

Section 1 General

A Title:

This Ordinance shall be known as the Wireless Telecommunications Facility Siting Ordinance of the Town New Portland, ME. Here in after referred to as " the Ordinance".

B 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 MRSA Section 3001, and the provisions of the Planning and Land Use Regulation Act, Title 30-A MRSA Section 4312 et seq.

C Purpose:

The purpose of this Ordinance is to provide a process and a set of standards for the construction of wireless telecommunication facilities in order to:

- Implement a municipal policy concerning the provision of wireless telecommunication services, and the siting of their facilities.
- Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunication facilities.
- Ensure that all wireless telecommunication carriers providing facilities within the Town comply with the Ordinances of New Portland.
- Ensure that the Town can continue to fairly and responsibly protect the public health, safety and welfare.
- Encourage the colocation of wireless telecommunication facilities, thus helping to minimize adverse visual impacts on the community.
- Further the goals and policies of the comprehensive plan, while promoting orderly development of the town with minimal impact on existing users, and protect the scenic and visual character of the community.
- Ensure that towers do not unreasonably detract from the rural character and beauty of the Town.

D Applicability:

The provisions of this Ordinance apply to all construction and expansion of wireless telecommunication facilities. The following are exempt from the provisions of this Ordinance:

- Temporary wireless telecommunication facilities for emergency communications by public officials.
- Amateur ham radio tower licensed by the Federal Communications Commission.
- Parabolic antennas less than 7 feet in diameter, that are an accessory use of the property.
- 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.
- Temporary wireless telecommunication facility, in operation for a maximum period of 180 days.
- Antennas as accessory uses. An antenna that is an accessory use to a residential dwelling unit.

E Effective Date:

The effective date of this Ordinance shall be the date of the adoption by the Town of New Portland.

- F Validity and Severability:
Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.
- G Availability:
A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost to be charged to the person making the request. Notice of availability of this Ordinance shall be posted in the Town Office.
- H Conflicts with other Ordinances:
Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or any other ordinance, regulation, or statute, the more restrictive provision shall apply.
- I Application Fee(s):
For a public entity (non- commercial) exempt
for all others, the applications shall be accompanied by the following non-refundable fee of \$1000.00 for commercial operators made payable to the Town of New Portland.
- J Amendments:
The ordinance may be amended by Town Meeting vote. Amendments may be initiated by a request of the Planning Board, the Board of Selectman, or by petitions bearing the signatures of registered New Portland voters equal to, or in excess of ten percent (10%) of the votes cast in the last gubernatorial election in the Town. The Board of Selectman shall conduct a public hearing on any proposed amendment,
- K Appeals:

The Board of Appeals shall have the power to hear and decide appeals when it is alleged that the Planning Board disregarded pertinent information when making their decision or did not follow the procedural guidelines of this Ordinance.
- 1 Appeals Procedure
A Making an Appeal
 1 An appeal resulting from any decision on the part of the Board may be taken to the Board of Appeals by an aggrieved party. Such appeal shall be taken within thirty (30) days of the date of the decision appealed from, and not otherwise, pursuant to the procedures of the New Portland Board of Appeals Ordinance.
- L Administration and Enforcement:
1 The Planning Board shall administer this Ordinance and no person shall construct or expand a wireless telecommunication facility without the approval of the Board. The Planning Board shall review all wireless telecommunication applications and make written findings on whether the proposed facility complies with this Ordinance

2 The Code Enforcement Officer shall enforce this Ordinance. If the Code Enforcement Officer finds that any provision of this Ordinance has been violated, the Code Enforcement Officer 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

Code Enforcement Officer shall order correction of the violation. The selectman may take legal action to ensure compliance with the Ordinance, and may enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action.

M Penalties:

Any person who owns or controls any building or property that violates this Ordinance shall be fined in accordance with Title 30-A MRSA Section 4452. Each day such violation continues after notification by the Code Enforcement Officer shall constitute a separate offense. Each offense shall have a maximum fine of two thousand five hundred dollars (\$2,500.00). There is a twenty-five thousand dollar (\$25,000.00) fine per offense upon the second conviction within two (2) years for violations under the Ordinance.

Section 2 Approval Process:

No person shall construct or expand a wireless telecommunications facility without approval of the Planning Board.

A Applications:

All persons seeking Planning Board Approval shall submit an application on the forms provided by the Town of New Portland. The applicant shall have the burden of proof to show that the application meets all the provisions of this Ordinance.

Pre-application conference:

All persons seeking approval of the Planning Board under this ordinance shall meet with the 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.

B Planning Board Approval Application:

Six copies of the application must be submitted to the Planning Board. The application must include the following material and information:

- 1 A receipt from the Town showing that the application fee has been paid.
- 2 Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including the name and address of the property owner and applicant.
- 3 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.
- 4 Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, engineering or culture, that are listed, or eligible for listing in the National Register of Historic Places that are immediately proximate to the site.
- 5 Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.
- 6 For the proposed facility or expansion of a facility, a signed statement that commits the owner of the facility and his, her or its assigns or successors in interest to:
 - a Respond in timely 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.

- b Negotiate in good faith for shared use by the third parties;
 - c Allow shared use if an applicant agrees in writing to pay reasonable charges for colocation; and
 - d Require no more than a reasonable charge for shared use based on community rates and generally accepted accounting principles. This may include but is not limited to a pro rata share of the cost of developing and maintaining the facility including all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
 - e Require the colocator to adhere to all the provisions of the ordinance, including abandonment.
- 7 A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunication facilities above 150 feet in height above ground level, except antennas located on roof tops, within a 5 mile radius of the proposed facility, unless this information has been previously made available to the municipality. This information may be met by submitting current information (within 30 days of the date of the application is filed) from the FCC Tower Registration Database.
- 8 A site plan prepared and certified by a professional engineer registered in Maine that includes the following:
- a 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 Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
 - c A boundary survey for the proposed project performed by a land surveyor licensed by the State of Maine.
- 9 A scenic assessment, consisting of the following:
- a Elevation drawings of the proposed facility, and any other proposed structures, showing the height above ground level;
 - b 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; and
 - 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 the method of screening. At the discretion of the board, an appropriately sized balloon may floated to the height of the proposed tower in lieu of or in addition to the simulations.
- 10 A narrative discussing the extent to which the proposed facility would be visible from or within a Town designated scenic resource; the tree line elevation of vegetation within 1000 feet of the facility; and the distance to the proposed facility from Town designated scenic viewpoints.
- 11 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.
- 12 Evidence demonstrating that no existing building, site or structure can accommodate the applicant's proposed facility, the evidence for which may consist of the following:
- Evidence that no existing facility is located within the targeted market coverage area as required to meet the applicant's engineering requirements;
 - Evidence that existing facilities do not have sufficient height or cannot increase

- in height at a reasonable cost to meet the applicant's engineering requirements;
 - Evidence that existing facilities do not have the sufficient structural strength to support the 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 facility would be incompatible with the existing facility.
 - Evidence that fees, costs or contractual agreements required by the owner in order to share or adapt an existing facility are unreasonable.
 - Evidence that the applicant has made diligent good faith effort to negotiate colocation on an existing facility, building, or structure and has been denied access.
- 13 A form of performance guarantee that has been deemed acceptable by the Selectmen of the Town of New Portland in an amount determined under Section 3 A.1.k. The performance guarantee is to pay for the cost of removing the facility if it is abandoned. (The applicant may finalize the performance guarantee agreement with the Town of New Portland after receiving Planning Board conditional approval pending the final performance guarantee agreement from the Board of Selectmen)
- 14 Evidence that the applicant has met all public hearing requirements.
- 15 A signed statement stating that the owner(s) of the wireless telecommunications facility and his, her, or its successors and assigns agree to be bound by all the provisions of the permit and the ordinance.

C Submission Waiver:

The Planning Board as appropriate may waive any of the submission requirements based upon a written request from 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.

D Planning Board Application Processing Procedure:

The following application procedure shall be followed for all applications submitted to the Planning Board for approval.

- 1 The applicant shall submit a complete application to the Planning Board
- 2 A dated receipt shall be issued to the applicant indicating that the application has been filed with the Town.
- 3 Within 35 days of receipt of an application the Planning Board shall determine whether or not the application is complete. The Planning Board shall notify the applicant in writing whether the application is complete and if it is not complete of the materials necessary in order to make it complete.
- 4 A public hearing shall be scheduled at least 35 days after the Planning Board determines that a complete application has been submitted.
- 5 The applicant is responsible for supply the names and addresses of all property owners within 1000 feet, and property abutters of the proposed facility. All property owners located within 1000 feet, and property abutters of the proposed facility shall be mailed a notice by certified return receipt indicating the date, time, place, and purpose of the hearing. The notice shall be mailed no later than 10 days prior to the scheduled hearing.
 - a) Failure of any person to receive a notice shall not invalidate the public hearing nor require the holding of another public hearing.

- 6 A notice shall be placed in a newspaper of general circulation in the area indicating the date, time, place and purpose of the hearing. A total of two notices published on separate dates shall be placed at least 7 days prior to the hearing.
- 7 The Planning Board shall hold a public hearing on the application and shall within 60 days of the public hearing make a final decision on whether to approve the application, approve the application with conditions or deny the application. The date of final decision may be extended upon mutual consent of the Planning Board and the applicant.
- 8 The Planning Board may conditionally approve the application pending the final agreement between the applicant and the Board of Selectmen concerning the performance guarantee agreement.
- 9 The decision shall be in writing and provided to the applicant.

E Public Hearing Requirements:

The Planning Board shall hold a public hearing on all applications requiring Planning Board approval. The Planning Board shall set the date, time and place of the public hearing after it has determined that a complete application has been submitted.

Section 3 Review Standards

A Planning Board Approval Standards:

- 1 An application for approval by the Planning Board must meet all of the following standards.
 - a The wireless telecommunication facility shall not be located within the shoreland zoning districts, as designated in the Town of New Portland Shoreland Zoning Ordinance.
 - b A wireless telecommunication facility and related equipment must be designed and constructed to accommodate expansion for future colocation, subject to the height limitation posed by the tower design.
 - c A new or expanded wireless telecommunication facility must be setback 105% of its height from all property lines. The setback may be satisfied by including the areas outside of the property boundary by an easement.
 - d A new wireless telecommunication facility and related equipment must be screened from view by abutting properties to the maximum practicable extent. A combination of existing or proposed vegetation or fences and berms may be used..
 - e A new wireless telecommunication facility must be fenced to discourage trespass.
 - f A new wireless telecommunication facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. Security lighting may be installed as long as it is shielded to retain light within the boundaries of the site to the maximum extent possible. Strobe lights are not to be used unless mandated by the FAA.
 - g A new wireless telecommunication facility must be constructed with materials and colors that blend with the surrounding natural or built environment to the maximum extent possible.
 - h A new wireless telecommunication facility must comply with the current Electronic Industries Association Telecommunication Industries Association (EIA/TIA) 222 Revision Standard entitled " Structural Standards for Steel

Antenna Towers and Antenna Supporting Structures”, as amended, or its successor.

i 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.

j Tower height shall not exceed 190 feet.

k A performance guarantee in the form of a continuous corporate surety bond, irrevocable letter of credit, or an escrow account in favor of the Town equal to 125% of the estimated demolition and removal cost of the tower and associated facilities if abandoned at any time by the applicant. Such performance guarantee shall be satisfactory to the Board of Selectmen as to the issuer, form, sufficiency, surety and manner of execution. All performance guarantees shall be on a continuous basis, with any provision for cancellation to include that a minimum 30 day notice of cancellation or non-renewal be sent by certified mail to the Town of New Portland. If the holder of an approval under the Ordinance wishes to transfer that approval, the transferee must submit a replacement performance guarantee to the Board of Selectman, before transfer. The Selectman shall approve the replacement guarantee if they find it to be a suitable equivalent to the original guarantee.

B Amendment to an Approved Application

The Planning Board in accordance with the application procedure established in this Ordinance must approve any changes to an approved application, including but not limited to the transfer of an approval issued under the Ordinance to any third-party

C Abandonment

A wireless telecommunication facility that is not operated for a continuous period of 12 months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility in writing and order the removal of the facility within 90 days of receipt of the written notice. The owner of the facility shall have 30 days from the receipt of the notice to demonstrate to the Code Enforcement Officer that the facility has not been abandoned.

If the owner fails to show that the facility is in active operation, the owner shall have 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, and the municipality may draw upon the performance guarantee an amount equal to the municipality cost of facility removal.

If performance guarantee has been given to the municipality for removal of the facility, the owner of the facility may apply to Board of Selectmen for release of the performance guarantee when the facility and related equipment are removed to the satisfaction of the Board of Selectmen.

Section 4 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.

- **Antenna Height:** means the vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna. Measurement of the 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 sloped grade, then the average between the highest and the lowest grades shall be used in calculating the antenna height.

Colocation: means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Expansion: means the addition of antennas, towers, or other devices to an existing structure.

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 features usually erected at a height greater than the main roofs of buildings.

Historic or Archeological Resources: means resources that are:

- Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
- 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;
- Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
- Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or
- Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archeological resource, and any areas identified in the Town's 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 Town'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 Town'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: means an antenna, which is bowl shaped, and designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern. (also known as a satellite dish).

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 Town's 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 Town's comprehensive plan of by a State or Federal agency, that consist of:

- A three dimensional area extending out from a particular viewpoint on 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 as a downtown skyline or mountain range, resulting in a panoramic view corridor; or
- 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 telecommunication facility.

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

- Excessively out of character with the designated scenic resources affected, including existing buildings, structures and features within the designated scenic resource, and
- Would significantly diminish the scenic value of the designated scenic resource.

Viewpoint: means that location which is identified either in the Town's comprehensive plan or by a state or federal agency and which serves as the basis for the location and determination of a particular designated scenic resource.

Wireless Telecommunication 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, common carrier wireless exchange access services, and personal communications service (PCS), or pager services.

a true copy attest

10/25/12

Deirda Willis Town Clerk

