

**TOWN OF BRIDGTON
TOWER ORDINANCE**

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TOWN OF BRIDGTON
Tower Ordinance

This Ordinance is enacted pursuant to the Municipal Home Rule Authority (30A MRSA 2101 et seq), Municipal Ordinance Authority (30A MRSA 3001 et seq), and the Town of Bridgton Comprehensive Plan.

SECTION I. PURPOSE

This Ordinance is designed and intended to balance the interests of the residents of the Town of Bridgton, telecommunications providers, and telecommunications customers in the siting of telecommunications facilities within the Town of Bridgton. This Ordinance is also intended to promote safe, effective and efficient use of wind energy systems to reduce the dependence of fossil fuel energy sources and on-site consumption of utility-supplied electricity by encouraging the development of on-site energy production and consumption by providing standards for alternative wind powered energy. These purposes are also intended:

- A. To minimize the adverse impact of such facilities including - visual impacts, environmental impacts, impacts to historically significant areas, health and safety impacts and property value impacts.
- B. To encourage co-location of carriers and minimize the total number of towers located within the town.
- C. To permit the construction of new towers only where all other reasonable opportunities have been exhausted.
- D. To encourage the users of towers and antennas to configure them in a way that minimizes the need for additional towers in the Town of Bridgton.
- E. To provide for the removal of structures which are no longer being used for telecommunications or wind energy purposes.

SECTION II. DEFINITIONS

Alternative Tower Structure - shall mean clock towers, bell steeples, light poles and water towers, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

Antenna - shall mean any exterior apparatus designed for commercial transmission of telephonic, radio, or television, or similar communications through the sending and/or receiving of electromagnetic waves.

Co-Location - shall mean the location of more than one telecommunications facility (use) on a tower or alternative tower structure.

FAA - shall mean the Federal Aviation Administration.

FCC - shall mean the Federal Communications Commission

Height - shall mean, when referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if said highest point is an antenna or wind turbine blade when the tip is at its highest point.

Meteorological Tower - shall mean a structure designed to support the gathering of wind energy resource data and includes the tower, base plate, anchors, guy cables and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location relevant to siting a wind energy conversion system.

Telecommunications Facility - shall mean 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 access services, and personal communications service (PCS) or pager services. Telecommunications Facilities shall be considered a principal use. Pre-existing accessory use towers/antennas shall be exempt from this definition.

Threshold Height - shall mean the height, as defined above, below which a telecommunications facility does not need review and approval as a special exception, unless otherwise noted herein.

Tower - shall mean any structure, whether freestanding or in association with a building or other permanent structure, that is designed and constructed primarily for the purposes of supporting one or more antennas, including self-supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and similar structures.

Wind Energy System - shall mean equipment that converts and then stores or transfers energy from the wind into usable forms of energy and includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, turbine, vane, wire, or other component used in the system.

Wind Tower - shall mean a monopole, freestanding, or guyed structure that supports a wind turbine generator.

Wind Turbine Height - shall mean the height above grade to the tip of the turbine blade when it reaches its highest elevation.

SECTION III. PERMITS REQUIRED

A. All new telecommunications facilities, towers or wind energy system which exceeds 35 feet in height in the shoreland zone and all telecommunications facilities, towers or wind energy system exceeding 70 feet in all other areas must apply for, acquire and conform to the requirements of Section IV below.

B. New telecommunications facilities, towers or wind energy system below those threshold heights shall be considered a permitted accessory use, and shall need only to apply for and receive a building permit from the Code Enforcement Officer, if such telecommunications facility, tower or wind energy system is accessory to a principal use on the lot and is used for the private communications or wind energy conversion of the owner of or business location on the lot.

C. All telecommunications facilities, tower or wind energy system proposing to locate on existing towers or alternative tower structures below the threshold heights as set forth above shall apply for and conform to the requirements of a building permit from the Code Enforcement Officer.

D. All other telecommunications facilities, towers or wind energy system below the threshold heights as set forth above shall submit an application to the Bridgton Planning Board.

E. The same procedures and application guidelines apply for a meteorological tower. A building permit issued for a meteorological tower by the Code Enforcement Officer shall expire two years after issuance.

SECTION IV. APPLICATION PROCEDURE

A. All applications under this section shall be reviewed by the Planning Board of the Town of Bridgton in accordance with the procedure, standards and submission requirements set forth below and of The Bridgton Site Plan Review Ordinance and the Bridgton Shoreland Zoning Ordinance as applicable.

B. All activities or construction that require a permit in accordance with this Ordinance shall be submitted in an application to the Code Enforcement Officer. The Code Enforcement Officer, after reviewing the application to determine if it contains sufficient information as required below, will schedule the completed application for review at the next available meeting of the Planning Board.

C. Each application for a permit under this Ordinance shall submit a scaled plan and application in accordance with the following submission requirements:

1. Location of the proposed structure, including map/lot number and street address.

2. Name of owner or operator of the telecommunications facility, tower or wind energy system and owner of property.

3. Proof of right, title and interest to use the property on which the telecommunications facility, tower or wind energy system is proposed.

4. Name of company(ies) responsible for constructing and/or maintaining the telecommunication facility, tower or wind energy system.

5. Date the telecommunication facility, tower or wind energy system in cases of co-location, was initially constructed or is proposed to be constructed.

6. A description and construction detail of the telecommunication facility, tower or wind energy system including: plot plan identifying location of the tower on the property; dimensions of the tower; structural supports, if any; lighting; color; and equipment located on the structure, if any. This description shall also identify any accessory structures that are essential to operation of the telecommunication facility.

7. A topographic map, drawn at a scale of 1 inch = 50 feet (or other appropriate scale as determined by the Planning Board) of the property proposed as location of the structure. The topographic map shall identify: accurate contours at not less than 5 foot intervals (or other dimensions of the property; appropriate scale as determined by the Planning Board) existing vegetation, particularly noting height, diameter, density, quality, and type (deciduous or evergreen) of existing trees, wetlands, floodplains, streams and open bodies of water; ledge outcrops; soils data, medium intensity; all existing structures on the property; and any right-of-ways, easements, or similar encumbrances on the property; and other significant features.

8. A locus map drawn at a scale of not less than 1 inch = 100 feet (or other appropriate scale as determined by the Planning Board) that identifies all properties, all residences, all non-residential structures, all roads and the natural topography (vegetation and contours at 20 foot intervals) of the area located within a radius of 1000 feet of the proposed telecommunication facility location.

9. A landscape plan prepared at a scale of 1 inch = 50 feet (or other appropriate scale as determined by the Planning Board) that

identifies how the applicant shall satisfy landscape, screening and buffering requirements.

10. A visual impact analysis prepared by a landscape architect or other qualified professional that quantifies the amount of visual impact on properties located within 500 feet, within 2,500 feet and within 2 miles of the proposed telecommunication structure. This analysis shall include recommendations to mitigate adverse visual impacts on such properties.

11. An analysis prepared by a qualified professional that describes why this site and structure is critical to the operation for which it is proposed. The analysis shall address, at a minimum; existing and proposed service area maps; how this structure is integrated with other company operations, particularly other structures in Bridgton and surrounding communities; future expansion needs in the area; the affect on company operations if this structure is not constructed in this location; other sites evaluated for location of this structure and how such sites compare to the proposed site; other options, if any, which could be used to deliver similar services, particularly if the proposed equipment can be co-located (shared use) on an existing structure; and an analysis to the projected life cycle of this structure and location.

12. Certification by a structural engineer that construction of the structure shall satisfy all Federal, State and Local building code requirements as well as be able to satisfy the needs of maximum permitted co-location at the site (as approved by the Planning Board) per the height limits of the applicable zoning district.

13. Payment of all required performance guarantees as a condition of plan approval - with a note on the plan so stating.

D. The Planning Board has discretion to request additional information to proceed with the review process the cost of producing such additional information to be borne solely by applicant.

E. All applications shall be accompanied by fees as set by the Town of Bridgton.

14. Submit a plan for removal of the structure and restoration of the site. (6-9-99)

SECTION V. REVIEW PROCEDURES

A. The Planning Board shall make its decision to approve, approve with conditions, or deny an application within 90 days after review begins or within another time limit as may be mutually agreed to by the Board and the Applicant.

B. The Planning Board shall schedule a public hearing within forty-five (45) days of taking up the application. Notification of the hearing shall be provided:

1. By the Applicant in writing, at least ten (10) days prior to the hearing, to all owners of property that directly abut or are located within one thousand (1,000) feet of any property line of the property for which the tower is requested. (Notice to the owners within the first 500 feet shall be by certified mail the remaining notice shall be by first class mail). Notice shall also be given by certified mail to any town located within 1,000 feet of the proposed telecommunications facility. The applicant also shall present proof of such notification satisfactory to the Code Enforcement Officer. The notification shall include: the name of the applicant location of the property, a brief description of the project, and a plot plan identifying the proposed site layout in relation to nearby streets and properties.

2. By the Town posting notice of such hearing in the Municipal Office a minimum of ten (10) days in advance of the hearing.

3. By the Town advertising in a newspaper of general circulation within the Town notice of the hearing a minimum of ten (10) days in advance of the hearing.

C. The Planning Board will, after a public hearing and review of the application, issue Findings of Fact and Conclusions which outline the reasons it approves, approves with conditions, or denies the telecommunications structure application. The Board shall use the standards identified in The Bridgton Site Plan Review Ordinance as well as those noted below (Section VI) to make its decision. The Planning Board may impose conditions on any approval issued hereunder to ensure conformity with the purposes of this Ordinance and the Town of Bridgton Comprehensive Plan.

SECTION VI. REVIEW GUIDELINES

A. The Planning Board will be guided in its considerations by the following standards:

1. Height of proposed telecommunication facility, tower, wind energy system or other structure does not exceed that which is essential for its intended use and public safety.

2. Proximity of the telecommunication facility, tower or wind energy system to residential development or zones does not create undue impact on the value or use of property(ies) in such residential areas.

3. Nature of uses on adjacent and nearby properties and the degree of incompatibility of the proposed construction or activity with such adjacent and nearby uses.

4. Surrounding topography of the proposed site and the degree to which any specific topographical features render the proposed site incompatible with the purposes of this Ordinance, or require special consideration(s) as to drainage, erosion and sedimentation control.

5. Surrounding tree coverage and foliage and the extent to which the proposed site or construction would disturb or diminish such coverage and foliage, or require special consideration(s) as to landscaping or buffering.

6. Design of the telecommunication facility, tower, wind energy system, antenna, or facility with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness including the need for landscaping or other site improvement(s).

7. The safety and utility of any proposed ingress and egress to the site.

8. Availability of suitable existing telecommunication facility, towers, wind energy system and other alternative tower structures or locations as discussed in Section VII.

9. Visual impacts on view sheds, ridge lines, and other impacts resulting from telecommunication facility, tower or wind energy system location, tree and foliage clearing and placement of incidental structures, powerlines and access roads.

10. Visual impacts on the view from any public park, natural scenic vista, historic building or major view corridor.

11. That the proposed telecommunication facility, tower, dish, wind energy system be constructed in such a manner not to result in needless height, mass, and guy-wire supports with documentation having been provided and review regarding the design capacity and/or the remaining co-location capacity of the telecommunication facility, tower, wind energy system.

12. The proposed telecommunication facility, tower or wind energy system will minimize potential effects on wildlife.

A. The Planning Board may use any technical and professional services necessary to assist in their review of a telecommunication facility, tower or wind energy system. Services may include but are not limited to: an analysis of shared use, an analysis of visual impact, an analysis of the structure satisfying federal and state requirements, an analysis of alternative sites, and other issues required to satisfying requirement of this section. The applicant shall be required to pay all costs involved with these professional services.

B. The Code Enforcement Officer may use professional and technical services to inspect construction of an approved

project. The applicant shall pay all costs incurred for these inspection services.

SECTION VII. PERFORMANCE STANDARDS/DIMENSIONAL REQUIREMENTS

A. Height

1. Telecommunication facilities, towers, antennas and facilities shall not exceed a height of 150 feet except that where evidence of acceptable design and co-location is provided to the Planning Board, an additional 25 feet of height per each additional user is permitted, (based upon signed agreements to be filed with the Code Enforcement Officer prior to the issuance of any building permit). No telecommunications facility shall exceed a height of 200 feet.

2. Wind Energy Systems shall not exceed a height of 150 feet except where evidence of an alternate design and wind energy resource data collected by a meteorological tower is provided to the Planning Board for consideration.

B. Setbacks

1. All telecommunication facilities, towers and wind energy systems shall be setback from the lot lines of any residential use or residential zoning district a distance equal to at least 125% of the tower height. The height used shall be the maximum design height approved for the site.

2. Tower, guys and accessory facilities shall meet the minimum zoning district setback requirements.

3. Rotor blades on wind turbines must maintain at least twenty-four (24) feet of clearance between their lowest point and the ground.

C. Limit of Noise Levels

1. Telecommunication facilities, towers or wind energy systems shall not raise noise levels to the extent that abutting and/or nearby residents are adversely affected.

2. The maximum permissible sound pressure level of any continuous regular or frequent source of sound produced by any activity regulated by this Ordinance shall be as established below. Sound pressure levels shall be measured on a sound level meter at all major lot lines of the proposed site, at a height of at least four feet above the ground surface.

Sound Pressure Level Limit:
55 dB (A) - 70 dB (A)

D. Aesthetics, Landscaping, Buffers & Fencing

1. Telecommunication facilities, towers or wind energy systems shall have a galvanized, rust resistant steel finish or be painted a neutral color which is non-reflective to conform to the surrounding environment and reduces visual obtrusiveness.

2. No telecommunication facility, tower or wind energy system shall have any signage, writing or pictures that may be construed as advertising placed on it at any time.

3. No flags, streamers or decorative items shall be attached to any telecommunication facility, tower or wind energy system.

4. All telecommunication facilities, towers and wind energy systems, shall maintain the required setbacks as undisturbed vegetated buffers, except for the access road. The Planning Board may require additional plantings in the buffer area to enhance the quality and effectiveness of the buffer area to serve as a visual screen. The size and quantity of plantings shall be subject to Planning Board approval.

5. The design of the buildings and related structures shall, to the extent possible, use materials, colors, textures, screenings and landscaping that will blend the telecommunication facility, tower or wind energy system to the natural setting and built environment.

6. Telecommunication facilities, towers and wind energy systems shall not be artificially lighted, unless required by the FAA or other Federal or State authority. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance of the surrounding properties and views. Evidence of compliance or non-applicability shall be submitted with the application.

7. Road access to the telecommunications facility, tower, wind energy system and/or structures shall be so located to minimum size necessary to allow safe access.

8. The base of a telecommunications facility, tower or wind energy system may not be located in a wetland or floodplain.

9. A security fence or wall not less than eight (8) feet in height from the finished grade shall be provided around the telecommunication facility or tower. Access to the telecommunication facility or tower shall be through a locked gate. Wind energy systems are exempt from this criteria.

E. Investigation of Existing Alternative Towers, Sites & Structures

Applicants shall identify all existing and proposed (on file in the Municipal Office) telecommunication facilities and/or towers, including their heights, located in the town and within one mile of the town boundaries. Applicants must provide evidence of the lack of antenna space on all such telecommunication facilities

and/or towers, (except in cases where access is denied by tower or property owner), and shall identify other telecommunication facilities and/or tower structures and sites which have been investigated as an alternative to constructing a new telecommunication facility or tower. Applicant shall address the use of co-location and/or other alternative telecommunication facilities and/or tower structures and shall demonstrate that they cannot provide adequate communication service utilizing such existing telecommuniciaton facilities, towers or structures.

F. Co-Location - The applicant and owner shall allow other future wireless service carrier, using functionally equivalent personal wireless technology to co-locate antennae, equipment and facilities on a telecommunications facility or tower and site, unless satisfactory evidence is presented and the Planning Board concurs that technical constraints prohibit co-location. Space shall be provided at no charge to public agencies namely police, fire, ambulance, communications and Highway if requested at the time of review by the Planning Board.

G. Other Requirements

1. Building Code and Safety Standards - To ensure the structural integrity of telecommunications facilities, the owner shall ensure that it is designed, constructed and maintained in conformance with application Federal, State and Local building, electrical and safety codes.

2. Advertising - No advertising or signage is permitted on telecommunications facilities.

SECTION VIII. Performance Guarantees and Removal of Abandoned/Unused Facilities General Guarantee

A. No building permit may be issued until the applicant has filed a performance guarantee with the Town Manager equal to 100% of the cost of completing the following improvements;

1. The construction of any drainage systems involving piping, culverts, or retention or detention facilities; and

2. The construction of erosion and sedimentation control measures or landscaping required to meet the standards of this section; and

3. Other site improvements required by the Board to meet the standards of this section.

B. Removal of Abandoned/Unused Facilities

1. The owner of a telecommunications facility, tower or wind energy system shall be required to remove the telecommunication facility, tower or wind energy system should it not be used for the use or uses approved for a period of twelve (12) consecutive

months. An applicant for a permit under this section shall post a performance guarantee with the Town prior to obtaining a permit that is equal to 125% of the cost of removing the structure.

a. The Code Enforcement Officer may extend the removal time-frame (twelve (12) months) if proof of extenuating circumstances is submitted and approved by the Code Enforcement Officer.

2. The performance guarantee covering such removal shall be for a minimum term of five years. It must contain a mechanism, satisfactory to the Town, for review of the cost of removal of the structure every five years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate so necessitate.

SECTION IX. ENFORCEMENT

Any construction of or on or use of any premises for a telecommunications facility, tower or wind energy system purposes as set forth above without first obtaining a permit as required hereunder, or any use of any site or facility not in compliance with the terms and conditions set forth in any permit issued hereunder, or any material misstatement of fact in any application or supporting documentation discovered subsequent to the issuance of any permit hereunder, or any failure to comply with and maintain the performance guaranties and/or removal requirements set forth hereunder, or any failure to observe and comply with any provision of this ordinance, shall be deemed a violation of this Ordinance. This Ordinance shall be enforced, and any violations hereof abated, by the municipal officers of the Town of Bridgton or their duly authorized designees, and shall be enforceable by and under, and subject to all the terms, fines and penalties of 30A MRSA 4451 and 4452, as amended, which are incorporated herein by reference.

SECTION X. APPEALS

1. Any person, firm or corporation aggrieved by a decision of the Code Enforcement Officer ("CEO") or Planning Board may appeal such decision to the Board of Appeals within 30 days of the written decision by filing an appeal at the office of the Town Clerk on forms approved by the Board of Appeals.

2. The fee established by the Board of Selectmen (see fee schedule) shall be paid at the time of filing the appeal to cover the cost of advertising. An escrow fee shall also be paid for miscellaneous services rendered in processing the application. This fee shall also be established by the Board of Selectmen. Any unused portion of the escrow shall be returned to the appellant.

3. Appeals from decisions of the CEO shall be de novo. The CEO shall transmit to the Board of Appeals the decision and all documents and other evidence on which the decision was based

which may be considered as evidence in the de novo proceeding. The Board of Appeals shall conduct a public hearing at which all persons shall have the right to present additional testimony and documentary evidence. At the public hearing, any party shall have the right to cross-examine witnesses. The standard of review shall be whether, on the basis of the evidence before the Board of Appeals, the application conforms to the requirements of the Ordinance. The burden of proof shall be upon the applicant for the permit or approval. The Board of Appeals shall have authority to grant or deny a permit or approval or to remand the matter to the CEO for further proceedings.

4. Appeals from decisions of the Planning Board shall be purely appellate. The CEO shall transmit to the Board of Appeals the decision of the Planning Board and all documents and other evidence comprising the record on which the Planning Board decision was based. The Board of Appeals shall conduct a public proceeding at which all persons shall have the right to present legal argument concerning the decision of the Planning Board. The Board of Appeals shall not permit the introduction of additional testamentary or documentary evidence. The standard of review shall be whether the decision of the Planning Board was arbitrary or capricious, based on error of law or on findings of fact not supported by substantial evidence in the record. The Board of Appeals shall have authority to sustain or reverse a decision of the Planning Board or to remand the matter to the Planning Board for further proceedings.

5. The Board of Appeals shall not continue a public hearing on an appeal to a future date except for good cause.

6. The affirmative vote of three members of the Board of Appeals shall be necessary to grant an approval or permit on appeal from a decision of the CEO or to grant an appeal from a decision of the Planning Board. The failure of the Board of Appeals to issue a written notice of its decision, directed to the appellant by registered mail, within thirty five (35) days of the close of the public hearing shall constitute a denial of the appeal.

7. Any aggrieved party may appeal a decision of the Board of Appeals to Maine Superior Court within 45 days of the date of the vote of the Board of Appeals in accordance with 30-A M.R.S.A. § 2691 and Rule 80B of the Maine Rules of Civil Procedure.

SECTION XI. SEPARABILITY

If any section, part of a section or any provision of this Ordinance is declared by a court of competent jurisdiction to be unconstitutional, invalid or unenforceable such declaration shall not affect the validity or enforceability of the Ordinance as a whole, or any part or provision other than that specifically declared to be unconstitutional, invalid or unenforceable.

SECTION XII. NO RETROACTIVE EFFECT

This Ordinance does not render illegal any structure, facility or use which legally existed or was under active construction at the effective date of this Ordinance. Permits issued prior to the adoption of this Ordinance remain valid for a period of one year from the initial date of issuance.

SECTION XIII. AMENDMENT

This Ordinance may be amended by a vote of a Town Meeting, upon a town meeting warrant article submitted by the Planning Board after public hearing.

SECTION XIV. EFFECTIVE DATE

This Ordinance takes effect and is in force as of the date of its enactment by a duly called annual or special Town Meeting.

SECTION XV. EXEMPTIONS

All non-commercial applications exempted.

Enacted: June 10, 1998

Amended: June 9, 1999, June 12, 2007 and June 9, 2009