

WIRELESS TELECOMMUNICATIONS  
FACILITIES ORDINANCE

FOR THE TOWN OF STONINGTON

Adopted: 03/05/2012



Certified by the Stonington Town Clerk,  
Town of Stonington, Maine

George Lind  
Christopher Bell  
W. R. D.  
Richard Larabee Sr  
Donna Brewer

A True Attested Copy

Bradshaw

Lucretia Bradshaw, Town Clerk

# WIRELESS TELECOMMUNICATIONS FACILITIES ORDINANCE

## CONTENTS

Section 1 Title .....	3
Section 2 Authority .....	3
Section 3 Purpose .....	3
Section 4 Applicability .....	4
4.1 Exemptions .....	4
Section 5 Review and Approval Authority .....	4
5.1 Approval Required .....	4
5.2 Approval Authority .....	5
Section 6 Approval Process .....	5
6.1 Pre-application Conference .....	5
6.2 Application .....	5
6.3 Submission Waiver .....	8
6.4 Fees .....	8
6.5.A Application Procedure .....	8
6.5.B Public Hearing .....	9
6.6 Approval .....	9
Section 7 Standards of Review .....	9
7.1 Planning Board Approval Standards .....	9
7.2 Standard Conditions of Approval .....	10
Section 8 Amendment to an Approved Application ..	11
Section 9 Abandonment .....	11
Section 10 Appeals .....	11
Section 11 Administration and Enforcement .....	12
Section 12 Penalties .....	12
Section 13 Conflict and Severability .....	12
13.1 Conflicts with other Ordinances .....	12
13.2 Validity and Severability .....	12
Section 14 Definitions .....	13

## **Section 1. Title**

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

## **Section 2. Authority**

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

## **Section 3. Purpose**

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

Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;

Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;

Allow competition in telecommunications service;

Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Stonington;

Permit and manage reasonable access to the public rights of way of Stonington for telecommunications purposes on a competitively neutral basis;

Ensure that all telecommunications carriers providing facilities or services within Stonington comply with Stonington’s ordinances;

Ensure that Stonington can continue to fairly and responsibly protect the public health, safety and welfare;

Enable Stonington 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. Scenic resources identified in the Comprehensive Plan (XXXX) are:

1. View

2. Road
3. Route
4. Ridge
5. Pier
6. Islands

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).
- 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, or repair of a wireless telecommunications facility and related equipment.
- E.) **Temporary wireless telecommunications facility.** Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
- F.) **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 as follows:

- A.) **New Construction, expansion of an Existing Facility.** Approval by the Planning Board is required for construction of a new wireless telecommunications facility; any expansion of an

existing wireless telecommunications facility that increases the height or any other dimension of the facility; and accessory use of an existing wireless telecommunications facility.

**B.) Reconstruction of an existing facility.** Notification of the CEO or Planning Board Chairman is required for reconstruction of a wireless telecommunications facility. Reconstruction is allowed provided there is no change in the height or any other dimension of the facility. Reconstruction is allowed only within one year of damage. After one year, a new application must be made.

**C.) Expiration of Approved Applications:** All site plan approvals shall expire within one (1) year of the date of issuance unless work thereunder is substantially commenced. If work is not substantially completed within two (2) years for the date of issuance, a new application must be made.

## **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**

### **6.1 Pre-Application Conference**

All persons seeking approval of the Planning Board under this ordinance shall meet with the CEO or Planning Board Chairman, no less than thirty (30) days before filing an application. At this meeting, the CEO or Planning Board Chairman shall explain to the applicant the ordinance provisions, possible locations to avoid for tower sites (including areas identified as scenic resources in the Comprehensive Plan), as well as application forms and submission that will be required under this ordinance.

### **6.2 Application**

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

**A.) Application for Planning Board Approval.** The application must include the following information:

- 1.) 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.
- 2.) A copy of the FCC license for the facility, or a signed statement from the owner or operator of the facility attesting that the facility complies with current FCC regulations.

3.) A USGS 7.5 Minute topographic map showing the location of all structures and wireless telecommunications facilities above 150 feet in height above ground level, except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the 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.

4.) A site plan:

a.) prepared and certified by a professional engineer registered in the State of 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:

b.) certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and

c.) a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

5.) A visual assessment, consisting of the following:

a.) Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;

b.) A landscaping plan indicating the proposed placement of the facility on the site; location of existing structures, trees, and other significant 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,

c.) 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.

d.) A narrative discussing:

i.) the extent to which the proposed facility would be visible from or within a designated scenic resource,

ii.) the tree line elevation of vegetation within 100 feet of the facility, and

iii.) the distance to the proposed facility from the designated scenic resource's noted viewpoints.

6.) Propagation studies of areas already covered by telecommunication facilities as well as areas proposed to be covered by the applicant.

- 7.) 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.
- 8.) 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:
- a.) Evidence that no existing facilities are located within the targeted market coverage area as required to 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.
  - c.) Evidence that existing facilities do not have sufficient structural strength to support 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 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. 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;
  - e.) 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.
- 9.) 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).
- 10.) A form of surety [bond] approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

### **6.3 Submission Waiver**

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

### **6.4 Fees**

#### **A.) Planning Board Application Fee**

An application for Planning Board approval shall include payment of an application fee of \$.20 square foot of total area fenced compound. 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.

#### **B.) Planning Board Review Fee**

An applicant requesting approval by the Planning Board shall deposit with the Town a \$5000 fee to cover all reasonable and customary fees incurred by the municipality that are necessary to review the application. The review fee shall be paid at the time of application.

That portion of the review fee not used shall be returned to the applicant within thirty (30) days of the Planning Board's decision.

### **6.5 Application Procedure**

A.) Seven copies of the application shall be filed with the CEO or Planning Board Chairman two (2) weeks prior to scheduled meeting for review and accompanied by a fee of \$5000 for processing the application. Within forty-five (45) days of the filing of an application, the Planning Board shall review the application and determine if the application meets the submission requirements. The Planning Board, as appropriate, shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.

If the application is complete, the Planning Board shall notify the applicant in writing of this determination, or 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. After the Planning Board has determined that a complete application has been filed, it shall notify the applicant in writing and begin its review of the proposed development.



B.) The Planning Board may hold a public hearing within 30 days of the filing of the completed application. The Planning Board shall publish the time, date and place of the hearing at least one (1) time at least seven days prior to the hearing in a newspaper of area-wide circulation. The applicant must supply to the Board a list of the abutting land-owners. The abutting land-owners shall be notified by mail by the Planning Board of the hearing. Public hearings by the Planning Board shall be conducted according to its procedures. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

## **6.6 Approval**

**A.) Final Planning Board Approval.** Within thirty (30) days of the public hearing or 60 days of receiving a complete application for approval under Section 5.1(A), the Planning Board shall either approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The time limit for review may be extended by mutual agreement between the Planning Board and the applicant. Failure to reach a decision in the allotted time shall constitute a disapproval of the application.

## **Section 7. Standards of Review**

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

### **7.1 Planning Board Approval Standards**

An application for approval by the Planning Board under Section 5.1(A) must meet the following standards.

**A.) Siting on Municipal Property.** If an applicant proposes to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, the applicant must show the following:

1.) The proposed location complies with applicable municipal policies and ordinances. 2.) The proposed facility will not interfere with the intended purpose of the property. 3.) The applicant has adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.

**B.) 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. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future collocation.

**D.) Height.** A wireless telecommunications facility must be no more than 190' feet in height.

**E.) Setbacks.** A new or expanded wireless telecommunications facility must be set back one hundred fifty percent (150%) 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.

**F.) Landscaping.** A new wireless telecommunications facility and related equipment must be screened with plants from view by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

**G.) Fencing.** A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

**H.) Lighting.** A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site, to the maximum extent practicable.

**I.) Color and Materials.** A new wireless telecommunications facility must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.

**J.) Structural Standards.** A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Standards" for wind shear and ice load.

**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 municipality adopted comprehensive plan, or by a State or Federal agency.

- 1.) In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:
  - a.) The extent to which the proposed wireless telecommunications facility is visible above tree line, from the viewpoint(s) of the impacted designated scenic resource;
  - b.) the type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
  - c.) the amount of vegetative screening;
  - d.) the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
  - e.) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

**L.) Historic & Archaeological Properties.** The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on or eligible for listing on the National Register of Historic Places.

## **7.2 Standard Conditions of Approval**

A.) An approved project must meet the Performance Standards of the Site Plan Review Ordinance of the Town of Stonington.

2.) Upon request by the municipality, 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, in accordance with Section 5. If there is a transfer of ownership before or during the building phase, the new owner must meet with 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 municipality 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 re-establishment of vegetation.

If a surety bond 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 bond when the facility and related equipment are removed to the satisfaction of the Planning Board.

If the bond is to be cancelled or reduced, the bonding agent must directly notify the Chairman of the Planning Board. The Town's Attorney shall review the surety bond.

## **Section 10. Appeals**

A. Any person aggrieved by a decision of the Planning Board on a Telecommunications Tower application may appeal the decision to the Maine Superior Court in accordance with Rule 80(B) Maine Rules of Civil Procedure. Written notice of an appeal must be filed with the court within thirty (30) days of the Planning Board's written decision. The applicant's notice of appeal shall clearly state the reasons for the appeal.

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

- A. The CEO, as appointed by the Board of Selectmen, 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.
- B. The Board of Selectmen is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering fines without court action. Such agreements shall not allow a violation of this ordinance to continue unless 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 not result in a threat to public health and safety or substantial environmental damage.

## **Section 12. Penalties**

Any person or company that owns or controls any buildings or property connected with a Telecommunications facility that violates this Ordinance shall be liable for civil penalties in accordance with Title 30-A M.R.S.A. § 4452. Each day such a violation continues after notification by the CEO shall constitute a separate offense. Each offense shall be subject to civil penalties, orders to correct violations and attorney and expert witness fees in accord with Title 30-A M.R.S.A. § 4452.

## **Section 13. Conflict and Severability**

### **13.1 Conflicts with other Ordinances**

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

### **13.2 Validity and Severability**

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decisions shall not invalidate any other section or provision of the 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.

Adopted @ Town Meeting  
9/13/10  
Submitted by:  
Glennette F. J. Puhar  
Deputy Clerk

PROPOSED

TOWN OF STONINGTON  
COMMERCIAL COMMUNICATIONS TOWER  
MORATORIUM ORDINANCE

THE TOWN OF STONINGTON adopts a Moratorium Ordinance as follows:

1. Areas of the Town of Stonington are suddenly under threat of increased development pressure from commercial and personal radio/TV/telephone/communications towers and antennas in excess of 40 feet in height (hereinafter "Towers"), and all other structures or apparatus accessory to such facilities.
2. This development pressure was unanticipated and has not been adequately provided for in the Town's current Stonington Commercial Site Plan Review Ordinance.
3. There is a strong likelihood that all areas of the Town will continue to be subjected to this development pressure due to the amount of undeveloped land, the nonexistence of any local regulations or restrictions on location of towers, the relatively low land prices of some of the land at issue, the existing Towers in the surrounding areas and the high demand for sites for such Towers.
4. Continued development of such Towers could pose serious threats to the public health, safety and welfare of the residents of Stonington through the over-development of parts of Town with such Towers without adequate provision for issues of public safety, and land use compatibility, and visual access to view corridors, and avoidance of environmental degradation.
5. The Town will need at least 180 days to develop and implement the necessary Communications Tower Ordinance guidelines and regulations to accommodate these development pressures. This moratorium shall be in effect for a period of 180 days from September 13, 2010 and may be extended for an additional 180 day period by vote of the Board of Selectmen, after notice and a hearing, pursuant to 30-A M.R.S.A. § 4356.
6. A Stonington Communications Tower Ordinance will require a public hearing by the Planning Board and the Board of Selectmen, and then must be voted upon at a Town Meeting.

7. In the judgment of the Town, these facts create an emergency within the meaning of 30-A M.R.S.A. § 4356 and require the following Moratorium Ordinance as immediately necessary for the preservation of the public health, safety and welfare.
8. The Town of Stonington hereby ordains that a moratorium is hereby imposed, effective immediately and applicable to the maximum extent permitted by law and subject to the severability clause below, to all proceedings, applications and petitions not pending (within the meaning of 1 M.R.S.A. § 302) as of September 13, 2010, and on any new construction or use, requiring approval until the effective date of the Stonington Communications Tower Ordinance and regulations.
9. The Selectmen, Planning Board, Board of Appeals, the Building Inspector/C.E.O., all Town agencies and all Town employees shall neither accept nor approve applications, plans, permits, licenses, and/or fees for any new construction or uses governed by this Moratorium Ordinance for such Towers for said period of time.
10. Those provisions of the Town's Stonington Commercial Site Plan Review Ordinance and regulations which are inconsistent or conflicting with the provisions of this Moratorium Ordinance, including, without limitation, the requirements for site plan review by the Planning Board, subdivision and/or exception review by the Planning Board, and height variance appeals by the Board of Appeals, are hereby repealed to the extent that they are applicable for the duration of the Moratorium Ordinance hereby ordained, but not otherwise.
11. Each provision of this moratorium, including its application to pending proceedings and its effect on existing permits and approvals, shall be construed liberally to address the findings and to accomplish the policies established herein. Each provision of this moratorium, including its application to pending proceedings and its effect on existing permits and approvals, shall be severable, and the invalidity of any provision of the moratorium shall not affect the validity or enforceability of other provisions.
12. In view of the emergency cited in the preamble, this Moratorium Ordinance shall take effect immediately upon passage by the Town, shall apply, to the maximum extent permitted by the law but subject to the severance clause above, to all proceedings, applications and petitions as of the date of adoption at a Special Town Meeting, September 13, 2010.

