

# **Wireless Telecommunications Ordinance**

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## **Section 1. Title**

This Ordinance shall be known and cited as the “Wireless Telecommunications Facilities Siting Ordinance” of Kennebunkport, Maine (hereinafter referred to as the “ordinance”).

## **Section 2. Authority**

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

## **Section 3. Purpose**

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

- Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- Allow competition in telecommunications service;
- Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Kennebunkport;
- Permit and manage reasonable access to the public rights of way of Kennebunkport for telecommunications purposes on a competitively neutral basis;
- Ensure that all telecommunications carriers providing facilities or services within Kennebunkport comply with the ordinances of Kennebunkport;
- Ensure that Kennebunkport can continue to fairly and responsibly protect the public health, safety and welfare;
- Encourage the colocation of wireless telecommunications facilities and alternative technologies, thus helping to minimize adverse visual impacts on the community;
- Enable Kennebunkport 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 comprehensive plan, while promoting orderly development of the town with minimal impacts on existing uses;
- Protect the scenic and visual character of the community; and
- Comply with the 2012 Spectrum Act and the Telecommunications Act of 1996 as each is amended.

## Section 4. Applicability

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in section 4.1.

**4.1 Exemptions:** The following are exempt from the provisions of this ordinance:

- A. ***Emergency Wireless Telecommunications Facility.*** Wireless communication facilities for emergency communications by public officials or any municipal or quasi-municipal organization currently served by the Town of Kennebunkports Communications Department including, without limitation, the KK&W Water District and colocation by any person or firm, public or private, on any tower owned or operated by the KK&W Water District provided colocation by any private person or firm shall be subject to site plan approval by the Planning Board in addition to other applicable provisions of this ordinance.
- B. ***Amateur (ham) radio stations.*** Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. ***Parabolic antenna.*** Parabolic Antennas less than seven (7) feet in diameter, that are an accessory 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.

## Section 5. Review and Approval Authority

**5.1 Approval Required:** No person shall construct or expand a wireless telecommunication facility without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

- A. ***Expansion of an Existing Facility and Colocation.*** Approval by the CEO and issuance of a building permit is required for (1) any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; (2) accessory use of an existing wireless telecommunications facility; (3) collocation on an existing wireless telecommunications facility or alternative tower structure; or (4) installation of small cell facilities on existing utility poles.

- B. ***New Construction.*** Approval of the Planning Board and issuance of a building permit is required for construction of all new wireless telecommunications facilities; and any expansions or substantial modifications of existing wireless telecommunications facilities such as, but not limited to, increases in the height of the facility by more than 20 feet or new disturbed area or equipment cabinets outside the area occupied by the existing facility.

## 5.2 Approval Authority

In accordance with Section 5.1 above, the CEO or Planning Board shall review applications for wireless telecommunications facilities and make written findings on whether the proposed facility complies with this Ordinance.

## Section 6. Approval Process

- 6.1 **Pre-Application Conference:** All persons seeking approval of the CEO or the Planning Board under this ordinance shall meet with the CEO no less than thirty (30) days before filing an application. At this meeting, the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

- 6.2 **Application:** All persons seeking approval of the CEO or the Planning Board under this ordinance shall submit an application as provided below. The CEO shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

- A. ***Application for CEO Approval.*** Applications for permit approval by the CEO must include the following materials and information:

1. Documentation of the applicants 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. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800).
4. Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.

5. For a proposed small cell facility: (a) name and address of the owner(s) of the utility pole; (b) utility pole number; (c) address of nearest property; and (d) structural analysis, signed by a Maine registered professional engineer, attesting to the ability of the utility pole to support the small cell facility without any impact to the structural integrity of the utility pole or network of poles.
6. For proposed expansion of an existing facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:
  - i. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
  - ii. negotiate in good faith for shared use by third parties;
  - iii. allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;
  - iv. 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 of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

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

1. Documentation of the applicants right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
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. 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 days of the date the application is filed) from the FCC Tower Registration Database.

4. A site plan:
  - i. prepared and certified by a Maine registered professional engineer 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;
  - ii. certification by the applicant that the proposed facility complies with all FCC standards for radio frequency emissions is required; and
  - iii. a boundary survey for the project performed by a land surveyor licensed by the State of Maine.
5. A scenic assessment, consisting of the following:
  - i. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
  - ii. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
  - iii. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
  - iv. A narrative discussing:
    - a. the extent to which the proposed facility would be visible from or within a designated scenic resource,
    - b. the tree line elevation of vegetation within 100 feet of the facility, and

- c. the distance to the proposed facility from the designated scenic resources noted viewpoints.
- 6. A written description of how the proposed facility fits into the applicants telecommunications network. This submission requirement does not require disclosure of confidential business information.
- 7. Evidence demonstrating that no existing building, site, or structure can accommodate the applicants proposed facility, the evidence for which may consist of any one or more of the following:
  - i. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicants engineering requirements,
  - ii. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicants engineering requirements,
  - iii. Evidence that existing facilities do not have sufficient structural strength to support applicants proposed antenna and related equipment. Specifically:
    - a. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
    - b. The applicants proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing facility would cause interference with the applicants proposed antenna.
    - c. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
  - iv. For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall

- also be satisfactory for a tower built after the passage of this ordinance;
- v. Evidence that the applicant has made diligent good faith efforts to negotiate colocation on an existing facility, building, or structure, and has been denied access.
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 16 U.S.C. 470w(5); 36 CFR 60 and 800).
  9. A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to :
    - i. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
    - ii. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
    - iii. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
    - iv. 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.



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

**6.4 Fees:**

- A. **CEO Application Fee.** An application for CEO approval shall include payment of an application fee as determined annually by the Board of Selectmen. The application shall not be considered complete until this fee is paid.
- B. **Planning Board Application Fee.** An application for Planning Board approval shall include payment of an application fee as determined annually by the Board of Selectmen. The application shall not be considered complete until this fee is paid.
- C. **Planning Board Review Fee.** An applicant for approval by the Planning Board shall pay all reasonable and customary fees incurred by the Town that are necessary to review the application, including, without limitation, independent engineering, planning, legal or similar professional consulting services. Such review fee shall be assessed for the privilege of review and shall be payable without regard to consultation results or the outcome of the application. The review fee shall be paid in full prior to the start of construction. No building permit may be issued until all review fees have been paid in full.

That portion of the review fee not used shall be returned to the applicant within a reasonable period time after the Planning Board's decision, once it has been determined that all associated costs have been paid.

**6.5 Notice of Complete Application:** Upon receipt of an application, the CEO shall provide the applicant with a dated receipt. Within five (5) working days of receipt of an application the CEO shall review the application and determine if the application meets the submission requirements. The CEO or Planning Board, as appropriate, shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the CEO shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board, Code Enforcement Office, Police Department and Fire Department.

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

If the application is deemed to be complete, and requires Planning Board review, the CEO shall notify all abutters to the site as shown on the Assessors records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

**6.6 Public Hearing:** For applications for Planning Board approval under Section 5.1(B), a public hearing shall be held within 30 days of the notice of the complete application.

**6.7 Approval:**

A. **CEO Approval.** Within thirty (30) days of receiving a complete application for approval under section 5.1(A), the CEO shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. With the exception of applications for installation of a small cell facility, the CEO shall approve the application if the CEO finds that the application complies with the provisions in Section 7.1 of this ordinance.

For a small cell facility, the CEO shall approve the application if the CEO finds the following:

1. the small cell facility does not interfere with the safety and convenience of travel over the public right of way; other existing uses of the utility right of way, and shall not interfere with municipal emergency service communication equipment;
2. the small cell facility is not located within fifty (50) feet of a residence or sensitive population (including but not limited to schools, hospitals, nursing facilities etc.) If a small cell facility is proposed to be located within fifty (50) feet of a residence or sensitive population then the approval process outlined in 6.7D Planning Board Approval shall be followed.
3. The small cell facility is camouflaged such that it is visually unobtrusive as compared to the preexisting condition of the utility pole or nearby utility poles, including color and scale;

4. The dimensions of the antenna does not exceed three (3) feet in height or two (2) feet in width and associated equipment has a maximum square footage of ten (10) square feet and height of two (2) feet;
5. No part of the small cell facility projects from the utility pole further than four (4) feet from its existing height and two (2) feet from its existing width

- B. The small cell facility is proposed by a licensed provider who agrees to comply with all local ordinance, state and federal laws;

The entity seeking approval for the small cell facility submits a written commitment to notify the Town within thirty days of cessation of use of the facility and to remove that facility within ninety (90) days of termination of use.

The CEO shall notify all abutters of the decision to issue a permit under this section. The time period may be extended upon agreement between the applicant and the CEO.

- C. ***Planning Board Approval.*** Within ninety (90) days of receiving a complete application for approval under section 5.1(A) or one hundred fifty (150) days of receiving a complete application for approval under section 5.1(B), 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 period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

**6.8 Building Permit Required:** No wireless telecommunications facility shall be constructed or expanded without a building permit therefore issued by the CEO.

**6.9 Zoning:** Notwithstanding any provision in any municipal ordinance to the contrary, small cell facilities and colocated wireless telecommunications facilities or antennas installed on alternative tower structures shall be a permitted use in all zoning districts.

## Section 7. Standards of Review

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

### 7.1 **CEO Approval Standards:** An application for approval by the CEO under Section 5.1(A) must meet the following standards.

- A. The proposed facility is an expansion, accessory use, or colocation to a conforming structure legally 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 structure 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 approval by the Planning Board under Section 5.1(B) must meet the following standards.

- A. **Location.** New wireless telecommunications facilities installed on new towers may be permitted only in the following district as designated in the Kennebunkport Zoning Ordinance: Free Enterprise Zone.
- B. **Siting on Municipal Property.** If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on Town property, the applicant must show the following:
  - 1. The proposed location complies with applicable municipal policies and ordinances.
  - 2. The proposed facility will not interfere with the intended purpose of the 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 designated and constructed to accommodate expansion for future colocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future colocation.
- D. **Height.** A new wireless telecommunications facility must be no more than 200 feet in height.
- E. **Setbacks.** A new or expanded wireless telecommunications facility must comply with the set back requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:
1. The setback may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.
  2. An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.
  3. This setback does not apply to the installation of colocated wireless telecommunication facilities or small cell facilities on alternative tower structures.
- F. **Landscaping.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.
- G. **Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
- H. **Lighting.** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.
- I. **Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

- 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."
- K. **Visual Impact.** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the Towns Comprehensive Plan, or by a State or federal agency.
1. In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:
    - a. The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;
    - 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 wireless telecommunications facility would be visible from the viewpoint(s);
    - d. The amount of vegetative screening;
    - e. The distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
    - f. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- L. **Noise.** During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.
- M. **Historic & Archaeological Properties.** The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

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

- A. The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
  - 1. respond in a timely, comprehensive manner to a request for information from a potential colocation applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
  - 2. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
  - 3. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
  - 4. require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.
- B. Upon request by the Town, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

## **Section 8. Amendment to an Approved Application**

Any changes to an approved application must be approved by the CEO or the Planning Board, in accordance with Section 5.

## **Section 9. Abandonment**

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from

the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the Town may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation.

If a surety has been given to the Town for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

## **Section 10.Appeals**

Any person aggrieved by a decision of the CEO or the Planning Board under this ordinance may appeal the decision to the Board of Appeals as an administrative appeal under the Zoning Ordinance. Written notice of an appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

## **Section 11.Administration and Enforcement**

The CEO, as appointed through either the Zoning Ordinance or by the Board of Selectmen or Town or City Council, shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The CEO shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Board of Selectmen, or its authorized agent, is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: (a) there is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized municipal official upon which the applicant reasonably relied to its detriment; (b) there is no evidence that the owner acted in bad faith; and (c) 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 or property that violates this ordinance shall be fined in accordance with Title 30-A M.R.S.A. Section 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:

**“Alternative Tower Structure”** Clock towers, bell steeples, light poles, water towers, electrical transmission line towers, smokestacks, existing buildings, and similar mounting structures that camouflage, or conceal or support the presence of an Antenna(s).

**“Antenna/Antenna Array”** A system of one or more rods, panels, discs or similar devices used for the transmission or reception of radio frequency signals. These include, but are not limited to, omnidirectional antennas (whips or rods), directional antennas (panels) and parabolic antennas (dish or disc).

**“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.

**“Colocation”** means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

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

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

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

**“Height”** means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.

**“Historic or 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 Secretary of the Interior through the Maine Historic Preservation Commission; or
5. 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 Town’s Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

**“Historic District”** means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the Town’s Comprehensive Plan, which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.

**“Historic Landmark”** means any improvement, building or structure of particular historic or architectural significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state or national history identified in the Town’s Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

**“Line of Sight”** means the direct view of the object from the designated scenic resource.

**“Parabolic Antenna”** (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 the use other than one which is wholly incidental or accessory to another use on the same premises.

**“Public Recreational Facility”** means a regionally or locally significant facility, as defined and identified either by State statute or in the Town’s Comprehensive Plan, designed to serve the recreational needs of Kennebunkport property owners.

**“Designated Scenic Resource”** means that specific location, view, or corridor, as identified as a scenic resource in the Town’s 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 as 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.

**“Small Cell Facility”** An antenna, radio, power source and meter, disconnect switch, fiber optic cable, and supporting equipment, if any, installed on a utility pole owned by a regulated public utility and installed within the public right of way.

**“Targeted Market Coverage Area”** means the area which is targeted to be served by this proposed 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 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.

**“Viewpoint”** means that location which is identified either in the Town’s 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”** A facility that transmits, receives, distributes, provides or offers telecommunications services, radio or television signals, or any other spectrum-based transmissions/receptions, together, with the facility’s associated antennas, microwave dishes, horns, cables, wires, conduits, ducts, lightning rods, electronics and other types of equipment for the transmission, receipt, distribution or offering of such signals; wireless communication towers, antenna support structures, and other structures supporting said equipment and any attachments to those structures including guy wires and anchors, equipment buildings, generators, parking areas, utility services, driveways and roads and other accessory features.

**“Wireless Telecommunications Facility—Colocated”** A Wireless Telecommunications Facility that is installed on an Alternative Tower Structure instead of a new tower structure.

## **Section 15. Effective Date**

Notwithstanding any other provision of law to the contrary, this ordinance shall become effective immediately upon passage but shall be retroactive to any application not pending within the meaning of 1 M.R.S.A. Section 302 as of August 26, 1999.

Amended 11/6/2018