

Town of Machias
Communication Facility Ordinance
Enacted on February 7, 2019

Section 1. Title

This ordinance shall be known as the "Communication Facility Ordinance of the Town of Machias, Maine", and referred to within as the "ordinance".

Section 2. Authority

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

Section 3. Purpose

The purpose of this ordinance is to provide a set of standards and a process to regulate siting, construction, and operation of wireless communication facilities in the Town of Machias to:

Implement Machias Town policy concerning wireless communications services, and establish standards, guidelines and time frames for the exercise of Town authority.

Section 4. Applicability

This ordinance applies to all construction, expansion, and operation of communication facilities except as provided below.

Exemptions

The following apparatus of facilities are exempt from provisions of this ordinance:

A. Emergency Wireless Communication – temporary wireless communication facilities for emergency use by public officials;

B. Amateur Radio Stations – amateur (ham) radio stations licensed by the Federal Communication Commission;

C. Parabolic Antennas – parabolic antennas less than seven (7) feet in diameter that are an accessory use on a property;

D. Maintenance or Repair – maintenance, repair, or reconstruction of a wireless communication facility and related equipment provided there is no change in height of the facility, nor substantial increase in other facility dimensions;

E. Temporary Communication Facility – a communication facility installed for operation during a maximum period of Ninety (90) days at the conclusion of which it is removed;

F. Antennas as Accessory Uses – an antenna that is an accessory use to a residential dwelling unit with a height less than twenty (20) feet greater than the dwelling unit.

Section 5. Review and Approval Authority

No person shall construct, expand, or operate a wireless communication facility before the Town of Machias Planning Board has reviewed plans for and approved issuance of a permit for the communication facility as follows.

No person shall construct a new tower or wireless communication facility in Town without first utilizing all existing tower structures.

Approval is required for a new wireless communication facility and any expansion of an existing facility that increases facility height.

Approval is required for adaptation of existing antenna structures for a new service, collocating of equipment to be operated by and entity other than the existing operator, and similar accessory uses of an existing communication facility.

Section 6. Approval Process

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 a permit application. At this meeting, the board shall discuss and explain ordinance provisions with the applicant as well as the applications form and data submissions required under the ordinance.

6.1 Applications

An application for permission to construct a proposed wireless communication facility must include the following information:

- A. Documentation of the applicant's right, title, or interest in the property where the facility is to be located including the name and address of the property owner when the applicant does not hold full rights and title to the property;
- B. A copy of the Federal Commission license for the proposed facility or a signed statement from the owner or intended operator of the facility attesting that the facility will comply with current FCC regulations;
- C. A U.S. Geodetic Survey 7.5 minute topographic map showing the location of all structures and wireless communication facilities with a height greater than 450 feet above mean sea level and within thirty (30) miles of the proposed facility location. This requirement may be met by submitting current information (i.e., including data arising within thirty days of application date) from the FCC Tower Registration data base.
- D. A site plan:
 - 1. height of proposed facility structured; antenna tower capacity for additional equipment, on-site and abutting off-site land uses, means access, electrical power supply transmission lines, setbacks from property lines, and all applicable American National Standards (ANSI) technical and structural codes together with a boundary survey of the site prepared by a Maine licensed land surveyor.

2. the plan shall be accompanied by a rationale and certification that the facility will comply with all Federal Communication Commission radio frequency energy emission standards.

E. A scenic assessment including the following:

1. elevation drawings of all proposed placement of the facility showing height above mean sea level and local ground level;
2. a landscaping plan indicating the proposed placement of the facility on the site, location of existing structures, trees, and other visually significant features; the type and location of plants proposed to screen the facility; the method of fencing; the color of visible structures; and the plan of lighting other than that required by the Federal Communication Commission. The number, brightness, and proposed schedule for FCC-required lighting shall be described.
3. photo simulations of the proposed facility as it might be seen from locations designated by the Planning Board at a preliminary meeting with the applicant. Each simulated photo (or actual photo with proposed facility structures sketched in) shall be labeled with the location, line of sight, angular elevation, and date taken. The photos must show the color of the facility and presence or method of screening.

F. A written description of how and why the proposed facility is part of the applicant's communication system or network of communication facilities. This requirement does not envision disclosure of confidential business information.

G. Evidence and rationale demonstrating that no existing building, communication facility, or structure can accommodate the applicant's radio frequency energy radiating or receiving elements. Relevant data and information includes:

Evidence that no existing suitable facility can reach the targeted market coverage area as required by the applicant's technical requirements.

Suitability and lack thereof shall be described in terms of:

planned and necessary equipment would exceed structural capacity of existing facilities considering the existing and planned use of the facilities, and existing facilities cannot be economically reinforced or reconstructed to accommodate new equipment;

the applicant's proposed emissions would cause irremediable electromagnetic interference with the applicant's proposed service:

engineering and cost estimates for modification of existing facilities to be practical for the applicant's purposes.

H. Evidence that the applicant has made diligent good faith efforts to negotiate collocation of his equipment on an existing, facility, building, or other structure and has been denied use of the facility, building, or structure.

I. 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). **No communication towers shall be permitted at any location within Five (500) Hundred Feet of a historical site listed on or eligible for the National Historic Register.**

J. A formal statement from the existing of proposed owner of the wireless communication facility and his of her successors and assign agreeing to:

1. respond in a timely, comprehensive, manner to a request for information from an applicant for location of equipment on the proposed facility in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
2. negotiate in good faith with a third party for shared use of the community facility;
3. allow shared use of the wireless communication facility if a subsequent applicant agrees to pay reasonable charges for collocation;
4. require no more than a reasonable charge for shared use based on community fates and accepted accounting principles. Such charge may include, but is not limited to, a pro rata share of the cost of site planning and preparation, land costs, site design and construction, depreciation, return of equity, and all other costs of adapting the facility to accommodate shared usage without causing electromagnetic interference with one party or another. Amortization of costs by the facility owner shall occur at a reasonable rate over the useful life of the facility.

K. A form of surety approved by the Planning Board to cover costs of facility removal and site renewal in the event the facility is abandoned.

L. Evidence that a notice of intent to apply has been published in a local newspaper of general circulation no later than fourteen (14) days prior to submission of the application.

6.2 Submission of Waiver

Upon written request by the applicant, the Planning Board may waive any submission requirement. A waiver of submission requirements shall be granted only when the Planning Board documents the fact and argument that, due to special circumstances of the application, the data or information is not required to determine compliance with standards of this ordinance.

6.3 Fees

A. Application Fee -

Upon submission of an application to construct or expand a wireless communication facility, the applicant shall pay a fee, for communication facilities exceeding thirty (30) feet in height as established by the Board of Selectmen on an annual basis and shall be based on a per foot price of structure height. Communication towers with a height less than thirty (30) feet height will be reviewed by the Machias Planning Board but will not require a Building Permit. The application shall be incomplete until these fees are paid. An applicant shall be entitled to fee refunds if the application is withdrawn within fifteen (15) days of permit review less any Town expenses incurred in handling the application during the interval.

B. Review Fee -

The applicant shall pay all reasonable and customary costs incurred by the Town of Machias Planning Board that are a necessary part of the application review. The review fee shall be paid in full before start of construction on an approved facility and within sixty (60) days after permit is denied.

6.4 Notice of Complete Application

Upon receipt of an application, the Town Clerk shall provide the applicant with a dated receipt. The Planning Board shall review any waiver requests and act upon these requests within forty-five (45) days prior to determining completeness of the application.

If the application is complete, the Planning Board shall formally notify the applicant within forty-five (45) days of application submission and request five (5) additional application copies to be used for review purposes. When the application is considered incomplete, the Planning Board shall immediately notify the applicant specifying additional information or data required to complete the application. Upon submission of the requested materials, the Planning Board shall determine application completeness within forty-five (45) days.

When an application is deemed complete, the Planning Board shall notify, by first-class mail, owners of land abutting the proposed facility site that a completed application has been accepted. The notice shall contain a brief description of the proposed facility, the name of the applicant, and the location of an application copy that is available for public inspection. Failure on the part of any abutter to receive such notice shall not be grounds for delaying consideration of the application nor denial of the proposed construction.

6.5 Public Hearing

A hearing to inform the general public in Machias shall be scheduled within forty-five (45) days of notice of complete application.

6.6 Approval and Permit Issuance

Within ninety (90) days of receiving a complete application for construction, installation, or modification of a wireless communication facility, the Planning Board shall approve, approve with conditions, or deny the application. The basis and rationale for Planning Board action shall be documented.

Should the Planning Board be confronted with several essentially simultaneous applications, it shall confer with the applicants to establish an agreeable schedule for completing reviews of each application. Under no circumstance shall a permit be issued before the Planning Board, in its sole discretion, has determined that its review is complete.

Section 7. Standards of Review

To meet standards for the issuance of a building permit, a wireless communication facility application shall meet the following standards:

A. Location Priority

A new wireless communication facility must be located according to the priorities below. The applicant shall provide factual evidence when a facility cannot reasonably be placed on higher priority

1. Collocation on an existing wireless communication facility of other existing structure.
2. Location on municipal property of property devoted to and existing public utility (pipeline right-of-way, transmission line corridor, etc.).
3. A new facility on municipal or private property other than as above and not in a Shoreland district.
4. A Shore land district as defined in Town of Machias ordinances.

B. Sites on Municipal Property

If an applicant proposes to locate a new wireless communication facility or expand an existing facility on municipal property, the applicant must show the following;

1. The proposed facility will not interfere with the original or existing use of the property
2. The applicant has adequate liability insurance and a lease agreement with the Town of Machias that includes reasonable compensation for use of the property and other provisions to safeguard the public rights and interests in the property.

C. Design for Collocation

A new wireless communication facility shall be designed and constructed to accommodate future collocation of at least three (3) additional provider equipment (antennas) similar to that proposed by the applicant. The Planning Board may waive or modify this standard where height limits of

other physical factors cannot be satisfied; the Planning Board shall document the rationale for the waiver.

D. Height of new wireless communication facility shall be no more than one hundred fifty (150) feet above the highest terrain in Machias

E. Setbacks

Any structure (tower, pylon, building, etc.) with a height greater than thirty (30) feet shall be set back five hundred (500) feet from property lines of abutting land owners. The setback requirement may be satisfied by including area beyond the applicant's property when the area owner has signed an easement for such purpose.

F. Landscaping

A new wireless communication facility, ancillary buildings, and equipment shall be screened by shrubbery, trees, of similar plants to be obscured from view on adjacent properties. Existing plants and land forms on the site should be used to the extent practicable.

G. Fencing

A new wireless communication facility shall be fenced to discourage trespass on the facility and prevent unauthorized climbing on towers and similar structures.

Insofar as it may be practical, fences may satisfy the demand for facility screening.

H. Lighting

A new wireless communication facility shall be illuminated only as necessary to comply with Federal Aviation Administration and other federal and state requirements. However, security lighting may be used so long as it is shielded to be down-directed to confine illumination to areas within facility boundaries. All applicants shall be responsible to contact the Federal Aviation Administration and obtain a clearance letter to construct a communications tower within the Town of Machias. A copy of the letter must be included with the application.

I. Color and Materials

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

J. Structural Standards

A new wireless communication facility must comply with the current Electronic Industries Association and Telecommunication Industries Association (EIA/TIA) 222 Revision Standard titled "Structural Standards for Steel Antenna Towers and Supporting Structures".

K. Visual Impact

A proposed wireless communication facility shall have no unreasonable adverse impact upon designated scenic resources in and adjacent to the Town of Machias.

In determining visual impact of a proposed facility, the Planning Board shall consider the following factors;

1. The extent to which the proposed facility will be visible above the tree line from affected scenic resources.
2. The type, number, height, and proximity of existing structures and features, and background features, within the same line of sight to the proposed facility.
3. The extent or proportion of the proposed facility which would be visible from the designated viewpoints.

L. Noise

During construction, repair or replacement, and testing of power generating equipment, operation of a noise-producing machine shall occur only during the hours of 8:00 AM to 9:00 PM. Operation of a power generator during a failure of commercial electric power is exempt from this restriction. Preferably, noise from a back-up generator will be muffled by appropriate vegetation and not reflected from building walls onto adjacent properties.

M. Historic and Archeological Properties

The proposed communication facility, to greatest degree practicable, will have no adverse impact or be located within five hundred (500) feet of the historic district, a historic site, or any structure which is currently on or eligible for listing on the National Register of Historic Places.

Section 8. Standard Conditions of Approval

In addition to satisfying the requirements of Section 7, the following conditions shall be part of an approval of conditional approval of a permit for construction or alteration of a wireless communication facility. Where necessary to assure that an approved project meets criteria of this ordinance, the Planning Board may impose additional conditions of approval. Reference to and the rationale for conditions of approval shall be documented by the Planning Board. When those conditions affect physical dimensions of the proposed facility, they shall be noted on the final site plan.

A. Certification of the applicant's intent to comply with all Federal Communication Commission emission regulations for radio frequency energy.

B. Declaration of intent to negotiate in good faith with applicants for shared use of the facility.

Section 9. Amendment of an Approved Application

Any changes to an approved application shall be reviewed for approval by the Planning Board in accord with Section 5.

Section 10. Abandonment

A wireless communication facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of

and abandoned facility by certified mail to order removal of the facility within ninety (90) days of written notice receipt. The owner shall have thirty (30) day period within which to demonstrate to the CEO of the Planning Board that the facility has not been abandoned.

If the abandoned facility is not removed in the allotted time period, the Town of Machias may remove the facility and bill the owner for costs incurred. Site reclamation costs are those deemed necessary to restore the site to its pre-construction status including removal of roads and re-establishments of vegetation.

If a surety had been given to the Town for facility removal, the owner shall apply to the Planning Board for return of that surety, or its residual value, after the facility and related artifacts are removed.

Section 11. Appeals

Any person aggrieved by a decision of the CEO or the Planning Board relative to this ordinance may appeal the decision to the Washington County Commissioners or to the Superior Courts of Washington County. Written notice of appeal must be filed with the Town Clerk within thirty (30) days of the questioned decision. The notice of appeal shall clearly state the reasons for appeal.

Section 12. Administration and Enforcement

The Machias Code Enforcement Officer, as appointed by the Machias Selectmen, shall enforce this ordinance. When the CEO believes that any provision of the ordinance has been violated, he shall notify in writing the person presumed responsible for the alleged violation indicating its nature and necessary actions to correct it. The communication facility owner or operator shall appeal, as above, when he questions a CEO action.

The Machias Selectmen may enter into administrative consent agreements for the purpose of eliminating violations of this ordinance and recovering penalties without necessity of court action. Such agreements shall not allow a violation to continue unless there is clear evidence that the violation occurred as the direct result of erroneous advice given by an authorized Town official, upon which the owner-operator reasonably relied, and there is no evidence that the owner-operator acted in bad faith, or removal of the violation will result in substantial threat to public health or safety or substantial environmental damage.

Section 13. Penalties

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

Section 14. Conflict and Severability

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

Section 15. Definitions

Words used in this ordinance shall carry their customary meaning with the following terms to be interpreted according to these definitions:

“Antenna” means any system of poles, panels, rods, energy reflecting surfaces, and similar devices used for the reception or emission of electromagnetic energy.

“Antenna height” means the vertical distance measured from a defined reference (local ground level, mean sea level, etc.) to the highest point of an antenna supporting structure including the radiating or receiving structure itself. If the antenna support is on a sloped grade, then the average between the highest and lowest grade shall be used in calculating antenna height above local ground level.

“Collocation” means the placement of equipment from more than one wireless communication service provider on a communication facility (area, tower, building, etc.).

“Communication facility” means the land area, buildings, towers, power supply, etc. described by documents associated with a communication facility construction permit issued by the Machias Planning Board.

“Expansion” means the addition of antennas, ancillary equipment, towers, or other artifacts to an existing wireless communication facility.

“Line of sight” means the direct view of an object from a designated scenic resource.

“Parabolic antenna” (also known as a satellite dish antenna) means an antenna, which is bowl-shaped, designed for reception or transmission of electromagnetic energy.

“Principal use” means that purpose or use which motivated construction or installation of a structure as opposed to those incidental uses which are neither necessary nor ancillary to a principal use.

“Targeted market coverage area” means the geographic area to be served by a proposed communication service.

“Unreasonable adverse impact” means a facility construction result which is:

- 1.) excessively out-of-character with a designated scenic resource;
- 2.) would significantly diminish the scenic value of a designated resource.

“Viewpoint” means a location which is identified in the Town comprehensive plan or by federal or state Agency and is associated with a designated scenic resource.