

**CHAPTER 8**  
**PERSONAL WIRELESS TELECOMMUNICATIONS FACILITIES**

**Section**

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**§10-8-1: PURPOSE:**

The purpose of this Chapter is to provide specific regulations for the placement, construction and modification of personal wireless telecommunications facilities. In order to accommodate the communication needs of residents and businesses while protecting the public health, safety, and general welfare of the community, the Board of Trustees finds that these regulations are necessary in order to:

- (A) Facilitate the provision of wireless telecommunications services to the residents of the Village, as well as to other persons, firms, and/or corporations in the vicinity of the Village;
- (B) Minimize adverse visual effects of towers through careful design and siting standards;
- (C) Avoid potential damage to adjacent properties from tower failure through structural standards and setback requirements; and
- (D) Maximize the use of existing and approved towers and buildings to accommodate new wireless telecommunication antennas in order to reduce the number of towers needed to serve the community.

(Ord. 2004-011, 11-15-2004)

**§10-8-2: INTERPRETATION:**

- (A) The provisions of this Chapter are not intended to and shall not be interpreted or applied so as to prohibit or have the effect of prohibiting the provision of personal wireless services, nor shall the provisions of this Chapter be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services. To the extent that any provision or provisions of this Chapter are inconsistent or in conflict with any provision of this Code, the provisions of this Chapter shall be deemed to control.

- (B) In the course of reviewing any request for any approval required under this Chapter made by an applicant to provide personal wireless service or to install personal wireless service facilities, the Zoning Board of Appeals or the Board of Trustees, as the case may be, shall act within a reasonable period of time after the request is duly filed with the Village, taking into account the nature and scope of the request, and any decision to deny such a request shall be in writing and supported by substantial evidence contained in a written record. This burden of proof requires more than a scintilla of evidence but less than a preponderance.
- (C) No decision to deny an application for a special use permit or a zoning variation for the construction or installation of a personal wireless service facility may be based on the environmental effects of radio frequency emissions to the extent that such facility complies with the Federal Communications Commission's (FCC's) regulations concerning such emissions.

(Ord. 2004-011, 11-15-2004, amd. 2014 Code)

**§10-8-3: DEFINITIONS:**

The terms "personal wireless service" and "personal wireless service facilities", as used in this Chapter, shall be defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as amended now or in the future. Generally, these terms refer to licensed commercial wireless telecommunication services including cellular, Personal Communication Services (PCS), Specialized Mobile Radio (SMR), Enhanced Specialized Mobile Radio (ESMR), paging, and similar services that are marketed to the general public. For the purpose of this Chapter the term "personal wireless service facilities" may also be referred to as "towers", "facilities" or "antennas", as deemed appropriate in the context. (Ord. 2004-011, 11-15-2004)

**§10-8-4: PLACEMENT OF PERSONAL WIRELESS SERVICE FACILITIES:**

- (A) In the B-1 Business Zoning District, in the F Farming Aoning District, and in the PL Public Land Zoning District, a personal wireless service facility shall require a special use permit and shall also require a zoning variation for any portion of the height of the personal wireless service facility in excess of the maximum height requirements of the applicable district.
- (B) Personal wireless service facilities are prohibited in all Residential Zoning Districts (A-1, A-2, A-3 and A-4), and in all the Private Recreational Zoning Districts (PR-1, PR-2 and PR-3).

(Ord. 2004-011, 11-15-2004)

**§10-8-5: SHARED USE:**

- (A) The shared use of existing towers and antenna facilities shall be preferred to the construction of new facilities. Provided that such shared use is accomplished in a manner consistent with the terms of this Chapter, then such shared use may be approved without any new or additional special use permit approval. Proper plans must be submitted and permits obtained for such shared use as required by the terms of this Chapter.

- (B) An applicant for a special use permit for a new tower or support structure shall submit a report inventorying existing towers and antenna sites within a reasonable distance from the proposed site outlining opportunities for shared use as an alternative to the proposed use. The applicant must demonstrate that the proposed tower or antenna cannot be accommodated on an existing approved tower or facility due to one or more of the following reasons:
1. Unwillingness of the owner to entertain the proposed facility.
  2. The planned equipment would exceed the structural capacity of existing and approved towers and facilities, considering existing and planned use for those facilities.
  3. The planned equipment would cause interference with other existing or planned equipment, which cannot reasonably be prevented.
  4. Existing or approved towers or facilities do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
- (C) The Zoning Board of Appeals or the Board of Trustees, as the case may be, may consider existing towers and antenna sites located in adjacent municipalities that are capable of serving the Village when examining an application for an additional new facility.

(Ord. 2004-011, 11-15-2004)

**§10-8-6: CONDITIONS:**

- (A) The personal wireless service facility shall conform to all applicable federal laws and regulations concerning its use and operation, shall also conform to all applicable provisions of this Zoning Ordinance and all other applicable provisions of this Code.
- (B) All antenna support structures must be set back from property lines a distance equal to one hundred fifty percent (150%) of their height. In addition, all antenna support structures shall conform to all minimum setback and yard requirements of this zoning ordinance. In addition, no personal wireless service facility shall be located between the front lot line and the principal building, if any, on the site. All personal wireless service facilities shall be separated from personal wireless service facilities on other properties by at least one thousand five hundred feet (1,500’).
- (C) In considering a request for approval of a special use to permit the installation of personal wireless service facilities the Zoning Board of Appeals and/or the Board of Trustees, as the case may be, shall, in addition to other relevant standards for approval, also give due consideration and weight to:
1. Whether the applicant has sought and been denied the opportunity to collocate its personal wireless service facility on an existing antenna supporting structure.
  2. Whether a significant gap in coverage exists in each applicant’s coverage area for the provision of personal wireless telecommunications service. A “gap in coverage” exists when a remote user of such services is unable to either connect with the land based national telephone network or to maintain a connection capable of supporting a reasonably uninterrupted communication. This standard shall be applied separately to each personal wireless communications service provider.
  3. Whether the means chosen to fill a significant gap in coverage are the least intrusive on the conditions set forth in this Chapter.
  4. Whether there are specific and unique aesthetic, visual and safety objections relative to the subject property that are distinct from those generalized concerns otherwise addressed in this Chapter.

5. Whether the proposed site would encroach in a historically significant area.

(Ord. 2004-011, 11-15-2004)

**§10-8-7: NONCONFORMITIES:**

Any personal wireless service facility installed and operating prior to the enactment of this Chapter which would be prohibited under this Chapter shall be considered to be legal nonconforming uses and/or legal nonconforming structures, as the case may be, and shall be subject to the rules on nonconforming uses and structures as provided by this Zoning Ordinance. (Ord. 2004-011, 11-15-2004)

**§10-8-8: TOWER AND ANTENNA DESIGN REQUIREMENTS:**

All tower and antenna designs, as well as designs for associated facilities, shall be approved in advance by the Board of Trustees, or their designee, as part of the required special use permit. Proposed or modified towers and antennas shall meet the following design requirements:

- (A) Personal wireless service facilities shall be of a monopole design unless the Board of Trustees determines that an alternate design would better blend into the surrounding environment.
- (B) Towers and antennas shall be designed to blend into the surrounding environment through the use of color or camouflaging architectural treatment, where possible. A tower shall be painted a single, neutral color, the color of which shall be approved in advance by the Board of Trustees, and any tower, antenna(s), and/or associated facilities shall be well maintained at all times.
- (C) Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lights are specifically required by a federal or state authority.
- (D) Site location and development shall preserve the existing character of the site as much as possible. Existing vegetation must be preserved or improved, and disturbance of the existing topography of the site must be minimized. All ground mounted facilities and equipment shall be enclosed with a solid six foot (6') high fence. Landscaping shall be required to screen as much of the support structure as possible, the fence surrounding the support structure and any other ground level features.

(Ord. 2004-011, 11-15-2004)

**§10-8-9: ABANDONED OR UNUSED TOWERS OR PORTIONS OF TOWERS:**

A tower shall be deemed abandoned if it remains unused or unoperated for a period of twelve (12) consecutive months, unless a shorter abandonment period is provided in the applicable lease, in which event, the abandonment period specified in the applicable lease shall govern, and such abandonment shall be as determined by the Board of Trustees. Abandoned or unused towers or portions of towers shall be removed as follows:

- (A) All abandoned or unused towers and associated facilities shall be removed within ninety (90) days of the Village Board's determination that said tower and associated facilities are abandoned, unless a time extension is approved by the Board of Trustees. Written notice of the Board's determination

of abandonment shall be sent via regular mail, and via certified mail, return receipt requested, to the owner of the tower(s) and associated facilities and to the applicant for the special use permit. A copy of the relevant portions of any signed lease which requires the applicant to remove the tower and associated facilities upon cessation of operations at the site shall be submitted at the time of application for the required special use permit. In the event that a tower is not removed within ninety (90) days of the Village's notice of said abandonment, the tower and associated facilities may be removed by the Village and the costs of removal may be recorded as a lien against the property. The Village may also recover the costs of such removal from the owner of the tower and associated facilities.

- (B) Unused portions of towers above operating antenna facilities shall be removed within six (6) months of the time of antenna relocation or abandonment. The replacement of portions of a tower previously removed requires the issuance of a new special use permit.

(Ord. 2004-011, 11-15-2004)

#### **§10-8-10: INTERFERENCE WITH PUBLIC SAFETY TELECOMMUNICATIONS:**

No new or existing telecommunications service shall interfere with public safety telecommunications. All applications for new service shall be accompanied by an intermodulation study which provides a technical evaluation of existing and proposed transmissions and indicates all potential interference problems. Before the introduction of new service or changes in existing service, telecommunication providers shall notify the Village at least ten (10) calendar days in advance of such changes and allow the Village to monitor interference levels during the testing process. If at any time it is determined by the Board of Trustees that public safety communications experience interference from the new, modified, or existing telecommunications service so as to jeopardize or impede emergency services to residents of the Village, the owner and/or operator of said telecommunications service shall immediately take the appropriate action to either modify its transmissions in order to eliminate any such interference, or cease and desist from any transmissions at the subject site and remove the tower and any antenna facilities from the premises within ninety (90) days of such determination. (Ord. 2004-011, 11-15-2004)

#### **§10-8-11: ADDITIONAL SUBMITTAL REQUIREMENTS:**

In addition to the information required elsewhere in this Code, applications for a special use permit and, where required, an application for a variation, for a wireless telecommunication antenna or tower shall include the following supplemental information:

- (A) A statement of the applicant's purpose and need.
- (B) Existing facilities, including existing and estimated capacities.
- (C) A site plan including tower and equipment elevations.
- (D) Demonstration from a qualified and licensed professional engineer that alternative locations are unavailable or impractical and that the equipment cannot be mounted on an existing tower.
- (E) A report from a qualified and licensed professional engineer which:

1. Describes the tower height and design including a cross section and elevation;
  2. Documents the height above grade for all potential mounting positions for collocated antennas and the minimum separation distances between antennas;
  3. Describes the tower's capacity, including the number and type of antennas that it can accommodate;
  4. Documents what steps the applicant will take to avoid interference with established public safety telecommunications;
  5. Includes a professional engineer's stamp and registration number;
  6. Includes any other information necessary to evaluate the request.
- (F) For all new wireless telecommunication service towers and facilities, a letter of intent committing the owner and his or her successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.
- (G) A plan indicating how specific visual impacts created by the proposed facilities will be minimized.
- (Ord. 2004-011, 11-15-2004)

**§10-8-12: VILLAGE-OWNED LAND:**

(A) Preference:

It is the express preference of the Village that personal wireless telecommunication facilities should be located on property within the Village according to the following priorities:

1. Village-owned property located within the public lands (PL) district;
2. Other government owned property and structures;
3. Existing private commercial structures such as buildings, silos, communications towers, and water towers.

(B) Priority of Users:

Priority for the use of Village-owned land for wireless telecommunication antennas and towers will be given to the following entities in descending order:

1. Village of Tower Lakes;
2. Public safety agencies, including law enforcement, fire, and ambulance services, which are not part of the Village and private entities with a public safety agreement with the Village;
3. Other governmental agencies, for uses which are not related to public safety; and
4. Entities providing licensed commercial wireless telecommunication services including cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and similar services that are marketed to the general public.

(C) Minimum Requirements:

The placement of wireless telecommunication antennas or towers on Village-owned property must comply with the following requirements:

1. The antennas or tower will not interfere with the purpose for which the Village-owned property is intended.

2. The applicant obtains adequate liability insurance and commits to a lease agreement which includes equitable compensation as determined by the Board of Trustees for the use of public land and other necessary provisions and safeguards.
3. The applicant will submit a letter of credit, performance bond, or other security acceptable to the Village to cover the costs of the antenna or tower removal and restoration of the subject property.
4. The antenna or tower will not interfere with other users who have a higher priority.
5. The user must obtain all necessary land use approvals.

(D) Application Process:

All applicants who wish to locate a wireless telecommunication antenna or tower on Village-owned property must submit to the Board of Trustees a completed application for a special use permit and, where required, variation and detailed plan that complies with the submittal requirements set forth in this Chapter along with other pertinent information requested by the Village.

(E) Reservation of Right:

The Board of Trustees, acting in its capacity as a property owner, reserves the right to deny, for any reason, the use of any or all Village-owned property by any one or all applicants.

(Ord. 2004-011, 11-15-2004)

(Amd. 2014 Code)