

ARTICLE XI - WIRELESS TELECOMMUNICATIONS FACILITY (WTF) ORDINANCE

1. STATEMENT OF PURPOSE

In order to establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities; to encourage the co-location of wireless telecommunications facilities thus helping to minimize adverse visual impacts on the community, and to further the goals and policies of the comprehensive plan, the following Wireless Telecommunications Facilities (WTF) regulations and procedures are adopted pursuant to 30-A M.R.S.A. Sections 3001 and 4312 et seq.

2. APPLICABILITY

This ordinance applies to any construction, expansion and co-location of any WTF except as provided in section 2.1.

2.1 The following are exempt from the provisions of this ordinance:

- a. Temporary WTFs erected for emergency communications by public officials.
- b. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- c. Parabolic antennas less than seven (7) feet in diameter that are an accessory use of the property.
- d. Maintenance, repair or reconstruction of a WTF and related equipment, provided that there is no change in the height or any other dimension of the facility.
- e. Temporary WTFs in operation for a maximum period of ninety (90) days and promptly removed.
- f. An antenna that is an accessory use to a residential dwelling unit

3. APPLICATION PROCESS

All persons seeking approval of the Planning Board under this ordinance shall meet with the CEO no more than thirty (30) days before filing an application. At this meeting, the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

The application must include the following information:

1. Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
2. A copy of the FCC license for the facility or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.
3. A USGS 7.5 minute topographic map or maps showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on rooftops, within a five (5) mile radius of the proposed facility. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
4. A site plan including:
 - a. a plan prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;
 - b. a boundary survey performed by a land surveyor licensed by the State of Maine.
5. A scenic assessment, consisting of the following:
 - a. elevation drawings of the proposed facility and any other proposed structures showing height above ground level;
 - b. 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 color of the structure, and the proposed lighting method.
 - c. photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight,

elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.

- d. a narrative discussing:
 - i. the extent to which the proposed facility would be visible from or within a designated scenic resource;
 - ii. the tree line elevation of vegetation within 100 feet of the facility; and
 - iii. the distance to the proposed facility from the designated scenic resource's noted viewpoints.
6. A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.
7. Evidence demonstrating that no existing building site or structure can accommodate the applicant's proposed facility. The evidence may consist of any one or more of the following:
- a. evidence that no existing facilities are located within the targeted market coverage area that meet the applicant's engineering requirements;
 - b. evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost (See 7d) so as to meet the applicant's engineering requirements;
 - c. evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
 - i. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - ii. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicant's proposed antenna.
 - iii. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively
 - d. For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or

adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;

- e. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure, and has been denied access;
8. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places.
 9. To encourage co-location, a signed statement binding the owner of the WTF and his or her successors and assigns to:
 - a. respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - b. negotiate in good faith for shared use of the WTF by third parties;
 - c. allow shared use of the WTF if an applicant agrees in writing to pay reasonable charges for co-location; (See 7d above)
 - d. require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
 10. A bond or other form of surety approved by the Planning Board in the amount of 150% of the estimated demolition cost of the tower and the removal of all accessory facilities. Such cost is to be determined by an independent Registered Professional Engineer in the State of Maine. The bond or other financial surety shall be in effect for as long as the tower is in place.
 11. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community, at the applicant's expense.

12. The names and mailing addresses of all property owners within five hundred (500) feet of the proposed facility.

4. PLANNING BOARD APPLICATION FEE

An application for Planning Board approval shall include payment of an application fee of \$100. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application fee, less all expenses incurred by the Planning Board to review the application, if the application is withdrawn within fifteen (15) days of date of filing,

5. PLANNING BOARD REVIEW FEE

An applicant shall pay all reasonable and customary costs incurred by the Planning Board that are necessary to review the application, if any. The review fee shall be paid in full prior to the start of construction. That portion of the review fee not used shall be returned to the applicant within fifteen (15) days of the Planning Board's decision.

6. NOTICE OF COMPLETE APPLICATION

Ten (10) copies of an application shall be presented to the Planning Board at a regular meeting. Upon receipt of an application, the Planning Board shall provide the applicant with a dated receipt. Within ten (10) working days of receipt of an application the Planning Board shall review the application and determine if the application meets the submission requirements.

If the application is deemed to be complete, the Planning Board shall notify all property owners within five hundred (500) feet by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, specify the location where a copy of the application is available for inspection, and provide the date, time, and place of the public hearing and the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application, nor for denial of the application.

7. PUBLIC HEARING

A public hearing shall be held within 30 days of the notice of the complete application.

8. PLANNING BOARD APPROVAL

Within ninety (90) days of receiving a complete application for approval under section 5.1 (B), the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based.

9. PLANNING BOARD APPROVAL STANDARDS

An application for approval by the Planning Board under Section 5.1 (B) must meet the following standards:

1. New wireless telecommunications facilities are permitted only in the following districts as designated in the Wiscasset zoning ordinance:
 - a. Rural Districts
 - b. Route One Business District

2. If an applicant proposes to locate a new WTF or expand an existing facility on municipal property the applicant must show the following:
 - a. The proposed location complies with applicable municipal policies and ordinances.
 - b. The proposed facility will not interfere with the intended purpose of the property.
 - c. The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

3. A new WTF and related equipment must be designed and constructed to accommodate expansion for future co-location of at least three additional WTFs or providers.

4. A new WTF must be no more than 200 feet in height.

5. A new or expanded WTF must be set back one hundred five percent (105%) of its height from all property lines
6. A new WTF and related equipment must be screened with plants from view from abutting properties to the maximum extent practicable. Existing plants and natural landforms on the site shall also be preserved to the maximum extent practicable.
7. A new WTF must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
8. A new WTF must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. Security lighting may be used as long as it is shielded to retain light within the boundaries of the site to the maximum extent practicable.
9. A new WTF must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
10. A new WTF must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."
11. A new WTF must have no substantial adverse impact upon designated scenic resources within the Town, as identified either in the comprehensive plan, or by a State or federal agency.
 - a. In determining the adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:
 - i. The extent to which the proposed WTF is visible above the surrounding tree line, from the viewpoint(s) of the impacted designated scenic resource;

- ii. the type, number, height, and proximity of existing structures and background features within the same line of sight as the proposed facility;
 - iii. the amount of vegetative screening;
 - iv. the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
 - v. the presence of reasonable alternatives that allow the facility to function consistently with its purpose.
12. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. at a WTF is exempt from existing municipal noise standards.
13. The proposed facility will have no substantial adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

10. AMENDMENT TO AN APPROVED APPLICATION

Any changes to an approved application must be approved by the Planning Board in accordance with Section 5.

11. ABANDONMENT

A WTF that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within sixty (60) 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 CEO that the facility has not been abandoned.

If the owner fails to show that the facility is in active operation the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. 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 vegetation.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment have been removed to the satisfaction of the Planning Board.

12. ADMINISTRATION AND ENFORCEMENT

The CEO shall enforce this ordinance. If the CEO finds any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it, such action to be completed within thirty (30) days.

13. PENALTIES

Any person who owns or controls any building or property that violates this ordinance shall be fined a minimum of one hundred (100) dollars and a maximum of twenty-five hundred (2500) dollars. Each day such violation continues after notification by the CEO shall constitute a separate offense.

14. CONFLICT AND SEVERABILITY

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

15. EFFECTIVE DATE

This ordinance becomes effective on December 17, 2001.

16. DEFINITIONS

The terms used in this ordinance shall have the following meanings:

“Antenna” means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

“Tower Height” means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. Measurement of tower height shall include antenna, base pad and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade then the average between the highest and lowest grades shall be used in calculating the antenna height.

"Co-location" means the use of a WTF by more than one wireless telecommunications provider.

"Expansion" means the addition of antennas, towers, or other devices to an existing facility.

"FAA" means the Federal Aviation Administration, or its lawful successor.

"FCC" means the Federal Communications Commission or its lawful successor.

"Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory feature usually erected at a height greater than the main roofs of buildings.

"Historic or Archaeological Resources" means resources that are:

- a. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places;
- d. Individually listed on a local inventory of historic places;

- e. Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the comprehensive plan which have been listed or are eligible to be listed on the National Register of Historic Places.

"Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the municipality's comprehensive plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

"Historic Landmark" means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, State or national history identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places. .

"Line of sight" means the direct view of the object from the designated scenic resource.

"Parabolic Antenna" (also known as a satellite dish antenna) means an antenna, which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"Principal Use" means the use other than one, which is wholly incidental or accessory to another use on the same premises.

"Public Recreational Facility" means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

"Designated Scenic Resource," means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or federal agency, that consists of:

- a. a three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of

objects, such a downtown skyline or mountain range, resulting in a panoramic view corridor; or

- b. lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.

"Targeted Market Coverage Area" means the area which is targeted to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result, which is:

- a. excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and
- b. would significantly diminish the scenic value of the designated scenic resource.

"Viewpoint" means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

"WTF" or "Facility" means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.