

TOWN OF VINALHAVEN
LAND USE ORDINANCE

SECTION 19

WIRELESS TELECOMMUNICATIONS FACILITIES

Section 19. **Wireless Telecommunications Facilities**

A. **Purposes:** The purposes of this section are 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 Vinalhaven;
- Permit and manage reasonable access to the public rights of way of Vinalhaven for telecommunications purposes on a competitively neutral basis;
- Ensure that all telecommunications carriers providing facilities or services within Vinalhaven comply with the ordinances of Vinalhaven;
- Ensure that Vinalhaven can continue to fairly and responsibly protect the public health, safety and welfare;
- Encourage the colocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;
- Enable Vinalhaven 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; and
- Protect the scenic and visual character of the community.
- Protect bird and other wildlife habitat.

B. **Applicability:** This section applies to all construction and expansion of wireless telecommunications facilities, except as provided below:

1. Emergency Wireless Telecommunications Facility: Temporary wireless communication facilities for emergency communications by public officials.
2. Amateur (ham) radio stations: Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
3. Parabolic antenna: Parabolic Antennas less than seven (7) feet in diameter that are an accessory use to a residential dwelling unit.
4. Maintenance or repair: Maintenance or 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.
5. Antennas as Accessory Uses: An antenna that is an accessory use to a residential dwelling unit.

C. Review and Approval Authority:

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; 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.
2. Approval Authority: In accordance with Section C.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.

D. Approval Process:

1. Pre-Application Conference: All persons seeking approval of the Planning Board under this ordinance shall meet with the 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.
2. Application for Planning Board Approval: An application for approval by the Planning Board must be submitted to the Code Enforcement Officer. The application must include the following additional information:
 - a. 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.
 - b. 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.
 - c. A site plan prepared and certified by a professional engineer registered in Maine indicating the location, type, and height of the proposed facility, information on the materials and coatings that will be employed, elevations and structural details of the tower, 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; certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and a boundary survey for the project performed by a land surveyor licensed by the State of Maine.

- d. A scenic assessment, consisting of the following:
- i.) Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 - ii.) 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.
 - iii.) 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.
 - iv.) A narrative discussing:
 - the extent to which the proposed facility would be visible from or within a designated scenic resource,
 - the tree line elevation of vegetation within 100 feet of the facility, and
 - the distance to the proposed facility from the designated scenic resource's noted viewpoints.
- e. A written description of how the proposed facility fits into the applicant's tele-communications network. This submission requirement does not require disclosure of confidential business information.
- f. 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:
- i.) Evidence that no existing facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements,
 - ii.) 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,
 - iii.) Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment. Specifically:
 - 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.
 - 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.
 - Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
 - iv.) 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;

- v.) 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;
- g. 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).
- h. A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - i.) 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;
 - ii.) negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - iii.) allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for colocation;
 - iv.) 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.
- i. A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned.

3. Fees:

- a. Planning Board Application Fee: An application for Planning Board approval shall include payment of an application fee of \$100.00. The application shall not be considered complete until this fee is paid.
- b. Planning Board Review Fee: An applicant shall pay all reasonable and customary fees incurred by the municipality that are necessary to review the application. The review fee shall be paid in full prior to the start of construction.

E. **Standards of Review:** An application for approval must meet the following standards.

- 1. 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.

- a. Colocation on an existing wireless telecommunications facility or other existing structure.
 - b. A new facility on public or private property in the Residential-Commercial District.
 - c. A new facility on public or private property in a Residential District.
 - d. New wireless telecommunications facilities may be permitted only in the following districts as designated in the Vinalhaven zoning ordinance:
 - Residential-Commercial District
 - Residential Marine 1 District
 - e. No wireless telecommunications facility shall be located in an area zoned RP or RM3, in a wetland or floodplain, or in the Shoreland zone.
2. 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:
 - The proposed location complies with applicable municipal policies and ordinances.
 - The proposed facility will not interfere with the intended purpose of the property.
 - 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.
 3. 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.
 4. Height. A new wireless telecommunications facility shall be no more than 150 feet in height above ground level (agl). In addition, the highest elevation of the structure, including antennas and obstruction lights, shall not exceed 225 feet above Mean Sea Level (MSL). All towers shall be no higher than that recommended by the Maine Department of Inland Fisheries and Wildlife.
 5. Setbacks. A new or expanded wireless telecommunications facility shall comply with the setback 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. Setbacks for guy anchors shall comply with the setback requirements for the zoning district in which it is located.
 6. Landscaping. A new wireless telecommunications facility, related equipment and fencing shall be screened with plants from view by abutting properties to the maximum extent practicable. Existing plants and natural landforms on the site shall also be preserved to the maximum extent practicable.
 7. Fencing. A new wireless telecommunications facility shall be fenced to deter trespass on the facility and to deter climbing on any structure by trespassers.

8. Lighting. A new wireless telecommunications facility shall 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.
9. Color and Materials. A new wireless telecommunications facility shall 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. The applicant shall provide MSDS (Materials Safety Data Sheets) or other information demonstrating that the coatings used on the tower will not adversely affect water quality, fish, wildlife or humans.
10. Structural Standards. Only self-supporting (non-guyed) towers or monopole antennas shall be permitted, unless the applicant can demonstrate that the use of a self-supporting tower will degrade telecommunications services to such a degree that the use of such a tower is technically not feasible. A new wireless telecommunications facility shall 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.”
11. Visual Impact. The proposed wireless telecommunications facility shall have no unreasonable adverse impact upon designated scenic resources within the Town, as identified in the municipally adopted comprehensive plan; a Town, State or Federal park; property containing a conservation easement because of its visual beauty, land under conservation, or by a State or federal agency.
12. Siting for Wildlife: An environmental impact study on wildlife shall be performed and reviewed by appropriate State wildlife management officials. No tower shall be sited in a location that is not recommended by the appropriate Maine State wildlife management agency.
13. 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.

14. Noise. Operation of a back-up power generator is permitted during construction, repair, replacement or testing between 8 a.m. and 9 p.m. A generator may be operated at any time during a power failure.

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

F. **Standard Conditions of Approval:** The following standard conditions of approval shall be a part of any approval or conditional approval. Where necessary to ensure that an approved project meets the criteria of this ordinance, the Planning Board may impose additional conditions of approval. Reference to the conditions of approval shall be clearly noted on the final approved site plan, and shall include:

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.
2. Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.

G. **Amendment to an Approved Application:** Any changes to an approved application must be approved by the Planning Board.

H. **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 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.

- Change the numbering of Section ~~19~~ – *Definitions* to Section 20 – *Definitions*.
- Add the following additional definitions to Section 20.B *Definitions*:

"**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 of Telecommunications Tower**" 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.

"**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 Vinalhaven's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

"**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 Vinalhaven'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 dish antenna or satellite dish) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.

"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, which 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 to be served by this proposed telecommunications facility.

"Unreasonable Adverse Impact" means that the proposed project would produce an end result that 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.