

22.30 Personal Wireless Service Facilities

(Adopted: Article V, November 27, 2000 Special Town Meeting)

A. Purpose

This Section regulates personal wireless service facilities within the Town for the following purposes:

1. To protect the scenic, historic, environmental and natural or man-made resources of the Town;
2. To protect property values;
3. To minimize any adverse impacts on the residents of the Town (such as attractive nuisance, noise and falling objects) or on the general safety, welfare and quality of life in the community;
4. To minimize the total number and height of towers located within the community through, among other things,
 - Encouraging the use of existing structures and towers wherever appropriate; and
 - Requiring tower sharing and clustering of wireless communication facilities where they reinforce the other purposes and objectives in this Section;
5. To accomplish those purposes through:
 - Providing standards and requirements for regulation, placement, construction, monitoring, design, modification and removal of wireless communications facilities; and
 - Providing a procedural basis for action within a reasonable period of time for requests for authorization to place, construct, operate or modify wireless communication facilities; and
 - Acting consistent with the Federal Telecommunications Act of 1996.

B. Applicability

Special permits may be granted for personal wireless service facilities as defined in Chapter 19.30 only in accordance with the standards and criteria below. However, facilities erected and maintained by the Town of Rochester for the exclusive use of schools, public works, emergency and safety services and facilities, such as satellite dishes of less than one-meter diameter, preempted from local control by the Federal Telecommunications Act, are not regulated by this Chapter 22.30.

C. Site Location

The Town's priorities for siting wireless communication facilities are as follows, in descending order. Applicants shall document that they have investigated locations higher in priority ranking than the one for which they are applying, indicating whether sites are available within those higher-ranked categories and, if so, under what conditions.

1. Concealed within an existing structure so as not to be visible from outside the structure, achieved without damage to historic features of the structure or its context;
2. On an existing building but not damaging important historic features of it, or on an existing structure such as an electric transmission tower or water tower, in either case camouflaged through location, design, color, or other means to resemble a compatible architectural feature or other element of the primary structure;
3. Co-located with existing wireless communication facilities;
4. On Town-owned land which complies with the standards of subsection 5 of this section C and where visual impact can be minimized and mitigated;
5. On other sites only if so located that the following are satisfied for the area within a radius equal to six times the height of the tower.
 - a. No portion of an historic district established under Chapter 41-C, M.G.L. or a district on or eligible to be on the National or State Register of Historic Places lies within that area;
 - b. No portion of a Town-designated scenic road or a State-designated Scenic Highway passes through that area;
 - c. No more than three existing principal buildings used as dwellings, churches, schools, or similar non-business uses located in whole or in part within that area.
 - d. The area is a low visibility one, meaning it has no state numbered highway within it, and has a majority of the area within it shown as forested on the most recent land coverage mapping available to the Board.

D. Design Requirements

1. Height

The height of personal wireless service facilities shall comply with the following.

- a. **Ground-Mounted Facilities.** The height of ground-mounted personal wireless service facilities (towers or other facilities attached directly to the ground rather than onto a building or other structure) measured above average grade at the base of the tower shall be less than 200 feet or, if smaller, a height equal to 40% of the distance from the tower center to the nearest point of an existing dwelling.
- b. **Building-Mounted Facilities.** Personal wireless service facilities shall not project more than ten feet above the height of an existing building to which they are attached nor project more than ten feet above the height limit of the zoning district within which the facility is located. Personal wireless service facilities may locate on a building that is legally non-conforming with respect to height, provided that the facilities do not project above the existing building height.
- c. **Location on Existing Structures.** New antennas located on a water tower or personal wireless service facility existing on the effective date of this bylaw shall be exempt from the height restrictions of this Section provided that they do not increase the height of the existing structure. New antennas located on electric transmission and distribution towers, telephone poles and similar existing utility structures shall be exempt from the height restrictions of this bylaw provided that there is no more than a twenty foot (20') increase in the height of the existing structure as a result of the installation of a personal wireless service facility.

2. Setbacks

- a. All personal wireless service structures and their equipment shelters shall comply with the building setback provisions of the zoning district in which the facility is located. In addition, the minimum distance from the center of the base of any ground mounted personal wireless service facility to any property line shall be the height of the facility, including any antennas or other appurtenances.

- b. In reviewing a Special application for a personal wireless service facility, the Board of Appeals may reduce the required setback distance by as much as 50% if it finds that on balance visual and safety impacts will be improved through such reduction.

3. Security and signs

Ground mounted communication towers shall be secured from trespass or vandalism by eight-foot high fencing or other means approved by the Board of Appeals, but fencing shall not include barbed or razor wire. A sign not larger than one square foot shall be posted adjacent to the entry gate indicating the name of the facility owner(s) and a 24-hour emergency telephone number, along with any other signs or notices required by State or Federal agencies. Advertising on any antenna, tower, fencing, accessory building or communication equipment shelter is prohibited.

4. Buffering

Existing on-site vegetation shall be preserved to the degree feasible, supplemented to the extent necessary to provide dense buffering from adjacent premises and streets by both trees and understory growth. Security fencing shall be screened by a landscaped buffer of evergreen plantings having mature height at least equal to the fence height.

5. Tower Design

New towers are to be monopole (single shaft without guy wires) type unless the applicant documents to the satisfaction of the Board of Appeals that an alternative would better serve the objectives of minimizing visual intrusion and adequately protecting safety.

6. Co-location Capacity

New towers are to be designed to accommodate facilities for at least six wireless communications carriers, and the owner/applicant shall allow co-location for such carriers under fair-market leases without discrimination against other wireless service providers.

7. Accessory Buildings

Shelters and other accessory buildings shall be located and designed to minimally intrude into or depart from the character of the environs, including use of underground facilities where feasible. Consistency with the appearance of buildings in the vicinity shall include use of gable roofs with eave heights averaging not more than twenty (20) feet above grade, and exterior wall appearance being that of wood.

8. Interconnections

To the extent technologically feasible, all network interconnections from the facility shall be via land lines.

9. Noise Impact

Noise levels shall not exceed eight (8) db (A) above ambient L90 levels measured at any property line or the nearest residence, exclusive of noise from construction, maintenance, and emergency alarms, and shall not result in tonal sounds (sounds in an octave band level exceeding the levels in adjacent bands by 3 db (A) or more) or in impulsive noise (noise which repetitively varies more than 5 db (A) more than ten times in an hour).

E. Procedure

Special permits for personal wireless service facilities shall require (1) justification of need for the facility, (2) approval of the location, and (3) approval of the project design and other provisions. Application for those three aspects may be made either serially or concurrently.

1. Justification of need. In applying for determination of justification of need the applicant shall submit the following:
 - a. A map of the geographic area in which the proposed facility will provide coverage that is “adequate” as expected by the FCC, locating existing or pending facilities in and abutting the Town, indicating those in which the applicant has a legal or equitable interest, whether by ownership, leasehold or otherwise.
 - b. Written documentation of any facility sites in the Town and in butting towns in which the applicant has a legal or equitable interest, whether by ownership, leasehold or otherwise. Said documentation shall demonstrate that these facility sites do not already provide, or do not have the potential to provide by site adjustment, adequate coverage.

- c. Written documentation that the applicant has investigated all facility sites located in the Town and in abutting towns in which the applicant has no legal or equitable interest to determine whether those existing facility sites can be used to provide adequate coverage.
- d. Written documentation that the proposed facility uses the least disruptive technology (through the use of repeaters or other similar technology as it may be developed subsequent to adoption of this By-law) in which it can provide adequate coverage in conjunction with all facility sites listed above.

2. Location Approval.

In applying for location approval, the applicant shall submit the following:

- a. Mapping and other graphic material documenting justification for the location selection in light of the Town's location priorities outlined at Chapter 22.30, Section C, and illustrating coverage adequacy.
- b. Visual evidence of the visibility and appearance of any proposed tower through photo simulation from locations selected by the Board of Appeals.
- c. Technical reports from qualified professional engineers describing:
 - _ The technical, economic and other reasons for the facility height and location;
 - _ The capacity of the facility, including the number and types of transmitters and receivers it can accommodate and the basis for the calculations of the capacity;
 - _ The basis for determining that the proposed facility location and design uses the least disruptive technology in which it can reasonably provide adequate coverage.
 - _ The basis for determining that the proposed technology and location are the safest and least intrusive to the vicinity that is currently feasible;
 - _ How the proposed facility complies with all applicable Federal and State standards;

3. Project design. In applying for project design approval the applicant shall submit the following:
- a. All information required under the site plan requirements for the district in which the facility is proposed.
 - b. Written statements of compliance with, or exemption from, the regulations of all federal and state agencies governing personal wireless facilities or uses, including but not limited to: the FAA, FCC, Massachusetts Aeronautics Commission, and Massachusetts Department of Health.
 - c. A report certified by an acoustical engineer documenting that the projected impact upon noise levels will meet the standard of Chapter 22.30, Section D.9.
 - d. For proposed ground-mounted towers, a report prepared by a Certified General Appraiser documenting the projected difference in real estate values resulting between these two scenarios for any existing dwellings within the six-times tower height area specified at Chapter 22.30, Section C.5:
 - Development of that area with the proposed communications facility plus nothing else; or
 - Development of that area with the maximum amount of residential development feasible under current zoning and other regulations.

4. Approval Criteria

A special permit shall be granted under this section only if the Board of Appeals finds that the project is in harmony with the general purpose and intent of this Bylaw. In addition, the Board of Appeals shall make all the applicable findings before granting the special permit, as follows:

- a. That the applicant is not already providing adequate coverage or is unable to maintain adequate coverage without the special permit;
- b. That the applicant is not able to use existing facility sites either with or without the use of repeaters to provide adequate coverage;

- c. That the proposed wireless service facility minimizes any adverse impact on historic resources, scenic views, residential property values, and natural or man-made resources.
- d. That the applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the facilities;
- e. That the applicant has agreed to rent or lease available space on any tower it controls within Rochester, under the terms of a fair-market lease, without discrimination to other wireless service providers.

In granting a special permit the Board of Appeals may, in addition to such terms and conditions as may be specified above, impose such additional conditions and safeguards as public safety, welfare and convenience may reasonable require.

All special permit decision by the Board of Appeals under this section shall be in writing and supported by substantial evidence contained in a written record, as required by the Federal Telecommunications Act and by Chapter 40A, M.G.L.

5. Term of Permit

Each Special Permit shall be valid for a fixed or conditional period of time as determined by the Board of Appeals, but not to exceed twenty-five years. At the end of the approved time period, the carrier shall remove the facility unless a new special permit has been approved.

6. Monitoring and Reporting

Each carrier utilizing wireless communications facilities authorized under these provisions shall file a report with the Town every year on operational aspects of the facility including: power consumption, power radiation, frequency transmission, the number, location, and orientation of antennas; and types of services provided. The Board of Appeals may require by regulation a reasonable fee for review of such report by outside consultants, which fee shall be held and expended in accordance with the provisions of Massachusetts General Laws Chapter 44, Section 53G.

7. Expert Testimony and Review

- a. To ensure a well-informed process, the Board of Appeals will place important reliance on the written submittals required above. Those submittals shall be prepared by professionals who are expert on the topics which they are addressing and who, if requested by the Board of Appeals, will be available to provide oral testimony as well.
- b. The applicant shall pay the reasonable costs for the Board of Appeals to engage independent consultants to review the application submittals.

F. Removal Requirements

Any personal wireless service facility that ceases to perform the normal functions associated with the wireless service facility and its equipment on a continuous and ongoing basis for a period of one year shall be removed. At the time of removal, the facility site shall be remediated such that all wireless communication facilities that have ceased to operate are removed. If all facilities on a tower have ceased to operate, the owner shall also remove the tower (including foundation). Existing trees shall only be removed if necessary to complete the required removal. The applicant shall, as a condition of the special permit, provide a bond or other formal financial guarantee acceptable to the Board of Appeals to cover the cost of removal of the facility and remediation of the landscape.

*(NOTE: JUNE 12, 2000, ARTICLE XXIX, PLACED A MORATORIUM ON CELL TOWERS
JUNE 3, 2002, ARTICLE XX, MORATORIUM WAS REPEALED)*