

WIRELESS TELECOMMUNICATIONS FACILITIES

SITING ORDINANCE

CHAPTER 141

From the

CODE

of the

TOWN OF WINDHAM

Adopted 11/26/99

COUNTY OF CUMBERLAND

STATE OF MAINE

TOWN OF WINDHAM

WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE

Section 1. Title

This ordinance shall be known and cited as the “Wireless Telecommunications Facilities Siting Ordinance of the Town of Windham, 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), the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S.A. Section 4212 *et seq.*, and the provisions of Article I, Section 2 of the Charter of the Town of Windham, Maine.

Section 3. Purpose

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

- Implement a municipal policy concerning the provision of wireless communication services, and the siting of their facilities;
- Establish clear guidelines, standards and time frames for the exercise of municipal authority to review and 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 the Town of Windham;
- Permit and manage reasonable access to the public rights of way of the Town of Windham for telecommunications purposes on a competitively neutral basis;
- Ensure that all telecommunications carriers providing facilities or services within the Town of Windham comply with the ordinances of the Town of Windham;
- Ensure that the Town of Windham can continue to fairly and responsibly protect the public health, safety and welfare;

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- Encourage the co-location of wireless telecommunications facilities in order to reduce the number of future tower structures and their related appurtenances;
- Enable the Town of Windham to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and,
- Further the goals and policies of the Town's Comprehensive Plan, while promoting orderly development of the town with minimal impacts on existing uses.

Section 4. Applicability

This ordinance shall apply to the construction and/or expansion of all wireless telecommunications facilities and their related appurtenances within the Town of Windham, except as provided for in Section 4.1,(Exemptions) of this ordinance.

Section 4.1. Exemptions

The following are exempt from the provisions of this ordinance:

A. Emergency Wireless Telecommunications facility – Temporary wireless telecommunications facilities that are utilized for emergency communications purposes by public officials.

B. Temporary Wireless Telecommunications Facility – A temporary wireless telecommunications facility which is in operation for a maximum period of one hundred eighty (180) days, whether the days are consecutive or not, and at a location that has been previously reviewed and approved by the Planning Board.

C. Amateur (ham) Radio Stations – Amateur (ham) radio stations that are licensed by the Federal Communications Commission (FCC).

D. Parabolic Antenna – Parabolic Antennas which are eight (8) feet, or less, in diameter, and are an accessory use to the principal use of the property. Parabolic antennas which are installed as part of a Wireless Telecommunications Facility are not exempt from this ordinance and are considered a principal use. Other parabolic antennas which are not part of a Wireless Telecommunications Facility may need a building permit from the Code Enforcement Officer.

E. Antennas as Accessory Uses – An antenna that is an accessory use to a residential dwelling unit, such as, but not limited to, a television antenna or a CB radio antenna.

F. Maintenance and Repair – Routine maintenance and repair of a wireless telecommunications facility and its related equipment, provided that there is no

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change in the height or configuration of the tower or any other dimension of the facility.

G. Reconstruction - Reconstruction of a wireless telecommunications facility and its related equipment, provided that there is no change in the height or configuration of the tower, the number of co-locators and/or antennas, or any other change to the dimensions of the facility as it existed prior to reconstruction, including any buildings or structures. Reconstruction of the facility must commence within six (6) months of the date the facility was either damaged or destroyed, and all necessary plans and permit applications must be submitted by the applicant and approved by the CEO prior to reconstruction. All work must be completed within twelve (12) calendar months, from the date reconstruction commenced, in order to be deemed exempt from this ordinance.

H. Governmental Wireless Telecommunications Facilities –Governmental wireless telecommunications facilities that are utilized for communication purposes by authorized public officials, or the co-location of non-governmental wireless telecommunications facilities that otherwise satisfy the requirements of this ordinance.

Section 5. Review and Approval Authority.

Section 5.1. Approval Required.

No person or entity shall construct a wireless telecommunications facility without first receiving Planning Board approval, or expand a wireless telecommunications facility without first receiving a permit from the Code Enforcement Officer.

A. New Construction.

Planning Board approval shall be required for the construction of any new wireless telecommunications facility, or the expansion of an existing wireless telecommunications facility that increases the height of the facility by more than twenty (20) feet. Should the expansion increase the height in excess of one hundred ninety-five (195) feet, including all appurtenances, a variance shall be required from the Board of Appeals in addition to Planning Board approval.

B. Expansion of an Existing Facility and Co-location.

A permit from the Code Enforcement Officer (CEO) shall be required for any expansion of an existing wireless telecommunications facility that was previously reviewed and approved by the Planning Board under this ordinance, or by the Board

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of Appeals prior to the enactment of this Ordinance. An expansion shall be any change that:

1. increases the height of the facility by no more than twenty (20) feet;
2. proposes an accessory use to an existing wireless telecommunications facility;
or,
3. proposes co-location on an existing wireless telecommunications facility where the potential co-location of additional antennas has been previously endorsed by the Planning Board, or the Board of Appeals.

Should the expansion increase the height in excess of one hundred ninety-five (195) feet, including all appurtenances, a variance shall be required from the Board of Appeals in addition to the Code Enforcement Officer's approval.

Upon granting any permit for a wireless telecommunications facility, the Code Enforcement Officer (CEO) shall make written findings of facts stating that the proposed facility complies with all of the applicable Approval Criteria outlined under Section 7.2 of this ordinance.

5.2. Approval Authority.

In accordance with Section 5.1, Approval Required, of this ordinance, the Planning Board shall review all applications for the construction of wireless telecommunications facilities, and any expansion-of wireless telecommunications facilities above and beyond the specific expansions listed under Section 5.1 (B)(1-3) of this ordinance. The Code Enforcement Officer (CEO) shall review all applications for a permit to expand a wireless telecommunications facility, as listed under Section 5.1 (B)(1-3) of this ordinance. Upon granting final approval for a new wireless telecommunications facility, the Planning Board shall make written findings of facts on whether the proposed facility complies with this ordinance. In addition, upon approval of an application for a permit to expand an existing facility, the Code Enforcement Officer (CEO) shall also make written findings of facts on whether the proposed expansion of an existing facility complies with this ordinance.

Section 6. Approval Process

Section 6.1 Pre-Application Conference

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All applicants seeking approval from the Planning Board for the construction of a wireless telecommunications facility under this ordinance are encouraged to meet with the Town Planner prior to the submittal of a formal application for the development of the facility. The purpose of this meeting is to provide an opportunity for the applicant, the applicant's representative and the Town Planner to: meet and discuss the proposal in detail; review and discuss any of the provisions in the ordinance that specifically apply to the proposal, as well as, any proposed modification or waiver requests that may be requested; review and discuss the application forms; and identify what type of site plans and related information must be submitted for the Planning Board's review.

Section 6.2 Application Requirements

A. Application for Planning Board Approval.

All applicants seeking approval of a wireless telecommunications facility under this ordinance shall submit twelve (12) copies of an application, including site plans and related information, to the Community Development Office at least fourteen (14) days prior to the Planning Board meeting at which the applicant wishes the proposal to be heard. The application shall include the following information:

1. A site plan prepared and certified by a professional engineer registered in the State of Maine indicating the following information:
 - a. the location, type, and height of the proposed facility, including the proposed location of the tower structure, accessory buildings and/or structures, and parking stalls for maintenance vehicles;
 - b. the antenna capacity of the proposed facility;
 - c. the type of existing land uses on-site, if any;
 - d. the name of all abutting property owners and the type of existing land use on each abutting property, including all existing buildings or structures on site;
 - e. the location of the proposed or existing town road, private road, right-of-way, or access drive providing access to the property under consideration;
 - f. the proposed location of utilities to service the site, such as telephone and electrical services, which shall be placed underground;
 - g. all building setbacks from the property lines for the zoning district in which the property under consideration is located;

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- h. the bearings and distances of all property lines of the property to be developed, and the source of this information. However, the Planning Board shall require a standard boundary survey for the property under consideration, performed by a land surveyor licensed by the State of Maine, when sufficient information is not available to accurately establish on the ground all property boundaries;
- i. a North arrow; the scale of the plan (the plan shall be drawn to an engineers scale of not over fifty (50) feet to the inch); a title block indicating the name of the proposed project; the name of the owner(s) of the property; the date the plan was drafted; and, the name, registration number, and seal of the professional engineer who prepared the site plan; and,
- j. a location map, preferably drawn to a scale of not over four hundred (400) feet to the inch, to show the relation of the proposed site plan to the adjacent properties and to the general surrounding area. The location map shall show all the area within two hundred fifty (250) feet of any property line of the proposed site including all existing buildings, structures, streets, right-of-ways, as well as, the zoning district(s) of the surrounding area.

The required site plan shall include the following notes as well:

- k. "This wireless telecommunications facility shall meet all of the applicable American National Standards Institute (ANSI) technical and structural codes, as amended."
- l. "The entire site shall be developed and/or maintained as depicted on the site plan and in accordance with all accompanying written submittals and in accordance with any conditions attached by the Planning Board. Approval by the Planning Board shall be required for any amendments to or deviations from the approved site plan, including, without limitation: topography; drainage; landscaping; retention of wooded or lawn areas; access; utilities; size, location and surfacing of parking areas; and location and size of buildings and/or structures."
- m. "Failure to commence substantial construction of this facility within two (2) years of the date of final Planning Board approval shall render the plan null and void."
- n. "Prior to the construction of a driveway serving any use, the owner(s) of the property must secure, in writing, all required permits for a driveway opening (i.e. "curb cut") from either the Town of Windham's Department of Public Works and/or the State of Maine Department of Transportation, as necessary, and submit a copy of said permits as part of an application for any future building permit."

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2. A USGS 7.5 minute topographic map showing the location of all existing structures and wireless telecommunications facilities that are one hundred fifty (150) feet in height above ground level, or greater, excluding antennas located on roof tops, within a five (5) mile radius of the property under consideration unless this information has been previously submitted as part of any prior application. This requirement may be met by submitting current information from the FCC Tower Registration Database. However, this information shall be submitted no later than thirty (30) days from the date that the application is submitted to the Community Development Department.

3. A scenic assessment consisting of the following:
 - a. Elevation drawings of the proposed facility, including any buildings or structures, showing the proposed height above ground level;

 - b. A landscaping and buffering plan indicating the proposed placement of the facility on the site; location of existing buildings or structures, trees and other significant features existing on site; the proposed type (species), size and location of trees, plants and/or shrubs to be installed in order to adequately screen the proposed facility and soften its impact on abutting and/or adjacent properties; the proposed method of security fencing; the proposed color of the structure; and, the proposed type and location of exterior lighting.

 - c. Photo simulations of the proposed facility taken from various perspectives, such as public right-of-ways, historic sites or buildings, and impacted adjoining properties. Each photo shall be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photo simulations shall indicate the proposed color(s) of the facility and the method of landscaping and buffering.

4. Evidence demonstrating that no existing site, building, or structure can accommodate the applicant's proposed facility. The evidence may consist of any one or more of the following:
 - a. Evidence that no existing facilities are located within the targeted market coverage area that would 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;

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- c. Evidence that existing facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. Specifically:
 - i. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - ii. The applicant's proposed 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 applicant's proposed antenna.
 - iii. Existing or approved facilities do not have space on which planned equipment can be placed so that 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. (NOTE: Costs exceeding the development of a new facility are presumed to be unreasonable.) This evidence shall also be satisfactory for a tower constructed after the passage of this ordinance; and/or,
 - e. Evidence that the applicant has made diligent, good faith efforts to negotiate co-location on an existing facility, building or structure and has been denied access.
5. Documentation of the applicant's right, title or interest in the property and access to the property on which the facility is to be located, including the name and address of the property owner and the applicant.
 6. A copy of the FCC license for the facility, or a signed, notarized statement from the owner and/or operator of the facility attesting that the facility complies with all current FCC regulations.
 7. Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions.
 8. Certification by a professional engineer, registered in the State of Maine, that the proposed facility will comply with all of the applicable standards of the American National Standards Institute (ANSI), the Electronics Industries Association Standard for Antenna Towers and Antenna Support Structures, and any other applicable technical and structural codes;
 9. A written description of how the proposed facility fits into the applicant's telecommunications network. As part of this description, the applicant shall describe anticipated maintenance needs, including frequency of service, personnel needs,

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equipment needs, and traffic, noise, or safety impacts of such maintenance. In all cases, the equipment at a wireless telecommunications facility shall be automated to the greatest extent possible to reduce traffic, congestion, and noise associated with maintenance and upkeep of the facility.

10. 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).
11. A signed, notarized statement, to be recorded in the Cumberland County Registry of Deeds and the recording data submitted to the CEO, that commits the owner of the facility, and his or her successors in interest, to:
 - a. Respond in a timely, comprehensive manner to a request for information from a co-location 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. Allowed shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location; and,
 - d. require no more than a reasonable charge for shared use of the wireless telecommunications facility.
12. A performance guarantee, or similar form of surety, approved by the Town Manager or a designee, to pay for the costs of removing the entire facility, if it is abandoned, and reclaiming the site to a pre-construction condition. The amount of this performance guarantee shall be in an amount equal to one hundred twenty-five percent (125%) of the projected total cost of removing the entire facility, and reclaiming the site to its pre-construction condition. Should the operation of the facility cease in the future, and the facility is dismantled by the owner and/or operator, the performance guarantee shall be returned to the owner and/or operator, including any interest that may have accrued during the time it was held by the town. The accepted form of surety shall be reviewed by the Town Manager or a designee every five (5) years, and renewed or increased when necessary.

B. Application for Code Enforcement Officer (CEO) Approval.

All applicants seeking to expand a wireless telecommunications facility under this ordinance shall submit three (3) copies of an application, including site plans and

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related information, to the Community Development Office. The application shall include the following information:

1. Documentation of the applicant's right, title, or interest in the property where the facility is to be sited, including the name, address and telephone number of the property owner and the applicant.
2. A copy of the FCC license for the facility, or a signed, notarized statement from the owner and/or operator of the facility attesting that the facility complies with all 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. A location map, copy of the approved site plan for the existing facility, and elevation drawings of the proposed facility and any other proposed buildings and/or structures, showing the proposed color of the facility and identifying structural materials to be used.

Section 6.3. Waiver of Application Requirements

- A. The Planning Board may modify or waive any of the application requirements listed under Section 6.2, Application Requirements, subsection A, Application for Planning Board Approval, of this ordinance upon receipt of a written request for specific modifications and/or waivers from the applicant. The written waiver request may be submitted at the pre-application conference for discussion purposes, but shall also be included as part of the formal application to the Planning Board. A modification or waiver of any application requirement may be granted only when the Planning Board makes a finding that, due to special circumstances associated with the proposal under consideration, the submission of specific information is not applicable to the proposal and that granting the requested modification(s) or waiver(s) would not cause an undue, adverse impact on abutting or adjacent properties, and the health, safety, and general welfare of the citizens of the Town of Windham.
- B. The Code Enforcement Officer (CEO) may modify or waive any of the application requirements listed under Section 6.2, Application Requirements, subsection B, Application for Code Enforcement Officer (CEO) Approval, of this ordinance upon receipt of a written request for specific modifications and/or waivers from the applicant. The written waiver request shall be submitted as part of the formal application to the Code Enforcement Officer (CEO). A modification or waiver of any application requirement may be granted only when the Code Enforcement Officer

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(CEO) makes a finding that, due to special circumstances associated with the proposal under consideration, the submission of specific information is not applicable to the proposal and that granting the requested modification(s) or waiver(s) would not cause an undue impact on abutting or adjacent properties, and the health, safety, and general welfare of the citizens of the Town of Windham. Said finding shall be made in writing and forwarded to the applicant.

Section 6.4. Application and Review Fees

A. Planning Board Application Review Fee

Any formal application submitted for Planning Board review and approval of a wireless telecommunications facility shall include a non-refundable application fee as established by the Windham Town Council and amended from time to time. No formal application shall be considered complete or forwarded to the Planning Board for review until the required application fee is submitted.

B. CEO Construction/Expansion Permit Application Fee

Any building permit application submitted for the Code Enforcement Officer's review and approval of the construction of a new wireless telecommunications facility, or an expansion to an existing wireless telecommunications facility, as defined in this ordinance, shall include a non-refundable application fee as established by the Windham Town Council and amended from time to time. No building permit application shall be determined complete or formally acted upon by the Code Enforcement Officer (CEO) until the required application fee is submitted.

C. Independent Analysis and Review Fee

In the event that the Planning Board or the Code Enforcement Officer finds that an independent analysis is required due to the fact that the review of certain information associated with the development of a proposed wireless telecommunications facility is beyond the expertise of town staff, and that the anticipated costs of the independent analysis are reasonable based upon the required time involved and the complexity of the analysis, it shall hire an independent consultant to conduct an independent analysis of that information deemed to be beyond the expertise of town staff with the cost of the analysis to be paid entirely by the applicant.

The Planning Board and the applicant, or the applicant's representative, must mutually agree to the hiring of an independent consultant prior to having any plans and related information forwarded to the consultant. The developer shall pay a fee equal to the estimated cost of the analysis as provided by the consultant hired by the Town. The fee shall be payable by check to the Town of Windham stating the

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purpose of the fee before the analysis is conducted. Upon completion of the independent analysis any remaining portion of the estimated fee shall be returned to the applicant. However, should the actual cost exceed the estimated cost, the applicant shall pay the difference prior to the Planning Board granting final approval to the project.

In the event that the Planning Board and the applicant, or the applicant's representative do not come to a mutual agreement regarding the requested independent analysis and/or the estimated fee, the Planning Board shall deem the project's application incomplete and table the proposal. The application shall lose any standing it may have after six (6) months from the date that the Planning Board made a motion to table the application.

Section 6.5. Planning Board Review

Upon receipt of an application for the development of a wireless telecommunications facility, the Community Development Office shall notify all property owners within five hundred (500) feet of the property under consideration, as determined from the Assessor's records as of April 1st, by mail, of the pending application. This notice shall include a brief description of the proposed activity, the name of the applicant, and the location of the property under consideration for development. Failure on the part of any abutter to receive said notice shall not be grounds for delay of any consideration of the application nor denial of the project.

Upon receipt of an application for the development of a wireless telecommunications facility, the Planning Board shall hold a Pre-Application Conference to review the proposed site plan and the project's application for completeness. The Planning Board shall make a finding at a Determination of Completeness Hearing that the application is, or is not complete, within thirty (30) days of receiving the application and notify the applicant, in writing, of the Board's decision. Should the Planning Board find that the application is complete, the Board shall schedule the proposal for a Public Hearing within thirty (30) days of the date of its decision. The Planning Board may hold a site walk to review the specific conditions of the property under consideration, and said site walk shall be held prior to the Public Hearing. Notice of the site walk shall be published in a local newspaper of general circulation in the community prior to the scheduled site walk. Should the Planning Board find that the application is not complete, the Board shall specify, in writing, what additional materials or information would be required to complete the application.

The Planning Board shall also review the applicant's requests for modifications and/or waivers to the application requirements listed under Section 6.2 of this ordinance and take action on the requests within thirty (30) days of receiving them. The Planning Board shall act on the applicant's requests for modifications and/or waivers to the application requirements prior to determining the application complete.

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Section 6.6. Planning Board Approval

Within ninety (90) days of the date that the Planning Board made a finding that a complete application has been submitted, 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 development review applications that would prevent the Planning Board from making its decision within the required ninety (90) day time period, then a final decision on the application shall be issued within sixty (60) days of the Public Hearing date, if necessary, or within sixty (60) days of the completed Planning Board review. In all cases, these required time periods may be extended upon mutual agreement between the Planning Board and the applicant, or the applicant's representative.

Section 6.7 Code Enforcement Officer (CEO) Review.

Upon receipt of an application for a permit to expand a previously approved wireless telecommunication facility, the CEO shall review the application and determine if the application meets the submission requirements within fourteen (14) days of receiving the application. The CEO shall also review any requests for modifications or waivers from the submission requirements and shall act on these requests prior to determining the application complete.

Upon determining the application complete, the CEO shall notify all property owners within five hundred (500) feet of the property under consideration, as determined from the Assessor's records as of April 1st, by mail, of the pending application. This notice shall include a brief description of the proposed activity, the name of the applicant, and the location of the property under consideration for development. Failure on the part of any abutter to receive said notice shall not be grounds for delay of any consideration of the application nor denial of the project.

Should the CEO find that the application is not complete, the CEO shall notify the applicant, in writing, and specify the additional materials or information necessary to make the application complete.

The CEO shall not issue any required permits for an application on a proposal to co-locate on an existing tower facility until fifteen (15) days after the date that the required notice was sent to all abutting property owners.

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Section 6.8 Code Enforcement Officer (CEO) Approval.

Within thirty (30) days of receiving a complete application for the expansion of a wireless telecommunications facility, the CEO shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The CEO shall approve the application if the CEO finds that the application complies with the provisions listed under Section 7.2 of this ordinance. In all cases, these required time periods may be extended upon mutual agreement between the Code Enforcement Officer and the applicant, or the applicant's representative.

Section 7. Planning Board Approval Standards

The following criteria are to be used by the Planning Board in judging applications for the development of all wireless telecommunications facilities and shall serve as the minimum requirements for approval of the application. Any application submitted for approval by the Planning Board under Section 5.1 (A) of this ordinance shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence sufficient to warrant a finding that all applicable criteria have been met.

A. Priority of Locations.

Siting of new wireless telecommunications facilities shall be giving the greatest consideration in all non-residential zoning districts, and may be located in any residential zoning district after an applicant has exhausted all possible locations within non-residential zoning districts. The applicant shall demonstrate that "good faith" efforts were made to secure a location within a non-residential district as part of the application to locate a wireless telecommunications facility within a residential area.

B. Siting on Municipal /Governmental/Quasi-Governmental Property.

Whenever possible, applicants shall give consideration to locating wireless telecommunication facilities on property owned by the Town of Windham or other Governmental/Quasi-Governmental entities. In all cases, the proposed facility should not interfere with the intended or existing use of the property. The Planning Board shall require the applicant to have adequate liability insurance, and a long-term lease agreement with the municipality. The lease agreement must include the specific purpose of the lease, the duration, termination and renewal terms, and reasonable compensation for the use of the property. In addition, the Planning Board shall ensure that adequate provisions are in place to safeguard the public rights and interests in the property.

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C. Design for Co-Location.

The proposed wireless telecommunications facility shall be designed and constructed to accommodate expansion for future co-location of at least three (3) additional wireless telecommunications facilities and/or providers. In all cases, the Planning Board shall work closely with applicants in determining what would be the most effective and appropriate co-location design of the facility in order to meet this standard, and the Board shall also give strong consideration to the future co-location of municipal communications equipment, such as, but not limited to: antennas, receivers, transmitters, and related equipment.

D. Maximum Height Restrictions.

Notwithstanding any district regulations to the contrary, the proposed wireless telecommunications facility shall have a maximum height of one hundred ninety-five (195) feet. A variance shall be required from the Board of Appeals for any proposed facility in excess of one hundred ninety-five (195) feet in height, including the height of any antennas to be placed on the tower structure.

E. Minimum Lot Size.

The proposed wireless telecommunications facility shall be constructed on a lot sufficient in size to meet the required setbacks for the proposed tower structure, unless the Planning Board grants a request for a reduction to the required setback, as allowed under Section 7 (E) of this ordinance. If such a reduction in setback is granted, the Planning Board shall determine the minimum lot size for the proposed facility as part of granting the setback reduction. In all cases, a new wireless telecommunications facility shall not be constructed on a lot that does not conform to the minimum lot area required in the zoning district, even if such lot is a lawful non-conforming lot of record.

F. Required Setbacks.

Notwithstanding any district regulations to the contrary, the proposed wireless telecommunications tower structure shall have a set back equal to one hundred and ten percent (110%) of the height of the tower structure, measured from the nearest edge of the base of the tower structure to the property line. All principal and accessory structures shall have a setback equal to fifty percent (50%) of the height of the tower structure, or the minimum setback requirements for the district in which the facility is located, which ever is greater, and shall be placed as close to the tower structure as possible. These setback requirements shall not apply to Wireless Telecommunications Facilities that were in existence prior to the effective date of this ordinance, or to co-location of antennas and the placement of accessory structures at

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Wireless Telecommunications Facilities that were in existence prior to the effective date of this ordinance.

The Planning Board, as part of its review, may exempt antennas from the setback requirement if they extend no more than five (5) feet, horizontally, at their lowest point, from the edge of the tower structure to which they are attached.

As part of the Planning Board's review, the applicant may request a reduction to the required setback upon demonstration to the Planning Board that the facility (i.e. tower structure) is designed to collapse in a manner that will not harm any abutting property, including any buildings or structures located thereon.

G. Landscaping and Buffering.

The proposed wireless telecommunications facility and its related equipment shall be screened from view by abutting properties to the maximum extent possible. A staggered row of evergreen plantings, six (6) feet in height (minimum) at the time of planting and four to six (4-6) feet on center, shall be installed outside the fenced area and in such locations where they will provide the greatest amount of screening. Additional landscaping materials are strongly encouraged and should be installed in specific locations where they will soften the appearance of the facility.

Where abutting properties are at a greater elevation than the facility property, the required evergreen plantings shall be installed on a four (4) foot high berm in order to elevate the plantings and maximize their screening effect. Existing natural vegetation and/or landforms shall be preserved to the maximum extent possible and incorporated, where possible, into the buffer design.

H. Security Fencing

The proposed wireless telecommunications facility shall have security fencing installed to discourage trespass on or within the facility, and to discourage climbing on the tower or any buildings and/or structures by trespassers. Security fencing shall be a minimum of eight (8) feet in height with the option of an outward projecting attachment at the top of the fence.

I. Lighting.

a. Tower Lighting

The proposed wireless telecommunications facility shall be illuminated, as required, in order to comply with Federal Aviation Administration (FAA) and/or other applicable state and federal requirements. However, strobe lights shall only

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be utilized to illuminate the tower structure during daylight hours, and glowing red lights shall be utilized to illuminate the tower structure during evening and night hours.

b. Security Lighting

Security lighting may be implemented as long as it is adequately shielded and does not impact abutting properties. All exterior lighting shall be located in such a manner that light is retained within the boundaries of the site, and should be down-directional to the maximum extent possible to reduce “sky glow”.

J. Color and Materials.

The proposed wireless telecommunications facility shall be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent possible. Unless contrary to the built environment, muted colors, earth tones and subdued hues shall be used. Except where dictated by federal or state requirements, the Planning Board may require a proposed tower to be “camouflaged” or designed to blend with its surroundings. This may include, but is not limited to, having a galvanized finish painted “flat” blue-grey or in a sky tone above the tree line and earth-tone below the tree line.

K. Structural Standards.

The proposed wireless telecommunications facility shall comply with the most current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled “Structural Standards for Steel Antenna Towers and Antenna Supporting Structures”.

L. Noise.

The volume of sound, measured by a sound level meter and frequency weighting network (manufactured according to standards prescribed by the American Standards Association), inherently and recurrently generated by the facility, shall not exceed sixty (60) decibels at lot boundaries.

During construction, repair, or replacement of the facility, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between the hours of 7 a.m. and 7 p.m. is exempt from this standard.

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M. Historical and Archaeological Properties.

The proposed wireless telecommunications facility shall not have an 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.

7.1. Standard Conditions of Approval.

In addition to the required notes to be placed on a wireless telecommunications facility site plan, as outlined under Section 6.2 (1)(k,l,m,n) of this ordinance, the Planning Board shall also require the following “standard condition notes” to be clearly noted on the final approved site plan. The required notes are as follows:

1. The owner of the wireless telecommunications facility and his or her assigns agree to:
 - a. respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not to exceed 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 co-location; and,
 - d. require no more than a reasonable charge for shared use of the wireless telecommunications facility.
2. Upon request by the Town of Windham, the applicant shall certify compliance with all applicable Federal Communications Commission (FCC) radio frequency emissions regulations.

Section 7.2. CEO/Expansion Approval Criteria.

The following criteria are to be used by the Code Enforcement Officer in judging applications for the expansion of a wireless telecommunications facility and shall serve as the minimum requirements for approval of the application. Any application submitted for approval by the Code Enforcement Officer under Section 5.1 (B) of this ordinance shall be approved unless the Code Enforcement Officer determines that the applicant has failed to meet one or more of these standards. In all instances the burden of proof shall be on the applicant and such burden of proof shall include the production of evidence sufficient to warrant a finding that all applicable criteria have been met.

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- A. The proposed facility is an expansion, accessory use, or co-location to a tower structure that was previously reviewed and approved by the Planning Board or The Board of Appeals, and that the tower structure is in existence at the time the application is submitted.
- B. The applicant has demonstrated to the Code Enforcement Officer's satisfaction that the applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C. The proposed facility does not increase the height of the existing tower structure by more than twenty (20) feet.
- D. The proposed facility will be constructed with materials and/or colors that match or blend with the surrounding natural or built environment, to the maximum extent possible.
- E. The proposed facility, to the greatest degree possible, 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).

Section 8. Structural Integrity and Routine Inspections

Upon completion of any inspection of a wireless telecommunications facility, specifically the tower structure and any antennas, dishes, etc. attached thereto, the owner and/or operator shall forward a copy of the inspection report and its findings to the Code Enforcement Officer for his review and consideration. Should any portion of the inspection reveal an unsafe condition, the Code Enforcement Office shall require the owner and/or operator to correct the unsafe condition within forty-five (45) days of receiving the report.

Failure to provide the inspection reports shall be deemed to be *primaefacie* evidence of abandonment.

Section 9. Amendment to an Approved Application

Any amendments to an application for a wireless telecommunications facility, that has been previously reviewed and approved by the Planning Board, must be re-submitted to the Planning Board for review and approval.

Any amendments to an application for co-location on a wireless telecommunications facility, that has been previously reviewed and approved by the Code Enforcement

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Officer (CEO), must be re-submitted to the Code Enforcement Officer for review and approval.

Section 10. Expiration of Approval

Failure to commence substantial construction of any wireless telecommunications facility approved under this ordinance within two (2) years of the date of final Planning Board approval shall render the plan null and void."

Prior to the expiration of the Planning Board's approval of a wireless telecommunications facility, an applicant may apply for a one (1) year extension to the Planning Board's approval if the applicant can demonstrate that extraordinary or unusual circumstances beyond his control have caused a delay in the construction of the facility. Any request for an extension shall be made, in writing, at least sixty (60) days prior to the date of expiration, and shall be submitted to the Planning Administrator (i.e. Town Planner). In addition, no more than two (2) one-year extensions shall be granted by the Planning Board for any approval under this ordinance.

For the purposes of this ordinance, "substantial improvement" shall mean two (2) or more of the following: the creation of a gravel drive to the site of the proposed facility (if one is required), the construction of at least forty percent (40%) of the towers height, and/or a completed foundation or concrete pad for any proposed buildings or structures associated with the facility. In all cases, the Planning Board shall make a finding that substantial construction has occurred when granting any request for an extension to a prior approval.

Section 11. Abandonment

Any wireless telecommunications facility that is not operational for a period of twelve (12) consecutive months shall be deemed to be abandoned. Upon determination that the facility has been abandoned, the Code Enforcement Officer (CEO) shall notify the owner and/or operator, in writing, by certified mail, of the abandonment determination. The owner and/or operator of the facility shall have thirty (30) days from the receipt of the notice to adequately demonstrate to the Code Enforcement Officer that the facility has not been abandoned. Should the Code Enforcement Officer find that, in his or her opinion, the evidence presented does not adequately demonstrate that the facility has not been abandoned and reaffirms the original determination, the Code Enforcement Officer shall notify the owner and/or operator of the facility, in writing, within thirty (30) days of the final determination. The owner and/or operator may appeal the Code Enforcement Officer's final determination by filing an appeal to the Board of Appeals within thirty (30) days of the receipt of the notice of final determination.

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The owner and/or operator of a wireless telecommunications facility that is deemed to be abandoned shall remove the entire tower structure within thirty (30) days from the date that the facility was deemed to be abandoned. Any accessory buildings or structures, parking areas, security fencing, landscaping, and access roads shall be removed within thirty (30) days of the date that the facility was deemed to be abandoned, and the property shall be reclaimed, to the greatest extent possible, including the re-establishment of vegetation in order to return the property to a pre-construction condition.

If the facility is not removed within the required time periods, the Town of Windham may remove the facility, including the removal of any accessory buildings or structures, parking areas, security fencing, landscaping, and access roads, and, to the greatest extent possible, return the property to a pre-construction condition, including the re-grading of the site and the re-establishment of vegetation. The owner and/or operator of the facility shall pay for all facility removal and site reclamation costs deemed necessary to complete the removal and reclamation process, or the Town shall draw upon the performance guarantee or similar accepted form of surety that was required by the Town as part of the facility's approval. Any remaining funds shall be returned to the individual or entity who gave the performance guarantee or similar accepted form of surety to the Town within sixty (60) days of the completion of all removal and reclamation work.

If a performance guarantee or similar accepted form of surety was required by the Town as part of the facility's approval, the individual or entity who gave the performance guarantee or similar accepted form of surety to the Town may request, in writing, that the Town Manager release said performance guarantee or similar accepted form of surety, but not until such time that the entire facility and related equipment are removed and the site is reclaimed to the satisfaction of the Town Manager and/or the Code Enforcement Officer (CEO).

Section 12. Prior Existing Wireless Telecommunications Facilities

Any existing wireless telecommunications facility that was reviewed and approved by the Windham Board of Appeals prior to the adoption of this ordinance shall be regulated by those conditions and restrictions placed upon said facility as part of the Board's approval. Any amendment or expansion of the facility beyond the approval granted by the Board of Appeals shall be reviewed and approved by the Planning Board or the Code Enforcement Officer (CEO), as outlined under this ordinance. In addition, the Planning Board or the Code Enforcement Officer (CEO) may require the wireless telecommunications facility under consideration to come into compliance with the criteria outlined under this ordinance, to the greatest extent possible, as part of their review of an amendment or expansion of the facility.

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Section 13. Appeal of Planning Board or Code Enforcement Officer (CEO) Decision

Any person aggrieved by the decision of the Planning Board to approve a wireless telecommunications facility under this ordinance may appeal the Board's decision to Superior Court within thirty (30) days of the Planning Board's decision, pursuant to Maine Rules of Civil Procedures 80-B.

Any person aggrieved by the decision of the Code Enforcement Officer (CEO) to approve a permit for the expansion to, or co-location on an existing wireless telecommunications facility, as outlined under this ordinance, may appeal the decision to the Board of Appeals within thirty (30) days of the Code Enforcement Officer's decision, as outlined under Article III, §140-15 (a-d) of the Land Use Ordinance. The notice of appeal shall clearly state the reason(s) for the appeal.

Section 14. Administration and Enforcement

The Code Enforcement Officer (CEO) shall be responsible for enforcing 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 appropriate action necessary to correct it within a defined time period. The CEO shall order correction of the violation and may take any other legal action necessary to ensure compliance with this ordinance.

The Code Enforcement Officers of the Town of Windham, or their authorized agent, are empowered and duly authorized to enter into administrative consent agreements for the purpose of resolving violations of this ordinance and recovering fines without initiating court action. Such 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 municipal official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith, the removal of the violation will result in a threat to public health and safety, and/or cause substantial environmental damage.

Section 15. Penalties

Any person or entity who owns, controls, or operates any building, property, or facility that violates this ordinance shall be notified by the Code Enforcement Officer (CEO), in writing, of such violation and provided sufficient time to correct said violation, as determined by the Code Enforcement Officer. Any person or entity who continues to violate this ordinance after being properly notified shall be fined in accordance with Title 30-A M.R.S.A. §4452. In addition, each day such violation(s) continues after proper notification shall constitute a separate offense.

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Section 16. Conflict and Severability

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.

Should any portion of this ordinance be determined to be invalid by a court of law, the invalidity shall not invalidate any other portion of this ordinance.

Section 17. Definitions

The words or terms used in this ordinance shall have the following meaning:

ANTENNA – any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

ANTENNA (TOWER) HEIGHT – the vertical distance measured from the base of the antenna support structure, at grade, to the highest point of the structure, even if said highest point is an antenna. Measurement of the tower height shall include the antenna, base pad, and other appurtenances, and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

CO-LOCATION – the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

EXPANSION – the addition of antennas, towers, or other devices to an existing (tower) structure.

FAA – the Federal Aviation Administration, or its lawful successor.

FCC – the Federal Communications Commission, or its lawful successor.

HEIGHT – 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.

HISTORIC or ARCHEOLOGICAL RESOURCES – 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

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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 certified by the Secretary of the Interior through the Maine Historic Preservation Commission; or,
5. Areas identified by a government agency such as the Maine Historic Preservation Commission as having significant value as a historic or archaeological resource and any areas identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

HISTORIC DISTRICT – 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 municipalities comprehensive plan, which is listed or 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 – 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 municipality's comprehensive plan, which have been listed or are eligible to be listed on the national Register of Historic Places.

PARABOLIC ANTENNA (also known as a satellite dish antenna) – 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 – the use other than one which is wholly incidental or accessory to another use on the same premises.

TARGETED MARKET COVERAGE AREA – the area which is targeted to be served by this proposed telecommunications facility.

UNREASONABLE ADVERSE IMPACT – 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,

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2.) would significantly diminish the scenic value of the designated scenic resource.

WIRELESS TELECOMMUNICATIONS FACILITY or FACILITY – any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, and personal communications services (PCS) or pager services.

Section 18. Permitted Use Within Zoning Districts

Notwithstanding any zoning district regulations to the contrary, wireless telecommunications facilities shall be a permitted use in the following zoning districts within the Town of Windham, Maine: Farm (F), Farm Residential (FR), Light Density Residential (RL), Commercial I (C-1), Commercial II (C-2), Commercial III (C-3), Industrial (I), and Enterprise Development (ED).

However, with respect to all shoreland zoned areas, wireless telecommunications facilities shall only be permitted in the General Development (GD) District and shall require a Shoreland Zoning Permit from the Planning Board in addition to Planning Board approval of the facility.

Section 19. Effective Date

This ordinance shall become effective on: November 26 1999.

FEE SCHEDULE

Effective 7/28/11

Site Plan Review: \$400.00

CEO Co-Location Review: \$250.00