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FINAL DRAFT (03/17/2016) PLANNING BOARD

WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE

FOR THE

TOWN OF CHERRYFIELD, MAINE

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WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE
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SECTION 1: TITLE

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

SECTION 2: AUTHORITY

This Ordinance is adopted pursuant to the enabling provisions of Article VII, 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 Regulations Act, Title 30-A M.R.S.A. Section 4312 et seq.

SECTION 3: PURPOSES

The Purposes of this Ordinance are to:

Provide a process and a set of standards for the construction of Wireless Telecommunications Facilities in order to implement the Town's 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 the Town's authority to regulate Wireless Telecommunications Facilities;

Enable the Town of Cherryfield to discharge its public trust consistent with rapidly evolving Federal and State regulatory policies, industry competition and technological development;

Further the Goals and Policies of the adopted Comprehensive Plan of the Town of Cherryfield while promoting orderly development of the Town with minimal impacts on existing uses;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of the Town of Cherryfield;

Ensure that all telecommunications carriers providing facilities or services within the Town of Cherryfield comply with all adopted ordinances of the Town;

Ensure that the Town of Cherryfield can continue to fairly and responsibly protect the public health, safety and welfare;

Protect the historic integrity of the existing Historic District, as defined by the State Historic Preservation Office, thereby helping to preserve the visual character of the downtown residential and business community and protect other Historic Landmarks, Historic or Archaeological Resources and Designated Scenic Resources of the Town of Cherryfield;

Encourage the use of existing and approved towers and other existing structures such as utility poles and buildings to accommodate new communication antennas in order to reduce the number of new towers thereby helping to minimize adverse visual impacts on the community;

Protect abutting properties from potential damage from tower failure, falling ice and to prevent other hazards to public safety through careful siting regulations and engineering requirements;

SECTION 4: APPLICABILITY

This Ordinance applies to all construction and expansion of Wireless Telecommunications Facilities, except for those set forth hereinbelow at Section 4.1. Exemptions.

4.1. Exemptions.

The following are expressly exempt from the provisions of this Ordinance:

A. Emergency Wireless Telecommunications Facility

Temporary Wireless Telecommunication facilities for emergency communications by public authorities.

B. Amateur (ham) Radio Stations

Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC), provided the antenna, whether a ground, building or tower mounted antenna, is no higher than the maximum height permitted in the Land Use District wherein it is located and is not licensed for commercial purposes.

C. Parabolic Antenna

Parabolic antenna less than seven (7) feet in diameter that is an accessory use of the property.

D. Routine Maintenance, Repair Or Reconstruction

Routine maintenance, repair or reconstruction of a Wireless Telecommunications Facility and its related equipment, provided that there is no change in the height or any other dimension of the existing Facility.

E. Temporary Wireless Telecommunication Facility

Temporary Wireless Telecommunications Facilities which operate for a maximum time period of one hundred eighty (180) days. This may include, but is not limited to, "cellular on wheels" mobile equipment.

F. Antennas As Accessory Uses

An antenna that is an accessory use to a residential dwelling unit, provided whether ground or building mounted antenna, including any mast, is no higher than the maximum height permitted in the Land Use District wherein it is located.

G. Municipal, Public Safety, Public Works, or Quasi-Municipal Organizations

Municipal, public safety, public works, or quasi-Municipal organizations, when used solely for the

communication use of these users, including any Town lands existing at date of this Ordinance adoption or on any Town property acquired in the future.

H. A Wireless Telecommunications Facility which is totally integrated into an existing or proposed church steeple, flagpole, light standard, power line support device, water tower or other similar structure.

SECTION 5: REVIEW AND APPROVAL AUTHORITY

5.1. Approval Required

No person shall construct or expand a Wireless Telecommunications Facility without prior approval of the Code Enforcement Officer (CEO) or the Planning Board as hereinbelow set forth:

5.1.1. Approval of Code Enforcement Officer For Expansion of Existing Facility and Colocation

Approval by the Code Enforcement Officer is required for the expansion of an existing Wireless Telecommunications Facility that increases the height of the Facility by no more than twenty (20) feet; accessory use of an existing Facility; or the colocation on an existing Facility.

5.1.2. Approval of Planning Board for New Construction of Wireless Telecommunications Facility

Approval by the Planning Board is required for the construction of a new Wireless Telecommunications Facility and for the expansion of an existing Facility that increases the height of the Facility more than twenty (20) feet.

5.2 Approval Authority

In accordance with Section 5.1 hereinabove, the CEO, or in his/her absence, the Planning Board shall review an application for a Wireless Telecommunications Facility and shall make written findings on whether the proposed Facility complies with this Ordinance.

SECTION 6: APPROVAL PROCESS

6.1 Pre-Application Conference

All persons seeking the approval of the CEO or the Planning Board under this Ordinance shall meet with the CEO or the Planning Board no less than thirty (30) days before filing the application. At this pre-application conference, the CEO or the Planning Board shall explain to the prospective applicant the Ordinance provisions; review the application forms; and explain the submission and subsequent review process required of the filed application under this Ordinance.

6.2 The Application

All persons seeking approval of the CEO or the Planning Board under this Ordinance shall submit an application as provided hereinbelow. The CEO shall be responsible to notify by mail all abutting property owners that the application has been filed and is available for public viewing. Applicant shall publish notice of the application filing in a local newspaper of general circulation in the Town.

6.2.1. Application for CEO Approval

An application for permit approval pursuant to Section 5.1.1. hereinabove must include the following materials and information:

1. Documentation of the applicant's right, title or interest in the property where the Facility is proposed to be sited, including the name and address of the property owner(s), any lessee and the applicant, the Map/Lot number and street address for the property.
2. A copy of the FCC license for the Facility or a signed statement from the owner or operator of the proposed Facility attesting that the Facility complies with current FCC regulations.
3. Identification of the districts, sites, buildings, structures or objects significant in American history, architecture, archaeology, engineering, or culture that are listed or are eligible for listing in the National Register of Historic Places (See 16 U.S.C. 470W(5); 36 CFR 60 and 800). Such identification may be obtained from applicant's consultation with the State Historic Preservation Office, the Cherryfield-Narraguagus Historical Society and/or the Town Administrative Assistant or Head Selectman.
4. A Location Map and Elevation drawing of the proposed Facility and any other proposed structures, including Map/Lot number and street address, showing color, and identifying all structural materials.
5. For a proposed expansion of an existing Facility, a signed statement committing the owner of the Facility, and his/her/its successors in interest, to:
 - a.) 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 preparation of the response;
 - b.) negotiate in good commercial faith for shared use by 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 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 costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

6.2.2. Application For Planning Board Approval

An application for approval by the Planning Board must be submitted to the Code Enforcement Officer or in his/her absence, to the Planning Board. This application must include the following materials and information:

1. The Documentation and copy of FCC license provided in Sections 6.2.1.1. and 2 above;

2. Topographic Maps

a.) 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 Town. This requirement may be met by submitting current information (within thirty (30) days of the date of the application is filed) from the FCC Tower Registration Database; and

b.) A topographic map of the property at a scale of 1 inch=50 feet which shall identify within a 500 foot radius: accurate dimensions of the property, where a tower is proposed to be located; contours at not less than 5 foot intervals (or other appropriate scale as determined by the Planning Board); existing vegetation, particularly noting height, diameter, density, quality, estimated useful life, and type (deciduous or evergreen) of all existing trees; wetlands, floodplains, streams and open bodies of water; ledge outcrops; soils data, medium intensity; all existing structures on the property; and any rights-of-way, easements, access roads, or similar encumbrances on the property; and any other significant features.

3. A locus map:

a.) drawn at a scale of not less than 1 inch =100 feet (or other appropriate scale as determined by the Planning Board) that identifies all properties; all Residential Use/Structures, all non-Residential Use /Structures, all roads, and the natural topography (vegetation and contours at 20 foot intervals) of the area located within a radius of 1,000 feet of the location of the proposed Wireless Telecommunications Facility.

4. A site plan:

a.) prepared and certified by a Professional Engineer registered in Maine indicating the location, type, and height of the proposed Facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes.

b.) certification by the applicant that the proposed Facility complies with all FCC standards for radio emissions as required; and

c.) a Boundary Survey for the project performed by a Land Surveyor licensed by the State of Maine.

5. A scenic assessment to consist of the following:

a.) Elevation drawings of the proposed Facility, and any other proposed structures, drawn to scale, showing all measurements, both linear and volumetric, showing height above ground level; front, sides and rear of proposed Facility, including all fencing, supporting system for transmission cables running between the tower and accessory structures, control panels, antennas, and existing structures and trees, evergreen and deciduous. Applicant shall identify any design features or characteristics which have the effect of reducing or eliminating visual obtrusiveness.

b.) A landscaping plan at a scale of 1 inch=50 feet indicating the proposed placement of the Facility on the site; location of existing structures, evergreen and deciduous trees, and other significant site features; the type and location of plants proposed to screen the Facility and to provide required buffer strips; the method of fencing, the color of the structure and the proposed lighting method. Site photos showing existing trees and vegetation and existing structures and views from the property boundaries of adjacent unimproved or improved properties shall accompany submittal of the landscape plan.

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 photo. The photos must show the actual color, height, lighting, screening of the proposed Facility. Applicant shall present to the Planning Board photos of a similar operational tower in height, color, all design features and screening showing the photo simulation prior to construction and photos of the same tower after construction completion.

A visual impact assessment shall also be prepared and submitted by applicant, which shall include a photo montage, field mockup, or other technique to identify potential visual impacts at design capacity of the proposed Facility. Consideration shall be given to views from Designated Scenic Resources, other public areas as well as from private Residential Use/Structures, Historic and Archaeological Resources, including Historic Districts, Historic Landmarks, other areas and structures specifically those listed in the National Register of Historic Places, or eligible for inclusion. This assessment of impact on all such Resources shall meet the requirements of the Maine State Historic Preservation Officer in his/her review capacity for the FCC. The overall analysis shall assess the cumulative impacts of the proposed Facility and any other existing and foreseeable Wireless Telecommunications Facilities in the area and shall identify and include all feasible mitigation measures consistent with technological requirements of the proposed communications service.

d.) A narrative discussing the following:

i. the extent to which the proposed Facility would be visible from or within a Designated Scenic Resource, Historic District or Historic Landmark, or Historic or Archaeological Resource and any visibility difference between leaf-on and leaf-off seasons;

ii. the tree line elevation of vegetation within 100 feet of the Facility; and

iii. The distance to the proposed Facility from the Designated Scenic Resource's, Historic District's or Historic Landmark's or Historic or Archaeological Resource's noted Viewpoints.

6. A written description of how the proposed Facility fits into the applicant's Wireless Telecommunications network and identification of the location of other compatible towers. This submission requirement does not require disclosure of any confidential business information.

7. 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:

a.) Evidence that no existing Facilities are located within the Targeted Market Coverage Area as required to meet the applicant's engineering requirements;

b.) Evidence that existing Facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements;

c.) Evidence that existing Facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment, specifically:

i. Planned, necessary equipment would exceed the structural capacity of the existing Facility, considering the existing and planned use of those Facilities, and these existing Facilities cannot be reinforced to accommodate the new equipment.

ii. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures or the antenna equipment on the existing Facility would cause interference with the applicant's proposed antenna.

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

d.) For Facilities existing prior to the effective date of this Ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing Facility are unreasonable. Costs exceeding the pro rata share of a new Facility development are presumed to be unreasonable. Such evidence shall also be satisfactory for a tower built after the passage of this Ordinance.

e.) Evidence that the applicant has made diligent, good faith efforts to negotiate collocation on an existing Facility, building, or structure, and has been denied access.

8. Identification of districts, sites, buildings, structures, or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (See U.S.C. 470W(5); 36 CFR 60 and 800).

9. A signed statement stating that the owner of the Wireless Telecommunication Facility and his/her/its successors and assigns agree to:

a.) respond in a timely, comprehensive manner to a request for information from a potential collocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;

b.) negotiate in good faith for shared use of the Wireless Telecommunications Facility by third parties;

c.) allow shared use of the Wireless Telecommunications Facility if an applicant agrees in writing to pay reasonable charges for collocation; and

d.) require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the Facility owner shall be accomplished at a reasonable rate over the useful life span of the Facility.

10. A form of Surety approved by the Planning Board to pay for the costs of removing the Facility if it is abandoned.

11. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

12. Design Standards

All proposed Wireless Telecommunications Facilities shall be designed to blend into the surrounding environment to the greatest extent practicable. The following Design Standards shall be implemented by the applicant in its design and the Planning Board, as part of the site plan review process, shall determine whether applicant has complied with these Design Standards.

a.) Towers shall be constructed of metal or other nonflammable materials unless specifically waived by the Planning Board due to demonstrated technical or engineering reasons;

b.) Accessory facilities shall be located adjacent to the tower base unless an alternative location will be less visually obtrusive or topographic considerations require an alternative location.

c.) Accessory facilities shall be constructed of nonreflective exterior materials with earthtone colors or shall be placed underground, if possible.

d.) Accessory facilities shall be no taller than one story in height and shall be treated to look like a building or facility typically found in the area.

e.) All buildings, poles, towers, antenna supports, antennas and other components of each Wireless Telecommunications Facility site shall be initially painted and thereafter repainted as necessary with a matte finish paint. Color(s) selected shall be one(s) that will minimize their visibility to the greatest extent practicable. Improvements that will be viewed against soils or trees shall be painted color(s) matching those landscapes, while elements which rise above the horizon shall be painted a blue gray that matches the typical sky color at that location, unless the Planning Board determines that an alternative proposal will better minimize visibility.

f.) Applicant's plan shall seek to the greatest extent practicable to camouflage the proposed Facility; to that end, the Planning Board may require special design of the proposed Facility where findings of particular sensitivity are made (e.g., the proximity to a Designated Scenic Resource, Historic District or Historic Landmark, Historic or Archaeological Resource, and/or other historic or aesthetically significant structures, views, areas and/or community features.)

g.) Only security lighting is permitted. All outdoor lighting shall employ full cutoff (i.e., night-sky friendly) fixtures to prevent or reduce light pollution and glare. Signals, lights, or illumination shall not be permitted on a Wireless Telecommunications tower unless required by the FCC, FAA or other Federal agency.

h.) Advertising and commercial signs are not permitted on a Wireless Telecommunications Facility.

i.) No proposed Facility shall be located so as to create a significant impact to the health or survival of rare, threatened or endangered plant or animal species.

j.) No proposed Facility shall be located within a property within a designated Land Use District within the Shoreland Zoning Ordinance of the Town.

k.) No proposed Facility shall be located within 1,000 feet of an Education, Institutional, Public Use/Structure in the Mixed Use, Rural and/or Industrial Districts.

l.) No proposed Facility shall be located within 1,000 feet of the Historic Village District boundaries.

m.) No proposed Facility shall be located within 1,000 feet of a Residential Use/Structure in the Mixed Use, Rural and/or Industrial Districts, unless located within the same property, or the owner of the Residential Use/Structure has signed and delivered to the Facility owner/operator an agreement to waive this distance requirement. In such event, the agreement shall be recorded and a copy included with the Application for the proposed Facility.

n. Where a proposed Facility is adjacent to Residential Use/Structures, noise generated by the Facility shall not exceed Town permitted dBA as measured at the property line of the Residential Use/Structure. Operation of back-up power generator during any power failure and testing of a back-up generator between 7 a.m. and 7 p.m. are exempt from this Design Standard. Other than the foregoing hours, no testing shall otherwise occur.

6.3 Submission Requirements Waiver

The CEO or Planning Board, as appropriate, may waive any of the submission requirements in Section 6.2 above based upon a written request of the applicant submitted at the time of the application filing. A waiver of any submission requirement may be granted only if the CEO or Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine full compliance with the submission requirements and/or Design Standards of this Ordinance.

6.4 Fees

6.4.1. CEO Application Approval: Application Fee Payment

An application for CEO approval shall include payment of an application fee of \$100.00. The application shall not be considered complete until this fee is paid in full. An applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of filing, less all expenses incurred by the Town to review the application.

6.4.2. Planning Board Application Approval: Application Fee Payment

An application for Planning Board approval shall include payment of an application fee of \$500.00. The application shall not be considered complete until this fee is paid in full. An applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of filing, less all expenses incurred by Town to review the application.

6.4.3. Planning Board Review Fee

An applicant for Planning Board approval shall pay all reasonable and customary fees incurred by the Town that are necessary to review the application. The review fee shall be paid in full prior to the start of construction of the approved Facility.

That portion of the review fee not used shall be refunded to the applicant within fourteen (14) days of the rendition by Planning Board of its decision.

6.5 Notice To Applicant of Application Completeness or Incompleteness

Upon receipt of an application with full payment for the application fee, the CEO shall provide the applicant with a dated receipt. Within five (5) working days from the receipt of an application, the CEO shall complete review of the application and determine whether the application meets the submission requirements set forth in Section 6.2 above. The CEO or Planning Board, as appropriate, shall review any submission requirements waiver request made under Section 6.3 above and shall act upon such request prior to determining the completeness of the application.

If the application is determined to be complete, the CEO shall notify the applicant in writing of this completeness determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board if its approval shall be subsequently required for approval of the application.

If the application is determined to be incomplete, the CEO shall notify the applicant in writing specifying by citation to the Sections of this Ordinance what additional materials or information is required to complete the application. The CEO shall take no further action to review an incomplete application unless and until applicant has provided all requested additional materials and information.

Upon an application being determined complete and requiring Planning Board review, the CEO shall notify all Abutters to the site as shown by the Town's assessor records, by first class mail, that the application has been filed and determined to be complete. This notice shall contain a brief description of the proposed activity; name of the applicant; location of a copy of the application available for inspection; and 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 application.

6.6. Public Hearing Notice of Planning Board Public Hearing

For applications for Planning Board approval under Section 5.1.2. of this Ordinance, a public hearing shall be held within thirty (30) days of the mailing of notice of the complete application pursuant to Section 6.5 hereinabove.

6.7 Approval

6.7.1. CEO Approval

Within thirty (30) days of receipt of a complete application for approval under Section 5.1.1., the CEO or the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The CEO or the Planning Board shall approve the application if the CEO or the Planning Board finds that the application complies with the provisions in Section 7.1 of this Ordinance.

The CEO or the Planning Board shall notify all Abutters by first class mail of the decision to issue a permit under this Section. The above time period may be extended upon written agreement of the applicant and the CEO or the Planning Board.

6.7.2. Planning Board Approval

Within ninety (90) days of receipt of a complete application for approval under Section 5.1. 2. above, 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 its decision within the 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 written agreement of the applicant and the Planning Board.

SECTION 7. STANDARDS OF REVIEW

To obtain approval from the CEO or the Planning Board, an application must be found to comply with the following standards:

7.1. CEO or Planning Board Approval Standards under Section 5.1.1.

An application for approval by the CEO or the Planning Board under Section 5.1.1. above must meet all these below Standards:

- A. The proposed Facility is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.
- B. The applicant has sufficient right, title, or interest to locate the proposed Facility on the existing structure.
- C. The proposed Facility increases the height of the existing Facility by no more than twenty (20) feet.
- D. The proposed Facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.
- E. The proposed Facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon 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).

7.2. Planning Board Approval Standards

An application for Planning Board approval under Section 5.1.2. must meet these below Standards:

A. Priority of locations: New Wireless Telecommunications Facilities must be located according to the priorities set forth hereinbelow. 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 in the following Land Use Districts, as identified in the Town's Building and Land Use Ordinance, Section 3. C. Land Use Districts and Section 3. D. Table of Land Uses: Mixed Use District (MU); Future Industrial District (I); and Rural District (R).

2. A new Facility on public or private property in one of the above Land Use Districts.

B. Siting on Town Property: If an applicant proposes to locate a new Wireless Telecommunications Facility or to expand an existing Facility on Town property, the applicant must show:

1. The proposed location complies with applicable Town policies and ordinances;
2. The proposed Facility will not interfere with the intended purpose(s) of the Town property;
3. The applicant has adequate liability insurance and a lease agreement with the Town that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

C. 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 two (2) additional Wireless Telecommunications Facilities or providers. The total mass of antennas, including required antenna support structures, on a tower shall not exceed 1900 cubic feet per array. However, the Planning Board may waive or modify this design requirement where the District height limitation effectively prevents future colocation or the provision of necessary services.

D. Height

A new Wireless Telecommunications Facility must meet the following height standards in the following Land Use Districts:

1. The Mixed Use District: the maximum height shall be 190 feet;
2. The Future Industrial District: the maximum height shall be 190 feet; and
3. The Rural District: the maximum height shall be 190 feet.

E. Setbacks

A new or expanded Wireless Telecommunications Facility must comply with the set back requirements for the Land Use District in which it is located, or be set back one hundred twenty-five percent (125%) 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 granted by the abutting property owner. No part of the structure, including anchors, overhead lines, masts, etc. shall be located within the required District setback or in any required buffer area both on the ground or in the air space above the ground. Any accessory support building containing electronic equipment and any other structures accessory to the wireless communications tower shall meet the required District building setback.

If more than one Wireless Telecommunications tower is proposed on a single Lot or parcel, the towers shall be clustered as closely together as technically possible.

If other nonaccessory uses are already located on the same lot or parcel as a tower, all such structures associated with such other uses shall be located a minimum distance of 20 % of the tower height from the center of the base of the tower, unless the property owner has signed and delivered to the Facility owner/operator an agreement to waive this distance requirement. In such event, the agreement shall be recorded and a copy included with the Application for the proposed Facility.

The following exemptions apply:

1. In the Mixed Use District, the setback may be reduced by the Planning Board upon a showing by the applicant that the Facility is designed to collapse within the Fall Zone in a manner that will not harm other existing buildings and 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 the abutting property.

F. Landscaping and Buffer Strips

Consistent with the approved Landscape Plan submitted by the applicant, the new Wireless Telecommunications Facility and related equipment shall be screened with plants and trees to reduce from view by abutting properties, to the maximum extent practicable, and the required buffer strips planted. Existing healthy trees, plants and natural land forms and features on the Facility site shall also be preserved to the maximum extent practicable.

G. Fencing

A new Wireless Telecommunications Facility must be totally encircled by fence meeting the following standards to discourage trespass on the Facility and to discourage climbing on any structure by trespassers: a minimum height of eight (8) feet from finished grade with one (1) access through a locked gate.

H. Lighting

A new Wireless Telecommunications Facility shall be illuminated only as necessary to comply with Federal Aviation Administration (FAA) or other applicable State or Federal requirements. However, security lighting may be used as long as it is shielded to be down directional to retain the light totally within the boundaries of the Facility site, to the maximum extent practicable.

I. Color and Materials

A new Wireless Telecommunications Facility must be constructed with materials and with colors that match or blend harmoniously 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.

J. 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" and any amendments thereto or other standards adopted subsequently to the effective date of this Ordinance.

K. Visual Impacts

A proposed Wireless Telecommunications Facility will have no unreasonable adverse visual impacts upon Designated Scenic Resources, Historic District or Landmark or Historic or Archaeological Resources within the Town, as identified either by the adopted Town Comprehensive Plan, or by State or Federal agency.

1. In determining the potential unreasonable adverse visual impacts of the proposed Facility upon such Designated Scenic Resources, Historic District or Landmark or Historic or Archaeological Resources, the Planning Board shall consider the following factors:
 - a.) The extent to which the proposed Facility is visible above existing tree line from the Viewpoint(s) of the impacted Designated Scenic Resource, Historic District or Landmark or Historic or Archaeological Resources;
 - b.) The type, number, height, and proximity of existing structures and features 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 Viewpoint(s) of the impacted Designated Scenic Resource, Historic District or Landmark or Historic or Archaeological Resource;
 - d.) The amount of existing tree and other vegetation, during both leaf-on and leaf-off seasons, to screen visibility of the proposed Facility;

e.) The distance of the proposed Facility from the Viewpoint(s) and the Facility's location within the Designated Scenic Resource or Historic or Archaeological Resource;

f.) The presence of reasonable alternatives that allow the proposed Facility to function consistently with its purpose.

L. Noise

During any construction, repair or replacement of the Facility or related equipment, the operation of a back-up power generator at any time during a power failure, and testing of a back-up power generator between 7 a.m. and 7 p.m. is permissible.

M. Historic District, Historic Landmark or Historic and Archaeological Properties

The proposed Wireless Telecommunications Facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon a Historic District, site or structure therein, Historic Landmark or Historic or Archaeological Resource which is currently listed on or eligible for listing on the National Register of Historic Places (See 16 U.S.C 470w(5); 36 CFR 60 and 800). Such identification may be obtained from Applicant's consultation with the State Historic Preservation Office, the Cherryfield -Narraguagus Historical Society and/or the Town Administrative Assistant or Head Selectman.

7.3 Standard Conditions of Approval

The following Standard Conditions of Approval shall be incorporated into any approval or conditional approval issued by the CEO or Planning Board. Where necessary to ensure that an approved Wireless Telecommunications Facility project meets the criteria of this Ordinance, the Planning Board can impose additional Conditions of Approval. Reference to the Standard Conditions of Approval shall be clearly noted within the final approved site plan, and shall include:

1. The owner of the Wireless Telecommunications Facility and his/her/its successors and assigns agree to:

a.) respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not to be in excess of the actual cost of the preparation of the response;

b.) negotiate in good faith for shared use of the Wireless Telecommunications Facility by third parties;

c.) allow shared use of the Wireless Telecommunications Facility if an applicant agrees in writing to pay reasonable charges for colocation;

d.) require no more than a reasonable charge for shared use of the Wireless Telecommunications Facility, based upon 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. This 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.

2. Upon request by the Town, the applicant shall certify compliance with all current applicable FCC radio frequency emissions regulations.

SECTION 8. AMENDMENT OF AN APPROVED APPLICATION

Any requested changes to an approved application must be approved whether by the CEO or Planning Board in accordance with SECTION 5 of this Ordinance.

SECTION 9. ABANDONMENT

9.1 An approved Wireless Telecommunications Facility that is not operated continuously for a period of twelve (12) calendar months shall be deemed to have been abandoned. In such case, the CEO shall notify the Facility owner in writing, by certified mail, return receipt requested, and order the removal of the Facility and related equipment within ninety (90) days of the receipt of the written notice. The Facility owner shall have thirty (30) days from the receipt of the written notice to demonstrate to the CEO that the Facility has not been abandoned.

If the Facility owner fails to show that the Facility is in active operation, the Facility owner shall have sixty (60) days to remove the Facility and related equipment, unless the Facility owner and the CEO shall agree in writing to a longer period of time. If the Facility and related equipment is not totally removed within this sixty (60) day time period or longer agreed upon time period, the Town may remove the Facility and related equipment at the Facility owner's expense. The Facility owner shall pay all site reclamation costs deemed necessary and reasonable to restore the site to its pre-construction condition, including the removal of any access roads and other improvements and the planting of new trees and vegetation.

After an approval of the application and before issuance of a permit to applicant, the applicant shall post a Bond or other acceptable financial Surety that is equal to 120% of the estimated demolition cost of the tower and the removal of the Facility and related accessory structures and equipment. Applicant shall provide such estimate at its cost from an independent registered Professional Engineer in the State of Maine. The Bond or Surety shall be in place for as long as the Facility is in place. At expiration of each five year period that the Facility is in place, the owner of the Facility shall provide to the CEO an updated estimate; if such updated estimate requires additional funds, either the Bond or Surety must itself provide the mechanism to increase the amount to the updated amount or the owner must obtain and present a new Bond or Surety to the CEO; in such latter event, the CEO shall redeliver to Facility owner the original Bond or other financial Surety. The Facility owner may apply to the Planning Board for release of the Bond or Surety upon certification by the CEO that the Facility and related equipment have been fully removed from the site; all costs to be paid to the Town have been fully paid; and the site fully restored to its pre-construction condition as required hereinabove.

9.2 The following events shall further constitute an abandonment and be grounds for the demolition and removal set forth in 9.1 above:

a.) Failure or refusal of the Facility owner or operator to comply with revised standards or regulations of the FCC, FAA and any other agency of the Federal or State of Maine government having controlling regulatory authority within six months of the effective date of these revised standards or regulations, unless a more stringent compliance time period is mandated.

b.) Failure or refusal of the Facility owner or operator to conform to applicable industry standards, as may be amended from time to time, within thirty days after receipt of written notice from Town demanding the Facility owner or operator remedy the nonconformance.

c.) Failure or refusal of the Facility owner or operator within thirty days after receipt of written notice from Town that the Facility or equipment pose a danger to persons, property or the community to remedy the identified dangerous condition or to maintain a Bond or Surety required by above 9.1.

SECTION 10. APPEALS

Any person aggrieved by a decision made by the CEO or Planning Board under this Ordinance may appeal the decision to the Town Board of Appeals as provided by Section 11.C. of the Land Use Ordinance. Written notice of appeal must be filed with the Board of Appeals within thirty (30) days of the date of the decision.

SECTION 11. ADMINISTRATION AND ENFORCEMENT

11.1 The CEO shall enforce this Ordinance. If the CEO finds that any provision of this Ordinance has been violated, the CEO shall notify in writing, by certified mail, return receipt requested, the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct such violation. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this Ordinance.

11.2 The Town Officers, or their authorized agents, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without necessity of a court action. Such consent 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 Town official upon which the inquiring person reasonably relied to his/her/its detriment and there is no evidence of bad faith by such person; the removal of the violation will result in a threat to public health and safety or substantial environmental damage.

SECTION 12. PENALTIES

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

SECTION 13. CONFLICT AND SEVERABILITY

13.1 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.

13.2 Severability

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

SECTION 14. DEFINITIONS

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

“Abutter(s) or abutting property owner(s)” means the owner(s) of any property with one or more common boundaries, or across a right-of way or river, stream or other watercourse from the proposed Facility site.

“Alternative Tower Structure” means a manmade structure that supports one or more antennas, and that either conceals or camouflages the presence of a Wireless Telecommunications Tower from public view by unobtrusively blending in aesthetically with the surrounding environment. Alternative Tower Structures may include, but are not limited to, simulated trees, clock towers, water towers, bell towers, church spires, flagpoles, light and utility pole replacements which match the appearance of existing or adjacent light and utility poles, and similar structures.

“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 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.

“Camouflaged Antenna Facility” means architectural treatment of a Structure-mounted Facility to conceal or screen the presence of antennas, antenna supports, and/or the associated support facilities from public view by designing the Facility to unobtrusively blend in aesthetically with the surrounding environment.

“Colocation” means the use of a Wireless Telecommunications Facility by more than one Wireless Telecommunications provider.

“Designated Scenic Resource” means that specific location, view, or corridor as identified as a scenic resource in the Town's adopted Comprehensive Plan or by a State or Federal agency, that consists of:

1. A three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects, such a downtown skyline or mountain range, resulting in a panoramic view corridor; or

2. 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.

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

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

“Fall Zone” means the area surrounding a Ground-mounted Tower within which a Maine licensed Professional Engineer certifies that the Tower is designed to fall or collapse in the event of structural failure of all or part of the Tower.

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

“Ground-mounted Tower” means a Monopole Tower, Lattice Tower or Guyed Tower.

“Guyed Tower” means a Ground-mounted Tower that is supported, in whole or in part, by guy wires and ground anchors.

“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. 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.
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior.
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Secretary of the Interior through the Maine Historic Preservation Commission; or
5. Areas identified by a governmental agency such as the Maine History Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the Town's adopted 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 adopted 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 adopted Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"Lattice Tower" means a Ground-mounted Guyed Tower or self-supporting three or four sided, open, steel frame Telecommunications Tower.

"Line of Sight" means the direct view of the object from the Designated Scenic Resource.

"Monopole Tower" means a Ground-mounted Telecommunications Tower that is freestanding and constructed without guy wires and ground anchors.

"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 specified directional pattern.

"Pole-attached Antenna" means an antenna attached to electric transmission or distribution poles, streetlights, traffic signals or similar facilities.

"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 adopted Town's Comprehensive Plan, designed to serve the recreational needs of Town property owners.

"Structure-mounted Facility" means a Wireless Telecommunications Facility, the antennas for which are attached to an existing non-tower structure or building. The Facility includes all Support Facilities regardless of where such Facilities are located with respect to the antennas.

"Support Facilities" means any on-site or off-site building, cabinet, or equipment enclosure which houses the electronic backup power, power generators, and other freestanding equipment associated with the operation of a Wireless Telecommunications Facility.

"Targeted Market Coverage Area" means the geographic area which is targeted to be served by the proposed Wireless Telecommunications Facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result which is:
1. excessively out-of-character with the Designated Scenic Resource 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(s).

“Viewpoint” means that location which is identified either in the Town's adopted Comprehensive Plan or by a Federal or State agency, and which serves as the basis for the location and determination of a particular Designated Scenic Resource.

“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 (SMR), enhanced specialized mobile radio communications (ESMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services and similar services that presently exist or may be developed in the future. The placement of a Facility on an existing structure or building shall not cause such structure or building itself to become a Facility.

SECTION 15. EFFECTIVE DATE

This Ordinance shall take effect upon approval at a Regular or Special Town meeting or Town referendum election duly called for this purpose.

[End of Proposed Ordinance]
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