

TOWN OF SMITHFIELD
Adopted March 10, 2012, Amended March 14, 2020

PERSONAL WIRELESS SERVICE FACILITIES SITING ORDINANCE

1. Title and Purpose

This ordinance shall be known and cited as the "Town of Smithfield Personal Wireless Service Facilities Siting Ordinance" hereinafter referred to as "this Ordinance".

The purpose of this Ordinance is to establish balanced regulations for the siting of personal wireless service facilities within the Town of Smithfield. The requirements of the Ordinance are intended to:

- a. Provide for siting of personal wireless service facilities while avoiding potential damage to abutting properties.
- b. To minimize any adverse impact on sensitive environmental areas as designated by the Department of Inland Fisheries and Wildlife.
- c. To maximize the use of approved or preexisting sites within the coverage area to reduce the number of personal wireless service facilities needed to serve the community; and
- d. To maintain to the greatest extent possible, the character of the existing site.
- e. To accommodate the communication needs of residents and businesses, while protecting the public health, safety, and general welfare of the community.

2. Authority

This Ordinance is adopted pursuant to Home Rule provisions of Title 30-A of the Maine Revised Statutes Annotated, Section 3001, et. seq.

3. Conflict with other Ordinances

- a. Any applications shall be subject to all applicable Federal, State and Town of Smithfield regulations as well as this Ordinance.
- b. Whenever a provision of this Ordinance conflicts with or is inconsistent with any other Federal, State or Town of Smithfield ordinance or standard, the more restrictive provision shall apply.

4. Severability

Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision.

5. **Effective Date**

The effective date of this Ordinance shall be the date of adoption or amendments by voters at a Town Meeting scheduled for this purpose.

6. **Definitions**

As used in this Ordinance, unless the context otherwise indicates, the terms referenced below have the following meanings:

“**Accessory Structure**” is a structure which is incidental and subordinate to the principal use or structure.

“**Accessory Use**” is a use which is incidental and subordinate to the principal use. Accessory uses, when aggregated, shall not subordinate the principal use of the lot.

“**Alternative Tower Structure**” is defined as clock towers, church steeple, light poles, water towers and similar alternative-design mounting structures that camouflage or conceal the presence of towers.

“**Antenna**” is the surface from which electromagnetic frequency signals are sent or received by the personal wireless service facility.

“**Camouflaged**” means personal wireless service facilities are disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure.

“**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.

“**Equipment Shelter**” is an enclosed structure, shed or box at or near the base of the mount within which are housed equipment for personal wireless service facilities, such as batteries and electrical equipment. Equipment shelters sometimes are referred to as base receiver stations.

“**FAA**” means the Federal Aviation Administration, or its lawful successor.

“**FCC**” means the Federal Communications Commission, or its lawful successor.

“**Guyed Tower**” is a tower that is tied to the ground or other surface by diagonal cables for lateral support.

“**Height**” means, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

“**Lattice Tower**” means a type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

“**Licensed Carrier**” is a company authorized by the FCC to construct and operate a commercial mobile radio services system.

“**Mast**” is a pole that resembles a street light standard or telephone pole.

“**Monopole**” is a type of mount, normally thicker than a mast that is self supporting with a single shaft of concrete, steel, or wood, which is designed for the placement of antennas or arrays along the shaft.

“**Mount**” is the structure or surface upon which antennas are mounted. Antennas may be mounted on the roof of a building (roof-mounted), on the side of a building (side-mounted), mounted on the ground (ground-mounted), or mounted on a structure other than a building (structure-mounted).

“**Parabolic Antenna**” means an antenna which is bowl-shaped, designed for the reception and/or transmission of electromagnetic radiation signals in a specific directional pattern.

“**Personal Wireless Service Facility**” or “**Wireless Service Facility**” or “**Facility**” means any structure, antenna, tower, or other device which provides personal wireless services.

“**Personal Wireless Services**” includes any personal wireless service defined in the Federal Telecommunications Act of 1996, which includes FCC licensed commercial wireless telecommunications services, including cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging and unlicensed wireless services, and common carrier wireless exchange access services.

“**Propagation Studies**” are computer generated estimates prepared by a professional radio frequency engineer of the signal emanating, and prediction of coverage, from antennas or repeaters sited on a specific personal wireless service facility or structure.

“**Site**” means the lot, tract, or parcel upon which the personal wireless service facility is located.

“**Structure**” means anything built for the support, shelter or enclosure of persons, animals, goods, or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences.

“**Tower**” means any structure, whether free standing or in association with a building or other permanent structure, primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers.

7. **Exemptions**

The following are exempt from the provisions of this Ordinance:

- a. Amateur (Ham) radio stations licensed by the FCC.
- b. Parabolic antennas of 10 feet or less in diameter that are an accessory use of the property.
- c. Maintaining or repair of a personal wireless service facility and existing equipment if there is no change in the height or other dimensions of the facility.
- d. Temporary personal wireless service facility in operation for a maximum period of 30 (thirty) days.
- e. Residential antennas that are an accessory to a residential dwelling unit, such as a television or radio antenna.

8. Permit Required

No person shall place, construct, erect, or expand a wireless service facility unless a permit has been obtained from the Town of Smithfield Planning Board, except as provided below

- a. Co-location of antennas and/or ancillary equipment onto an existing personal wireless service facility may be permitted by the Smithfield Code Enforcement Officer provided it does not result in a change of height or basal area of the facility

9. General Filing Requirements

An application for a personal wireless service facility siting permit must include the name, address, and telephone number of the applicant and any co-applicants, including landowners, as well as agents for the same. Signed permission is required from the registered landowner of any site.

10. Specific Application Requirements

- a. An application for a personal wireless service facility siting permit must also include the following, at the cost of the applicant:
- b. A site plan prepared and reviewed by a professional engineer registered to practice in Maine indicating the location, type, and height of the proposed facility and any accessory structure, loading/antenna capacity, on-site and abutting off-site land uses, means of access, and setbacks from property lines. The site plan must include certification by a professional engineer registered in Maine that the design and construction of the proposed facility meets accepted industry standards and satisfies all federal, state, and local building code requirements. The Board may also require an independent review of the site plan by a professional engineer or independent consultant at the applicant's expense.
- c. A United States Geological Survey 7.5-minute topographical map showing the current location of all structures and personal wireless service facilities above 100 feet in height from ground level, except antennas located on roof tops, within a 5-mile radius of the proposed facility.
- d. A list of all abutting property owners and evidence that written notification has been provided to them (through certified mail delivery) of the intended application.
- e. Documentation of the applicant's search for appropriate sites for the location of a personal wireless communications facility and the rationale for selecting the site under consideration.
- f. Verification of contact with all other owners of facilities for commercial mobile radio or wireless transmission operating within a 5-mile radius, inquiring as to the feasibility of co-locating the proposed personal wireless service facility on a pre-existing tower or structure.
- g. Proof of the need for a new structure and that co-location on an existing structure is not available. In addition, the applicant shall present proof that there is a contracted first tenant. Propagation studies for the proposed location as well as for any existing or approved personal wireless service facility within a 5-mile radius of the proposed site.
- h. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board. Each photo should be labeled with line of sight, elevation, and the date taken. Photos must demonstrate the color of the proposed facility and method of screening.

- i. Elevation drawings of the proposed facility, showing height above ground level.
- j. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the access road design, and the color of the structure.
- k. A balloon test, illustrating the proposed height and location of a personal wireless service facility, may be required at applicant expense. Adequate notice to the public of the test shall be given by the applicant. The Planning Board will determine what photos will be taken.

11. Location/Co-location

- a. Co-Location Opportunities: Applicants seeking approval for siting of new personal wireless service facilities shall first evaluate the suitability of existing structures or approved sites. Only after finding that there are no suitable existing structures or approved sites for co-location, shall a provider propose a new ground mounted facility. Personal wireless service facilities that may be suitable for co-location include but are not limited to buildings, water towers, flag poles, telecommunication facilities, utility poles or existing personal wireless service facilities and related facilities.
- b. Burden of Proof: The applicant shall have the burden of proving that there are no co-location opportunities which are suitable to locate its personal wireless service facility.
- c. The applicant and owner shall allow other future wireless service carriers, using functionally equivalent personal wireless technology to co-locate antennas, equipment, and facilities on the personal wireless service facility they are proposing, unless satisfactory evidence is presented, and the Planning Board concurs that technical constraints prohibit co-location. In addition, space shall be provided at no charge to public agencies that benefit the Town of Smithfield; namely police, fire, ambulance, communication, and highway, including internet access if requested at the time of review of the application by the Planning Board and as determined to be appropriate by the Planning Board.

12. Dimensional Requirements

- a. The height of any proposed personal wireless service facility shall not exceed two hundred (200) feet. No expanded personal wireless service facility shall exceed the height of two hundred (200) feet.
- b. Subject to approval of a Town of Smithfield Planning Board permit, new personal wireless service facilities that are located on water towers, electric transmission and distribution towers, utility poles and similar existing utility structures, guyed towers, lattice towers, masts, and monopoles, may be increased in height, but in no event shall the resulting height be more than two hundred (200) feet.

13. Setbacks/Appearance

- a. All personal wireless service facilities, guys and accessory facilities shall be setback from any residences or property lines by a minimum of 125% (percent) of the height of the facility;

however, it may not be closer than two hundred and fifty (250) feet of a structure located on abutting property without written consent of the abutting property owner.

- b. All personal wireless service facilities shall be galvanized steel or finished in a neutral color to reduce visual obstructiveness.
- c. When a personal wireless service facility extends above the roof height of a building on which it is mounted, every effort shall be made to conceal or camouflage the facility within or behind existing or new architectural features to limit its visibility from public ways.

14. Lighting/Signage/Security/Access Roads/Equipment Shelters

- a. Personal wireless service facilities shall not be artificially lit, except for manually operated emergency lights for use when operating personnel are on site.
- b. A security fence or wall of not less than eight (8) feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.
- c. No advertising signs or signage is permitted on personal wireless service facilities, except for signs that are needed to identify the property and the owner and to warn of potential hazards. A clearly visible sign with emergency contact information should be provided on site.
- d. Road access to the personal wireless service facility shall be limited to a single roadway, which must be designed to harmonize with the topographic and natural features of the site by minimizing filling, grading, excavation, or similar activities which result in unstable soil conditions and soil erosion. The access roadway must follow the natural contour of the land and should not involve excessive grading or tree removal. Curvilinear roads shall be used as access roads to prevent direct line of site from the town road access point to the tower site. Existing vegetation should be maintained to the extent practical. All practical steps must be taken to prevent a visible scar up or across a ridgeline.
- e. The base of the tower shall not be in a wetland or floodplain.
- f. At the site, the design of the facility and accessory structures shall use materials, colors; textures, screening and landscaping that will blend the personal wireless service facility to the natural setting as much as possible. The required security fence shall also use materials that blend into the natural setting as much as possible. The Planning Board will determine if the style of fencing and/or landscape buffer is compatible with the surrounding area.

15. Application Procedure

- a. Applicants must fulfill the application requirements as outlined in this Ordinance and present the material to the Smithfield Planning Board.
- b. A Public Hearing may be called for the application at the discretion of the Planning Board. The applicant is required to cover the additional costs of this process. The fee is to be determined by the Board of Selectmen as below.

16. Application Fee

A non-refundable application fee of \$250.00, set by and can be amended, by the Board of Selectmen, (the board shall hold a public hearing prior to setting or amending fee schedule) per proposed personal wireless service facility, payable to the Town of Smithfield, must be submitted with the application. In addition, the applicant is responsible for all out-of-pocket expenses, relating to the application.

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17. 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 and the owner or operator of the personal wireless services facility shall comply with all local, state, and federal laws, codes, rules regulations, orders and ordinances in the handling and disposal of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least one hundred and ten (110) percent of the volume of the hazardous materials stored or used on site. In the event of leakage, the owner is responsible for all costs related to cleanup of the site and affected surrounding areas.

18. Maintenance

The owner and/or operator of the personal wireless service facility shall maintain the structure in good condition. Such maintenance shall include, but is not limited to painting, structural integrity of the mount and security barrier, any buffer areas, fencing and landscaping.

19. Monitoring

- a. On an annual basis, the personal wireless service facility owner shall provide the Town of Smithfield with evidence of compliance with federally mandated safety levels for radio frequency electromagnetic fields and radio frequency radiation exposure levels, to include copies of any reports filed with the FCC.
- b. The personal wireless service facility owner shall arrange for a licensed structural engineer to conduct regular inspections of the personal wireless service facility's structural integrity and safety at least every five years. A report of the inspection results shall be submitted to the Town of Smithfield Selectmen and members of the Planning Board.

20. Bond for Removal

At the time of approval of a permit application, and prior to initiating construction of any personal wireless service facility within the Town of Smithfield, the applicant must post a bond to cover costs for the removal of the personal wireless service facility, including site reclamation. The amount of the bond shall be based on the removal and reclamation costs plus fifteen (15) percent, provided by the applicant and certified by a professional civil engineer licensed in Maine. The owner of the facility shall provide the Planning Board with a revised removal and reclamation cost estimate prepared by a professional civil engineer licensed in Maine every five (5) years from the date of the Planning Board's approval of the site plan. If the cost has increased more than fifteen (15) percent, then the owner of the facility shall provide additional security in the amount of the increase.

21. Abandonment or Discontinuation of Use/Removal

- a. A personal wireless service facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Town shall notify the owner of an abandoned

facility in writing, certified mail, return receipt requested, ordering the removal of the facility within 180 days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the Town that the facility has not been abandoned.

- b. If the owner fails to show that the facility is not abandoned, the owner shall have one hundred fifty (150) days to remove the facility. If the facility is not removed within that time, the Town shall remove the facility at the owner's expense and the Town may draw upon the bond required in Section 20 above to defray the costs of removal of the facility. Removal shall include, but not be limited to, antennas, mounts, equipment shelters and security barriers. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of any vegetation.

22. Appeals

Appeals involving conditions imposed by the Planning Board, or a decision to deny approval, shall lie from the Planning Board to the Superior Court, according to State law, except that when such appeals involve administrative procedures or interpretation, they may first be heard and decided by the Board of Appeals, as detailed below:

- a. When errors of administrative procedure are found, the case shall be referred to the Planning Board for rectification.
- b. When errors of interpretation are found, the Board of Appeals may modify or reverse the order or action but may not alter the conditions attached by the Planning Board in a conditional use permit. The Planning Board in accordance with the Board of Appeals' information, other than changes made by the granting of a variance, shall make all changes in conditions.

Appeals involving administrative procedure or interpretation shall lie from the decision of the Planning Board to the Board of Appeals and from the Board of Appeals to the Superior Court according to State Law.

23. Violations

- a. Failure to comply with any conditions of the Site Plan Review after the receipt of a building permit shall be construed to be a violation of this regulation and shall be grounds for the revocation of any building permit by the Planning Board.
- b. In instances where no new building or construction is proposed, establishment of a new use or resumption of a use which has been discontinued for at least two (2) years, if accomplished without Planning Board approval, shall constitute a violation of this ordinance. Such a violation shall be punishable by a fine of not less than one hundred dollars (\$100) or more than two thousand five hundred dollars (\$2500) for each day that the violation continues to exist after official notification by the Town.
- c. Whenever sedimentation is caused by stripping vegetation, regarding, or other development, it shall be the responsibility of the owner to remove sedimentation from all adjoining surfaces, drainage systems, and watercourses, and to repair any drainage at his expense as quickly as possible. Failure to do so within two (2) weeks after official notification by the Town shall be

punishable by a fine of not less than one hundred dollars (\$100) or more than two thousand five hundred dollars (\$2500) for each day the offense continues.

24. Enforcement

- a. Nuisances: Any violation of this Ordinance shall be deemed to be a nuisance.
- b. Code Enforcement Officer: It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings, structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be maintained as a permanent record.
- c. Legal Action: When the above action does not result in the correction or abatement of the violation or nuisance condition, the municipal officers, upon notice from the Code Enforcement Officer, are hereby authorized and directed to institute all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality.
- d. Fines: Any person who continues to violate any provision of this Ordinance, after receiving notice of such violation, shall be guilty of a misdemeanor subject to a fine of not less than one hundred dollars (\$100) or more than two thousand five hundred dollars (\$2500) for each violation. Each day such a violation is continued is a separate offense.