

TOWN OF FARMINGTON

Wireless Telecommunications Facility Ordinance

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CERTIFIED BY: Seamus E. Dickey
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Town of Farmington

Chapter 11- Land Use Table of Contents

Article 11- Wireless Telecommunications Facility Siting Ordinance

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TOWN OF FARMINGTON
Wireless Telecommunications Facility Siting Ordinance
Chapter 11
Land Use

11-11.1 Title:

This ordinance shall be known and cited as the “Town of Farmington Wireless Telecommunications Facility Siting Ordinance” and will be referred to herein as “this Ordinance”. This Ordinance limits Wireless Telecommunication Facility Siting to the zoning district(s) specified under the Zoning Ordinance Table of Uses; prescribes definitions of wireless telecommunication terminology; provides for permitting and regulation; and provides for additional miscellaneous standards.

11-11.2 Authority and Applicability:

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

Persons or entities wishing to establish a Wireless Telecommunications Facility Siting within the Town of Farmington shall first obtain a permit from the CEO or Planning Board and shall be subject to the provisions of this Ordinance.

11-11.3 Purpose:

This Ordinance is designed and intended to balance the interests of the residents of the Town of Farmington, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the Town.

11-11.4 Conflict with Other Ordinances:

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

11-11.5 Effective Date:

The effective date of this Ordinance shall be the date this Ordinance is adopted by the voters at Town Meeting.

11-11.6 Permits Required:

No person shall construct or expand a wireless telecommunication tower without obtaining a permit from the Code Enforcement Officer (CEO) or the Planning Board as follows:

A. Expansion of an Existing Tower, New Towers 75 Feet or Less, and Co-location.

Approval by the CEO is required for any expansion of an existing wireless telecommunications tower that increases the height of the tower by no more than twenty (20) feet; accessory use of an alternative tower structure; construction of new towers seventy-five (75) feet or less in height; or co-location on an existing wireless telecommunications tower.

B. New Construction. Approval of the Planning Board is required for construction of all new telecommunication towers exceeding seventy-five (75) feet; and any expansion of an existing wireless telecommunications tower that increases the height of the facility by more than twenty (20) feet.

C. Approval Authority. In accordance with Article 1, the CEO or Planning Board shall review applications for wireless telecommunications towers, and make written findings on whether the proposed facility complies with this Ordinance.

11-11.7 Validity and Severability:

Should any section or provision of this Ordinance be declared by any court to be invalid, such decision shall not invalidate any other section or provision.

11-11.8 Definitions:

As used in this Ordinance, unless the context otherwise indicates, the following terms have the following meanings:

Alternative Tower Structure. “Alternative Tower Structure” means clock towers, bell steeples, light poles and water towers, and similar alternative-design mounting structures and devices used in support of antennas and/or concealment of such.

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

Antenna Height. “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 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. “Co-location” means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Commercial Mobile Services. “Commercial Mobile Services” means any mobile service that is provided for profit and makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the FCC.

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

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

FCC. “FCC” means the Federal Communications Commission, or its lawful successor.

Height. “Height” means, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna.

Interconnected Service. “Interconnected Service” means service that is interconnected with the public switched network (as such terms are defined by regulation by the FCC) or service for which a request for interconnection is pending.

Mobile Service. “Mobile Service” means a radio communication service conducted between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services; a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and any service for which a license is required in a personal communications service.

Parabolic Antenna. “Parabolic Antenna” (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and/or transmission of electromagnetic radiation signals in a specific directional pattern.

Personal Wireless Service Facilities. “Personal Wireless Service Facilities” means facilities for the provision of personal wireless services.

Personal Wireless Services. “Personal Wireless Services” means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

Tower. “Tower” means any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, and cellular telephone towers.

Unlicensed Services. “Unlicensed Services” means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.

Wireless Telecommunications Facility. “Wireless Telecommunications 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. Excluded from this definition are individual wireless electronic devices for personal use, either indoors or outdoors. (Examples: Wireless door and light controls, wireless computers and accessory equipment, cordless phones, “walkie-talkies”, wireless entertainment systems, wireless security systems).

11-11.9 Exemptions:

The following are exempt from the provisions of this Ordinance:

- A. Emergency Wireless Telecommunications Facility.** Temporary wireless communication facilities for emergency communications.
- B. Amateur (ham) radio stations.** Amateur (ham radio stations licensed by the Federal Communications Commission [FCC]) if associated tower is seventy-five (75) feet or less in height.
- C. Parabolic & Flat-Panel antennas.** Parabolic & flat-panel antennas less than seven (7) feet in diameter, that are an accessory residential use of the property.
- D. 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.
- E. Temporary wireless telecommunications facility.** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
- F. Residential antennas.** An antenna that is an accessory to a residential dwelling unit and is less than twenty (20) feet above roof peak or less than forty-five (45) feet above grade.
- G. Pre-existing Facility.** This Ordinance does not render illegal any structure, facility or use which legally existed or was under active construction at the effective date of this Ordinance.

11-11.10 Application Procedure:

- A. Application.** An application for a Wireless Telecommunications Facility Siting permit must include the following information:
 - 1. Location of the proposed structure, including map/lot number and street address.
 - 2. Name of owner or operator of the telecommunications facility and owner of property.

3. Date the telecommunication facility was initially constructed or is proposed to be constructed.
4. A description and construction detail of the telecommunication, facility, including: plot plan identifying location of the tower on the property; dimensions of the tower; and structural supports, if any. This description shall also identify any accessory structures that are essential to operation of the telecommunication facility.
5. Certification that construction of the structure meets industry standards and satisfies all federal, State and local building code requirements.
6. Provide documentation of FCC approval and licensure: This shall include copies of the carrier's FCC/ULS license, copies of National Environmental Protection Act (NEPA)/National Historic Preservation Act (NHPA) compliance statements under Section 106 (16 U.S.C. 470f) of the NHPA of 1966, and copies of Maine Historic Preservation Commission (MHPC) compliance review under Section 106.

B. Notice to Abutters.

Abutting property owners shall be notified by certified mail, by the Town, at least fourteen (14) days prior to initial Planning Board or CEO consideration. The cost of notification shall be borne by the applicant. This notice shall indicate the time, date and place of Planning Board consideration, if applicable. Public hearings may be called at the discretion of the Planning Board or CEO.

C. Standards for Permit.

1. A new permit shall be granted for a Wireless Telecommunications Facility siting only in a district or zone in which such a facility is allowed.
2. Setbacks. All telecommunication towers shall be setback from abutting property lines by a distance equal to 105% of tower height. Towers, guys and accessory facilities shall meet the minimum zoning district requirements.
3. Building Codes & Safety Standards.
 - a. To ensure the structural integrity of telecommunications facilities, the owner shall ensure that it is designed, constructed and maintained in conformance with industry standards and applicable federal, State and local building, electrical and safety codes.
 - b. Unless it can be demonstrated that the tower is access secure and not a safety hazard a security fence or wall not less than eight (8) feet in height from the finished grade shall be provided around the tower. Access to the tower shall be through a locked gate.

4. Other Requirements.

Towers shall not be artificially lighted, unless required by the FAA or other federal or State authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance of the surrounding properties and views.

5. Removal of Abandoned/Unused Facilities.

The owner of a telecommunications facility shall be required to remove the tower should it not be used for the use or uses approved for a period of twelve (12) consecutive months. Unless the owner of a telecommunication facility and the land owner are one and the same, the applicant for a permit under this section, shall post a performance guarantee with the Town prior to obtaining a permit that is equal to one hundred twenty-five percent (125%) of the cost of removing the structure.

The performance guarantee covering such removal shall be for a minimum term of five years. Requirement for renewal of the guarantee shall be at the discretion of the CEO or Planning Board. The guarantee must contain a mechanism, satisfactory to the Town, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.

11-11.11 Permit Fees:

An application for a Wireless Telecommunications Facility Siting shall be accompanied by a fee of fifty dollars (\$50.00).

11-11.12 Enforcement/Penalties:

A. Enforcement. The Board of Selectmen or their designees shall enforce this Ordinance.

B. Penalties. Whoever violates this Ordinance is subject to penalty under 30-A M.R.S. §4452. Each day that the violation continues constitutes a separate offense with maximum fines of two thousand five hundred dollars (\$2,500.00) per offense. There is a twenty-five thousand dollar (\$25,000.00) maximum fine per offense upon the second conviction within two (2) years for violations under this Ordinance.

11-11.13 Appeals:

Any person aggrieved by the action of the Code Enforcement Officer or Planning Board may appeal to the Board of Appeals by filing a notice of appeal within thirty (30) days after receipt of the Code Enforcement Officer's or Planning Board's notification. Administrative appeals and variance applications submitted under this Ordinance shall be subject to the standards and procedures established by the Town of Farmington Board of Appeals Ordinance.

11-11.14 Amendments:

A. Initiation of Amendments: An amendment to this Ordinance may be initiated by:

1. The Board of Selectmen, provided a majority of the Board of Selectmen has so voted;
2. Written petition of a number of voters equal to at least ten percent (10%) of the number of votes cast in the municipality at the last gubernatorial elections.

B. Public Hearing: The Board of Selectmen shall hold a public hearing on the proposed amendment. Notification of the hearing shall be posted and advertised in a newspaper of general circulation in the municipality at least seven (7) days prior to the hearing.

C. Adoption of Amendment: An amendment to this Ordinance shall be adopted by a majority vote of a Town Meeting.