

TOWER ORDINANCE

TOWN OF OWLS HEAD

Adopted - August 30, 1999
Amended - August 26, 2002
Amended - June 1, 2009

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Section 1. Title

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of the Town of Owls Head, 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 I of the Maine Constitution; the provisions of Title 3 O-A M. R. S. A. Section 3 001 (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 Owls Head;
- Permit and manage reasonable access to the public rights of way of Owls Head for telecommunications purposes on a competitively neutral basis;
- Ensure that all telecommunications carriers providing facilities or services within Owls Head comply with the ordinances of Owls Head;
- Ensure that Owls Head can continue to fairly and responsibly protect the public health, safety and welfare;
- Encourage the co-location of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;
- Enable Owls Head 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; and
- Protect the scenic and visual character of the community.

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. Temporary wireless communication facilities for emergency communications by public officials.
 - B. Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC) which are less than sixty (60) feet in height.
 - C. Parabolic antenna. Parabolic Antennas less than seven (7) feet in diameter, that are accessory use of the property.
 - D. Maintenance or repair. Maintenance, repair or reconstruction of a wireless telecommunication facility and related equipment provided that there is no increase in the height or any other dimension of the facility.
 - E. Temporary wireless telecommunication facility. Temporary wireless telecommunication facility, in operation for a maximum period of ninety (90) days.

Section 5. Review and Approval Authority

5.1 Approval Required. No person shall construct a new wireless telecommunication facility or expand an existing wireless telecommunication facility without approval of the Planning Board and the issuance of a building permit by the CEO.

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

Section 6. Approval Process

6.1 Application. An application for approval by the Planning Board must be submitted to the Code Enforcement Officer (CEO) and shall include the following information:

- A. Documentation of the applicant's rights, title, or interest in the property where the facility is to be sited, including the name and address of the property owner and the applicant.
- B. 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.
- C. Identification of relevant districts, landmarks, 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.
- D. Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.

- E. A site plan:
 - 1. prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;
 - 2. certification by the applicant that the proposed facility complies with all FCC standards for radio frequency emissions; and
 - 3. a boundary survey for the project performed by a land surveyor licensed by the State of Maine.
- F. Evidence demonstrating that no existing structure can accommodate the proposed facility.
- G. A signed statement that commits the owner of the facility, and his or her successors in interest and assigns, to:
 - 1. respond in a timely, comprehensive manner to a request for information from a potential 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 if an applicant agrees in writing to pay reasonable charges for co-location; negotiate in good faith for shared use by third parties; and
 - 4. 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 of equity, depreciation, and all of the costs of adopting 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.

The following items shall be submitted only if specifically required by the Planning Board.

- H. A narrative discussing:
 - 1. the extent to which the proposed facility would be visible from or within a designated scenic resource,
 - 2. the tree line elevation of vegetation within one hundred (100) feet of the facility, and
 - 3. the distance to the proposed facility from the designated scenic resource's noted viewpoints.

- I. A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.

For the expansion of an existing facility and/or co-location, the following information shall be submitted:

Items A, B, C, D, and G as listed above.

6.2. Submission Waiver. The Planning Board 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 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.

6.3. Fees and Costs

- A. Planning Board Application Fee. An application for Planning Board approval shall include payment of a non-refundable application fee. The application shall not be considered complete until this fee is paid.
- B. Planning Board Review Fee. An applicant for approval by the Planning Board shall pay all reasonable costs incurred by the municipality 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 costs shall be paid in full prior to the start of construction. No building permit may be issued until all review fees have been paid.

6.4. Notice of Complete Application. The CEO shall review the application and determine if the application meets the submission requirements. 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 and Code Enforcement Office. If the application is incomplete, the CEO shall notify the applicant in writing, specifying the additional materials or information required to complete the application.

6.5. Planning Board Approval. Within one hundred (100) days of receiving a complete application for approval under Section 5. the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based.

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

Section 7. Standards of Review

- 7.1. Approval Standards. An application for approval by the Planning Board must meet the following standards.
- A. Priority of Locations. New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.
 - 1. Co-location on an existing wireless telecommunications facility the construction of which had previously been approved by the Planning Board.
 - 2. A new facility on property that is located within the "Communications Antenna Area".
 - B. Design for Co-location. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future co-location 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 co location.
 - C. Height. A new wireless telecommunications facility must be no more than 150-ft. in height.
 - D. Setbacks. A new or expanded wireless telecommunications facility must be set back one hundred percent (100%) of its height from the boundary of the Communication Antenna Area. The setback may be satisfied by including the areas outside the Communications Antenna Area boundaries if secured by an easement.
 - E. Landscaping. A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to also be preserved to the maximum extent practicable.
 - F. Fencing. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
 - G. 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.
 - H. 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".

- 7.2 Standard Conditions of Approval. The following standard conditions of approval shall be a part of any approval or conditional approval issued by the 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 co-location 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 co-location;
 - 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 share 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 the 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 Planning Board.

Section 9. 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 of the Town of Owls Head. 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.

In carrying out its responsibilities under the *Tower Ordinance*, the Board of Appeals shall be governed by the provisions of *Article I. General, Section 1.6 Board of Appeals, of the Zoning Ordinance of the Town of Owls Head*. However, whenever there is found to be a conflict between the requirements of the *Zoning Ordinance* and the *Tower Ordinance*, the more severe requirement as judged against the interest of the appellant shall apply.

The Board of Appeals shall hear matters on an appellate basis. The Board of Appeals may reverse the decision of the Code Enforcement Officer or Planning Board only upon a finding that the decision was clearly contrary to specific provisions of this ordinance.

Section 10. Administration and Enforcement

The CEO shall enforce this ordinance. If the CEO finds that any provision of this ordinance has been violated, the CEO shall notify in writing 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.

Section 11. 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. Sec. 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

Section 12. Conflict and Severability

- 12.1 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.
- 12.2 Severability. The invalidity of any part of this ordinance shall not invalidate any other part of this ordinance.

Section 13. Definitions

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

Antenna: means any system of poles, panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals. This includes all related supports, attachments, anchors, guy wires.

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

Co-location: means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Communications Antenna Area: The Communications Antenna Area shall be as defined by the Town’s Communications Antenna Area Ordinance and shown on the accompanying map.

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.

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 municipality'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 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) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

Designated Scenic Resource: means that specific location, view, or corridor, as identified as a scenic resource in the municipally adopted comprehensive plan or by a State or federal agency, that consists of:

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

Viewpoint: means that location which is identified either in the municipally adopted comprehensive plan or by a federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.

Wireless Telecommunications Facility or Facility: means any structure, antenna, tower, or other device which provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

Section 14. Effective Time and Date

This ordinance becomes effective at upon adoption by Town Meeting.

Section 15. Certification of Adoption

We hereby attest that this is a true copy of the TOWER ORDINANCE of the Town of Owls Head, Maine, duly adopted at a Town Meeting held on August 30, 1999 and amended at Town Meetings held on:

Amended - August 26, 2002

Amended - June 1, 2009

Selectmen: Nancy Golson

Renee

Linda Poff

Attest to: [Signature]
Town Clerk

Date: 6/01/09

Section 16. Tower Siting Area

Town of Owls Head Ordinance Declaring a “Communications Antenna Area”

This is an ordinance designating an area within the Town of Owls Head as the only area, within the Town’s boundaries, on which a wireless telecommunications facility as defined in the Town’s Wireless Telecommunications Siting Ordinance can be located. This area is designated “Communications Antenna Area”.

The text below and the accompanying map, labeled “Communications Antenna Area, define the “Communications Antenna Area” 13 January 1999.

The Communications Antenna Area is a rectangular area, the corner points of which have been designated points C, E, F, and D on the attached map entitled “Communications Antenna Area, 13 January 1999”.

On Owl’s Head Tax Map 9 of the property tax maps of the Town of Owls Head, as prepared by Aerial Survey & Photo, Inc. and dated 1980 which may be examined in the Assessors’ Office at the Town Office, start at the point of intersection of the boundaries of Lots 41,49, and 50 (designated point A).

From point A follow the boundary between Lots 41 and 49 in the (generally) northwesterly direction for 325 feet to a point that is designated, point B.

The line through point B and perpendicular to the boundary between Lots 40 and 41 includes the (generally) northwesterly boundary of the Communications Antenna Area. This boundary is designated CD.

From the intersection of line CD with the boundary between lots 40 and 41 (point C), follow this boundary (between lots 40 and 41) in a (generally) southeasterly direction for 1,014 feet to a point designated, point E.

From point E, construct a line perpendicular to Line CE and intersecting the boundary between Lot 50 and Lot 14 (Part of Lot 14 is shown on Tax Map 6) at point F. The line EF represents the (generally) southeasterly boundary of the Communications Antenna Area.

From point F construct a line that follows in a (generally) northwesterly direction the boundary between Lot 50 and Lot 14 (part of Lot 14 is shown on Tax Map 6). Project this straight line until it intersects line CD at point D. This line is the (generally) northeasterly boundary of the Communications Antenna Area.

