

6/10/13
Accepted by
Majority Vote
Special Town
Mtg 6-10-13

WIRELESS TELECOMMUNICATIONS FACILITY ORDINANCE

Section 1: AUTHORITY

This ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution and of Title 30-A M.R.S.A. Section 3001 (Home Rule).

Section 2: 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:

- A. Establish clear guidelines, standards and time frames for the regulation of wireless telecommunications facilities;
- B. Encourage competition in telecommunications service;
- C. Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Eustis while avoiding discrimination between carriers and the creation of unreasonable barriers to their ability to provide telecommunications services;
- D. Encourage the collocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;
- E. Enable Eustis to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;
- F. Further the goals and policies of the Eustis comprehensive plan, while promoting orderly development of the Town with minimal impacts on existing uses; and
- G. Protect the scenic and visual character of the community.

Section 3: APPLICABILITY

This local land use ordinance applies to ~~all construction~~ and ~~expansion~~ of wireless telecommunications facilities, ~~except~~ as follows:

- A. Temporary wireless communication facilities for emergency communications by public officials;
- B. Amateur (ham) radio stations licensed by the 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 wireless telecommunications facility and related equipment, provided that there is no change in the height or any other dimension of the facility.
- E. Temporary wireless telecommunications facilities which will remain in operation for a maximum period of ninety (90) days;
- F. Antennas that are accessory uses to residential dwelling units.

Section 4: APPLICATIONS

A. Approval Required

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

B. Application Fee

An application for Planning Board approval shall include payment of an application fee of \$150.00. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town of Eustis to review the application. The applicant shall bear the itemized costs incurred in reviewing the application which shall be paid to the town before a permit is issued.

C. Pre-Application Conference

✓ All persons seeking approval from 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 the application forms and submissions that will be required under this ordinance.

? D. Notice of Application

The CEO shall be responsible for ensuring that notice of the application will be published in a newspaper of general circulation in the community at the expense of the applicant.

E. Contents of Application

Unless previously provided, the applicant shall submit the following materials and information:

1. Documentation of the applicant's right, title, or interest in the property where 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. Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials;
4. A signed statement that commits the owner of the facility, and his or her successors in interest, to:
 - a. Respond in a timely and comprehensive manner to any future 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 by third parties;
 - c. Allow shared use if an applicant agrees in writing to pay reasonable charges for collocation;
 - d. Require no more than a reasonable charge for shared use, based on any area 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.
5. 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 Planning Board. 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.
6. Unless previously provided, a site plan and boundary survey prepared and certified by a professional engineer or licensed land surveyor registered in Maine indicating the location and type of the proposed facility, antenna capacity, and compliance with all applicable national codes.
7. A scenic assessment including:
 - a. A landscaping plan indicating the location of existing structures, trees, and other significant site features, the types and location of plants proposed to screen the facility, the method of fencing, and the proposed lighting method.

- b. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee. Each photo simulation must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photo simulations must show the color of the facility and method of screening.
- c. A narrative describing:
 - (1) the extent to which the proposed facility would be visible from or within all designated scenic resources and from property of abutters;
 - (2) the tree line elevation of vegetation within 100 feet of the facility, and
 - (3) the distance to the proposed facility from the designated scenic resource's noted viewpoints.
- d. 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.
- e. 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 lack sufficient structural strength to support the proposed antenna and related equipment as in cases where:
 - (i) The planned, necessary equipment would exceed the structural capacity of the existing facility in question 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 antennas on existing towers or structures, or the antennas or equipment on the existing facilities would cause interference with the applicant's proposed antenna;

(iii) Existing or approved facilities do not have space on which the planned equipment can be placed so it can function effectively.

- f. Evidence demonstrating that the fees, costs, or contractual provisions which the applicant would be obliged to pay or assume to adapt an existing facility are unreasonable. Costs exceeding the pro rata share of building a new facility are presumed to be unreasonable.
- g. Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure and has been denied access.

F. Any alterations to an existing telecommunications tower shall comply with the provisions of this ordinance. However, legally nonconforming grandfathered telecommunications towers may be repaired, replaced, or relocated within the same lot provided that such changes do not become more nonconforming, the replaced or relocated structure is no higher than the present facility, and the owner of any such facility which has been replaced or relocated has taken reasonable steps to screen or camouflage any nonconforming elements on the structure.

Compare with
Sec 3
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Section 5: BURDEN OF PROOF

A. Proof That Collocation Not Feasible

The applicant shall have the burden of proving that there are no existing structures or additional sites which would be suitable for its personal wireless services facility and/or to transmit or receive radio/cellular communication signals. To meet the burden, the applicant shall take all the following actions to the extent applicable:

1. The applicant shall submit to the Planning Board a list of all contacts made with the owners of potential sites regarding the availability of potential space for a personal wireless service facility. If the Planning Board informs the applicant that additional existing structures or sites may be satisfactory, the applicant shall contact the property owner(s) of those structures.
2. The applicant shall provide copies of all letters of inquiry made to owners of existing structures or sites and letters of rejection. If letters of rejection are not provided, at a minimum, "Return Receipt Requested" forms shall be provided for each owner of existing structures or sites who was contacted.

3. If the applicant claims that a structure is not capable of physically supporting a telecommunications service facility, or that collocation cannot be achieved without radio frequency interference, a licensed professional civil or structural engineer must certify this claim. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without unreasonable costs.

Section 6: COMPLETED APPLICATIONS

A. Notice of Application

Upon receipt of an application, the Planning Board shall provide the applicant with a dated receipt. Within thirty (30) working days of receipt of an application, the Planning Board 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. A waiver may be granted if the Planning Board determines in writing that, due to special circumstances, the information in question will not be necessary in order to determine compliance with the standards established by this ordinance.

B. Notification of Property Owners

The CEO shall notify all property owners within 500 feet of the property lines of the proposed site as shown on the Assessor's records, by certified 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 to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

C. Notice of Complete Applications

If the application is complete, the Planning Board 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, Code Enforcement Office, and Fire Department.

D. Incomplete Applications

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

Section 7: PERFORMANCE BONDS

A. Bond Required

As a condition of the approval of an application for the installation of a telecommunications tower and related facilities, the Planning Board shall require the developer or installer to file with the Town a bond in an amount adequate to cover the costs of removing the facility together with any appurtenant structures and of returning the site as nearly as possible to its condition prior to such installation. The performance bond shall remain on file with the Town and shall not be released until the facility has been decommissioned, dismantled and removed. The performance bond may be used to defray such costs. Any bond funds not expended shall be returned to the bond owner when the work has been successfully completed.

B. Liability Insurance

The Planning Board may also require the applicant or owner to annually provide the Town with proof that it is maintaining in effect a certificate of insurance covering claims by third persons arising from the operation of the facility.

Section 8: INDEPENDENT EXPERTS

The Planning Board in its discretion may engage an independent expert or experts to assist it in resolving complex or disputed issues which are of significance in determining whether the applicant's request to construct a telecommunications facility should be approved. The applicant shall assume the expense of any such independent review.

Section 9: PUBLIC HEARINGS

A. Scheduling of Hearings

The Planning Board shall hold a public hearing on the request for approval within forty-five (45) days of issuing the notice of the complete application.

B. Approval

After the public hearing and within ninety (90) days of receiving a complete application for approval, 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, a decision on the application shall be issued within sixty (60) days of the public hearing. This time period may be extended by agreement between the applicant and the Planning Board.

Section 10: DESIGN STANDARDS

- A. Telecommunications facilities shall meet the following design standards:
1. A wireless telecommunications facility must be designed and constructed to accommodate expansion for future collocation of at least three additional wireless telecommunications facilities. However, the Planning Board may waive or modify this requirement where the height limitations in the area effectively prevent collocation or the cost of such construction would be so expensive as to make the facility economically unfeasible.
 2. Any new facilities must be set back at least 125% of the height of the structure from all property lines and at least 300 feet from schools and churches. The property line set-back may be satisfied by including property outside the property boundaries secured by an easement.
 3. Cell towers shall not have any signs, writings, symbols, or other graphic representations on them except those allowed or required by the Planning Board in the interest of public safety.
 4. Access to a tower for motorized vehicles shall meet the performance standards set forth in the Town's Land Use Ordinance and shall be constructed so as to minimize any adverse effects on the surrounding environment.
 5. Any new facility shall be constructed using materials and colors that are consistent with the surrounding environment to the extent feasible. Unless otherwise required for safety reasons, muted colors, earth tones, or other similar colors shall be used. The applicant shall make reasonable efforts to camouflage the proposed tower to minimize its aesthetic impact on the area from which it will be visible.
 6. Any new telecommunications facility shall be fenced in to prevent trespassing and to discourage climbing on any structure by trespassers. Perimeter fencing shall be at least eight (8) feet high.
 7. Any new facility and related equipment shall be screened by plants and trees from view from abutting properties to the extent possible. Existing plants, trees, and land forms on the site shall be preserved to the extent possible.
 8. Any new facility shall be illuminated only to the extent necessary to comply with FAA or other applicable state or federal requirements. Security lighting may be used as long as it is directed downward to retain light within the boundaries of the site to the extent possible.

9. The maximum permitted height of such facilities shall be that height which is the minimum which is technologically necessary to provide wireless service coverage for the applicant's proposed service area. The height of such facilities shall, in any event, not exceed that set out below for each zoning district:
 - a. Town-owned property on Eustis Ridge also known as tax map R 11, lot 5 - 130 feet
 - b. Industrial Districts - 199 feet
 - c. Rural Woodland Districts I and II - 80 feet
 - d. Mixed Use Districts - 80 feet
 - e. General Development Districts - 80 feet
 - f. Residential/Recreational Districts - 80 feet, except for Eustis Ridge where such facilities are not allowed.

10. Any new facility shall comply with the Electronic Industries Association/Telecommunications Industries Association 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

11. Any new facility will not have an unreasonable adverse impact on the scenic resources designated in the comprehensive plan. In determining whether this criterion has been met, the Planning Board shall consider the following factors:
 - a. The extent to which the proposed facility would be visible above the tree line from viewpoints in the designated scenic resource areas.
 - b. The type, number, height, and proximity of existing structures and background features within the same line of sight as the proposed facility.
 - c. The extent to which the proposed facility would be visible from the designated viewpoints.
 - d. The amount of vegetative screening.
 - e. The distance of the proposed facility from the viewpoints and the facility's location within the designated scenic resources.

12. The proposed facility shall not have an unreasonable adverse impact on historic sites or structures currently listed or eligible to be listed on the National Register of Historic Places.
13. A 10-acre minimum lot size is required in all districts located on Eustis Ridge.
14. If an applicant proposes to locate a new wireless telecommunications facility, 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 with the town listed as an additional insured 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.

Section 11: CLASSIFICATION OF TELECOMMUNICATION FACILITIES AS "USES"

A. Principal Use

The siting, erection, installation or operation of a telecommunications facility within the Town of Eustis shall be considered to be a "principal use" for purposes of this ordinance and the Land Use Ordinance.

B. Non-Commercial Use

Telecommunication facilities shall not be considered to be "commercial uses" for purposes of the table of uses attached to the Land Use Ordinance nor shall they be treated as "infrastructure," "public utilities," or "essential services," and such facilities shall constitute "uses" subject to regulation by this ordinance.

Section 12: ABANDONMENT

- A. A wireless facility that has not been operated for a continuous period of twelve (12) months shall be considered to have been abandoned. The CEO shall notify the owner of the facility in writing and order its removal within ninety (90) days of the receipt of the notice. The owner shall have thirty (30) days from the receipt of the notice to demonstrate that the facility has not been abandoned. Alternatively, the owner may appeal the CEO's decision to the Board of Appeals.

- B. Once the decision has become final, the owner shall have sixty (60) days to remove the facility. The owner shall return the site as nearly as possible to its pre-construction condition at his own expense. If the owner does not act in a timely manner, the Town may do so at the owner's expense or may use the proceeds of the owner's performance bond for this purpose. Once reclamation work has been completed, the owner may request the bonding company to release any remaining funds or to cancel the bond as the case may be.

Section 13: APPEALS

- A. Any person, whose proposal to erect a telecommunication facility under this ordinance has been denied, may appeal to the Board of Appeals from a final decision of the Planning Board denying his application. Any such appeal must be in writing and filed with the Board of Appeals not less than thirty (30) days from receipt by the applicant of the Planning Board's written decision. If notice of the decision has been sent by ordinary mail, it will be presumed to have been received three business days after mailing.

Section 14: ADMINISTRATION AND ENFORCEMENT

- A. Enforcement of the Ordinance

The CEO shall enforce this ordinance. If the CEO finds that any provision of the ordinance has been violated, he or she shall notify the violator in writing identifying the violation, ordering the necessary corrective action, and imposing a deadline by which the violation must be corrected. The CEO may take such legal action as may be necessary to enforce compliance with the ordinance. Copies of the notice of violation shall be filed with the Selectmen and the Planning Board.

- B. Administrative Consent Agreements

The Selectmen or their designee are authorized to enter into administrative consent agreements to resolve violations outside of court.

Section 15: PENALTIES

Any person who owns or is in control of a structure or property that is being maintained in violation of this ordinance shall be subject to a civil penalty and the other remedies provided by 30-A M.R.S.A. § 4452. Each day that the violation continues after notification by the CEO shall constitute a separate offense.

Section 16: RETROACTIVITY

Notwithstanding the provisions of 1 M.R.S.A. § 302, this ordinance shall apply to pending applications for the construction or enlargement of telecommunications towers or related facilities unless such towers or facilities have received all necessary approvals and construction has substantially commenced prior to its enactment.

Section 17: CONFLICTS AND SEVERABILITY

A. Inconsistent Provisions

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

B. Severability

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

Section 18: 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 the highest point is part of an antenna. 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.

"Collocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

"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 Archaeological Resources" means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register.

2. 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.

"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 a use other than one which is wholly incidental or accessory to another use on the same premises.

"Designated Scenic Resource" means that specific location, view, or corridor which has been identified as a scenic resource in the comprehensive plan.

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

1. Esthetically inconsistent with the designated scenic resources affected, including existing buildings, structures and features within the designated scenic resource, and
2. Would significantly diminish the scenic value of the designated scenic resource.

"Wireless Telecommunications Facility" 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, common carrier wireless exchange phone services, specialized mobile radio communications, common carrier wireless exchange access services, and personal communications service or pager services.

Section 19: EFFECTIVE DATE

This ordinance becomes effective on the date of its adoption by the town meeting.

↳ 6/10/13 Special Town meeting