

Town of Palermo
WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE
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Section 1. Title

This Ordinance shall be known and cited as the Town of Palermo "Wireless Telecommunications Facilities Ordinance" (hereinafter referred to as "this ordinance").

Section 2. Authority

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

Section 3. Purpose

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

Ensure that Palermo can continue to fairly and responsibly protect the public health, safety and welfare;
Encourage the collocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;

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

Section 4.1 Exemptions

The following are exempt from the provisions of this ordinance:

- A. Emergency Wireless Telecommunications Facility.** Wireless communication facilities for emergency communications by public officials.
- B. Amateur (Ham) Radio Stations.** Amateur (Ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. Parabolic Antenna.** Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.
- D. Maintenance or Repair.** Maintenance, repair or reconstruction of a wireless telecommunications facility and related equipment provided that there is no change in the height or any other dimension of the facility.
- E. Antennas as Accessory Uses.** An antenna that is an accessory use to a residential dwelling unit.

Section 5. Review and Approval Authority

5.1 Approval Required

No person shall construct or expand a wireless telecommunication facility without approval of the Planning Board.

5.2 Approval Authority

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

Section 6. Approval Process

Section 6.1 Pre-Application Conference

All persons seeking approval of the Planning Board under this ordinance shall meet with the Planning Board no less than 30 days before filing an application. At this meeting, the Planning Board shall explain the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

Section 6.2 Application

All persons seeking approval of the Planning Board under this ordinance shall submit an application as provided below.

- A. Right, Title and Interest.** Documentation of the applicant's right, title, or interest in the property on which the facility is to be sited, including name and address of the property owner and the applicant.
- B. Fee Regulations.** 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. Topographical Map.** A USGS 7.5 minute topographical map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
- D. 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 emissions is required; and
 - 3. A boundary survey for the project performed by a land surveyor licensed by the State of Maine.
- E. A Scenic Assessment,** consisting of the following:

1. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 2. A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant site features; the type and location of plants proposed to screen the facility; the method of fencing, the color of the structure, and the proposed lighting method.
 3. Photo simulations of the proposed facility taken from perspectives determined by the Planning Board, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
 4. A narrative discussing:
 - a. The extent to which the proposed facility would be visible from or within a designated scenic resource,
 - b. The tree line elevation of vegetation within 100 feet of the facility, and
 - c. The distance to the proposed facility from the designated scenic resource's noted viewpoints.
- F. Telecommunications Network.** 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.
- G. Existing Structures.** Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:
1. Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,
 2. 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,
 3. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
 - a. Planned, necessary equipment would exceed the structural capacity of the existing facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.
 - b. The 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.
 - c. Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
 4. For facilities existing prior to the effective date of this ordinance, the fees, costs, or contractual provisions required by the owner in order to share or adapt an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this ordinance;
 5. Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access;
- H. National Register of Historic Places.** 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).
- I. Collocation.** A signed statement stating that 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 collocation 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 collocation;
 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, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
- J. Financial Surety.** At the time of approval, the applicant for a new tower shall submit to the Town a bond or other financial surety, to be approved by the Town Selectmen, in the amount of 150% of the estimated demolition cost of the tower and the removal of all accessory facilities. Such cost to be determined by an Independent Registered Professional Engineer in the State of Maine and the amount shall be acceptable to the Town. The bond or other financial surety shall be in effect for as long as the tower is in place.
- K. Newspaper Notification.** Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

Section 6.3 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.

Section 6.4 Fees

- A. Planning Board Application Fee.** An application for Planning Board approval shall include payment of an application fee in accordance with a fee schedule established and adopted by the Board of Selectman. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town of Palermo to review the application.
- B. Planning Board Review Fee.** An applicant for approval shall pay all reasonable and customary fees incurred by the Town of Palermo that are necessary to review the application. The review fee shall be paid in full prior to the start of construction. That portion of the review fee not used shall be returned to the applicant within fourteen (14) days of the Planning Board's decision.

Section 6.5 Notice of Complete Application

Upon receipt of an application, the Planning Board shall provide the applicant with a dated receipt. The Planning Board shall review the application and determine if the application meets the submission requirements. The Planning Board shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

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

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

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

Section 6.6 Public Hearing

A public hearing shall be held within 30 days of the notice of the complete application.

Section 6.7 Approval

Within ninety (90) days of receiving a complete application for approval the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. However, if the Planning Board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing, if necessary, or within 60 days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

Section 7. Standards of Review

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

Section 7.1 Planning Board Approval Standards

- A. Collocation.** A new wireless telecommunications provider must collocate on an existing wireless telecommunications facility.
- B. Location**
 - 1. New wireless telecommunications facilities may be permitted only in the general development area as shown in the 1991 Town of Palermo Comprehensive Plan.
 - 2. New wireless telecommunications facilities *shall be located* within 1000 feet of the centerline of Route Three.
 - 3. New wireless telecommunications facilities shall *not* be located within one half mile of the Palermo Consolidated School property lines.
 - 4. New wireless telecommunications facilities shall *not* be located within a 1000 feet of any residence. Unless the property owner waives the 1000 feet buffer zone from his / her residence. This waiver must be recorded in the Waldo County Registry of Deeds.
- C. Design for Collocation.** A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future collocation of at least three additional wireless telecommunications facilities or providers.
- D. Height.** A new wireless telecommunications facility must be no more than 195 feet in height.
- E. Setbacks.** A new or expanded wireless telecommunications facility must be set back one hundred five percent (105%) of its height from all property lines. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. No part of the structure, including anchors, guide wires, overhead lines, masts, etc. shall be located in the required setback.
- F. Landscaping.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural landforms on the site shall also be preserved to the maximum extent practicable.
- G. Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
- H. Lighting.** Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would best cause the least disturbance in the surrounding area. The tower compound may use lighting for security reasons, which is compatible with the surrounding neighborhood.
- I. Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
- J. Structural Standards.** A new wireless telecommunications facility must comply with the current Electronic Industries Association/ Telecommunications Industries Association (EIA/TIA) 222

Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures."

- K. Visual Impact.** The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the 1991 Town of Palermo Comprehensive Plan, or by a State or federal agency. In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:
1. The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;
 2. The type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
 3. The extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
 4. The amount of vegetative screening;
 5. The distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
 6. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- L. Noise.** Noise levels shall not exceed 55 dBA Sound Pressure Level (SPL) on adjacent properties. Operation of a back up power generator in the event of power failure or the testing of a back up generator between 8:00AM and 9:00PM are exempt from this standard. No testing of back up power generators shall occur between the hours of 9:00PM and 8:00AM.
- M. Historic & Archaeological Properties.** The proposed facility will have no unreasonable adverse impact upon a historic district, site or structure, which is currently listed on or eligible for listing on the National Register of Historic Places.

7.2 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. Collocation.** 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 collocation 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 collocation.
 4. Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.
- B. Certify Compliance.** Upon request by the Town of Palermo, 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. Abandonment

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

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

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

Section 10. Appeals

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

Section 11. Administration and Enforcement

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

The Board of Selectmen, or their authorized agent, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless: 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 or substantial environmental damage.

Section 12. Penalties

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

Section 13. Conflict and Severability

Section 13.1 Conflicts with other Ordinances

Whenever a provision of this ordinance conflicts with or is inconsistent with another provision of this ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.

Section 13.2 Severability

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

Section 14. Definitions

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

"Antenna" means any system of poles; panels, rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

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

"Collocation" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

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

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

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

"Height" means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around the building or structure, to the highest point of the building or structure.

"Historic or Archaeological Resources" means resources that are:

Listed individually in the National Register of Historic Places or eligible for listing on the National Register;

Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;

Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;

Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by Secretary of the Interior through the Maine Historic Preservation Commission; or

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

"Historic District" means a geographically definable area possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united by past events or aesthetically by plan or physical development and identified in the 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.

"Line of sight" means the direct view of the object from the designated scenic resource.

"Parabolic Antenna" (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"Principal Use" means the use other than one, which is wholly incidental or accessory to another use on the same premises.

"Public Recreational Facility" means a regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

"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 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

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.

"**Targeted Market Coverage Area**" means the area, which is targeted to be served by this proposed telecommunications facility.

"**Unreasonable Adverse Impact**" means that the proposed project would produce an end result which is:

excessively out-of-character with the designated scenic resources affected, including existing buildings structures and features within the designated scenic resource, and

Would significantly diminish the scenic value of the designated scenic resource.

"**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 15: Amendments

An amendment to this ordinance may be initiated by the Planning Board, provided that a majority of the Board has so voted; by request of the Selectmen to the Planning Board; or by written petition to the Selectmen signed by 10% of the number of registered voters of the Town of Palermo who voted in the last gubernatorial election.

All proposed amendments shall be referred to the Planning Board for their recommendation. The Planning Board shall hold a public hearing on any proposed amendment within 21 days of its receipt and shall inform the Selectmen of their recommendation within 21 days of the public hearing. The amendment may be adopted by a majority vote of Town meeting or by secret ballot referendum.

Section 16. Effective Date

This ordinance becomes effective on March 10, 2001

Attest: a true copy of an ordinance entitled "Town of Palermo Wireless Telecommunications Facilities Ordinance" as certified to me by the municipal officers of Palermo on the seventh day of February 2001.

Janet Potter

Town Clerk