructed to maximize co-location with no increase in existing height so long as the standards of this Ordinance are met, and 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 increase the visual impact on the community.

5.3 Existing Structures

A PWSF may be located on an existing structure, building, utility tower or pole, or water tower subject to the provisions of this Ordinance.

5.4 Ground Mounted Facility

A ground-mounted PWSF may be constructed subject to the provisions of this Ordinance.

6. DIMENSIONAL REQUIREMENTS

New PWSFs shall comply with the following requirements:

6.1 Height When Using Ground-Mounted Facilities

- Ground-mounted PWSFs in open areas shall not exceed eighty (80) feet above the natural grade of the site.

- Ground-mounted PWSFs amid tree growth shall not project higher than twenty (20) feet above the average tree canopy height. The Planning board shall determine which standard applies to a proposed PWSF.

6.2 Height When Using Utility Poles and other Existing Structures

New PWSFs may be located on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, masts, and monopoles, or any other existing structure. Such installations shall not increase the height of a structure more than ten (10) feet, and the additional height shall not cause visual impact as described in Section 7. This increase in height shall be permitted only once for each structure.

6.3 Maximum Height

In no case shall a PWSF facility exceed one hundred (100) feet in height.

6.4 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 written 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. Fall zones may overlap. 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, view-sheds, and ridge lines, all PWSFs 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, it shall be concealed or camouflaged 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:

PWSFs which are side mounted shall blend with the existing building's architecture and, antenna panels shall be painted or shielded with material consistent with the design features and materials of the building to limit visibility from public ways.

7.1.3 Camouflage for Ground Mounted Facilities:

All ground-mounted PWSFs shall be camouflaged using such methods as compatible building materials and colors, screening, landscaping, placement in the midst of trees and the use of camouflage and stealth technology. The PWSF and supporting equipment shall be visually unobtrusive and shall blend with the natural setting.

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 which blends with the background or surroundings. All surfaces shall be non-reflective.

7.3 Equipment Shelters

Equipment shelters for PWSFs 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 significantly alter its exterior character-defining features. PWSFs 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.

No PWSF in the Town of Haverhill shall be lighted unless required by a Federal or State regulatory authority. 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 should be surrounded by a security barrier.

7.6 Scenic Landscapes and Vistas

Ground-mounted facilities shall not be located within pre-existing open areas such as open fields, parking areas, or hilltops that are clearly visible from public roads, recreational areas, nearby or abutting properties.

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 fit within a circle having a diameter of no more than four (4) feet.

7.9 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.

7.10 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. VERIFICATION, MAINTENANCE, AND MONITORING

8.1 Verification

The Planning Board, at its discretion, may hire an expert of its choice to review applications. All such expenses incurred shall be borne by the applicant.

8.2 Maintenance

The owner of the facility shall continually 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. Maintenance must conform to the original site plan.

8.3 Monitoring

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

8.4 Security for Removal

Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Selectboard 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 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 an owner or carrier plans to abandon or discontinue operation of a PWSF, or make significant changes to such, such owner or carrier will notify the Selectboard by certified U.S. mail of the proposed date. Such notice shall be given no

less than thirty (30) days prior to abandonment, significant changes, or discontinuation of operations. In the event that an owner or carrier fails to give such notice, the PWSF shall be considered abandoned.

9.2 Removal

Upon abandonment or discontinuation of use, the owner of the facility or the carrier 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, foundation/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 aftercondition.

9.3 Completion of Removal

Only when removal of the PWSF is completed to the satisfaction of the Selectboard will the security be returned to the PWSF owner.

9.4 Failure to Remove

If the owner or carrier fails to remove the facility the Selectboard 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 Selectboard. If the abandoned facility is not removed within ninety (90) days, the Selectboard may execute the security to pay for this action.

10. ADMINISTRATION, ENFORCEMENT AND PENALTIES

10.1 Enforcement

It shall be the duty of the Selectboard, or its appointed representative, to enforce the provisions of this Ordinance. The Selectboard may appoint an agent to carry out all or any such specific duties as the Selectboard might determine. The Selectboard 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 Wireless Service Facility Building Permit

A Personal Wireless Service Facility Building Permit must be applied for and issued by the Selectboard before any work on a personal wire service facility is undertaken. It shall be the duty of the Selectboard 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 and notification of abutters. Upon acceptance by the Select Board of a completed application, the Selectboard shall act to approve or deny the application within sixty (60) days. The Selectboard 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 Haverhill. If the Selectboard 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.

10.2.1 Plan

It shall be the responsibility of the applicant to provide a plan including a map showing existing and proposed PWSF sites and radio frequency coverage range for each.

10.3 Personal Wireless Service Facility Site Requirements

In reviewing and approving the site plan, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse impact of the proposed tower or antenna on adjoining properties, and preserve the intent of this ordinance. The following factors are to be considered when reviewing the application:

- a. Height of proposed tower or other structure.
- b. Proximity of tower to residential development or zones and schools.
- c. Nature of uses on adjacent and nearby properties.
- d. Impact on historic resources.
- e. Surrounding topography.
- f. Surrounding tree cover and foliage.
- g. Design of the tower with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
- h. Proposed entrance and exit to the site.
- i. Availability etc., of suitable existing towers and other structures as discussed in Section 6 and 7 of this Ordinance.
- j. visual impacts on viewsheds, ridge lines, open fields and other impacts by means of tower location, tree and foliage clearing and placement of incidental structures.
- k. Availability of alternative tower structures and alternative siting locations.

10.3.1 Submission requirements

Each applicant requesting Site Plan review and approval for a PWSF facility shall submit a plan to the Planning Board in accordance with this Ordinance. In addition, the applicant shall submit the following prior to any approval by the Board:

- a. Additional plat information: a scaled elevation view, topography, radio frequency coverage, tower height requirements, setbacks, access drives, parking, fencing, landscaping, and adjacent uses (up to 200 feet away).
- b. Written proof that the proposed use/ facility complies with Federal Communications Commission regulations on radio frequency (RF) exposure guidelines.
- c. Written proof that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable Federal Communications Commission (FCC) rules.
- d. An inventory of existing towers that are within the jurisdiction of the Town

and those within two (2) miles of the border of the Town, 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 Town.

- e. Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, potential interference, and co-location costs which would make co-location impractical.
- f. A written agreement with the Town specifying that the applicant agrees to provide for maximum shared use of the facility with other telecommunication providers and with governmental agencies at industry standard lease rates. the applicant shall also provide notice to all commercial carriers in the region that a new facility is to be erected and that an opportunity for co-location exists.
- g. The Planning Board may require a certified Balloon Test and/or Crane Test accurately simulating the height and location of the proposed PWSF. Public notice shall be given by the applicant of the date and time of such test not less than ten (10) days prior thereto. The balloons/crane shall remain in place for forty-eight (48) hours. The applicant shall provide photographs of such test from locations around the town and within twenty (20) miles from which the balloon(s) or crane is visible.
- h. Engineering information detailing the size and coverage required for the facility location. The Planning Board may have this information reviewed by a consultant for verification of any claims made by the applicant regarding technological limitations and feasibility for alternative locations. Any and all costs for this review shall be borne by the applicant in accordance with RSA 676:4(g).
- i. Any other information deemed necessary by the Planning Board to assess compliance with this Ordinance.
- j. The owner of the PWSF shall certify biennially that wireless services are being provided to residents of the Town.

10.4 Penalties

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

10.5 Application Fee and Other Expenses

A fee of \$100 shall be paid by the applicant 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, Selectboard, 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 Haverhill Floodplain Development Ordinance (effective June 26, 1990). 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.

11.3 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 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 portions 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.

13. DEFINITIONS

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

13.1 *Antenna*. The surface from which wireless radio, telecommunication, and/or television communication signals are sent and/or received by a PWSF.

13.2 *Antenna Array*. A collection of antennas attached to a mount to send and receive radio signals.

13.3 *Average Tree Canopy Height*. An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height within a 150 foot radius of the proposed facility site. Trees that will be removed for construction shall not be used in this calculation.

13.4 *Buffer*. A vegetated strip of land at least ten (10) feet wide which screens the site from adjacent properties and public ways and enhances the aesthetics of the installation. Natural growth may be used.

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

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

13.7 *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 and/or antennas on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

13.8 *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.

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

13.10 *Facility*. See Personal Wireless Service Facility.

13.11 *Fall Zone*. The area on the ground measured from the base of a ground mounted PWSF that forms a circle with a radius equal to one hundred twenty-five per cent (125%) 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.

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

13.13 *Height*. The height above ground level from the natural grade of a site to the highest point of a structure including antennas.

13.14 *Historic Structure*. Structure having substantial historic significance.

13.15 *Lattice Tower*. A type of tower with multiple legs and structural cross-bracing between the legs that is self-supporting and freestanding or may be guyed.

13.16 *Mast*. A thin pole that resembles a street light standard or a telephone pole. A dualpolarized antenna is typically deployed on a mast.

13.17 *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.

13.18 *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.

13.19 *Personal Wireless Service Facility (PWSF or PWSFs)*. Facility for the provision of personal wireless services, as defined by the Telecommunications Act of 1996, as amended. PWSFs include a mount, antenna, equipment shelter, and other related equipment.

13.20 *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.

13.21 *Radio Frequency Radiation (RFR)*. The emissions from PWSFs.

13.22 *Security Barrier*. A wall, fence, or berm that restricts an area from unauthorized entry or trespass.

13.23 *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.