

Wireless Telecommunications Facilities Siting Ordinance

Town of Wales

Adopted: June 11, 2005

Article 1. Purpose, Authority, and Applicability

1.1 Purpose

The purpose of this ordinance is to provide a process and a set of standards for the construction of wireless telecommunications facilities in order to: implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities; establish clear guidelines, standards, and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities; ensure that all telecommunications carriers providing facilities or services within the Town of Wales comply with the ordinances of the Town of Wales; ensure that the Town of Wales can continue to fairly and responsibly protect the public trust consistent with rapidly evolving federal and state regulatory policies, industry competition, and technological development.

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of the Town of Wales, Maine (hereinafter referred to as this ordinance).

1.2 Authority

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.A. Section 3001 (Home Rule), and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4312 et seq.

1.3 Applicability

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in Article 1.3, A.

A) Exemptions: The following are exempt from the provisions of this ordinance:

- 1) Emergency Wireless Telecommunications Facility. Temporary wireless communication facilities for emergency communications by public officials.
- 2) Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- 3) Parabolic antenna. Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.
- 4) Maintenance or repair. Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- 5) Temporary wireless telecommunications facility. Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
- 6) Antennas as Accessory Uses. An antenna that is an accessory use to a residential dwelling unit.

1.4 Effective Date

The effective date of this Ordinance shall be the date of the 2005 Town Meeting of the Town of Wales held on June 11, 2005.

1.5 Repeal of Prior Ordinances

This Ordinance shall repeal the ordinance entitled "Wireless Telecommunications Facilities Siting Ordinance of the Town of Wales" adopted at the June 2000 Wales Town Meeting.

Article 2. Review and Approval Authority

2.1. Approval Required

No person shall construct or expand a wireless telecommunication facility without approval of the the Planning Board (PB) as follows:

- A) Expansion of an Existing Facility and Colocation. Approval by the PB is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; accessory use of an existing wireless telecommunications facility; or colocation on an existing wireless telecommunications facility.
- B) New Construction. Approval of the Planning Board is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 20 feet.

2.2 Approval Authority

In accordance with Section 2.1 above, the Planning Board shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

Article 3. Approval Process

3.1. Pre-Application Conference

All persons seeking approval of the Planning Board under this ordinance shall meet with the Code Enforcement Officer (CEO) no less 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.

3.2 Application for Planning Board Approval.

All persons seeking approval of the PB under this ordinance shall submit an application as provided below. The CEO shall be responsible for ensuring that notice

of the application has been published in a newspaper of general circulation in the community.

An application for approval by the Planning Board must be submitted to the Code Enforcement Officer. The application must include the following information:

- A) 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.
- B) 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.
- C) A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. 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.
- D) A site plan:
 - 1) 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;
 - 2) certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and
 - 3) a boundary survey for the project performed by a land surveyor licensed by the State of Maine.
- E) A scenic assessment, consisting of the following:
 - 1) Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 - 2) A 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.
 - 3) 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.
 - 4) A narrative discussing:
 - a) the extent to which the proposed facility would be visible from or within a designated scenic resource,
 - b) the tree line elevation of vegetation within 100 feet of the facility, and

- c) the distance to the proposed facility from the designated scenic resource's noted viewpoints.
- F) 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.
- G) Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
 - 1) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,
 - 2) Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements,
 - 3) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
 - a) 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.
 - b) 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.
 - c) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
 - 4) 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;
 - 5) Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access;
- H) 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 (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
- I) A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - 1) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - 2) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;

- 3) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
 - 4) 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.
- J) A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.
- K) Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

3.3. Submission Waiver

The Planning Board may waive any of the submission requirements based upon a written request of the applicant submitted at the time of application. A waiver of any submission requirement may be granted only if the Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

3.4. Fees

- A) **Planning Board Application Fee.** An application for Planning Board approval shall include payment of an application fee. The Selectmen, after holding a public hearing, shall establish reasonable fees for the administration of this Ordinance, including Board of Appeals application fees. The application shall not be considered complete until the fee is paid. An applicant is entitled to a refund of the application portion of the fee if the application is withdrawn within fifteen (15) days of the date of filing, less all expenses incurred by the Town of Wales to review the application.
- B) **Planning Board Review Fee.** An applicant for approval by the Planning Board shall pay all reasonable and customary fees incurred by the Town of Wales that are necessary to review the application. 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 fourteen (14) days of the Planning Board's decision.

3.5. Notice of Complete Application

Upon receipt of an application, the CEO shall provide the applicant with a dated receipt. Within fifteen (15) working days of receipt of an application the CEO shall review the application and determine if the application meets the submission requirements. The Planning Board shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the CEO shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board and the abutters.

If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

If the application is deemed to be complete, the CEO shall notify all abutters to the site as shown on the Assessor's records, 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, give the location of a copy of the application available for inspection, and provide the date, time, and place of 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 denial of the project.

3.6. Public Hearing

For applications for Planning Board approval under Section 2.1, a public hearing shall be held within 30 days of the notice of the complete application.

3.7. Approval

Planning Board Approval. Within ninety (90) days of receiving a complete application for approval under section 2.1, the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within sixty (60) days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

Article 4. Standards of Review

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section.

4.1 Planning Board Approval Standards

An application for approval by the Planning Board under Section 3.2 must meet the following standards.

- A) **Priority of Locations.** New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.

- 1) Colocation on an existing wireless telecommunications facility or other existing structure on Oak Hill, so-called, located easterly of Route 126 and westerly of Oak Hill Road, so-called.
 - 2) A new facility on Oak Hill, so-called.
 - 3.) A new facility on public or private property in the Town of Wales.
- B) **Design for Colocation:** A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation of at least three (3) additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.
- C) **Height:** A new wireless telecommunications facility must be no higher than the existing towers on Oak Hill in the Town of Wales, if the facility is located on Oak Hill, or one hundred ninety (190) feet in height, if located on other property in the Town of Wales.
- D) **Setbacks:** A new or expanded wireless telecommunications facility must comply with the set back requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:
- 1) The setback may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.
 - 2) An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.
- E) **Landscaping:** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.
- F) **Fencing:** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
- G) **Lighting:** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.
- H) **Color and Materials:** A new wireless telecommunications facility 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.

- I) **Structural Standards:** A new wireless telecommunications facility 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."
- J) **Visual Impact:** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the municipally adopted comprehensive plan, or by a State or federal agency.

In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:

- 1) The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;
 - 2) the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
 - 3) the extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
 - 4) the amount of vegetative screening;
 - 5) the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
 - 6) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- K) **Noise:** 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. is exempt from existing municipal noise standards.
 - L) **Historic & Archaeological Properties:** The proposed facility, to the greatest degree practicable, will have no unreasonable 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.

4.2 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the Planning Board. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board can impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

- A) The owner of the wireless telecommunications facility and his or her successors and assigns agree to:

- 1) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - 2) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - 3) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation.
 - 4) require no more than a reasonable charge for shared use of the wireless telecommunications facility, 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 and maintenance, 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 life span of the useful life of the wireless telecommunications facility.
- B) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

Article 5. Amendment to an Approved Application

Any changes to an approved application must be approved by the Planning Board, in accordance with Article 2.

Article 6. Abandonment

A wireless telecommunications facility 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 ninety (90) 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 Town of Wales 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 are removed to the satisfaction of the Planning Board.

Article 7. Appeals

Any person aggrieved by a decision of the CEO or the Planning Board under this ordinance may appeal the decision to the Board of Appeals, as provided by Article 6 of the Land Use Ordinance of the Town of Wales.

Article 8. Administration and Enforcement

The CEO, as appointed by the Board of Selectmen, shall enforce this ordinance. If the CEO finds that 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. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Board of Selectmen, or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

Article 9. Penalties

Any person who owns or controls any building or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. § 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

Article 10. Conflict and Severability

10.1 Conflicts with other Ordinances

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.

10.2 Severability

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

Article 11. Definitions

Unless specifically defined in the Town of Wales Definitions Ordinance, words and phrases used in this Ordinance shall have the same meaning as they have at common law and to give this Ordinance its most reasonable application.