

Personal Wireless Service Facilities (PWSF)
Hart's Location, New Hampshire

1. Authority

This ordinance is adopted by the town of Hart's Location on _____ in accordance with the authority granted in New Hampshire Revised States Annotated 674:16 and 674:21 and procedurally under 675:1,II.

The terms of this Ordinance and the Site Plan Review Regulations shall apply to all personal wireless service facilities proposed to be located on property within the Town of Hart's Location, on privately owned property and on property that is owned by any other governmental entity that acts in its proprietary capacity to lease such property to a carrier.

1.1. This ordinance shall not govern any tower or the installation of any antenna that is up to thirty-five (35) feet in height and is owned and operated by a federally licensed amateur station operator, or is used exclusively for personal owned and operated receive only antennas, or serves the purpose of providing a personal owned and operated satellite dish not to exceed three (3) feet in diameter, or a tower that is owned and operated by the Town of Hart's Locations for the purpose of emergency radio communications.

2. Purpose

In recognition of the requirements of the Federal Telecommunications Act of 1996, this ordinance is designed and intended to balance the interest of the residents of Hart's Location, to regulate and provide opportunity for the siting of personal wireless service facilities while preserving the rural, scenic and environmental qualities of the Town as stated in the Town's Master Plan. In addition, the goal of this ordinance is to preserve the health, safety and welfare of the Town and its residents.

2.1. Permit the construction of new towers only where all other reasonable opportunities have been exhausted, and encourage the users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers.

3. Definitions

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

3.2. Height: the distance above the ground level (AGL) from the natural grade of a site to the highest point of a tower or structure, including antennas.

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

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

3.5. Fall Zone: the area on the ground from the base of a ground mounted personal wireless service facility that forms a circle with the diameter equal 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.

4. Siting Standards/Regulations

4.1. Location: Personal wireless service facilities (PWSF) shall be permitted in Hart's Location. Applicants seeking approval for PWSF shall first evaluate existing structures for the siting of a PWSF. Only after finding that there is no suitable existing structures pursuant to 4.2 herein shall a provider propose a new ground mounted facility. The lessee/owner must allow co-location provided that the structure can support additional PWSF.

4.2. Existing Structure

4.2.1. Policy: PWSF shall be located on existing structures, including but not limited to buildings, water towers, existing PWSF, utility poles or towers, and related facilities, provided that such installations preserve the character and integrity of those structures.

4.2.2. Burden of Proof: Co-location on any existing facilities is a priority consideration for any new personal wireless service providers before any application for a new tower construction will be accepted by the Planning Board. The applicant shall have the burden of proof that there are no existing structures, which are suitable to locate its PWSF on. To meet that burden, the applicant shall take all the following actions to the extent applicable:

4.2.2.1. The Applicant shall submit to the Planning Board a list of all contacts and correspondence made with owners of potential sites regarding the availability of potential space for a PWSF. If the Planning Board informs the applicant that additional existing structures may be satisfactory, the applicant shall contact those additional property owner(s) of those structures.

4.2.2.2. If the applicant claims that a structure is not capable of physically supporting a personal wireless service facilities, this claim must be certified by a licensed profession 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 unreasonable costs. The estimated cost shall be provided to the Planning Board.

4.3. Ground Mounted Facilities: If the applicant demonstrates that it is not feasible to locate on an existing structure, ground mounted personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees.

5. Use Regulations

In all cases, a PWSF shall require a building permit issued by the Hart's Location Selectmen. The application and plan shall be reviewed and approved by the Hart's Location Planning Board before it goes to the Selectmen for a building permit and may be permitted as follows:

5.1. Existing Structures Tower(s), other Non-Tower(s), Reconstruction of Existing Tower, or Ground Mounted Facility: Subject to the issuance of a building permit that includes review by the Planning Board, carriers may locate a PWSF on any structure approved under the provision of this Article so long as the co-location complies with the approved plan. All the performance standards from this Article shall be met.

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

5.3. Ground and Roof Mount: All ground mounts shall be of a mast type mount. Lattice towers, guyed towers, and roof mounted monopoles are expressly prohibited, unless constructed as part of a reconstruction project.

5.4. Noise: PWSF shall not generate noise "0.0 decibels" in a one hundred (100) foot radius from the base of the tower.

5.5. Maximum Height: In no case shall a PWSF exceed sixty (60) feet in height or combined total height when using existing structures.

5.5.1. Existing Structures and Utility Poles: Carriers that locate new PWSF on water towers, electric transmission and distribution towers, utility and similar existing utility structures, or ski lift towers may be permitted to increase the height of those structures by no more than twenty (20) feet.

5.5.2. Other Existing Structures: The height of a PWSF shall not increase the height of a structure by more than twenty (20) feet, unless the facility is completely camouflaged; for example a facility completely within a flagpole, steeple, or chimney. The increase in height of the structure shall be in scale and proportion to the structure as originally configured. A carrier may locate a PWSF on a building that is legally non-conforming with respect to height, provided that the provisions of this Article are met.

5.5.3. Ground Mounted Facilities: Ground-mounted PWSF shall not project higher than ten (10) feet above the average tree canopy height within a three hundred (300) foot radius.

5.6. Setbacks/Access

5.6.1. Building: All PWSF, their equipment shelters, and security fences shall comply with the building setback provisions of the zoning district in which the facility is located and shall maintain a minimum setback of three hundred (300) feet from any maintained trail, trail head, or trail rest area. Security fences higher than six (6) feet will have to be approved by the Zoning Board by a Special Exception.

5.6.2. Scenic Landscape, Roads, and/or Vistas: Ground-mounted facilities shall not be located within open areas that are clearly visible from public roads, recreational areas, or abutting properties. All ground-mounted PWSF shall be surrounded by a buffer of dense tree growth.

5.6.3. Driveways: If available, existing entrances and driveways to serve a PWSF shall be utilized, 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 (12) feet in width. A gravel or crushed stone surface is encouraged.

5.7. Fall Zone

5.7.1. Ground Mounted Towers: In order to insure public safety, the minimum distance from the base of any ground-mount of a PWSF to any property line, public road, maintained trail, 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 Article. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the plan review and annotated on the recorded plot plan.

5.7.2. Non-Ground Mounted Towers: In the event that an existing structure is proposed as a mount for a PWSF, a fall zone shall not be required, but the setback provisions of zoning district shall apply. In the case of a pre-existing non-conforming structure, PWSF and their equipment shelters shall not increase any non-conformity.

6. Performance and Design Standards

6.1. Building Codes and Safety Standards: To ensure the structural integrity of towers and antennas, the owner of a tower shall ensure that it is maintained in compliance with applicable standards for towers that are published by the Electronic Industries Association, the Federal Aviation Administration, the Federal Communications Commission and any other agency of the Federal Communications Commission, as amended from time to time. Failure to bring a tower into compliance within thirty (30) days of notice being provided to the owner by the Town or within six (6) months of regulatory changes, shall constitute abandonment and grounds for removal of the tower or antenna in accordance with "Section 8" of the PWSF.

6.2. Signage: Signs shall be limited to those needed to identify the property and the owner and warn of any danger. All signs shall comply with the Town's ordinances.

6.3. Visibility

6.3.1. Camouflage for Ground Mounted Facilities: All ground-mounted PWSF shall be surrounded by a buffer of dense tree growth that extends continuously for a minimum distance of one hundred and fifty (150) feet from the mount, security barrier, or designated clear area for access to equipment, whichever is greatest, and screens views of the facility in all directions. This vegetative buffer area shall be protected by a landscape

easement or be within the area of the carrier's lease and shall not allow the removal or topping of the buffer, unless the trees are dead or dying and present a hazard to person or property. The Planning Board shall have the authority to decrease, relocate, or alter the required buffer based on site conditions. In all cases, new tower construction must be able to accomplish in such a manner that the top of the tower is at an elevation of no less than one hundred (100) feet below the elevation of the nearest peak and its extended ridge line, up slope from the tower site.

6.3.2. Color: To the extent that any PWSF extend above the height of the vegetation immediately surrounding it, they shall be of a color that blends with the background of the surroundings.

6.4. Equipment Shelters: shall be designed so that the shelters are architecturally consistent, with respect to materials and appearance, to the buildings in the area of the personal wireless service facility; or camouflaged behind an effective year-round landscape buffer, equal to the height of the proposed building, and/or wooden fence. The Planning Board shall determine the style of fencing and/or landscaping buffer that is compatible with the area.

6.5. Lighting: the mounts of PWSF shall be lighted only if required by the Federal Aviation Administration (FAA). Lighting of equipment structures and any other facilities on site shall be shielded from abutting properties. Foot-candle measurements at the property line shall be 0.0 initial foot-candles.

6.6. Historical Buildings and Districts: PWSF authorized shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas. The historic characteristics, methods, or materials shall not be altered.

7. Monitoring and Maintenance

7.1. Maintenance and monitoring: The owner of the facility shall maintain the PWSF in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping. As part of the issuance of the site plan approval or building permit, the property owner shall agree that the Town of Hart's Location may enter the subject property to obtain RFR measurements and noise measurements at the expense of the carrier. The Town shall provide reasonable written notice to the carrier and landowner and provides them the opportunity to accompany the Town representatives when the measurements are conducted.

7.2. Hazardous Waste: No hazardous waste shall be discharged 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

7.3. Security for Removal: Recognizing the hazardous situation presented by abandoned and unmonitored telecommunications facilities, the Planning Board shall set the form and amount of security that represents the cost for removal and disposal of abandoned PWSF in the event that a facility is abandoned and the

facility owner is unwilling or unable to remove the facility in accordance with "Section 8.2". The amount of the security shall be based upon the removal cost plus, fifteen percent (15%), provided by the applicant and certified by a professional structural engineer licensed in New Hampshire. The Selectmen reserve the right to review the amount of the security deposit and make any corrections necessary to cover the cost of removal. The security deposit shall be placed in an escrow account to be refunded once the facility is removed as set forth in this ordinance.

7.4. **Proof of Insurance:** The Planning Board shall require the owner/operator of any antenna or tower to provide, annually, proof that maintaining adequate liability insurance covering accident or damage.

8. Abandonment or Discontinuation of use

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

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

8.2.1. Removal of antennas, mount, equipment shelters and security barriers from the subject property.

8.2.2. Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

8.2.3. Restoring the location of the PWSF to its natural condition, except that any landscaping and grading shall remain in the after-condition.

8.3. **Failure to Remove:** If the owner of the facility does not remove the facility upon the Planning Board's order, then the Board of Selectmen shall, after holding a public hearing with notice to the owner and abutters, issue a declaration of abandonment. The owner of the facility shall dismantle and remove the facility within ninety (90) days of receipt of the declaration of abandonment by the Board of Selectmen. If the abandoned facility is not removed within ninety (90) days, the Town may execute the security to pay for this action.