

**WIRELESS  
TELECOMMUNICATIONS  
FACILITIES SITING  
ORDINANCE  
OF THE  
TOWN OF SABATTUS**



**CHIEF SABATTUS**

**DRAFT  
02/26/02**

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# **WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE OF THE TOWN OF SABATTUS**

## **SECTION 1. TITLE**

This Ordinance shall be known as the Wireless Telecommunications Facilities Siting Ordinance of the Town of Sabattus, Maine (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: 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; ensure that all telecommunications carriers providing facilities or services within the Town of Sabattus comply with the ordinances of the Town of Sabattus; ensure that the Town of Sabattus 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; and to enable the Town of Sabattus to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development.

## **SECTION 4. EFFECTIVE DATE**

This Ordinance becomes effective on the date of the Town of Sabattus Annual Town Meeting in June, 2002.

## **SECTION 5.**

## **APPLICABILITY**

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in Section 5.1

### **5.1 Exemptions**

The following are exempt from the provisions of this ordinance:

- A. Emergency Wireless Telecommunications Facility.** Temporary wireless communications 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 and Repair.** Maintenance and repair 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. 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 6.**

## **REVIEW AND APPROVAL AUTHORITY**

### **6.1 Approval Required**

No person shall construct or expand a wireless telecommunications facility without approval of the Planning Board (PB) as follows:

- A. Expansion of an Existing Facility and Co-location.** Approval by the PB is required for any expansion of an existing wireless telecommunications facility; accessory use of an existing wireless telecommunications facility; or co-location on an existing wireless telecommunications facility.
- B. New Construction.** Approval of the PB is required for construction of a new wireless telecommunications facility.

### **6.2 Approval Authority**

In accordance with Section 6.1 above, the PB shall review applications for wireless telecommunications facilities, and make written findings on whether the proposed facility complies with this Ordinance.

## **SECTION 7. APPROVAL PROCESS**

### **7.1 Pre-application Conference**

All persons seeking approval of the PB under this Ordinance shall meet with the Code Enforcement Officer (CEO) no less than thirty (30) days before filing an application. At this meeting the CEO shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this Ordinance.

### **7.2 Application**

All persons seeking approval of the PB under this Ordinance shall submit an application as provided below. The CEO shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

**Application for Planning Board Approval.** An application for approval by the PB must be submitted to the CEO. The application must include the following information:

1. Documentation of the applicants right, title, or interest in the property on which the facility is to be sited, including the name and address of the property owner and 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 one hundred fifty (150) feet in height above ground level, except antennas located on rooftops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the Town of Sabattus. This requirement may be met by submitting current information (within thirty (30) 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 applicants Radio Frequency Engineer 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.

## **7.2 Application, continued**

- 5. A scenic assessment, consisting of the following:**
  - a. Elevation drawings of the proposed facility, and any other proposed structures, showing the 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 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.**
  - c. Photo and computerized simulations of the proposed facility taken from perspectives determined by the PB, 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:**
    - 1. the applicant's analysis of the tower's impact on scenic values,**
    - 2. the tree line elevation of vegetation within one hundred (100) feet of the facility, and**
    - 3. proposed methods to minimize adverse visual impacts on scenic values.**
- 6. 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.**
- 7. Evidence demonstrating that no existing building, site, or structure can accommodate the applicants 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:**
    - 1. 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.**
    - 2. 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.**
    - 3. 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**

## **7.2 Application, continued**

- 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 co-location on an existing facility, building, or structure, and has been denied access.
  8. 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. 47w(5); 36 CFR 60 and 800.
  9. A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
    - a. respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
    - b. negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
    - c. allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location;
    - d. 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.
  10. A form of surety approved by the PB to pay for the costs of removing the facility if it is abandoned.
  11. Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

## **7.3 Submission Waiver**

The PB may waive any of the submission requirements based upon a written request of the applicant submitted at the time of the application. A waiver of any submission requirement may be granted only if the PB 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.

## **7.4 Fees**

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

An application for Planning Board approval shall include payment of an application fee. The application fee shall be \$100. The planning board shall review this fee once a year at the April meeting and by a majority vote increase or decrease the fee. There shall be a \$100 fee for a Board of Appeals review. The application shall not be considered complete until the fee is paid. An applicant is entitled to a refund of the application portion of the fee if the application is withdrawn within fifteen (15) days of the date of filing, less all expenses incurred by the Town of Sabattus to review the application.

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

An applicant for approval by the PB shall pay a \$500 Review fee. All reasonable and customary fees incurred by the Town of Sabattus that are necessary to review the application shall be taken from this fee including a \$100 planning board fee. 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 PB's decision.

## **7.5 Notice of Complete Application**

Upon receipt of an application, the CEO shall provide the applicant with a dated receipt. Within fifteen (15) working days of receipt of an application the CEO shall review the application and determine if the application meets the submission requirements. The PB 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 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 PB and the abutters. If the application is incomplete, the CEO 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, then the CEO shall notify all abutters within 500ft of the site as shown on the Assessor's records, by first-class mail 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 PB meeting at which the application will be considered. Failure 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.

## **7.6 Public Hearing**

For applications for PB approval under Section 5.1, a public hearing shall be held within thirty (30) days of the notice of the complete application.

## 7.7 Approval

### **Planning Board Approval.**

Within ninety (90) days of receiving a complete application for approval under Section 7.2, the PB shall approve, approve with conditions, or deny the application in writing, together with the finding on which that decision is based. However, if the PB has a waiting list of applications that would prevent the PB 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 sixty (60) days of the completed PB review. This time period may be extended upon agreement between the applicant and the PB.

## SECTION 8 STANDARDS OF REVIEW

### 8.1 Planning Board Approval Standards

An application for approval by the PB under Section 7.2 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 or other existing structure on Pleasant Hill, so-called, located on Pleasant Hill Road across from the Pleasant Hill Cemetery
2. A new facility on Pleasant Hill, so-called.
3. A new facility on public or private property in the Town of Sabattus

#### 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 (3) additional wireless telecommunications facilities or providers. However, the PB may waive or modify this standard where the height limitation effectively prevents future co-location.

- C. **Height.** A new wireless telecommunications facility must be no higher than the existing tower on Pleasant Hill in the Town of Sabattus.

## 8.1 Planning Board Approval Standards, continued

### **D. 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 of the property boundaries if secured by an easement. The following exemptions apply:

1. The setback may be reduced by the PB upon a showing that the facility is designed to collapse in a manner that will not harm other property.
2. An antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

### **E. 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.

### **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 shall be illuminated at the top of the facility by an FAA approved lighting apparatus. Security lighting may be used as long as it is shielded to be down-directional to retain lighting within the boundaries of the site, to the maximum extent practicable.

1. The lighting requirement may be waved or modified by the PB

### **H. 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.

### **I. Structural Standards.**

A new wireless telecommunications facility must comply with current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.

## 8.1 Planning Board Approval Standards, continued

### J. Visual Impact.

The proposed wireless telecommunications facility will have no unreasonable adverse impact on scenic values.

1. In determining the potential unreasonable adverse impact of the proposed facility on scenic values, the PB shall consider the following factors:
  - a. the extent to which the proposed wireless telecommunications facility is visible above the tree line and areas identified in the applicant's analysis of scenic values;
  - 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 extent to which the proposed wireless telecommunications facility has been situated to minimize visual impact;
  - d. the amount of vegetative screening; and,
  - e. the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

### K. Historic and 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.

## 8.2 Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the PB. Where necessary to ensure that an approved project meets the criteria of this Ordinance, the PB 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 successor and assigns agree to:
  1. respond in a timely, comprehensive manner to a request for information from a potential co-location applicant;
  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 shared use 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 the wireless telecommunications facility.

B. Upon request by the Town of Sabattus, the applicant shall certify compliance with all applicable FCC radio frequency emission regulations.

## **SECTION 9 AMENDMENT TO AN APPROVED APPLICATION**

Any changes to an approved application must be approved by the PB in accordance with Section 6

## **SECTION 10 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 Sabattus 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 Town of Sabattus for removal of the facility, the owner of the facility may apply to the PB for release of the surety when the facility and related equipment are removed to the satisfaction of the PB.

## **SECTION 11 APPEALS**

Any person aggrieved by a decision of the PB under this Ordinance may appeal the decision to the Board of Appeals within thirty (30) days of final notification.

## **SECTION 12 ADMINISTRATION AND ENFORCEMENT**

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. The Board of Selectmen, or the CEO, 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 13 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., Section 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

## **SECTION 14 CONFLICT AND SEVERABILITY**

### **14.1 Conflicts with other Ordinances**

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

### **14.2 Severability**

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

## **SECTION 15 DEFINITIONS**

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

- Abutter:** means any landowner within five hundred (500) feet of the property that the tower or facility will be located on.
- 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.
- Co-location:** 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 or the increase in the height of a tower.

**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. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of building

**Historic or Archaeological Resources:**

means resources that are:

1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs approved by the Secretary of the Interior;
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Secretary of the Interior through the Maine Historic Preservation Commission; or
5. 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 Town of Sabattus'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 Town of Sabattus'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 Town of Sabattus'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.

**PB** means Planing Board

**Principal Use:** means the use other than the 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 Town of Sabattus's comprehensive plan, designed to serve the recreational needs of municipal property owners.

**Designated Scenic Resource:**

means the specific location, view, or corridor, as identified as a scenic resource in the Town of Sabattus's comprehensive plan or by a State or federal agency, that consists of:

1. 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 as a downtown skylight or a mountain range, resulting in a panoramic view corridor; or
2. 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:

1. excessively out-of-character with the designated scenic resources affected, including existing buildings, structures and features within the designated scenic resource; and
2. would significantly diminish the scenic value of the designated scenic resource.

**Viewpoint:**

means that location which is identified either in the Town of Sabattus's comprehensive plan or by a State or federal 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 and personal communications service (PCS) or pager services.