

ZONING ORDINANCE

Article XII. PERSONAL WIRELESS SERVICE FACILITIES 437 455 511 564

Section 1201. Purpose

A. THE PURPOSE OF THIS ORDINANCE IS TO ENCOURAGE AND PROMOTE PERSONAL WIRELESS SERVICES IN ALL AREAS OF THE TOWN WHILE PRESERVING THE TOWN'S DISTINCTIVE RESIDENTIAL CHARACTER AND MINIMIZING VISUAL, ENVIRONMENTAL, AND NEIGHBORHOOD IMPACTS. THE INTENT IS TO ALLOW SUFFICIENT PERSONAL WIRELESS SERVICE FACILITIES THAT PROVIDE ADEQUATE SERVICE TO THE TOWN AND ACCOMMODATE CONNECTION TO WIRELESS FACILITIES IN ADJACENT AND SURROUNDING COMMUNITIES WHILE AVERTING ANY ADVERSE VISUAL IMPACT ON THE TOWN'S DISTINCTIVE RESIDENTIAL CHARACTER.

~~A. The purpose of this ordinance is to establish appropriate locations, site development standards, and permit requirements to allow for personal wireless services to the residents of the Town, in a manner which will facilitate the location of various types of personal wireless service facilities in locations consistent with the residential character of the Town. The nature of residences, their scale (height and mass), their proximity to each other and the street, and the extensive natural, informal landscaping all contribute to this distinctive character. Precluding the adverse visual impact of these facilities within this virtually developed residential area is one of the primary objectives of this ordinance. Limitations on the height of antennas are intended to conform the antennas to the existing limitations of height of residential buildings. The ordinance is intended to allow personal wireless service facilities which are sufficient to provide adequate service to citizens, the traveling public and others within the Town and to accommodate the need for connection of such services to wireless facilities in adjacent and surrounding communities.~~

B. It is also the intent that this ordinance and its purposes are implemented as allowed by applicable law, particularly in light of evolving federal and state regulations, laws and interpretations, evolving technology and land uses for personal wireless services.

Section 1202. Definitions

For the purpose of this Article, the following terms shall have the meanings prescribed herein unless the context clearly requires otherwise:

"Antenna" means the surface from which wireless radio signals are sent from and received by a personal wireless service facility;

"Applicant" means a person or other entity who submits an application with the Town for a special use permit or major amendment to a special use permit for a personal wireless service facility. A personal wireless service carrier and the owner of the subject property shall be an applicant(s) or co-applicant(s) on such application;

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“BUILDING MOUNTED ANTENNA” SHALL INCLUDE ANY ANTENNA LOCATED ON THE ROOF OR ATTACHED TO THE WALLS OF OR INTEGRATED INTO BUILDINGS, CHURCH STEEPLES, COOLING TOWERS, ELEVATOR BULKHEADS, PARAPETS OR OTHER STRUCTURES;

“CANISTER MOUNT” MEANS A CYLINDRICAL SHAPED FORM CONCEALING WIRELESS COMMUNICATION ANTENNAS MOUNTED ON A MONOPOLE, OTHER TYPE OF POLE, OR TOWER;

"Co-location" means the use of a single mount and/or site by more than one personal wireless service; "Commercial mobile radio service" means any of several technologies using radio signals at various frequencies to send and receive voice, data or video to and from mobile transceivers;

"Commercial mobile radio service" means any of several technologies using radio signals at various frequencies to send and receive voice, data or video to and from mobile transceivers;

"Design" means the appearance of a personal wireless service facility, including but not limited to its material, color or shape;

"Equipment cabinet" means an enclosed ~~mobile home~~, shed or box at the base of or near a mount within which are housed, among other things, batteries and electrical equipment (hereinafter referred to as "equipment"). This equipment is connected to the antenna by cable. Equipment cabinets are also called "base transceiver stations";

"Licensed carrier" means a company authorized by the FCC to build and operate a commercial mobile radio services system;

"Location" means property(ies) or site(s) where personal wireless service facilities are located or could be located;

"Modification" means any physical or operational change, alteration, or other modification of any of the following as they relate to a personal wireless service facility or the subject property upon which it is located, including but not limited to:

- a. The site plan;
- b. The sight line representation;
- c. The design submittal as required in this Article;
- d. **CHANGE IN ANTENNA SIZE OR CONFIGURATION, ANTENNA FREQUENCY, OR ANTENNA TYPE OR STRENGTH.**

The conversion of a single-use personal wireless service facility to a co-location is also considered a modification;

"Monopole" means a type of mount that is self-supporting with a single shaft of steel or concrete or other acceptable material **THAT MAY ALSO UTILIZE A CANISTER MOUNT OR SNUG MOUNT; SOME EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, AN EXISTING POWER POLE, LIGHT POLE, FLAG POLE, UTILITY POLE, SPORTS-FIELD LIGHT, OR ROUNDABOUT INSTALLATION;**

"Permittee" means the owner of a subject property and/OR a personal wireless service carrier;

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"Personal wireless service facility" or "PWSF" means a facility for the provision of personal wireless services as defined by the Telecommunications Act 1996, and any amendments thereto. PWSFs are composed of two (2) or more of the following components:

- a. Antenna
- b. Mount
- c. Equipment Cabinet
- d. Security Barrier;

"Personal wireless services" means commercial mobile radio services, unlicensed wireless services and common carrier wireless exchange access services as defined in the Telecommunications Act of 1996, and any amendments thereto;

“ROUNDABOUT POLE” MEANS A POLE INSTALLED WITHIN A ROUNDABOUT IN THE TOWN RIGHT-OF-WAY THAT IS SET BACK FROM A DWELLING UNIT IN EXISTENCE AT THE TIME OF THE INITIAL APPROVAL OF THE CONDITIONAL USE PERMIT FOR SUCH PWSF BY AT LEAST EIGHTY (80) FEET.

"Security barrier" means a locked, impenetrable wall or fence that completely seals an area from unauthorized entry or trespass;

"Sight line representation" means a drawing in which a sight line is drawn from the closest facade of each building, private road or right of way (viewpoint) within five hundred (500) feet of the PWSF to the highest point (visible point) of the PWSF. Each sight line shall be depicted in profile, drawn at one inch equals forty (40) feet unless otherwise specified by the Town. The profiles shall show all intervening trees and structures;

"Site" means the subject property where a personal wireless service facility is located or proposed to be located and includes any contiguous property(ies) under the same ownership as the subject property;

"Siting" means the method and form of placement of a personal wireless service facility on a specific area of a subject property;

“SNUG MOUNT” MEANS AN ANTENNA MOUNTED NO MORE THAN EIGHT (8) INCHES FROM THE EDGE/FACE OF THE POLE, TOWER, OR STRUCTURE TO WHICH IT IS MOUNTED;

"Subject property" means all the area within a lot, lots, or tax parcel(s) under common ownership upon which a personal wireless service facility is either proposed to be, or already is, developed, located, constructed or operated;

"Unlicensed wireless service" means commercial mobile services that can operate on public domain frequencies and that therefore need no FCC license.

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Section 1203. General Requirements ⁵⁶⁴

- A. The determination of where a PWSF shall be located is subject to the following. Certain locations have been identified by the Town as potential PWSF sites and are subject to all of the provisions of this Article and the Town Code. Said locations are set forth in Town of Paradise Valley Resolution No. 932 as it may be amended from time to time. Any subject property that meets the requirements of this Article may be eligible for consideration for a PWSF, or modification thereof, pursuant to a conditional use permit, in accordance with the standards in this article.
- B. Any subject property that meets the requirements of this Article may be eligible for consideration for a PWSF, or modification thereof, pursuant to a conditional use permit, in accordance with the standards in this article.
- C. **THE DEVELOPMENT, LOCATION, CONSTRUCTION, OR OPERATION OF** a PWSF or modification thereof is permitted only with a conditional use permit, granted pursuant to Article 11, Sections 1103 et. seq. of the Zoning Ordinance and this Article. ~~No PWSF may be developed, located, constructed or operated without a conditional use permit. A conditional use permit is required for any modification to a PWSF.~~
- D. ~~A PWSF may be mounted on a structure which is not a dwelling unit on the side or roof in accordance with the requirements of this Article.~~ A PWSF is prohibited on any dwelling unit or site containing **OR PLANNED FOR** dwelling unit (s) unless otherwise authorized pursuant to Subsection A of this section.

Section 1204. Siting Standards ^{511 564}

The following siting criteria apply to consideration of a conditional use permit for a PWSF:

- 1 A PWSF shall be:
 - a. Completely screened from public view and rights of way by trees, mature vegetation, natural features or structures on the subject property, **EXCEPT AS PROVIDED IN 5 BELOW**, and
 - b. Completely camouflaged in a manner that is architecturally compatible with the structure on which it is mounted and integrated as an integral architectural element of the structure;
2. The screening required in this section may exist on the subject property or be installed as part of the proposed PWSF or a combination of both;
3. A PWSF shall not be approved for a location on a ~~site~~ **PARCEL** containing a dwelling unit, except where the dwelling unit is located on the site of ~~an existing~~ **A RESORT PROPERTY THAT HAS A** Special Use Permit granted by the Town **THAT INCLUDES RESIDENTIAL USES** ~~for a resort or guest ranch.~~ **EXCEPT AS PROVIDED IN SECTION 5 BELOW**, A PWSF shall not be ~~initially~~ approved for a location ~~two hundred (200) feet from~~ **THAT IS NOT SET BACK FROM** a dwelling unit in existence at the time of the initial approval of the conditional use permit for such PWSF site **BY A DISTANCE EQUAL TO THE HEIGHT OF THE TALLEST ELEMENT OF THE PWSF (AS MEASURED FROM THE FOOTING AN APPROVED BUILDING TO THE HIGHEST POINT OF THE PROPOSED PWSF) PLUS AN ADDITIONAL TWENTY (20) FEET. FURTHER, A PWSF SHALL HAVE AND MAINTAIN VERTICAL**

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SPACING OF ANTENNAES SUCH THAT THEY WILL BE AT LEAST 10 FEET HIGHER THAN ANY SURFACE IN WHICH A PEDESTRIAN IN A PUBLICLY ACCESSIBLE LOCATION CAN STAND OR WALK. For a proposed PWSF site that is adjacent to residentially zoned lots or parcels that are vacant at the time of the initial approval of the proposed conditional use permit for a PWSF, the proposed PWSF site shall be located no closer than ~~two hundred (200)~~ **TWENTY 20** feet from the lot line of such vacant parcel or lot, **AND SHALL HAVE ANTENNA PANEL LOCATIONS AT LEAST TEN (10) FEET HIGHER THAN THE MAXIMUM HEIGHT PERMITTED FOR THAT RESIDENTIAL LOT**, less the greater of any applicable setback from such lot line or any platted or recorded easement adjacent to such lot line on the vacant parcel or lot. Once initially approved, changes to the dwelling unit locations or any changes in the setbacks or platted or recorded easements on the lots or parcels adjacent to the PWSF site shall not compel the removal or relocation of the PWSF that was initially approved for a conditional use permit in compliance with this section, nor shall the renewal of the conditional use permit for such a PWSF be withheld due to such changes in the adjacent lots or parcels.

4. A PWSF shall be set back from all property lines a distance equal to the height of the mount or the antenna, whichever is higher, and comply with all zoning setback requirements **EXCEPT AS PROVIDED IN 5 BELOW;**
5. **A PWSF MAY BE LOCATED ON A TRAFFIC SIGNAL POLE OR ROUNDABOUT POLE IN TOWN RIGHT-OF-WAY, SUBJECT TO THE FOLLOWING CRITERIA:**
 - a. **ADEQUATE PROOF OF A LICENSE AGREEMENT FROM THE TOWN FOR THE SITE OF THE PWSF (NOTE: THE TOWN RESERVES THE DISCRETION TO EITHER GRANT OR DENY ANY LICENSES FOR USE OF ITS RIGHTS-OF-WAY)**
 - b. **NEW TRAFFIC SIGNAL POLES SHALL BE WARRANTED BY TRAFFIC VOLUMES, AS DETERMINED BY THE TOWN;**
 - b. **TRAFFIC SIGNAL POLE OR ROUNDABOUT POLE DIAMETER SHALL NOT EXCEED FOURTEEN AND ONE-HALF (14 ½) INCHES OR THE TOWN'S MOST CURRENT STANDARD;**
 - c. **ANTENNAS SHALL BE LIMITED TO CANISTER MOUNT ANTENNAS, SHALL BE NO MORE THAN EIGHTEEN (18) INCHES IN DIAMETER, AND SHALL NOT INCREASE THE TOWN STANDARD TRAFFIC SIGNAL POLE HEIGHT BY MORE THAN SEVEN (7) FEET;**
 - d. **ALL CABLES SHALL BE LOCATED INSIDE THE POLE; AND,**
 - e. **EQUIPMENT CABINETS:**
 - i. **SHALL BE LOCATED INSIDE BUILDINGS, SCREENED BEHIND WALLS, POLE MOUNTED, OR BURIED UNDERGROUND;**
 - ii. **SHALL COMPLY WITH THE HEIGHT AND YARD DEVELOPMENT STANDARDS OF THE UNDERLYING ZONING DISTRICT UNLESS LOCATED COMPLETELY UNDERGROUND OR LOCATED WITHIN TOWN RIGHT-OF-WAY, IN WHICH CASE THEY SHALL BE EXEMPT FROM YARD DEVELOPMENT STANDARDS;**
 - iii. **LOCATED IN RIGHT-OF-WAY SHALL NOT BE MORE THAN SIX (6) FEET TALL MEASURED ABOVE NATURAL**

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GRADE AND ONE HUNDRED FIFTY (150) CUBIC FEET ABOVE NATURAL GRADE;

iv. EQUIPMENT AIR-CONDITIONING FACILITIES SHALL BE ENCLOSED BY WALLS AND SETBACK A MINIMUM OF FIFTEEN (15) FEET FROM LOTS WHERE THE EXISTING OR PLANNED PRIMARY USE IS A SINGLE-FAMILY DWELLING.

6. The height of a PWSF shall be limited to:
- The maximum height applicable to a building on the subject property pursuant to the Town's Zoning Ordinance Table 1001-A1 **OR THE HEIGHTS PERMITTED UNDER ANY SUP ISSUED FOR A PARTICULAR PROPERTY**. A roof-mounted PWSF may project a maximum of ~~four and one-half (4 1/2)~~ **TWENTY (20)** feet above the highest point of the roof **SO LONG AS IT IS CAMOUFLAGED CONSISTENT WITH 1204.1.(b) so long as it does not exceed the maximum height provided in;** or
 - If mounted to an existing structure on the subject property, the height of that structure.

Any PWSF shall be screened and camouflaged as required herein. The height requirements of this Section supersede requirements specified for antenna in Section 1003 and Table 1003-1 of the Town's Zoning Ordinance as applied to a PWSF;

7. A side-mounted PWSF shall not project more than ~~forty-two (42)~~ **TWENTY-FOUR (24)** inches from the side **OF** a nondwelling unit facade, shall not extend above the highest point of the roof of the structure and shall be screened and camouflaged as required herein. The PWSF shall not project into an easement, driveway or setback unless otherwise specified in the conditional use permit;
8. An equipment cabinet shall be located within or adjacent to the structure on which a PWSF is placed, or located below natural grade underground if site conditions permit and if technically feasible. An equipment cabinet shall be completely screened from view by compatible wall, fence or landscaping consistent with Town landscaping guidelines except that an equipment cabinet larger than one hundred forty-four (144) cubic feet may not be required to be totally screened from view if the Planning Commission finds, in its discretion, that the cabinet has been designed with a structure or facade, materials, colors or detailing that effect a structure which emulates the residential character of the area;
9. A security barrier shall be screened from view through the use of appropriate landscaping materials consistent with Town landscaping guidelines.

Section 1205. Design Standards ⁵⁶⁴

The following design criteria apply to consideration of a conditional use permit for a PWSF, in addition to others which may be identified and utilized by the Planning Commission in its consideration of the conditional use permit:

1. Appearance. The degree to which the PWSF "blends with" or "disturbs" the setting, the subject property and its character and use, or neighboring properties and their character and use;

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2. Form. The degree to which the shape of the PWSF and any equipment cabinet relates to its surroundings;
3. Color. A PWSF shall be in natural tones and a non-reflective color or color scheme appropriate to the background against which the PWSF would be viewed from a majority of points within its viewshed. "Natural" tones are those reflected in the natural features and structural background against which the PWSF is viewed from a majority of points within its viewshed. Final colors and color scheme must be approved by the Planning Commission;
4. Size. The silhouette of the PWSF shall be reduced to minimize visual impact.

To the extent allowed by law, the Town shall consider the cumulative visual effects of PWSFs and any mount, specifically their appearance or domination of the skyline, natural and structural features or terrain, in determining whether to approve a conditional use permit.

Section 1206. Radiofrequency (RF) Performance and Interference Standards and Monitoring ⁵⁶⁴

- A. To the extent allowed by law, the following radiofrequency (RF) performance standards apply to consideration of a conditional use permit for a PWSF, in addition to monitoring requirements as required in this Article:
 1. All equipment proposed for a PWSF shall meet the current FCC RF Guidelines and any amendments thereto (hereafter "FCC Guidelines");
 2. Any side-mounted or roof-mounted equipment shall meet FCC Guidelines, including but not limited to the following:
 - a. At the roof-mount or at the side-mount, the equipment shall meet the FCC Guidelines for occupational/controlled conditions;
 - b. At ground level at the point of the structure closest to the antenna, the equipment shall meet FCC Guidelines for general population/uncontrolled conditions.
- B. Within ninety (90) days after FCC issuance of an operational permit for the PWSF, and ~~annually~~ **UPON MODIFICATION** thereafter, the personal wireless service carrier shall submit a written report providing existing and maximum future projected measurements of RF radiation from the PWSF for:
 1. Existing PWSF: Maximum RF radiation from the PWSF RF radiation environment. These measurements shall be for the measurement conditions specified in Subsection A of this Section;
 2. Existing PWSF plus cumulative: Maximum estimate of RF radiation from the existing PWSF plus the maximum estimate of RF radiation from the total addition of co-located PWSFs. These measurements shall be for the measurement conditions in Subsection A of this Section;
 3. Certification, signed by an RF engineer, stating that RF radiation measurements are accurate and meet FCC Guidelines as specified in Subsection A of this Section.

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If FCC Guidelines are changed during the period of any conditional use permit for a PWSF use, then the PWSF shall be brought into compliance with such revised guidelines within the time period provided by the FCC or if no time period is stated, then within sixty (60) days of the effective date of such guidelines.

- C. If at any time during the term of the permit the Town has reasonable evidence that the Permittee or personal wireless service carrier is not in compliance with FCC Guidelines, and the Town provides notice of such, the Permittee or personal wireless service carrier so notified shall provide to the Town, within thirty (30) days after such notice, an analysis and determination of its compliance with FCC guidelines showing the data collected and status pursuant to FCC Guidelines. If on review, the Town finds that the PWSF does not meet FCC Guidelines, the Permittee or personal wireless service carrier shall have sixty (60) days from the date of the Town's finding of noncompliance to bring the PWSF into compliance. If compliance is not achieved in the sixty-day period, the conditional use permit may be revoked or modified by the Town.
- D. The Permittee shall ensure that the PWSF does not cause localized interference with the reception of area television or radio broadcasts or to personal wireless services. If on review the Town finds that the PWSF interferes with such reception, and if such interference is not cured by the Permittee within sixty (60) days after notice from the Town, the Town may revoke or modify the conditional use permit.

Section 1207. Noise and Environmental Standards ⁵⁶⁴

- A. To the extent allowed by law, the following noise and environmental standards apply to consideration of a conditional use permit for a PWSF in addition to the monitoring requirements of this Article:
 - 1 Roof-mounted or side-mounted equipment for a PWSF shall not generate noise in excess of fifty (50) decibels (dba) at ground level at the base of the facility closest to the antenna;
 - ~~2 An environmental assessment is required by the National Environmental Policy Act (NEPA) for any PWSF prior to commencing operations where any of the following exist:~~
 - ~~a. Wilderness area;~~
 - ~~b. Wildlife preserve;~~
 - ~~c. Endangered species;~~
 - ~~d. Historical site;~~
 - ~~e. Indian religious site;~~
 - ~~f. Flood plain;~~
 - ~~g. High intensity white lights in residential neighborhoods;~~
 - ~~h. Excessive radiofrequency radiation exposure.~~
 - ~~3 An environmental assessment which, at a minimum, conforms with FCC requirements shall be submitted to the Town for each PWSF where any of the above exists, and when the FCC requires such an environmental assessment to be submitted to the FCC. If the applicant has determined that an environmental assessment is not required pursuant to FCC rules, this Article and applicable state law and Town Code, a written certification to~~

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~~that effect must be submitted to the Town. If an applicant has not included an environmental assessment that the Town finds to be necessary under the National Environmental Policy Act, the Town may prepare, or cause to be prepared, such an environmental assessment at the applicant's expense. The environmental assessment shall be amended or revised by the applicant within thirty (30) days after notice to do so from the Town when modifications are made or occur on the PWSF. Failure to amend or revise shall constitute grounds for revocation of the conditional use permit.~~

- B. Within ninety (90) days after the approval of the conditional use permit and ~~annually~~ **UPON MODIFICATION** from the date of approval of the permit, the Permittee shall submit existing and maximum future projected measurements of noise from the PWSF for the following:
1. Existing PWSF: Maximum noise radiation from the PWSF. These measurements shall be for the type of mounts specified in Subsection A of this section;
 2. Existing PWSF plus cumulative: Maximum estimate of noise from the existing PWSF plus the maximum estimate of noise from the total addition of co-located PWSFs. These measurements shall be for the type of mounts specified in Subsection A of this section;
 3. Certification, signed by an acoustical engineer, stating that noise measurements are accurate and meet Subsection A of this section.

Section 1208. Co-Location and Limitations ⁵⁶⁴

A. A Permittee shall cooperate with other personal wireless service carriers in co-locating antennas and mounts provided the proposed co-locators have received a conditional use permit for the use at such site from the Town. A Permittee shall exercise good faith in co-locating other personal wireless service carriers and sharing the permitted site, provided such shared use does not give rise to a substantial technical level impairment of the ability to provide the permitted use (i.e., a significant interference in broadcast or reception capabilities). Applicants shall demonstrate a good faith effort to co-locating with other personal wireless service carriers, including but not limited to:

1. Contact with all other personal wireless service carriers operating in the Town;
2. Sharing information necessary to determine if co-location is feasible under the design configuration most accommodating to co-location;

In the event a dispute arises as to whether a Permittee has exercised good faith in accommodating other users, the Town may require a third party technical study at the expense of either or both the applicant and Permittee.

- B. All applicants shall demonstrate reasonable efforts in developing a co-location alternative for their proposal.
- C. Failure to comply with the co-location requirements of this Section may result in the denial of a permit request or revocation of an existing permit.

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Section 1209. Submittal Requirements ⁵⁶⁴

- A. In addition to the information requested in the Town's conditional use permit application, the following items shall be required for a PWSF application:
1. A master site plan in accordance with Planning Commission rules and regulations showing the subject property and adjacent properties; all existing and proposed buildings on the subject property and their purpose; the specific placement of the PWSF antenna, mount and equipment cabinet; security barrier (if any), including type and extent and point of controlled entry on the site; fall zone; all proposed changes to the existing site, including grading, vegetation, roads, sidewalks and driveways;
 2. A landscape plan showing specific placement of existing and proposed vegetation, trees, shrubs, identified by species and size of specimen at installation in accordance with Town landscape guidelines;
 3. Photographs, diagrams, photosimulations and sight line representations as listed below:
 - a. A diagram or map showing the viewshed of the proposed facility;
 - b. Sight line representation;
 - c. Existing (before condition) photographs illustrated by four (4) by six (6) inch color photograph(s) of what can currently be seen from any adjacent residential buildings or properties, private roads and rights of way adjacent to the site;
 - d. Photosimulations of the proposed facility from each ~~adjacent~~ **TOUCHING** residential properties or buildings, private roads and public rights-of-way adjacent to the site (after condition photographs). Such photosimulations shall include, but not be limited to, each of the existing condition photographs with the proposed PWSF superimposed on it to show what will be seen from residential buildings, properties, private roads and rights of way adjacent to the site;
 - e. Aerial photograph as required by the Planning Commission rules and regulations;
 4. Siting elevations, or views at ~~natural~~ **EXISTING** grade, from all directions (north, south, east, west) for a fifty-foot radius around the proposed PWSF plus from all existing rights of way and private roads that serve the subject property. Elevations shall be at one-quarter inch equals one foot scale and show the following:
 - a. Antenna, mount, equipment cabinet;
 - b. Security barrier. If the security barrier will block views of the PWSF, the barrier drawing shall be cut away to show the view behind the barrier;
 - c. Any and all structures on the subject property, existing trees and shrubs at current height and proposed trees and shrubs at proposed height at time of installation;
 - d. Grade changes or cuts and fills to be shown at original grade and new grade line;
 5. Design submittals as follows:
 - a. Equipment brochures for the PWSF such as manufacturer's specifications or trade journal reprints;

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- b. Materials of the PWSF and security barrier, if any, specified by generic type and specific treatment, such as anodized aluminum, stained wood, painted fiberglass, etc.;
 - c. Colors represented by samples or a color board showing actual colors proposed;
 - d. Dimensions of all equipment specified for all three dimensions: height, width and breadth;
 - e. Appearance shown by at least two (2) photographic superimpositions of the PWSF within the site. The photographic superimpositions shall include the antenna, mount, equipment cabinet and security barrier, if any, for the total height, width and breadth. The submittal may also include, if required by the Town, a scaled three-dimensional model of the PWSF on the site;
6. Market and service maps as follows:
- a. A map showing the service area of the proposed PWSF and the explanation of the need for that facility.
 - b. A map showing the locations and service areas of other PWSF sites operated by the applicant and those that are proposed by the applicant which are close enough to impact service within the Town or are within a two-mile radius of the limits of the Town;
 - c. **A MAP SHOWING FREQUENCY AND TARGET SERVICE; DATA, TALK, ETC.**
7. Co-location submittals, including signed statements indicating:
- a. The applicant agrees to allow for the potential co-location of additional PWSF(s) by other personal wireless services and carriers on the applicant's structure or facility or within the same site;
 - b. That the applicant agrees to remove the PWSF as required by this Article;
 - c. That the applicant has made a good faith effort to achieve co-location with other carriers and facilities as required in this Article, and if co-location is not feasible for this application for a substantial technical reason, a written statement of the reasons for the infeasibility;
8. A lease agreement with the owner or landholder shall also be submitted that:
- a. Allows the landholder to enter into leases with other providers;
 - b. Specifies that if the carrier fails to remove the PWSF when required by this Article, the responsibility for removal falls upon the landholder; and
 - c. Allows entry by the Town and its agent for the purpose of inspection and compliance with Town Codes;
 - d. Consents to the terms of Section 1211 of this Article;
9. To the extent allowed by law, radiofrequency (RF) radiation performance submittals shall include in a form or study acceptable to Town staff the applicant's written statement of the existing and maximum future projected measurements of RF radiation from the proposed PWSF:
- a. Existing or ambient: measurement of existing RF radiation;

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- b. Existing plus proposed PWSF: maximum estimate of RF radiation from the proposed PWSF plus the existing RF radiation environment. These measurements shall be for the conditions specified in the RF performance standards in this Article;
 - c. Existing plus proposed PWSF plus cumulative: maximum estimate of RF radiation from the proposed PWSF plus the maximum estimate of RF radiation from the total addition of co-located PWSF plus the existing RF radiation environment. These measurements shall be for the conditions specified in the RF performance standards in this Article;
 - d. Certification, signed by an RF engineer, stating that RF radiation measurements are accurate and meet FCC Guidelines as specified in the RF performance standards in this Article;
- 10 To the extent allowed by law, noise performance submittals shall include a statement of the existing and maximum future projected measurements of noise from the proposed PWSF measured in decibels (logarithmic scale, accounting for greater sensitivity at night) for the following:
- a. Existing or ambient: the measurement of existing noise;
 - b. Existing plus proposed PWSF: maximum estimate of noise from the proposed PWSF plus the existing noise environment;
 - c. Existing plus proposed PWSF plus cumulative: maximum estimate of noise from the proposed PWSF plus the maximum estimate of noise from the total addition of co-located PWSFs plus the existing noise environment;
 - d. Certification signed by an acoustical engineer stating that noise measurements are accurate and meet the noise performance standards section of this Article;
- ~~11. To the extent allowed by law, environmental submittals shall include an environmental assessment if required in the environmental standards section of this ordinance. If the applicant determines that the environmental assessment is not required, certification to that effect shall be provided. The applicant shall also list location, type and amount of any materials proposed for use within the PWSF that are considered hazardous by the federal, state or town government.~~
- B. In addition to the requirements of this Article, processing and consideration of a PWSF conditional use permit shall comply with the conditional use permit requirements specified in Article 11, Sections 11031 et seq. of the Zoning Ordinance.

Section 1210. Technological Change and Periodic Review.

- A. The Town recognizes that PWSFs and communication technologies in general are currently subject to rapid change. Innovations in such things as switching hardware and software, transmission/receiving equipment, communications protocols, and development of hybrid cable/wireless systems may result in reducing the impact of individual facilities and to render specific portions of this ordinance obsolete. Therefore, the Town may review this Article periodically and assess its provisions relative to current trends in the communications industry, innovations in communications technology, permit activity during the preceding

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years, and effectiveness in producing PWSFs that are compatible with the Town's residential character.

- B. The Town may recommend updates to this Article that may include, but not be limited to the deletion, modification, or addition of allowed locations; allowed heights; site development requirements; administrative review possibilities; or permitting procedures.
- C. When changes are made pursuant to Subsection B, the Town and Permittees agree in good faith to review and modify the stipulations and terms of such permits during their terms in order to reflect current technologies and then current laws and ordinances. If such modifications adversely and materially affect, either operationally or monetarily, Permittee's use of a PWSF, such modifications may not be made without a Permittee's consent. If such modifications adversely affect the Town's regulations or this permit, such modifications may not be made without the Town's consent.

Section 1211. Permit Limitations and General Conditions. ⁵⁶⁴

- A. A conditional use permit shall expire five (5) years after the date of the permit approval. A Permittee wishing to continue the use at the end of the five-year period must apply for a conditional use permit renewal application to continue that use at least six months prior to its expiration. In ruling on the renewal the Planning Commission shall apply all then existing regulations affecting the application.
- B. The conditional use permit shall become null, void and non-renewable if the permitted facility is not constructed and placed into use within one year of the date of permit approval, provided that the conditional use permit may be extended one time for six (6) months if construction has commenced before expiration of the initial year. **FOR CAUSE, THE TOWN MANAGER MAY EXTEND THESE DATES FOR AN ADDITIONAL SIX (6) MONTHS.**
- C. The permit shall expire and the Permittee must remove the PWSF if the use is discontinued for a period in excess of ninety (90) days in any three-hundred-sixty-five (365) day period. A Permittee shall notify the Town in writing at least thirty (30) days prior to abandonment or discontinuance of operation of the PWSF. Failure to give such notice shall be considered abandonment of the special use permit or amendment by the Permittee.
- D. If the conditional use permit expires, terminates, is abandoned or revoked for any reason pursuant to this Article or the Town Code, if removal of the PWSF is required in this Article, or if the use is discontinued pursuant to this Article, the PWSF shall be removed as required herein. If the PWSF is not so removed, the Town may cause the facility to be removed and all expenses of removal shall be paid by the owner of the land where the facility is located. If not paid by the owner within thirty (30) days of notice by the Town, the Permittee agrees that the Town's costs shall constitute a lien upon the subject property upon its execution and filing with the county recorder's office. The term "remove" shall include but not be limited to the following:
 - 1 Removal of antenna, mount, equipment, equipment cabinet, security barrier from the site;
 - 2 Transportation of the antenna, mount, equipment, equipment cabinet or security barrier to a location off-site; if the location is within the Town limits, it is subject to approval by the Town.

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- 3 Restoration of the site of the PWSF to its natural condition, except that any landscaping and grading shall remain in finished condition.
- E. A personal wireless service carrier, upon granting of a conditional use permit for a PWSF use, shall indemnify, protect and hold harmless the Town, its officers and agents, from and against any and all liabilities, losses, damages, demands, claims and costs, including court costs and attorney fees (collectively "liabilities") incurred by the Town arising directly or indirectly from 1) the PWSF use as contemplated herein and in the use permit; and 2) the installation and operation of the PWSF permitted thereby, including without limitation, any and all liabilities arising from emission by the PWSF of electromagnetic fields or other energy waves or emissions. The personal wireless service carrier's compliance with this Section is an express condition of the conditional use permit and is binding on any and all of personal wireless service carrier's successors and assigns. The requirements of this section shall survive the termination of any such permit.
- F. The Permittee shall maintain the PWSF to standards that are imposed by the Town at the time of granting of a permit. Such maintenance shall include, but shall not be limited to, maintenance of the paint, structural integrity and landscaping. If the Permittee fails to maintain the facility, the Town may undertake the maintenance at the expense of the Permittee or terminate or revoke the permit, at its sole option. If such maintenance expense is not paid by the owner within thirty (30) days of notice by the Town, the Permittee agrees that the Town's costs shall constitute a lien upon the subject property upon its execution and filing with the county recorder's office.
- G. A conditional use permit granted to a Permittee is specific to the owner and personal wireless service carrier and may not be assigned, provided however that the personal wireless service carrier may assign its interest in the permit to any subsidiary or other affiliate of the personal wireless service carrier. In the event of such assignment, the assignee shall re-execute the conditional use permit within thirty (30) days of the effective date of the assignment or the permit shall automatically expire. Permittee shall notify the Town of any change in ownership or operation of the PWSF at least ninety (90) days prior to such change taking place for approval by the Town, which approval shall not be unreasonably withheld.
- H. In its consideration of applications herein, and in addition to criteria provided in this article, Article 11 (Sections 1103 et seq) of the Zoning Ordinance and within the authority granted by law, the Town may also consider and prescribe limitations on the locations and numbers of special use permits which may be granted pursuant to this article.
- I. Where the Planning Commission finds that strict compliance with the requirements of this Article may result in extraordinary hardship or are needed to ensure the Town's compliance with Federal or state law, the Planning Commission may modify such requirements only upon a showing of noncompliance with applicable law or extraordinary hardship so that substantial justice may be done and the public interest secured **OR IF THE REQUIREMENT IS SUPERSEDED BY STATE OR FEDERAL LAW**. Hardship as used herein shall include, but not be limited to, a finding that special circumstances applicable to the property, including its size, shape, topography, location or surroundings, will deprive such property of privileges enjoyed by other property in the same classification in the same zoning district through the strict application of the zoning ordinance. In granting such modifications, the Planning Commission may require such conditions as will, in its

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judgment, secure substantially the objectives of the standards or requirements so varied and modified.

- J. Any violation of the terms of this Article or the conditional use permit may result in revocation by the Town of the conditional use permit. Acceptance of any portion of the conditional use permit is acceptance of the entire conditional use permit and the terms of this Article.
- K. Within ninety (90) days after issuance of the FCC operational permit, the personal wireless service carrier shall provide a copy of such permit to the Town and register the PWSF, providing information and data as may be requested by the town. Any change in the permit or registration data shall be filed with the Town within thirty (30) days after the change is made. The personal wireless service carrier shall submit to the Town a copy of its FCC Form 600 prior to the Town's approval of final inspection of a building permit for the PWSF or portion thereof.
- L. The Town and its agents are authorized to enter on the subject property and PWSF site for the purpose of inspection and determining compliance with this Article and the provisions of the special use permit or amendment thereto.

Section 1212. Applicability

The requirements of this ordinance apply to all new PWSFs and modification of any existing PWSFs.

FOOTNOTES

437 Ordinance #437 - 02/13/97

455 Ordinance #455 - 02/26/98

511 Ordinance #511 – 07/26/2001

564 Ordinance #564 – 11/03/2005