

# Town of Vienna

## Wireless Telecommunications Facilities Siting Ordinance

### Section 1. Title

This Ordinance shall be known and cited as the "Wireless Telecommunications Facilities Siting Ordinance" of Vienna, 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.

Persons or entities wishing to establish a wireless telecommunications facility or make major modifications to an existing wireless telecommunications facility within the Town of Vienna shall first obtain an application for a conditional use permit from the Vienna Planning Board (hereinafter "Planning Board") and shall be subject to the provisions of this Ordinance.

### 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:

- 1 Preserve the character and appearance of the Town of Vienna while allowing adequate telecommunication services to be developed;
- 2 Provide standards and requirements for the regulation, placement, design, appearance, construction, monitoring, modification, and removal of wireless telecommunication facilities;
- 3 Preserve property values, and protect historic and scenic areas within the Town;
- 4 Locate facilities in a manner which promotes the general safety, health, welfare and quality of life of the citizens of Vienna;
- 5 Require, where possible, the colocation of additional communications facilities, towers, and sites;
- 6 Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- 7 Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- 8 Ensure that all telecommunications carriers providing facilities or services within Vienna comply with the ordinances of Vienna.

### 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.

No wireless telecommunication facility as listed in Section 4.1 shall be considered exempt from Section 7.2.D

No wireless telecommunication facility shall be considered exempt from this Ordinance by virtue of colocation with an exempt facility as listed 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, 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.) 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.
- G.) Citizens' Band Radio
- H.) Pre-existing Facility. This Ordinance does not render illegal any structure, facility or use which legally existed, has received permit approval, or is in a pending approval process prior to the effective date of this Ordinance.
- I.) Radio dispatch services for local businesses.

## **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.) Expansion of an Existing Facility and Colocation. Approval by the Planning Board is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than 20 feet; accessory use of an existing wireless telecommunications facility; or colocation on an existing wireless telecommunications facility.

B.) New Construction. Approval of the Planning Board is required for construction of a new wireless telecommunications facility; and any expansion of an existing wireless telecommunications facility that increases the height of the facility by more than 20 feet.

### **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 Planning Board no less than thirty (30) days before filing an application. At this meeting, the Planning Board shall explain to the applicant the ordinance provisions, as well as application forms and submissions 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. The Planning Board shall be responsible for ensuring that notice of the application has been published in a newspaper of general circulation in the community.

**A.) Application for Expansion of an Existing Facility and Colocation.**

Applications must include the following materials and information:

- 1.) Documentation of the applicant's right, title, or interest in the property where 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.) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, 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).
- 4.) Location map and elevation drawings of the proposed facility and any other proposed structures, showing color, and identifying structural materials.

- 5.) For proposed expansion of a facility, a signed statement that commits the owner of the facility, and his or her successors in interest, to:
- a.) respond in a timely, comprehensive manner to a request for information from a potential colocation 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 by third parties;
  - c.) allow shared use if an applicant agrees in writing to pay reasonable charges for colocation;
  - 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 and maintenance, financing, return on equity, depreciation, and all of the costs of adopting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- 6.) for colocation permits, a copy of the lease/contract with the owner of the existing structure.

**B.) Application for New Construction.**

An application must be submitted to the Planning Board. The application must include the following information:

1.) Contacts:

Applicant shall submit the exact legal name, address or principal place of business and phone number of the following:

- a. Applicant. If applicant is not a person, it shall also give the type of business entity and the state in which it is registered
- b. Person to whom correspondence or communications in regard to the application are to be sent. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon the applicant. Person to be contacted in the event of an emergency involving the facility. This person shall be available on a 24-hour basis and authorized by the applicant to act on behalf of the applicant regarding an emergency situation.
- c. Owner of the property on which the proposed tower shall be located and of the owners(s) of the tower or structure on which the proposed facility shall be located. Written permission of the owner(s) to apply for a conditional use permit shall also be submitted along with written permission from the owner(s) of the proposed property(s) or facilities site(s) for the Town's independent consultant(s) to conduct any necessary site visit(s).
- d. Names and addresses of abutting landowners and landowners within 500' of the site property boundaries.

2.) Permits

Applicant shall submit copies of all pertinent submittals and showings pertaining to:

- a. FCC permitting/licensing, including Environmental Assessments and Environmental Impact Statements as required by the national Environmental Protection Act of 1969, section 47, and documentation from Maine Historical Preservation Society;
- b. FAA Notice of Construction or Alternation aeronautical studies;
- c. All pertinent data, assumptions and calculations relating to service coverage
- d. All pertinent calculations and/or measurement data related to non-ionizing radiation exposure, regardless of whether categorical exemption from routine environmental evaluation under FCC rules is claimed.

3.) Maps.

a.) Location map. 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.

b.) Vicinity map. at a scale of 1" = 416' (1:5000) with contour intervals no greater than 10 feet (3 meters) showing the entire vicinity within a 2500' radius of the facility site, and including the topography, public and

private roads and driveways, buildings and structures, bodies of water, wetlands, landscape features, historic sites, habitats for endangered species, indicating the property lines of the proposed facility site parcel and all abutters to the facility site parcel. Indicate any access easement or right of way needed for access from a public way to the facility site, and the names of all abutters or property owners along the access easement or who have deeded rights to the easement.

c.) Existing conditions map. A recent survey of the area within 500 feet of the facility site at a scale no smaller than 1" = 40' (1:480 or metric equivalent) with topography drawn with a minimum of 10 feet contour intervals, showing existing utilities, property lines, existing buildings or structures, stone walls or fence lines, wooded areas, existing wells and springs. show the boundary of any wetlands or floodplains or watercourses, and of any bodies of water included in the Shoreland Zoning District within 500' from the facility site. The survey plan must have been completed, on the ground, by a land surveyor registered in the State of Maine within two years prior to the application date.

4.) A site plan:

a.) 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; and

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

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

5.) A scenic 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 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 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.) Technical Documentation.

a.) 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.

b.) Proposed equipment plan, to include enough detail for evaluation of the proposed facility. Independent contractor hired to evaluate the application may request more detail if not enough is provided.

7.) 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 colocation 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, archeology, 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).
- 9.) A signed irrevocable statement valid for the duration of the existence of the tower 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 colocation 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 colocation;
  - 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.
- 12.) Evidence of financial ability to cover the costs of tower construction maintenance, and insurance coverage.
- 13.) A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.
- 14.) Five-Year Plan. A written five-year plan for utilization of the proposed facilities. This plan shall include justification for capacity in excess of immediate needs, as well as plans for further development within the Town.
- 15.) Evidence that a notice of the application has been published in a local newspaper of general circulation in the community.

16.) Applicants must be a telecommunication provider or must provide a copy of its lease/contract with an existing telecommunication provider. A permit shall not be granted for a tower to be built on speculation.

### **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.

### **6.4. Fees**

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

A conditional use permit application for Planning Board approval shall include payment of an application fee of \$75.00. The application shall not be considered complete until this 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 date of filing, less all expenses incurred by the Town of Vienna to review the application.

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

An applicant for approval by the Planning Board shall pay all reasonable and customary fees (e.g. certified mailings, advertisements, consultant fees, etc.) incurred by the Town that are necessary to review the application and assure that the facility meets the conditions of this Ordinance after completion, including hiring independent consultants to evaluate the application. A retainer of \$1000.00 will accompany the application, and the Planning Board shall place it in an escrow account. If the contract with an independent consultant is estimated to cost more than the retainer submitted with the application, the total estimate cost for the consultant must be provided in the retainer by the applicant before the application is considered complete and review started. That portion of the review fee not used shall be returned to the applicant within thirty (30) days of the Planning Board's decision to approve or deny the application. The review fee shall be paid in full prior to the start of construction.

#### **C. Notification of application**

The applicant shall be responsible for insuring that abutting landowners and landowners within 500' of the site property boundaries be notified of the application by certified mail no later than thirty (30) days after the Vienna Planning Board pre-application conference as detailed in Section 6.1 and that receipts and copies of the letters be forwarded to the Planning Board and the Vienna Board of Selectmen. The Planning Board shall post a notice of the application for public review at the Town Office and in at least two places of public gathering within the Town of Vienna and abutting towns.

#### **D. Provision for Hiring Independent Consultants**

1. Upon submission of an application for a conditional use permit under this Ordinance, the Vienna Planning Board shall hire independent consultants whose services shall be paid for by the applicant's review fee. These consultants shall be qualified professionals with an appropriate combination of training, record of service, and certification in one of the following fields: a) telecommunications/radio frequency engineering; b) structural engineering; and if determined necessary by the Vienna Planning Board, c) other fields of expertise.
2. Upon submission of a complete application for a conditional use permit under this Ordinance, the Vienna Planning Board shall provide its independent consultant(s) with the full application for their analysis and review.

### **6.5. Notice of Complete Application**

Upon receipt of an application, the Planning Board shall provide the applicant with a dated receipt. Within 30 (thirty) working days of receipt of an application 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.

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 Planning Board shall notify all abutters to the site as shown on the Assessor's records, by first-class mail, 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.

## **6.6. Public Hearing**

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

## **6.7. Approval**

**A.) Expansion of existing facility as defined in Section 5.1(A)** Within thirty (30) days of receiving a complete application for approval under section 5.1(A), the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. The Planning Board shall approve the application if the Planning Board finds that the application complies with the provisions in Section 7.1 of this ordinance.

The Planning Board shall notify all abutters of the decision to issue a permit under this section. The time period may be extended upon agreement between the applicant and the Planning Board.

**B.) New construction as defined in Section 5.1(B)** 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.

### **7.1. Approval Standards for Expansion of existing facility as defined in Section 5.1(A)**

The Planning Board must find that the application meets the following standards:

- A.) The proposed facility is an expansion, accessory use, or colocation to a structure existing at the time the application is submitted.
- B.) The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C.) The proposed facility increases the height of the existing structure by no more than twenty (20) feet.
- D.) The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable.
- E.) The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archeology, 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).

### **7.2. Approval Standards for New construction as defined in Section 5.1(B)**

The Planning Board must find that the application includes the following documentation and meets the following standards:

- A.) Priority of Location. 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.) Colocation on an existing wireless telecommunications facility or other existing structure in either Vienna or a

town in the surrounding area.

B.) Coverage Area. The Town of Vienna must be included in the primary coverage area.

C.) Design for Colocation. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future colocation 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 colocation.

D.) Height. New towers shall not exceed the minimum height necessary to provide adequate coverage for the telecommunications facilities proposed for use on the tower. Applicant may submit a request for additional height to accommodate future sharing and shall provide design information and data to justify such additional height. In no case shall facility height exceed 199 feet, triggering the FAA and FCC rules and regulations regarding lighting of towers. Exceptions may be made if applicant can adequately demonstrate to an independent qualified consultant (as specified by Section 6.4.D) that denial of greater height would effectively prohibit service or that colocation would not be possible.

E.) Setbacks.

1.) A new or expanded wireless telecommunications facility must comply with the set back requirements for the zoning district in which it is located, or be set back one hundred five percent (105%) of its height from all property lines, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:

a.) The setback may be reduced by the Planning Board upon a showing by the applicant that:

- i. The facility is designed to collapse in a manner that will not harm other property
- ii. Ice build-up and discharge will not present a public safety hazard,
- iii. Any hazard guy wires or tower structure will not adversely affect public safety.

b.) 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.

2.) Existing wireless telecommunication facilities that undergo major modifications must meet setback requirements.

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. A sign no greater than two (2) square feet indicating the name of the facility owner(s) and a 24-hour emergency telephone number shall be posted adjacent to the entry gate. No Trespassing or other warning signs, and the federal tower registration plate, where applicable, may be posted on the fence or as required to meet federal requirements.

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 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 municipally 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 extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
- d.) the amount of vegetative screening;
- e.) the distance of the proposed facility from the viewpoint and the facility's location within the designated scenic resource; and
- f.) the presence of reasonable alternatives that allow the facility to function consistently with its purpose.

L.) Noise. During construction, repair, or replacement, operation of a back-up power generator at any time during a power failure, and testing of a back-up generator between 8 a.m. and 9 p.m. is exempt from existing municipal noise standards.

M.) 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.

N.) Environmental Impact. All construction related to the facility, including access roads, will be limited to the minimum excavation needed to meet the requirements of the project and use techniques to avoid erosion and degradation of ground water during and after construction.

## 7.3 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 statement that:

- 1.) 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 colocation 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 colocation.
  - d.) 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.

e.) no advertising will be allowed on any part of the facility.

2.) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations and prove structural integrity and safety of the facility.

## **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.

## **Section 9. Abandonment**

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Planning Board 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 Planning Board 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 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 Planning Board under this ordinance may appeal the decision to the Board of Appeals. Written notice of an appeal must be filed with the Town of Vienna 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 Municipal Officers or an enforcement agent, as appointed by the Board of Selectmen, shall enforce this ordinance. If the enforcement agent finds that any provision of this ordinance has been violated, the enforcement agent 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 enforcement agent 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 Code Enforcement Officer shall constitute a separate offense.

## **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 Severability**

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

## **13.3 Consistency with Federal Law**

These regulations are intended to be consistent with state and federal law, particularly the Telecommunications Act of 1996 in that: a.) they do not prohibit or have the effect of prohibiting the provision of personal wireless services; b) they are not intended to be used to unreasonably discriminate among providers of functionally equivalent services, and c) they do not regulate personal wireless services on the basis of environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the regulations of the Federal Communications Commission concerning such emissions.

## **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.

"Colocation" 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. 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 buildings.

"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 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 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:

- 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 a downtown skyline or 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 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. Effective Date**

This ordinance becomes effective on the date that the ordinance is adopted by the public at Town Meeting or referendum.