

Telecommunications Ordinance

Town of Woodstock, New Hampshire

Purpose and Intent:

This ordinance is adopted in accordance with the enabling statutes of the State of New Hampshire, Revised Statutes Annotated (RSA) Title LXIV, Planning and Zoning; and more particularly pursuant to RSA 674 "Innovative Land Use Controls, 12K 1-9, and all applicable state and local standards/regulations." The purpose of this ordinance is to facilitate the provisions of personal wireless service facilities (PWSF) to the Town of Woodstock and its government, residents, and businesses, while conforming with all applicable federal (including all applicable Federal Communication Commission regulations), the Middle Class Tax Relief and Job Creation Act of 2012 - Section 6409 (a), state and local laws and regulations, and the goals stated in the Woodstock Master Plan; to minimize adverse visual effects of communications facilities, towers, and antennas through design and siting standards, and by use of alternative structures or systems; to minimize environmental, economic, audible and visual impacts on adjacent properties, historical and cultural resources, and on the Town of Woodstock and neighboring communities; to preserve scenic views and vistas, including ridgelines; to encourage appropriate uses of historic and cultural properties; through setback requirements, to reduce land use conflicts and to avoid potential damage to adjacent properties from tower failure; to provide for the maintenance and on-going inspection of PWSF, and for their removal upon abandonment or discontinuance of use; and to maximize the use of existing approved PWSF needed to serve the community and region.

Ordinance Overview:

A. 12-K: 7 Regional Notification –

- I. (a) Any municipality or state authority or agency which receives an application to construct a PWSF which will be visible from any other New Hampshire municipality within a 20 mile radius shall provide written notification of such application and pending action to such other municipality within the 20 mile radius.
(b) This notification shall include sending a letter to the governing body of the municipality within the 20 mile radius detailing the pending action on the application and shall also include publishing a notice in a newspaper customarily used for legal notices by such municipality within the 20 mile radius, stating the specifics of the application, the pending action, and the date of the next public hearing on the application. Such notice shall be published not less than 7 days nor more than 21 days prior to the public hearing date.
 - II. (a) Any person, prior to constructing a new PWSF in any location where no approval is required but which will be visible from any other New Hampshire municipality within a 20 mile radius, shall provide written notification of such planned construction to such other municipality within the 20 mile radius.
(b) This notification shall include sending a letter to the governing body of the municipality within the 20 mile radius detailing the planned construction and shall also include publishing a notice in a newspaper customarily used for legal notices by such municipality within a 20 mile radius, outlining the planned construction.
 - III. Municipalities within the 20 mile radius described in paragraphs I or II and their residents shall be allowed to comment at any public hearing related to the application. Regional notification and comments from other municipalities or their residents shall not be construed to imply legal standing to challenge any decision.
- B. Siting for PWSF shall be treated as a use of land, and shall be subject to the Town of Woodstock's other applicable ordinances and regulations. PWSF shall not be considered infrastructure, essential services, or public utilities, as defined and used elsewhere in the Town of Woodstock's ordinances and regulations.
- C. PWSF may be considered either a principal or a secondary use. A different existing use of an existing structure on the same lot shall not preclude the installation of a PWSF on such lot.
- D. For the purpose of determining whether the installation of a PWSF complies with this ordinance, the dimensions of the entire lot shall control, even though the facilities may be located on leased parcels within such lots.

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- E. PWSF that are constructed, in accordance with the provisions of this ordinance, shall not in themselves create a conforming structure if they do not meet all Town of Woodstock, state, or federal regulations or ordinances, and/or unless they are in the best interest of the general public.
- F. The applicant shall submit an evaluation report for the proposed site that satisfies the requirements of the National Environmental Protection Act (NEPA), and rules of the Federal Communications Commission (FCC).
- G. In the case of a new tower application, in addition to requirements in this section under III F, the applicant must submit proof that the Federal Aviation Administration (FAA) has been contacted regarding the height and location of the proposed tower and has no objection.

Applicability: The terms of this Ordinance shall apply to all personal wireless telecommunications facilities proposed to be located on property owned by the Town of Woodstock, on privately owned property, and on property that is owned by any other governmental entity that acts in its propriety capacity to lease such property to a carrier.

- A. A building permit shall be required for the construction, alteration, expansion, or relocation of a PWSF, including the placement, addition, replacement or relocation of related buildings and structures.
- B. A building permit for a PWSF shall not be issued or given to the applicant until the Planning Board has approved the PWSF.
- C. The Planning Board shall specify the form, content, and timing of application materials to be submitted by the applicant for PWSF approval, and may establish a fee structure for receiving and acting upon applications.
- D. The Planning Board may grant a waiver to the specific terms and conditions of this ordinance only if (a) it will not contradict or contravene any other ordinance adopted by the legislative body of the town (Town Meeting), or is inconsistent with any state or federal law or licensing agency; and (b) clear and convincing evidence demonstrates that the waiver would accomplish all of the following conditions: (1) no lessening in value will be suffered by surrounding properties if the waiver is granted; (2) granting the waiver will not be contrary to the public interest; (3) denial of the waiver would result in unnecessary hardship to the owner seeking it; (4) by granting the waiver, substantial justice will be done; and (5) the use is not contrary to the spirit of this and other Woodstock land use ordinances. The "hardship" in item 3 must be demonstrated through a showing by the applicant that: (a) the restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment; (b) no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property; and (c) granting the waiver will not harm the public or private rights of others.
- E. Exemptions: The following devices and sources of non-ionizing electromagnetic radiation are exempt from the provisions of this ordinance:
 - 1) Machines and equipment designed and marketed as consumer products, such as walkie- talkies and remote control toys;
 - 2) Radar systems for military and civilian communications and navigation;
 - 3) Hand-held, mobile, marine and portable radio transmitters and/or receivers; and
 - 4) Two-way radio utilized for temporary or emergency service communications.
 - 5) Antennas attached to the personal wireless communications facilities.

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Payment of Costs:

- A. 12-K: 4 Payment of Costs. – A wireless carrier seeking approval to deploy a wireless communication facility may be required to pay reasonable fees, including regional notification costs, imposed by the municipality in accordance with RSA 676:4, I (g).
1. In the event that the Planning Board deems it necessary, the applicant shall reimburse the town for expenses incurred to:
 - a) Hire experts to provide technical understanding of the proposed new or modified facility and alternatives;
 - b) Hire experts to interpret test results for radio frequency emissions, at the time of completion of the facility and annually thereafter;
 - c) Hire experts to estimate the costs of structure: removal and site remediation;
 - d) Hire legal counsel to review and/or enforce the applicants' compliance with the ordinance; and,
 - e) Hire experts to conduct environmental and/or cultural resources surveys and assessments to identify affected resources and to evaluate proposed mitigation measures.

Planning Board Approval and Town Building Permit Required: PWSFs may be located within the Town of Woodstock, subject to Planning Board approval of the PWSF and issuance of a building Permit. Modifications to an existing installation, other than replacement or installation of antennas on existing personal wireless telecommunications facilities, shall also be subject to Planning Board approval. Construction or modification of an approved facility may not begin without a valid building permit issued by the Board of Selectmen after approval by the Planning Board.

Criteria for Location: In considering requests for PWSF approval placement of a personal wireless service facility, the Planning Board shall determine that all of the criteria specified below are met:

- A. All PWSF, including equipment compounds, utility buildings, structures, and towers must meet the minimum setback requirements of the Woodstock Building Ordinance, and, in addition, freestanding towers must be located at a distance which is at least twice the tower's height, or two hundred (200) feet from all lot lines and public rights-of-way, whichever distance is greater.
1. Such facilities shall be located no closer than five (5) times the height of the facility from dwellings and residential buildings, except that this requirement shall not apply to locations that are itemized in B 1-3.
- B. PWSF shall be located according to the following priorities:
1. Concealed or camouflaged on or within existing buildings, including historic buildings;
 2. On or within other existing structures, including but not limited to agricultural buildings and structures, water tanks and utility transmission poles, outdoor lighting structures, church steeples, and historic structures;
 3. On new structures less than thirty-five (35) feet in height from surrounding grades;
 4. On or within alternative or camouflage structures other than those listed in B 1-3.
 5. On existing communications towers (also known as co-location);
 6. On new communications towers.
 7. Existing Structures: Burden of Proof - the applicant shall have the burden of proving that there are no buildings or structures or existing personal wireless telecommunications facilities which are suitable to locate its personal wireless service facility and/or transmit or receive radio signals. To meet this burden, the applicant shall, at a minimum, take all the following actions to the extent possible.
 - a) The applicant shall submit a list of all contacts made with owners of existing buildings or structures or existing personal wireless telecommunications facilities regarding the availability of potential space for a personal wireless service facility. If the Planning Board informs the applicant that additional existing buildings or structures or existing personal wireless telecommunications facilities may be satisfactory, the applicant shall contact the property owner(s) of those buildings or structures or existing personal wireless telecommunications facilities.

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- b) The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Receipt Requested" forms from the U. S. Post Office shall be provided for each owner of existing structures that was contacted.
- 1) If the applicant claims that an available, existing building or structure identified by the Planning Board is not capable of physically supporting a personal wireless service facility, this claim must be certified by a licensed professional civil engineer. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without reasonable costs, which shall be enumerated.

8. Location of new communications towers: Burden of proof - The applicant shall have the burden of proving that there is no reasonable alternative site available for location of the proposed new communications tower that will result in less adverse impact than location at the proposed site. To meet that burden, the applicant shall at a minimum take all of the following actions to the extent possible.

- a) The applicant shall submit a list of all contacts made with owners of potential sites regarding the availability of each site for a communications tower. If the Planning Board informs the applicant that it believes that one or more additional sites may be satisfactory, the applicant shall also contact the property owner(s) of those sites.
- b) The applicant shall provide copies of all letters of inquiry made to owners of potential sites and all letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U. S. Postal Service shall be provided for each owner of each alternative site who was contacted.
- c) If the applicant claims that a site suggested by the Planning Board is not a viable alternative site, the applicant must submit a detailed explanation of the insufficiencies of the site.

C. **Priority Assessments:** Prior to issuing a Special Use Permit, the Planning Board shall be satisfied that a complete assessment of locations in order of priority has been undertaken by the applicant, and that higher priority locations are exhausted or unfeasible.

D. **Height Limitations:** PWSF shall not project higher than (20) feet above the average tree canopy height within a one hundred and fifty (150) foot radius of the mount, security barrier, or designated clear area for access to equipment, whichever is greater. Within the 150 foot radius, the natural buffer and tree canopy shall be preserved, except to the extent removal is required for construction or maintenance of the facility. In addition to this requirement, no PWSF shall exceed one hundred (100) feet in height, measured as the vertical distance from the average finished grade surrounding the facility, to its highest point, including all attachments. If mounted upon another structure, the combined height of the structure and PWSF shall be used to determine compliance with the requirements of this section, and shall not exceed one hundred (100) feet in height as described above.

- 1) These height limitations will be strictly adhered to unless the applicant can demonstrate that strict adherence deems the PWSF ineffective. The burden of proof is upon the applicant to demonstrate there is no other feasible option; and that granting the PWSF approval is in the public's best interest and there will be no substantial harm resulting from the issuance of the PWSF approval, providing the PWSF will not compromise environmental compatibility (see applicable section)

E. **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

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be provided to the Planning Board, and shall include context views from the tower site and other vantage points. Notice to the public of the time and place of the balloon or crane test shall be provided in accordance with RSA 675:7, 1.

F. Environmental Compatibility

All proposed or modified PWSF and utility or service lines shall be designed to blend into the surrounding environment. In considering proposals and approving or denying PWSF approval, the Planning Board shall consider the following criteria:

1. The impact of the personal wireless service facility on the community scale, as determined by the height, mass and proportion of the facility relative to the surrounding buildings;
2. The extent to which the facility changes the visual elements of the setting by contrasting with the existing background;
3. The extent to which the colors, textures, and materials used in the facility blend with those in the existing background; and
4. The extent to which the facility will adversely impact scenic vistas, historic places, cultural sites and community recreation areas.
5. The extent to which material used in the tower construction, equipment, or accessory building construction creates a glare that can cause an adverse effect on the environment, visual or aesthetic impact, or public safety:
 - a) Non-glare materials shall be used unless the requirement for their use is waived by the Planning Board.
 - b) Applicants should consider types of alternative structures that blend with the environment i.e. clock towers, bell towers, church steeples, light/power lines, electric transmission towers, manmade trees, lookout towers, water towers or similar natural or manmade alternative designs on which to mount equipment that camouflage, conceal or minimize the presence of telecommunication towers or equipment.

G. Compliance and Certification Requirements All PWSF and accessory facilities shall be designed and certified by a qualified and licensed professional engineer to conform to the latest state and national structural, electrical, wind loading, ice loading, and other applicable codes, standards, and requirements. In addition, before the PWSF or towers are placed in service, and annually thereafter within two weeks of the anniversary date of PWSF approval, the owner shall provide to the Planning Board:

1. A certificate from a qualified independent licensed professional engineer, to certify structural integrity and compliance with applicable local, state, and federal codes, standards, and requirements, including those of the Federal Communications Commission (FCC).
2. A certificate documenting that all equipment for the personal wireless service facility is 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.
3. Failure to provide the required documentation shall be a violation, as provided under Enforcement Section b.

H. Signs: Personal wireless service facility signs shall be limited to those needed to identify the property and the owner and warn of any danger.

I. Lights and Noise: No communications tower or antenna, except during installation or repair, shall have lights, reflectors, flashers, or other illuminating devices attached to it, unless required by state or federal authorities. Secondary lighting for towers shall be installed so that it cannot be seen beyond the property line. However, light fixtures used to illuminate recreation fields, parking areas, street lighting, or similar uses for the benefit

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of the public may be incorporated into the design of PWSF, subject to approval by the Planning Board. Noise emanating from the facility shall not create a nuisance to abutting property or the general public.

- J. Security:** Every personal wireless service facility shall be protected and secured to prohibit access to the PWSF by unauthorized persons.
- K. Screening and Access:** All utility buildings and structures accessory to a PWSF shall be architecturally designed to blend in with the surrounding environment and buildings or structures. Equipment shall be screened from view of abutters and the public by suitable native vegetation, except where non-vegetative screening better reflects and complements the architectural or visual character of the surrounding area. Tree cutting and disruption of natural habitats shall be avoided or minimized. Existing entrances and access drives to serve a personal wireless service facility shall be utilized, unless the applicant can demonstrate that a new entrance and driveway will result in less visual, traffic, and environmental impact. Driveway permits are required where applicable.
1. Grades of all access drives shall conform in general to the terrain.
 2. A gravel or crushed stone surface is encouraged, and design and construction of the access drive shall follow best management practices of erosion control.
- L. Hazardous Waste:** No hazardous waste shall be discharged on the site of any personal wireless service facility. 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.
1. Information as to the generation of hazardous waste is required for the Planning Board's consideration for the imposition of specific criteria for safety purposes.
- M. Discontinuation and Removal:** Abandoned or unused PWSF and components, including but not limited to portions of towers, antennas, waste materials, and associated facilities, including foundations and supports, shall be removed within twelve (12) months of the cessation of operations at the site, and the site shall be restored to a natural condition, unless a time extension is approved by the Planning Board. In the event that a PWSF and/or associated facilities are not removed within twelve (12) months of the cessation of operations at a site, they may be removed by the Town of Woodstock and the costs of removal assessed against the personal wireless facility owner or the property owner.
1. Notification: At such time that a carrier plans to abandon or discontinue operation of a personal wireless service facility, such carrier shall notify the Planning Board 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 personal wireless service facility shall be considered abandoned upon such discontinuation of operations.

Non-compliance: Non-compliance with the terms and conditions of PWSF approval shall be a violation, as provided under Enforcement Section b.

Procedures for Amendment or Repeal: This ordinance may be amended or repealed by approval of a majority of voters present and voting by ballot at any legal (annual or special) Town Meeting. The amendment or repeal may be proposed by the Planning Board or Board of Selectmen, or by a petition of the necessary number of voters, in accordance with procedures set forth in the New Hampshire Revised Statutes Annotated.

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- a) Repeal or invalidation of this ordinance or any portion of it shall not abrogate or annul any lawful approval, permit, easement or covenant issued hereunder.

Severability: The invalidity of any provision of this ordinance shall not affect the validity or enforceability of any other of its provisions.

Effective Date: This ordinance and any amendments shall take effect upon its passage at any legal (annual or special) Town Meeting.

Enforcement:

- a. The Board of Selectmen is hereby given the authority and the duty to enforce this ordinance and may issue cease and desist orders, seek injunctive relief and take other appropriate actions for violations, as permitted by law.
 - 1) The Board of Selectmen, if no building inspector exists, shall act jointly as the building inspector and administrative officer charged with enforcement and may issue building or use permits.
 - 2) A violation of this ordinance shall be construed as a violation pursuant to RSA 676:17, as it may be amended from time to time.
- b. The Board of Selectmen shall give notice and prosecute violations in accordance with the procedures set forth in RSA 676:17, as it may be amended from time to time.
- c. Any civil penalties collected shall be used to reimburse the expenditures of costs associated with the discovery, investigation, and prosecution of the violation, with any remainder to be committed to the Town of Woodstock treasury.

Definitions:

- 1. "Antenna" means the equipment from which wireless signals are sent and received by a PWSF.
- 2. "Average tree canopy height" means the average height found by inventorying the height above ground level of all trees over a specified height within a specified radius.
- 3. "Buffer" means an area within a property or site, generally adjacent to and roughly parallel with the property line, either consisting of natural existing vegetation or created by the use of trees, shrubs, fences, landscape features, and/or berms, designed to limit continuously the view of and/or sound or lighting from the site to adjacent sites or properties.
- 4. "Camouflaged" defines a personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.
- 5. "Carrier" means an entity that provides personal wireless services.
- 6. "Co-location" means the use of a single mount on the ground by more than one carrier and/or several mounts on an existing building or structure by more than one carrier.
- 7. "Cultural Sites" means areas of high importance to our traditions or customs.
- 8. "Director" means the Director of the Office of Energy and Planning.
- 9. "Disguised" defines, a PWSF, designed to look like a structure which may commonly be found in the area surrounding a proposed PWSF such as, but not limited to, flagpoles, light poles, traffic lights, or artificial tree poles.
- 10. "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.

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11. "Fall Zone" means the area on the ground within a prescribed radius from the base of a PWSF. The fall zone is the area within which there is a potential hazard from falling debris or collapsing material.
12. "Height" means the height above ground level from the natural grade of a site to the highest point of a structure.
13. "Historic Places" means areas of high importance to our heritage.
14. "Mount" means the structure or surface upon which antennas are mounted and include roof-mounted, side-mounted, ground-mounted, and structure-mounted types.
15. "Municipality" means any city, town, unincorporated town, or unorganized place within the state.
16. "Personal Wireless Service Facility" or "PWSF" or "facility" means any "PWSF" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. section 332(c)(7)(C)(ii), including facilities used or to be used by a licensed provider of personal wireless services.
17. "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, 47 U.S.C. section 332 (c)(7)(C)(i).
18. "PWSF Approval" means a written and dated approval by the Woodstock Planning Board for construction, alteration, expansion, or relocation of a PWSF, including the placement, addition, replacement or relocation of related buildings, equipment and structures.
19. "Radio frequency radiation" means the emissions from personal wireless service facilities.
20. "Scenic Vistas" means areas of high visual quality.
21. "Tower" means any structure that is designed and constructed primarily to support one or more antennas. The term includes self-supporting lattice and monopole structures, and guyed structures; it also includes alternative, camouflaged, and stealth structures which are designed to be imperceptible or to be visually compatible and in scale with their surroundings.
22. "Cultural Sites" means areas of high importance to our traditions or customs.