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# TOWN OF TROY, NEW HAMPSHIRE

## Personal Wireless Service Facilities Ordinance

Adopted March 13, 2001  
Amended March 12, 2013  
Amended March 10, 2015

### **SECTION I: AUTHORITY**

This Ordinance is adopted by the Town of Troy on March 13, 2001 in accordance with the authority granted by the New Hampshire Revised Statutes Annotated 674:16. In addition, pursuant to the provisions of NH RSA 674:21, the Troy Planning Board is hereby granted the authority to issue Conditional Use Permits for the establishment of Personal Wireless Service Facilities, subject to the provisions in this Ordinance.

### **SECTION II: PURPOSE**

These regulations have been enacted in order to establish general guidelines for the siting of towers and antennas and to enhance and fulfill the following goals:

1. Preserve the authority of the Town of Troy to regulate and provide for reasonable opportunity for the siting of personal wireless service facilities.
2. Enhance the ability of providers of personal wireless services to provide such services to the community effectively and efficiently.
3. Reduce the adverse impacts such facilities may create on, including, but not limited to: migratory bird flight corridors, impacts on aesthetics, environmentally sensitive areas, historically significant locations, and health and safety by injurious accidents to person and property.
4. Preserve unique viewsheds and scenic values, in particular those associated with Mount Monadnock.

### **SECTION III: DEFINITIONS**

1. Antenna: Means the equipment from which wireless radio signals are sent and received by a PWSF.
2. Equipment Shelter: Means an enclosed structure, cabinet, shed vault, or box near the base of a mount within which are housed equipment for PWSFs such as batteries and electrical equipment.
3. Personal Wireless Service Facility (PWSF): Means any "PWSF" as defined in the Federal Telecommunications Act of 1996, including facilities used or to be used by a licensed provider of personal wireless services.
4. Personal Wireless Services: Means 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.
5. Radio Frequency Radiation: Means the emissions from PWSFs.

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## **SECTION IV: LOCATION OF TELECOMMUNICATIONS FACILITIES**

- A. Telecommunications facilities may be permitted in all districts, provided that they are camouflaged, hidden or disguised. In no case, however, shall such a facility be sited in a location that would impact any view to Mount Monadnock.
- B. Collocation and/or modification applications shall be reviewed for conformance with applicable building permit requirements, but shall not otherwise be subject to zoning or land use requirements, including design or placement requirements, or public hearing review, according to the procedure outlined in RSA 12-K: 10

## **SECTION V: PERMITTED USES**

- A. Principal or Secondary Use. Telecommunications facilities may be either principal or secondary uses. Having an existing-permitted use on site shall not preclude the addition of a PWSF as a Secondary Use as long as all other applicable provisions of the Ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a PWSF on such lot.
- B. For purposes of determining whether the installation complies with district development regulations, including but not limited to setback and lot coverage requirements, the dimensions of the entire lot shall control, even though the facility may be located on leased parcels within such lots. Facilities 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.
- C. 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.
- D. Essential Services & Public Utilities. Personal Wireless Service Facilities shall not be considered infrastructure, essential services, or public facilities, as defined or used elsewhere in the Town's ordinances and regulations.

## **SECTION VI: PERFORMANCE STANDARDS**

- A. Federal Requirements. All facilities 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 facilities governed by this Ordinance shall bring these into compliance within six (6) months of the effective date of the changes, unless a more stringent compliance schedule is mandated by the controlling federal agency. Failure to bring facilities into compliance with any changes shall constitute grounds for the removal of the tower or antenna at the owner's expense, in accordance with Section X through the execution of the posted security.
- B. Building Codes/Safety Standards. To ensure the structural integrity of towers and antennas, all facilities will be inspected every year by an engineer approved by the Town, with the cost to be paid by the owner. The engineer will submit a report to the Town. If the report concludes that a tower fails to comply with such codes and standards and constitutes a danger to persons or property, the owner will receive notice that he/she has 30 days to bring such tower into compliance with the standards. If the owner fails to comply within 30 days, such action shall

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constitute an abandonment and grounds for the removal, in accordance with Section X, of the tower or antenna, at the owner's expense through execution of the posted security.

- C. Height. All efforts should be made to keep tower height at a minimum; in no case shall a tower exceed 120 feet, unless it can be completely shielded from view.
- D. Setbacks and Separation. In addition to compliance with the minimum zoning district setback requirements for all structures, towers shall be set back a distance equal to 125% of the height of the tower from all property lines.
- E. Security Fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height and shall also be equipped with an appropriate anti-climbing device.
- F. Landscaping.
  - 1. A buffer shall be provided that effectively screens the view of the compound from adjacent residential property. Natural vegetation is preferred. The amount and type of screening shall be determined by the Planning Board during Site Plan Review.
  - 2. In locations where the visual impact of the compound would be minimal or non-existent, 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, such as towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
- G. Camouflaging.
  - 1. Any buildings and related structures shall, to the maximum extent possible, use materials, colors, and textures will blend with the natural setting and built environment.
  - 2. If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a 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 visually unobtrusive.
  - 3. All visual buffering should be provided and maintained on-site of the proposed facility. When this is not possible, the applicant will secure a guarantee from the owner of the property from which the buffering is provided that the buffering vegetation will be maintained during the life span of the facility.
- H. Balloon Test.
  - 1. A balloon must be floated at the proposed site. The applicant must provide pictures from all locations around town from which the balloon(s) is visible.
  - 2. Notice of the balloon test will be provided to the Planning Board and posted in the Keene Sentinel by the applicant at least one (1) week prior to the test. The notice shall include an alternate (weather) date.

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## **SECTION VII:           PROCEDURE ON APPLICATION**

- A. General. Personal Wireless Service Facilities are permitted only after obtaining a Conditional Use Permit and Site Plan approval from the Planning Board. All such uses must comply with other applicable ordinances and regulations of the Town of Troy. The application for Conditional Use Permit and Site Plan Review may be processed concurrently.
- B. Issuance of Conditional Use Permits. In granting the Conditional Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed tower on adjoining properties, and preserve the intent of this Ordinance.
- C. Procedure on Application.
1. The Planning Board shall act upon the application in accordance with the procedural requirements of the Site Plan Review Regulations and RSA 676:4.
  2. Regional public notice will be provided in accordance with RSA 12-K: 7.
  3. Decisions. All decisions shall be rendered in writing. A denial must be based upon substantial evidence contained in the written record.
  4. Plan Requirements. Applicants shall submit a plan in accordance with the applicable submission requirements of the Town's Site Plan Review Regulations.
  5. Other Information Required. The following information is required prior to any approval by the Board:
    - a. Propagation map showing proposed radio frequency coverage.
    - b. Written proof that the proposed use/facility complies with the FCC regulations on radio frequency emission regulations.
    - c. Written proof that it has conducted an evaluation of any requirements of the National Environmental Policy Act (NEPA) pertaining to the proposed facility, 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 30-day comment period; the Town proceedings with respect to the proposed facility shall become part of the FCC application requirements.
    - d. The number of sites for PWSF each provider will require;
    - e. Sites outside of the Town for the particular coverage area that are being considered;
    - f. How the siting of a PWSF will affect the ability to allow a competitor's antennas on the same property;
    - g. Studies of alternative sites in Town that have been considered.

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- h. An agreement with the Town that allows for the maximum allowance of co-location upon the new structure. Such statement shall, at a minimum, require the applicant to supply available co-location for reasonable fees and costs to other wireless telecommunication providers. An opportunity for co-location is not to be considered a justification for excessive height of towers. Co-location opportunities shall also not exclude the investigation of alternative sites.
  - i. Copies of the federal license from the FCC proving that they, or their contracted client, are eligible to deploy their systems under the Federal Telecommunications Act of 1996.
  - j. Detailed maps showing all of the carrier's current externally visible tower and monopole locations in the state within a 20-mile radius, both active and inactive.
  - k. Site descriptions for each of the above locations showing the antenna height and diameter, and all externally visible structures.
  - l. An agreement to the Town to the effect that the Town will be held harmless for any extraordinary fire or safety events.

#### **SECTION VIII: WAIVERS**

Any portion of these regulations may be waived or modified when, in the opinion of the Board, strict conformity would pose an unnecessary hardship to the applicant and such waiver would not be contrary to the spirit and intent of these regulations. A request for any such waiver shall be submitted in writing by the applicant. The request shall state fully the grounds for the waiver and all of the facts relied upon by the applicant.

#### **SECTION IX: BONDING AND SECURITY INSURANCE**

- A. The applicant shall provide a bond to the Town in an amount that would be sufficient to cover the costs of removal and disposal of the facility components. The Planning Board shall set the form and amount of the security. The Planning Board shall also require the applicant to submit proof of appropriate liability insurance with respect to the proposed facilities prior to construction.
- B. The term of the bond shall be negotiated with the Planning Board and administered by the Selectmen. In addition, if the Board requires an engineering assessment in order to set the amount of the bond, the cost shall be borne by the applicant.

#### **SECTION X: REMOVAL OF ABANDONED ANTENNAS AND TOWERS**

Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof of quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town. 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 tower is not removed within 90 days, the Town may execute the security and have the tower removed. If there are two or more users of a single tower, this provision shall not become effective until all users cease using the tower.

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**SECTION XI: ADMINISTRATION AND ENFORCEMENT**

- A. It shall be the duty of the Board of Selectmen, and they are hereby given the power and authority, to enforce the provisions of this ordinance. The Selectmen may appoint an agent to enforce this ordinance. Upon any well-founded information that this ordinance is being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance by seeking an injunction in the Superior Court or by any other legal action.
- B. These requirements shall supersede any and all other applicable standards found elsewhere in Town Ordinances or Regulations that are less strict or conflicting.
- C. Any alteration of the original permitted use and device configuration of the PWSF will require a new approval.
- D. A permit to operate shall be issued by the Selectmen and shall be renewable every year. When possible, this time frame shall be consistent with the timing for performance bond renewal.

**SECTION XII: SEVERABILITY**

The invalidity of any provision of this ordinance shall not affect the validity of any other provision.

**SECTION XIII: APPEALS**

Pursuant to RSA 676:5, any decision made under this ordinance cannot be appealed to the Board of Adjustment, but to the superior court as provided by RSA 677:15.