

APPLICATION FOR
GRANT OF SPECIAL EXCEPTION
FOR PWS FACILITY--CO-LOCATION

To: The Indian Hill Planning Commission

The undersigned hereby applies for a grant of special exception for establishment of a PWS Facility to the regulations of the Indian Hill Zoning Ordinance.

PART A GENERAL INFORMATION

- (1) Name & address of the person or organization making application:

- (2) Name (s) of property owner (s):

- (3) Address or location of proposed site:

- (4) District Classification:

NOTE TO APPLICANT

The information requested under the following items is required by the Indian Hill Zoning Ordinance.

It is suggested that the applicant consult with the City Manager's office for assistance in completing this form. Samples of completed forms are also available.

All items should be answered clearly and completely. (Additional sheets may be attached if space is not adequate.)

ZONING ORDINANCE

VILLAGE OF INDIAN HILL, OHIO

Section

101.4 Special Exceptions

101.41 Authority and Purpose. The Commission, in accordance with the procedures and standards set forth below, shall have the power to grant special exceptions to the district regulations of this ordinance. Special exceptions are uses which are generally compatible with the other land uses permitted in a given zoning district, but which, because of their potential adverse impact on the use and enjoyment of nearby properties, require individual review of their location, site design, and/or operation, and the imposition of such conditions as the Commission may deem necessary in order to minimize potential adverse impacts on the particular exception and to ensure that the exception is consistent with the character of the neighborhood.

101.42 Special Exceptions Authorized

101.421 Only the uses identified in this Section shall be allowed as special exceptions, provided that they meet the standards established in this Section and Section 101.43. Except as otherwise stated below, the following uses may be established as a special exception in any district:

(14) Personal Wireless Service (PWS) Facilities

101.422 The listing or designation of a special exception above does not constitute an assurance or presumption that such special exception will be approved. Rather, each proposed special exception shall be evaluated by the Commission on an individual basis, in relation to its compliance with the standards for the district in which it is located, in order to determine whether approval of the special exception is appropriate at the particular location and in the particular manner proposed.

101.43 Standards for Special Exceptions: Additional Conditions

101.431 Standards. The Commission shall not grant a special exception unless, in each case, it makes written findings of fact and conclusions, directly based on and supported by the particular evidence presented to it in the application and at the hearing, that the proposed special exception meets each of the following standards:

- (1) The establishment, maintenance, or operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, comfort, morals, or general welfare;
- (2) The special exception is not inconsistent with the Village's adopted Land Use Objectives and Policies;
- (3) The special exception, either alone or in conjunction with other special exceptions previously granted or otherwise existing, will not injure, diminish, or impede the use, enjoyment, or normal and orderly development of other property in the immediate vicinity for uses permitted in the zoning district;
- (4) The special exception is consistent with the residential character of the immediate vicinity of the parcel proposed for development;
- (5) The special exception will not substantially diminish or impair property values within the neighborhood;
- (6) Adequate utilities, drainage, wastewater treatment, and/or other facilities necessary to serve the proposed special exception already exist or will be provided;
- (7) Adequate access roads, entrance and exit drives, and off-street parking spaces already exist or will be provided and designed so as to prevent traffic safety hazards, to minimize traffic conflicts and congestion in the streets and to maintain the rural residential character of existing roadways in the Village, without requiring improvements that will increase the capacity of existing roadways or will encourage their use by through-traffic;
- (8) The special exception will not adversely affect a known archaeological, historical, or cultural resource;

- (9) The applicant has represented to the Commission that it has the capacity to complete, maintain, and operate the special exception as proposed and approved, and has made or will make adequate legal provision to guarantee the provision and development of any buffers, landscaping, public open space, and other improvements associates with the proposed development;
- (10) The special exception shall in all other respects conform to the applicable regulations of the zoning district in which the property is located, except where the Planning Commission in a particular case grants a variance from the regulations pursuant to Section 101.5 or, if the regulations are of a type that may not be varied under Section 101.52, where the Council in a particular case waives or modifies the regulations pursuant to the recommendations of the Commission;
- (11) All exterior lighting fixtures will be designed, directed, or shaded so that no direct light is cast upon any other property; and all driveways and off-street parking areas will be designed and screened to minimize the illumination of adjacent residential properties by automobile headlamps; and
- (12) All buildings and structures located within 25 feet of the minimum front yard, side yard, or rear yard required under Section 63.1 or Section 73.1 will be screened by landscaping of a type, nature, and seasonal character that will ensure the privacy of adjacent dwellings and will ensure that the visual character of the use will be compatible with surrounding uses; and all accessory outdoor storage areas, mechanical equipment, and waste disposal facilities will be screened from the view of adjacent dwellings.

101.432 Conditions. The Commission may attach to the approval of a special exception such conditions and restrictions upon the establishment, location, construction, maintenance, and operation of the special exception as the Commission deems necessary to secure compliance with the standards set forth in this section and to carry out the purposes of this ordinance. Such conditions may include, but are not limited to, the following: requiring larger yard depths for buildings, structures, or parking areas; requiring or placing restrictions on landscaping, signage, or outdoor lighting; requiring the provision of adequate ingress, egress, or off-street parking; limiting the duration of the approval of the special exception; limiting the hours and frequency of the operation of the use; and requiring measures to mitigate the impacts of the special exception on the natural environment.

PERSONAL WIRELESS SERVICE FACILITIES (PWS) ORDINANCE

VILLAGE OF INDIAN HILL, OHIO

Section

IV. Application for establishment of PWS Facility

A. Purpose

The Commission, in accordance with the procedures and standards set forth below, shall have the authority to grant a special exception to the district regulations of the Zoning Ordinance for PWS Facilities. Consistent with the Village's Land Use Objectives and Policies, it is preferred that all applicants desiring to establish PWS Facilities within the Village utilize Existing Towers or Existing Support Structures, as those terms are defined in Section III of this Ordinance. The standards set forth below shall be considered in addition to the general special exception standards in Section 101.4 of the Zoning Ordinance. Where the standards and/or requirements of this Ordinance conflict with the provisions of the Zoning Ordinance, the specific requirements of this Ordinance shall control.

B. Use Regulations

- (1) PWS Facilities shall be permitted by special exception in the Thoroughfare Proximity Areas located in Zoning Districts A, B, and C.
- (2) PWS Facilities may be permitted in areas outside Thoroughfare Proximity Areas if the Commission, following review and approval of an application for special exception, determines that no feasible alternative site exists in the Thoroughfare Proximity Areas which will substantially satisfy the PWS providers' coverage and service needs.

C. General Procedure: Preapplication Conference

An application for special exception to develop a PWS Facility shall comply with the hearing requirements and procedures set forth in Section 101.45 of the Zoning Ordinance. In addition, an applicant proposing the establishment of a PWS Facility is encouraged to schedule a preapplication conference with the City Manager to discuss the nature and proposed location of the PWS Facility. The preapplication conference is intended to facilitate the filing and consideration of a complete application, and no representation made by the City Manager or any other Village official during the preapplication conference shall

be binding upon the Village with respect to the application subsequently submitted.

D. Application Requirements

Any person owning property in the Village or having an interest in property together with a PWS provider may file an application with the City Manager for a special exception to establish a PWS Facility. An application for a variance from the provisions and requirements of this Ordinance may be filed as specified in Section 101.5 of the Zoning Ordinance in conjunction with the application for a special exception. Such variance application shall be considered by the Planning Commission at the same public hearing at which it considers that application for special exception. However, a decision by the Planning Commission to grant the requested variance shall be made only after deciding the application for special exception.

E. Standards for Approval of a PWS Facility

The Commission shall not grant a special exception for a PWS Facility unless the applicant has clearly demonstrated by substantial evidence in the record that it has complied with the standards set forth below. In each case, the Commission shall make written findings of fact and conclusions, directly based on and supported by the record presented to it in the application and at the hearing.

- (1) **For a PWS Facility for co-location or for a PWS Facility on an Existing Tower or on an Existing Support Structure**, the Commission must find that the application complies with the following standards.
 - (a) The applicant has complied with the special exception Standards set forth in Section 101.43 of the Zoning Ordinance.
 - (b) The applicant has complied with the submission requirements of Section IV.D.(2);
 - (c) The PWS Facility is not inconsistent with the Land Use Objectives and Policies adopted by the Village;
 - (d) The PWS Facility is in compliance with all applicable requirements of the Zoning Ordinance;
 - (e) All antennas mounted on or within an existing support structure are

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adequately screened, painted and/or architecturally treated so as to blend into the proposed existing architectural character of the structure. To the extent possible, equipment associated with PWS Facilities on existing support structures shall be located within the support structure. If a new equipment shelter is included as a part of a PWS Facility, it shall have an appearance consistent with other buildings or structures on the parcel and will preserve the character of the Village as a rural neighborhood of homes, green open spaces and farms;

- (f) The PWS Facility use will not substantially diminish or impair property values within the neighborhood;
 - (g) The PWS Facility will have adequate access to utilities and public roads and shall provide adequate space for on-site parking;
 - (h) All exterior lighting will be designed, directed or shaded so that no direct light is cast upon any other property;
 - (I) The PWS Facility use and its associated uses and structures is adequately landscaped in a manner consistent with the principle and accessory use of the site and the provisions of the Land Use Objectives and Policies;
 - (j) The PWS Facility complies with the RF Emission Standards adopted by the FCC;
 - (k) The PWS Facility complies with the performance standards set forth in Section IV.F.
- (2) **A proposed PWS Facility which will require the construction of a new tower shall comply with the standards set forth in Section IV.D.(1) above and the following additional standards.**
- (a) The area proposed to be serviced by the PWS Facility cannot be adequately addressed by the establishment of a PWS Facility on an existing tower or an existing support structure.
 - (b) The use of an existing tower is not technically, structurally, economically and/or financially feasible.

- (c) The proposed facility has adequate capacity to handle a maximum of three additional users.
- (d) No federal or state government land is available for the siting of the proposed PWS Facility.
- (e) All towers shall maintain a galvanized finish or shall be painted a neutral color, consistent with the natural or built environment of the site.
- (f) All obstruction lighting and/or marking required by the FAA shall be approved by the Commission at the time the application is made.
- (g) Ground anchors associated with any guyed towers shall be located on the same parcel as the tower and shall satisfy the setback requirements for structures in that district.

The Commission at its discretion, may retain an outside consultant to assist it in its evaluation of special exception application for a PWS Facility. The cost for such consulting services shall be borne by the applicant, and shall be collected as a part of the application fee. The applicant shall not be entitled to a return of this fee if the application is denied.

F. Thoroughfare Proximity Areas Performance Standards

For the purpose of this Ordinance only, a location proposed for a PWS Facility which satisfies all of the following standards shall be deemed to be within the limits of the Thoroughfare Proximity Areas.

- (1) The proposed PWS Facility shall be no closer than 250 feet nor further than 1,500 feet from the closest right-of-way line associated with any Principal Street in the Village.
- (2) The proposed PWS Facility site must be located in an area which maintains a ground elevation of at least 650 feet above mean sea level (AMSL).
- (3) No portion of the proposed PWS Facility Site Compound is within 250 feet from any existing single family residential structure on the same parcel or adjacent parcels.
- (4) Any tower associated with the proposed PWS Facility shall satisfy the setback requirement of Section VI.E. of this Ordinance.

G. Presumption Favoring Thoroughfare Proximity Areas

It is presumed, for the purposes of this Ordinance, that PWS Facilities in the Village can be located in the established Thoroughfare Proximity Areas. The Commission may approve a special exception application for a PWS Facility in an area outside of the Thoroughfare Proximity Areas if, in addition to satisfying the standards set forth in Section IV.E. above, the applicant can demonstrate that absolutely no site location within the Thoroughfare Proximity Areas can satisfy its technical coverage needs. The Commission may require the submission of such additional information as it deems necessary to determine that no site in the Thoroughfare Proximity Areas exists that will satisfy the reasonable coverage needs of the PWS provider. The PWS provider's inability to agree on acceptable terms with a property owner for the use of his/her parcel shall not, in and of itself, be an acceptable reason for failing to propose a PWS Facility on a parcel within the Thoroughfare Proximity Areas.

Section

V. Co-location

A. In effort to avoid the proliferation of PWS Facilities in the Village, the Village has established, as a part of its Land Use Objectives and Policies, a clear policy in favor of co-location. Each tower proposed as a part of a PWS Facility shall be required to accommodate a maximum of three (3) additional Personal Wireless Service providers and shall make space available on the tower to federal, state and local emergency service providers as requested.

B. Following the issuance of an approval of a special exception for a PWS Facility and prior to the issuance of a building permit for the construction of a tower, the applicant shall enter into a written agreement with the Village committing to make the approved tower available to additional users. The willful and knowing misrepresentation and the subsequent failure of the applicant to construct the tower and act in accordance with the approval, the signed co-location agreement and the Village's co-location policy is unlawful and shall, among other remedies of the Village, including the revocation of the special exception permit, be cause for the withholding of future permits for similar facilities and PWS Facilities within the Village. The applicant shall agree to make its tower available to other PWS providers on reasonable terms and conditions.

C. A PWS provider who is denied access to a PWS Facility tower previously approved under this Ordinance, may petition the Commission to review its request to use the existing PWS Facility tower. The Commission may hold a hearing, at which all parties shall appear, to determine whether the permittee is in breach of its agreement with the Village to permit

such co-location. Upon finding that co-location on an existing PWS Facility tower is technically, legally and economically feasible and/or upon a finding that the permittee is in breach of its co-location agreement, the Commission may act in accordance with the remedies set forth in Section V.B. above. All costs associated with the Commission's review and mediation of co-location disputes shall be shared equally by the petitioner and the permittee.

Section

VI. Miscellaneous Provisions

A. Parking

A maximum of two (2) parking spaces may be provided at a PWS Facility.

B. Landscaping

Each site approved for use as a PWS Facility shall be suitably landscaped. It is the intent of these landscape provisions to establish visual screening of all structures or equipment associated with the facility and located within the site compound. This landscaped area shall consist of a minimum 10-foot wide landscaped strip around the entire site compound for new towers sites or landscaping consistent with the principal use of the site for PWS Facilities utilizing existing support structures. At the discretion of the Commission, this landscape requirement may be waived for PWS Facilities on existing support structures.

The applicant shall propose a mix of tree, shrubs and ground cover to provide adequate screening of all structures and equipment within the site compound, excluding any tower structure but including any fence or wall surrounding the site compound. Landscaping requirements may be varied, at the discretion of the Commission as site specific conditions dictate.

C. Maintenance and Removal

The owner/operator of an approved PWS Facility shall be responsible for the maintenance of the site compound, associated landscaping, access driveway and any associated areas of the property used as a part of the PWS Facility.

Any PWS Facility tower which has discontinued its service as authorized by special exception for a period of twelve (12) continuous months shall be dismantled and removed from the site at the owner's expense. The Commission shall provide the PWS Facility

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operator with the notice to remove the tower within ninety (90) days after receipt of such notice. For the purpose of this section a tower shall be deemed to have discontinued its service as authorized by special exception if it has been abandoned, becomes obsolete, or ceased to be used or operated on a daily basis.

As a condition of the Commission's approval of a PWS Facility tower, the owner of the property upon which the PWS Facility tower is located shall be required to submit to the Commission the owner's covenant to undertake the responsibility and cost for the removal of a PWS Facility tower, which covenant shall be made enforceable by the Village and recorded as a lien against the property. This lien shall be released after tower removal and final inspection and sign off by the City Manager or its designee.

D. Fences and Walls

Each PWS Facility requiring the construction of a new tower shall be surrounded by an 8-foot high fence/wall and gate adequate to provide vehicular access to the base of the tower and equipment shelter. The type, style and the material of the proposed fence/wall shall be approved by the Commission as a part of the special exception application process. The fence/wall shall be installed along the perimeter of the site compound. The Commission may in its discretion impose these fence/wall requirements on PWS Facilities utilizing existing support structures.

E. Setbacks

Towers associated with a PWS Facility shall be set back from all property lines a distance equal to the height of the tower. All other structures or equipment associated with a PWS Facility must comply with the appropriate setback requirements of the Zoning Ordinance.

F. Tower Height

No tower shall exceed 160 feet in height. However, the Commission may approve a special exception for a new tower whose proposed height exceeds 160 feet upon making written findings of fact and conclusions that the additional height allowed will further the Village's policy to encourage co-location of PWS Facilities.

G. Modifications

Any modification to PWS Facility approved under this Ordinance, shall require the submission of a new special exception application in accordance with the provisions and

requirements of Section IV of this Ordinance. The Commission may agree to waive certain submission requirements if, at its discretion, the Commission believes such a waiver is justified.

H. Prohibitions

No PWS Facility shall be located in any Village of Indian Hill Green Areas, as designated on the "Green Areas Map" on file in the City Manager's office. In addition, no PWS Facility tower shall be illuminated in any manner unless such illumination is required by the Federal Aviation Administration (FAA).

I. Transferability

Special exception approvals for the development and operation of PWS Facilities may be transferred only after (1) the Commission's receipt, at least 60 days prior to the transfer, of the notice of the applicant's intent to transfer and (2) upon review and approval of the Commission at their next regularly scheduled meeting following receipt of the transfer notice.

PART B Answer the following items as thoroughly as possible:

- (1) Describe the special exception for which this application is made (see Sections IV.A. "Purpose," 101.42 "Special Exception Authorized," and 101.43 "Standards for Special Exceptions, Additional Conditions" of the Zoning Ordinance):

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- (3) List any permits or licenses required by any governmental agency for this use. Attach a copy of any such permit or license or explain why such permit or license is not available:

- (4) State the type of additional vegetation and landscaping to be used for screening the view of the equipment shelter from adjacent properties. In addition, mark site plan of the location of such vegetation and landscaping:

- (5) List number and types of all exterior lights. If such illumination is proposed, the location of each light must be clearly marked upon the site plan:

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(6) State nature and type of utility and drainage facilities which will be provided:

(7) State whether flammable or explosive materials will be used or stored on the property:

(8) Furnish a statement of (I) the impact of the proposed use upon significant natural environmental features on the property; (ii) the methods proposed to preserve such features; and (iii) the adverse environmental impacts which cannot be avoided if the special exception is granted:

- (9) State the number and types of vehicles which will be used in connection with the proposed use:

- (10) List the PWS Facilities or other Communications entities currently using the Existing PWS Facility:

- (11) Give names and addresses of all owners of property adjacent to or within 500 feet of the property on which the facility is proposed. (Also show on site plan):

Name Address

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(12) Additional information if required by Planning Commission:

PART C The following items are to be provided along with this application:

- (1) Eight (8) copies of a site plan drawn to such scale as the Commission shall, by rule, require that shows the actual dimensions of the subject property, according to the recorded plat and the site compound, including contour lines; all significant vegetation and other significant natural environmental features on the property; the use, height, location, and ground areas of all present and proposed buildings and structures, the location of all vehicular entrances to and exits from the property, the location of all off-street parking areas and number of spaces provided therein; the number, type, size, and location of all present and proposed signs, any lighting proposed for the site compound; and the existing zoning district classification of the property.
- (2) Architectural plans showing the location of antennas on the Existing Support Structure, as defined in Section III of the PWS Facility Ordinance, and equipment shelters, including a colored rendering illustrating the architectural treatment proposed for the equipment shelter, antennas and other equipment associated with the PWS Facility, so that they blend into the existing or proposed architectural character of the site and the Village overall.
- (3) A statement from a qualified professional Radio Frequency (RF) Engineer certifying that the proposed PWS Facility on an Existing Support Structure, or on an Existing Tower or the co-location on the previously approved PWS Facility, as the case may be, will operate at levels within the standards adopted by the FCC with respect to RF

Emissions. Within five (5) days following completion of construction of the approved PWS Facility or the co-location on the Existing Support Structure or on an Existing Tower, the applicant shall submit a statement from an RF Engineer certifying (1) that the PWS Facility, as constructed, operates at levels within FCC standards, and, if the PWS Facility is co-located, (2) that the PWS Facility, and all other PWS Facilities co-located, together, operate at levels within FCC standards.

- (4) A copy of the applicant's FCC license to operate the proposed facility.
- (5) A coverage map at a scale no smaller than 1:100,00 feet depicting the extent of coverage anticipated from the proposed facility and the extent of coverage from existing PWS Facilities (towers or non-towers) surrounding the site proposed.
- (6) A tower profile drawing showing the location of all existing and proposed antennas.
- (7) Any additional information if required by Planning Commission.

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Signature of Property Owner

Signature of Applicant

Date

Date

Review by City Manager:

I have examined this application and its attachments and find that it complies with the requirements of Sections 101.42 and 101.43 of the Zoning Ordinance and Sections IV-VI of the PWS Facilities Ordinance.

Said application for special exception for a PWS Facility, No. _____, is herewith forwarded to the Planning Commission for consideration.

City Manager

Date

cc: Planning Commission Members
Donald L. Crain
Applicant/Property Owner