

Section 44 ~~Cell Towers~~ PERSONAL WIRELESS SERVICE FACILITIES

44.1 Purpose

The purpose of these regulations is: 1) to minimize the adverse impact of wireless communications towers, antennas, and facilities on Charlemont's unique community character and natural amenities; 2) to minimize the overall number and height of such facilities; 3) to regulate the siting of towers in an effort to aid the provision of communication services; and 4) to also ensure that no discrimination occurs with competing providers.

44.2 Conditions

- A. To the extent feasible, ~~wireless communication facilities~~ Personal Wireless Service Facilities (PWSF) shall be placed on existing structures, including water tanks, towers and electrical transmission lines, or concealed within church spires, barn cupolas, and the likes.
- B. To the extent feasible they shall be co-located to minimize impact to the community and the environment.
- C. The height of any portion of the facility shall be limited so that it is the lesser of 120 feet in height or no more than 30% higher than the height of any forest canopy within 1,000 feet.
- D. The height of any portion shall be limited so that no light is required by regulation;
- E. To the extent feasible, the design of the facility shall minimize the visual impact on the community and the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting, landscaping, and screening.
- F. All facilities shall be maintained in good order and repair, including removal of rust and repair of failing paint.
- G. All ~~wireless communication facilities~~ PWSF which have not been used for their intended purpose for ~~two one~~ years shall be dismantled and removed at the owner's expense. The carrier shall have one (1) year to complete restoration of the land and removal of the facility.
- H. Any new tower or mono-pole shall not be erected nearer to a property line than a distance equal to twice the vertical height of the structure, nor shall it be allowed nearer than 800 feet to any existing residential structure;
- I. No advertising devices shall be allowed on any ~~wireless communication facility~~ PWSF.
- J. A bond will be posted for the removal, maintenance, or abandonment of the facility.
- K. Clearing shall be performed in a manner which will maximize preservation of natural beauty and conservation of natural resources; which will minimize marring and scarring of landscape of silting or wet lands;
- L. ~~That no~~ No lighting shall be used on any portion of the facility unless required by code;
- M. ~~That facilities~~ PWSF shall not be located on ridge lines whenever possible.
- N. In the event of a single application for multiple Small Cell Installations, the Planning Board shall have the right to deny some or all of the proposed individual small cell sites given that each location will have unique impacts on the Town. PWSF proposals in the public right of way will require a special permit as specified in Section 44 and shall not be treated as a "utility" or utility pole application.
- O. All PWSF shall comply with all applicable FCC rules regarding acceptable limits on radio frequency radiation exposure to the general public as determined by a qualified radio frequency engineer.

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44.3 Regulations

ALL PWSF shall:

- A. Adhere to all wetland regulations imposed by the Charlemont Conservation Commission.
- B. Adhere to all state and federal protection acts.
- C. ~~Those facilities be~~ monitored the and security of such facilities shall be maintained.

44.4 Submittal & Application Requirements

All Special Permit applications for ~~wireless communication facilities~~PWSF shall be made and filed in compliance with the procedural requirements of MGL Chapter 40A Section 9. In addition, five copies of the following information, professionally prepared, must be submitted for an application to be considered complete:

- A. A locus plan at a scale of 1" = 200' which shall show all property lines, the exact location of the proposed facility, streets, topography, landscape features, and structures within 1,000 feet;
- B. A detailed site plan and elevations at a scale of 1" = 10' or larger;
- C. Color renderings and/or photographs of the visual impact of the proposed facility from a minimum of three lines of sight locations, with more locations if required by the Planning Board;
- D. Technical specification of the proposed facility, for structural integrity and potential capacity for the carriers, prepared by a Massachusetts registered professional engineer.
- E. A description of technical, economic, and other reasons for the proposed location, height and design;
- F. In the event the Planning Board determines that circumstances necessitate expert technical review, that expense shall be paid by the applicant.
- G. A description of technical, economic, and other reasons for the proposed location, height and design; and certification that the proposed PWSF addresses an existing and significant gap in coverage in the service area, such certification to include a detailed map of the "gap areas" and documentation of such gaps causing an inability for a user to connect with the land-based national telephone network or maintain a connection capable of supporting a reasonably uninterrupted communication. These gaps must be demonstrated using dropped call as well as drive test data (i.e., "hard data" certified by a qualified engineer) rather than so called "propagation maps"; and
- H. Submission of the name(s) of the carrier(s) that will provide telecommunications services utilizing the proposed tower and a copy of the contract or other form of documentation acceptable to the Planning Board demonstrating that the Applicant has a firm commitment from a carrier to use the proposed tower to provide telecommunication services.
- I. Within thirty (30) days prior to the Public Hearing, the applicant shall arrange to fly a brightly colored and clearly visible balloon, or conduct a crane test, at the maximum height of the proposed installation. The balloon or crane shall remain raised in place for a period of at least two (2) consecutive days, including a weekend day between sunrise and sunset, and will be subject to a repeat if visibility or weather conditions require. If a balloon is used, the diameter shall be the greater of three (3) feet, the largest antenna/dish proposed for the PWSF facility or the width of the tower, whichever is largest. Said date will be established, including an alternative date due to inclement weather, at the time of the pre-submission meeting with the Planning Board. The Applicant shall be responsible for advertising the date, time, and location of such test in a newspaper of general circulation in the town at least 7 days prior to, but no more than 21 days, before the beginning date of the test. The Applicant will also be responsible for placing a public notice at the Town Hall and notifying abutters via US Mail at least 1 week prior to the test.

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44.5 Exemptions

The following types of ~~wireless communication facilities~~ PWSF are exempt from this section:

~~1. Amateur radio towers used in accordance with the terms of any amateur radio service license by the FCC, provided that the tower is not used or licensed for any commercial purpose.~~

1. Satellite dishes and antennas for residential uses.

2. Charlemont's MLP: Fixed (point to point) wireless connectivity required for the backhaul of Charlemont's municipally owned fiber network or connecting new homes when establishing a wired connection is deemed too expensive by the MLP Manager and Charlemont Selectboard.

3. Any Facilities exclusively for private, noncommercial radio and television reception and private citizen's bands, licensed amateur radio and other similar noncommercial telecommunications

~~2.4.~~

44.6 Performance Guarantees and Fees

1. Towers and Personal Wireless Service Facilities PWSF shall be insured by the owner(s) against damage to the persons or property. Annual proof of said insurance shall be filed with the Town Clerk.

2. Minimum Coverages. Each PWSF Permittee shall maintain in full force and effect, throughout the term of a PWSF Permit, an insurance policy or policies. Such policy or policies shall, at a minimum, afford insurance covering all of the Permittee's operations, as follows:

(a) Commercial General Liability insurance with limits of insurance of not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate for bodily injury and property damage, including contractual liability, personal injury, products and completed operations

(b) Commercial Umbrella insurance with limits of not less than \$5,000,000.

(c) Pollution Liability insurance, on an occurrence form, with limits not less than \$1,000,000 each occurrence and \$3,000,000 annual aggregate, with any deductible not to exceed \$25,000 each occurrence.

3. Other Insurance Requirements

a. Said policy or policies shall include the Town and its officers and employees as additional insureds.

b. Said policy or policies shall be endorsed to provide thirty (30) days advance written notice of cancellation or any material change to the Town.

c. Should any of the required insurance be provided under a claims-made form, a Permittee shall maintain such coverage continuously throughout the term of a Personal Wireless Service Facility Permit, and, without lapse, for a period of three (3) years beyond the expiration or termination of the Permit, to the effect that, should occurrences during the term of the Permit give rise to claims made after expiration or termination of the Permit, such claims shall be covered by such claims-made policies.

~~1-4.~~ Proof of Insurance. Before the Town will issue a Personal Wireless Service Facility Site Permit, a Permittee shall furnish to the Town certificates of insurance and additional insured policy endorsements with insurers that are authorized to do business in the State of Massachusetts and that are satisfactory to the Town evidencing all coverages set forth in this subsection V.

~~2-5.~~ Applicant, upon obtaining a permit, shall obtain a financial surety sufficient to cover the cost of removal of the facility and the redemption of the landscape as defined under CONDITIONS; G, should the facility cease to operate.

~~6.~~ A filing fee of \$200 shall be submitted with the application to cover the cost of processing and notification.

~~3-7.~~ Prior to issuance of a Building Permit for a PWSF, the Applicant is required to post with the Town Treasurer a bond or other form of financial security in the minimum amount of \$50,000.00 or greater, depending on a determination by the Engineer or as set forth by the Planning Board. In the case of an application from the town of Charlemont, the town shall be exempt from this bond requirement. The bond will cover all removal, decommissioning, and restoration costs in the event that the Building Inspector condemns the tower or parts thereof or accessory facilities and structures or deems it unused continuously for more than a year. The Building Inspector shall give the applicant 90 days written notice in advance of any removal action. In addition, a separate \$10,000.00 bond shall be required for each Small Cell Installation. This bond(s) will be held as a guarantee that no such installation exceeds or will exceed the allowable FCC limits for radio frequency radiation exposure to the general public as determined by a qualified radio frequency engineer.

44.7 Definitions

Definitions specific to this section are from 47 U.S.C. § 332 - U.S. Code - Unannotated Title 47. Telecommunications § 332. Mobile services

“personal wireless service facilities” means facilities for the provision of personal wireless services;

“personal wireless services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

“unlicensed wireless service” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.