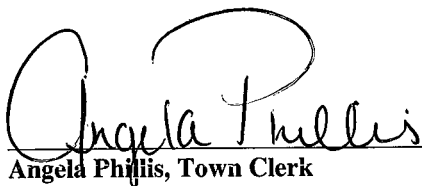


TOWN OF WEST GARDINER, MAINE WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

ADOPTED
28 March 2015

This is to certify that this ordinance was adopted by majority vote at the Annual Town Election held March 28, 2015 at the Town Hall.



Angela Phillips, Town Clerk

Adopted 3/28/15

TOWN OF WEST GARDINER, MAINE

WIRELESS TELECOMMUNICATIONS FACILITIES (WTF) ORDINANCE

ARTICLE I – TITLE AND PURPOSE

1. TITLE

This ordinance shall be known and cited as the “Town of West Gardiner, Maine Wireless Telecommunications Facilities (WTF) Ordinance”, hereinafter referred to as “this Ordinance.”

2. PURPOSE

The purpose of this Ordinance is to establish predictable and balanced regulations and to provide a process and a set of standards for the construction of wireless telecommunication facilities within the Town of West Gardiner in order to:

- A. Implement a municipal policy concerning the provision of wireless telecommunications services, and the appropriate siting of their facilities;
- B. Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunication facilities in order to avoid potential damage to adjacent properties;
- C. Encourage the provision of advanced wireless telecommunication facilities to the largest number of businesses, institutions and residents of West Gardiner;
- D. Encourage competition in wireless telecommunications services;
- E. Permit and manage reasonable access for wireless telecommunications on a competitively neutral basis;
- F. Ensure that all wireless telecommunication carriers providing facilities or services within West Gardiner comply with the ordinances of the Town;
- G. Ensure that West Gardiner can continue to fairly and responsibly protect the public health, safety and welfare;
- H. Encourage the co-location of wireless telecommunication facilities in order to maximize the use of approved or pre-existing sites within the coverage area;
- I. Minimize adverse impact on the Town’s aesthetic resources and to protect the scenic, historic, environmental, natural resources, and visual character of the community;
- J. Enable West Gardiner to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development; and
- K. Further the goals and policies of the Comprehensive Plan, while promoting orderly development of the Town with minimal impacts on existing uses.

3. ACTIVITIES EXEMPT FROM THIS ORDINANCE

The following are exempt from the provisions of this Ordinance:

- A. Amateur (Ham) radio stations licensed by the FCC or wireless telecommunication facilities used for the transmission and receipt of wireless computer networks, with a maximum tower height, including antenna, of seventy-five (75) feet above ground level. Amateur (Ham) radio facilities shall be exempt from all fees listed in this Ordinance when co-locating on a tower of any height.
- B. Parabolic antennas and residential antennas or towers that are an accessory to a residential dwelling unit for personal or non-commercial use.
- C. Maintenance, upgrade, or repair of an existing WTF and its equipment, provided that there is no change in the height or any other dimension of the facility.
- D. Temporary wireless telecommunications facilities for emergency communications by public officials.
- E. Facilities completely enclosed in existing structures at the time of enactment of this Ordinance.
- G. Governmental services are exempt from all fees contained herein, but are subject to the rest of this ordinance.

Adopted 3/28/15

4. DEFINITIONS & REFERENCES

A. CONSTRUCTION OF LANGUAGE

In general, all words and terms used in this Ordinance shall have their customary dictionary meanings. More specifically, certain words and terms shall be described below.

B. REFERENCES TO THE TOWN

All references in this Ordinance to "Town," "the Town," "the Town of West Gardiner," and to any board, official or officer, unless clearly defined otherwise, shall be construed to be references to The Town of West Gardiner, Maine, an incorporated municipality in the County of Kennebec, State of Maine and its municipal boards, officials and officers.

C. Definitions.

For the purposes of this Ordinance, the following definitions apply:

Abandon -- Occurs when an owner of a Support Structure intends to permanently and completely cease all business activity associated therewith.

Accessory Equipment -- Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval -- Zoning approval that the [Zoning Administrator] or designee is authorized to grant after Administrative Review.

Administrative Review -- Non-discretionary evaluation of an application by the [Zoning Administrator] or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV E of this Ordinance.

Antenna -- Any structure or device used to collect or radiate electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include, but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Carrier on Wheels or Cell on Wheels ("COW") -- A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Collocation -- The act of siting Telecommunications Facilities on an Existing Structure without the need to construct a new support structure and without a Substantial Increase in the size of an Existing Structure.

Concealed Telecommunications Facility -- Any Telecommunications Facility that is integrated as an architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure for providing wireless services is not readily apparent to a casual observer.

Existing Structure -- Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Major Modifications -- Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure shall not constitute a Major Modification.

Minor Modifications -- Improvements to Existing Structures that result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Ordinary Maintenance -- Ensuring that Telecommunications Facilities and Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility and relocating the Antennas of approved Telecommunications Facilities to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Minor and Major Modifications.

Replacement -- Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

5. Construction.

The tower must be constructed of materials that make it nearly invisible, and, lighting must be as inconspicuous as possible--existing only for the purpose of satisfying the Federal Aviation Administration (FAA) requirements.

6. Applications/Permitting

- A. Review - The West Gardiner Planning Board will rule on all applications after a Public Hearing is held.
- B. The applicant shall provide proof of adequate liability insurance to the West Gardiner Planning Board. Applicant shall provide a Certificate of Insurance evidencing current coverage, and provide notice to Town of West Gardiner to County if insurance is diminished, canceled, terminated, or not renewed, and, identify the tower by application number.

7. Location of Tower.

The applicant shall locate the tower on the designated lot so that the distance from the base of the tower to any adjoining property lines or public way is a minimum of (a) 100 per cent for free standing towers, or (b) 80 per cent for guy anchored towers.

8. Landscaping.

Applicant shall landscape the tower site perimeter with at least one row of deciduous trees, not less than two (2) inches in diameter measured three (3) feet above grade, spaced not more than twenty (20) feet apart and within twenty-five (25) feet of the site boundary, as well as at least one (1) row of evergreen trees or shrubs at least four (4) feet high when planted and spaced not more than fifteen (15) feet apart and within forty (40) feet of the site boundary.

9. Security Fencing.

Applicant shall fence the tower site with a minimum of eight (8) foot high security fencing with barbed wire around the base of the tower not more than 20 feet including buildings, and post appropriate signs on the fence every twenty (20) feet warning of the danger of trespassing.

10. Changes in Business Status.

If tower applicant sells, transfers, disposes of or yields control over its facilities and equipment and services and business interests used to support its obligation hereunder, or assigns any of its rights or delegates its obligations, or enters bankruptcy proceedings, executes an assignment for the benefit of creditors or ceases to exist or loses its license to operate or such license is limited in any way, applicant shall give legal notice to the West Gardiner Planning Board.

11. Setbacks:

Lot setback from any Great Pond or River shall be one-quarter lineal mile.

- o Front: 15 Feet, (relative to the supporting structure only, the setback is to the center of the supporting structure)
- o All others: 10 feet (relative to the supporting structure only, the setback is to the center of the supporting structure)
- Height:
 - o No taller than 200 feet

(B) Abandonment and Removal. If a Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the [Jurisdiction] may require that such Support Structure be removed only after first providing written notice to the owner of the Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Support Structure within thirty (30) days of receipt of said written notice. In the event the owner of the Support Structure fails to reclaim the Support Structure within the thirty (30) day period, the owner of the Support Structure shall be required to remove the same within six (6) months thereafter. The [Jurisdiction] shall ensure and enforce removal by means of its existing regulatory authority.

(C) Multiple Uses on a Single Parcel or Lot. Telecommunications Facilities and Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself. If this is a Multiple Use Parcel the Telecommunications Facility shall not infringe on the minimum lot size of the additional principal use.

§12. MONITORING

A. The WTF owner shall provide the CEO with copies of current FCC licenses, renewals, and copies of any reports filed with the FCC when changes occur.

B. The WTF owner shall arrange for a licensed professional structural engineer or professional tower service/installation company to conduct inspections of the tower's structural integrity and safety.

1. Towers shall be inspected every five years at the owner's expense.

2. A report of the inspection results shall be submitted to the CEO and the Planning Board.

3. Modification of existing facilities which include changes to dimension or antenna number or type may require a new structural inspection at the Board's discretion.

§13. ABANDONMENT OR DISCONTINUATION OF USE

A WTF that is not listed as having a license in the FCC Database or is out of operation for a continuous period of twelve

(12) months or more shall be considered abandoned.

A. At least thirty (30) days prior to the time that the tower owner plans to abandon or discontinue use of a WTF, said owner must notify the CEO by certified mail.

B. If the CEO considers a WTF abandoned, the CEO shall notify the owner of an abandoned WTF by certified mail in writing and order the removal of the WTF within one hundred eighty (180) days of receipt of the written notice. The owner of the WTF shall have forty (40) days from the date of the written notice to demonstrate to the CEO that the WTF has not been abandoned.

C. If the Owner fails to show that the WTF is actively being operated, the WTF owner shall have one hundred eighty (180) days from the date of the notice required by §13-B, above, to remove the WTF.

§14. REMOVAL

A. Any WTF, or upper portion thereof, that ceases to operate must be removed at the expense of the permit holder within one hundred eighty (180) days from the date of the notice required by §11-B, above.

Adopted 3/26/04 - 14 - Amended 3/30/07

B. Removal shall include, but not be limited to, antennas, mounts, equipment shelters, and security barriers. Waste materials must be properly disposed of at an offsite location.

C. The site of the WTF must be restored to its pre-construction condition. The owner of the WTF 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 re-establishment of vegetation.

D. The permit holder or land owner may apply for a change of use permit that will allow the existing facilities, not including towers, to be retained for future use.

E. If the permit holder fails to remove a WTF in accordance with the provisions of this section, the Board of Selectmen of the Town of West Gardiner and/or their representatives shall have the authority to enter the property and dismantle the WTF at the permit holder's expense.

ARTICLE VII – PERFORMANCE GUARANTEES

§ 1 . GUARANTEE FOR REMOVAL

At the time of approval of a permit application, and prior to initiating construction of any WTF within the Town of West Gardiner, the applicant must guarantee the costs for the removal of the WTF .

A. The amount of the guarantee shall be equal to the estimated removal cost, provided by the applicant and certified by a professional civil engineer licensed in Maine or a professional tower construction company.

B. The owner of the facility shall provide the Planning Board with a revised removal cost estimate and structural evaluation prepared by a professional civil engineer licensed in Maine or a professional tower construction company every five (5) years from the date of the Planning Board's approval of the site plan.

C. If the cost has increased more than fifteen (15) percent, then the owner of the facility shall provide additional security in the amount of the increase. The applicant may also request adjustments in the guarantee.

§ 2 . TYPES AND CONTENTS OF GUARANTEE

One of the following performance guarantees chosen by the applicant shall be provided with submittal of the application.

A. Interest-Bearing Escrow Account

A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town, direct deposit into a savings account, or purchase of a certificate of deposit.

1. For any account opened by the permit holder, the Town shall be named as owner or co-owner, and consent of the Town shall be required for a withdrawal.

2. Any interest earned on the escrow account shall be returned to the WTF owner unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the developer and the amount withdrawn to complete the required work.

B. Performance Bond

A performance bond shall detail the conditions of the bond, the method for release of the entire bond or portions of the bond to the Town, and the procedures for collection by the municipality. The bond documents shall specifically reference the wireless service facility for which approval is sought.

C. Irrevocable Letter of Credit

An irrevocable letter of credit from a bank or other lending institution shall indicate that funds have been set aside for the removal of the wireless service facility and may not be used for any other project or loan.

The conditions and amount of the performance guarantee shall be determined by the Planning Board with the advice of the

Town Selectmen, and/or Town Attorney, expenses paid for by the applicant.

§ 3 . RELEASE OF GUARANTEE

Prior to the release of any part of the performance guarantee, the Planning Board shall determine to its satisfaction, that the

removal meets or exceeds the design requirements for which the release is requested.

§ 4 . DEFAULT

If upon inspection, the CEO or other inspecting official finds that any of the required removal has not been performed in

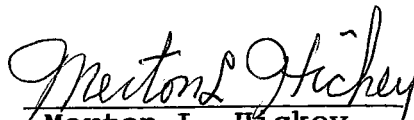
accordance with the approved plans and specifications, he shall report in writing to the Municipal Officers, the Planning


Board, and the permit holder and guarantor. The permit holder shall have 30 days, unless otherwise specified by the CEO, to remedy any insufficiency noted. Thereafter, the Municipal Officers shall take any steps necessary to enforce the guarantee and remedy the insufficiencies.

ARTICLE 54. Shall an Ordinance entitled "Town of West Gardiner, Maine Wireless Telecommunications Facilities Ordinance" be enacted or take any other action thereon?

Adopted as read March 28, 2015


Gregory A. Couture


Merton L. Hickey


Earle L. McCormick

Attest:

Angela Phillis
Town Clerk