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CHAPTER VI WIRELESS TELECOMMUNICATIONS FACILITIES¹

SECTION I - 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 4212 et seq.

SECTION II - PURPOSE

The purpose of this ordinance is to provide a set of standards for the construction of wireless telecommunications facilities in order to:

- Implement a municipal policy concerning the provision of wireless communications services, and the siting of their facilities;
- Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of Gorham;
- Permit and manage reasonable access to the public rights of way of Gorham for telecommunications purposes on a competitively neutral basis;
- Ensure that all telecommunications carriers providing facilities or services within Gorham comply with the ordinances of the Town of Gorham;
- Ensure that Gorham can continue to fairly and responsibly protect the public health, safety and welfare; and to avoid potential damage to adjacent property through engineering and careful siting of tower structure;
- Minimize the total number of towers in Gorham through co-location requirements and encourage multiple users on towers and tower sites, thus helping to minimize adverse visual impacts on the community;
- Enable Gorham to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;
- Protect the scenic and visual characteristics of the community, as identified in its comprehensive plan or other municipally adopted plan, to the greatest extent possible;
- 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.

SECTION III - APPLICABILITY

This local land use ordinance applies to all construction and expansion of wireless telecommunications facilities, except as provided in Section 3.1.

3.1 Exemptions

The following are exempt from the provisions of this Chapter:

¹ Section added May 2, 2000

- A. Temporary wireless communication facilities for emergency communications by public officials;
- B. Amateur (ham) radio stations, with antennas of 25 feet or less, licensed by the Federal Communications Commission (FCC);
- C. Parabolic Antennas less than 7 feet in diameter that are an accessory use of the property;
- D. 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, in operation for a maximum period of one hundred eighty (180) days and at a location that had been previously approved by the Town;
- F. An antenna that is 25 feet or less that is an accessory use to a commercial or residential dwelling unit;
- G. Towers used to augment or facilitate the governmental business or primary governmental function of the Town of Gorham; and
- H. Towers lawfully in existence on the date of passage of this ordinance that are 110 feet or less in height (provided that any such tower may expand an additional 20 feet from the height lawfully in place on the date of passage of this ordinance without requiring any additional review or approval under this ordinance).

SECTION IV - REVIEW AND APPROVAL AUTHORITY.

4.1. Approval Required

No person shall construct or expand a wireless telecommunication facility without a permit.

- A. Expansion of an existing facility and co-location. Except as otherwise provided, in 3.1H, approval by the CEO is required for any expansion of an existing wireless telecommunications facility that increases the height of the facility by no more than twenty (20) feet in total after the adoption of this ordinance; accessory use of an existing wireless telecommunications facility; or co-location 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 twenty (20) feet.

SECTION V - APPROVAL PROCESS

5.1 Pre-Application Conference

All persons seeking approval of the Planning Board under this ordinance shall meet with the Town's Planning Department no less than thirty (30) days before filing an application. At this meeting, the Planning Department shall explain to the applicant the ordinance provisions, as well as application forms and submissions that will be required under this ordinance.

5.2 Application

All persons seeking approval of the Planning Board or Code Enforcement Officer under this ordinance must submit a completed application that complies with the requirements of the Town's Land Use and Development Code and submit other pertinent information as determined by the Town.

A. Application for Code Enforcement Officer approval. Applications for permit approval must include the following minimum 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 or will comply with FCC regulations.
- 3) 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).
- 4) A description of the design plan proposed by the applicant to include, at least, location map and elevation drawings of the proposed facility and any other proposed structures, showing color and identifying structural materials.
- 5) Evidence that a notice of the application has been published in a newspaper of general circulation in the community.
- 6) For proposed expansion of an existing 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 co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing for 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 co-location;

- d) Require no more than a reasonable charge for shared use based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction 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.

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

- 1) Documentation of the applicant's right, title, or interest in the property on which 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 FCC regulations.
- 3) 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 one (1) 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.
- 4) A site plan:
 - a) Prepared and certified by a professional engineer registered in Maine indicating location, type, and height of the proposed facility, antenna capacity, on-site and abutting off-site land uses, means of access, setbacks from property lines, and all applicable American National Standards Institute (ANSI) technical and structural codes;
 - b) Certification by the applicant that the proposed facility complies with all FCC standards for radio emissions is required; and
 - c) A boundary survey for the project performed by a land surveyor licensed by the State of Maine.
- 5) 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; and

- c) Photo simulations of the proposed facility taken from perspectives determined by the Planning Board or the Town Planner 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 within a designated scenic resources,
 - ii) The tree line elevation of vegetation within 100 feet of the facility; and
 - iii) The distance to the proposed facility from scenic resources and noted view points, designated in the Town's Comprehensive Plan Inventory.
- 6) A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.
- 7) Written technical evidence from an engineer demonstrating that no existing building, site or structure can accommodate the applicant's proposed facility, 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 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; and
 - 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.
- 8) Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, or eligible for listing, in the National Register of Historic Places (see 16 USC 470w(5); 36 CFR 60 and 800).
- 9) A signed statement stating that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
- a) Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
- b) Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
- c) Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location;
- d) Require no more than a reasonable charge for shared use, based on community rates and generally accepted accounting principles. This charge may include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return or equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
- 10) A form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned shall be provided by a variety of means including, but not limited to, the following which must be approved as to form and enforceability by the Town Manager and Town Attorney:
- a) Security Bond. The applicant may obtain a security bond from a surety bonding company authorized to do business in the state.
- b) Letter of Credit. The applicant may provide an irrevocable letter of credit from a bank or other reputable lending institution.
- c) Escrow Account. The applicant may deposit cash, or other instruments readily convertible into cash at face value, into a non interest bearing account with the Town. The applicant shall enter into an escrow agreement with the Town, which shall

stipulate that the Town can withdraw the money upon forty-eight hour notice to the applicant.¹

¹ Amended December 1, 2009

5.3. Submission Waiver

The CEO or Planning Board, as appropriate, 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 CEO or 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 Chapter.

5.4. Fees

A. Application fee for approval by Code Enforcement Officer. A non-refundable application fee in an amount(s) and for such purposes as the Town Council may from time to time establish by Council Order shall be paid by the applicant to the Town of Gorham at the time of filing of the Wireless Telecommunications Facilities application. The application shall not be considered complete and will not be processed until this fee is paid.

B. Application Fee for approval by Planning Board. A non-refundable application fee for Planning Board approval shall include a non-refundable payment of an application fee established by the Town Council and amended from time to time in an amount(s) and for such purposes as the Town Council may from time to time establish by Council Order shall be paid by the applicant to the Town of Gorham at the time of filing of the Wireless Telecommunications Facilities application. The application shall not be considered complete until this fee is paid.

C. Independent Consulting and Peer¹ Review Fees. An applicant for approval by the Planning Board shall pay all reasonable and customary fees incurred by the municipality that are necessary to review the application, per Chapter II, Section IX. The peer² review fee shall be paid in full prior to the release of the signed permit and prior to the start of construction.

D. Notice of Complete Application

If the application is deemed to be complete, and requires Planning Board review, the Planning Department shall notify all abutters to the site as shown on the Assessor's records, by first-class mail. 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.

5.5. Public Hearing

For applications for Planning Board approval under Section 5.2.B., a public hearing shall be held.

5.6. Approval

A. CEO Approval. Within thirty (30) days of receiving a complete application for approval under Section 5.1(A) 5.2.A., the CEO shall approve, approve with

¹ Amended December 1, 2009

² Amended December 1, 2009

conditions, or deny the application in writing, together with the findings on which that decision is based. The time period may be extended upon agreement between the applicant and the CEO. The CEO shall approve the application if the CEO finds that the application complies with the provisions in Section 7.16.1 of this ordinance.

The CEO shall notify all abutters of the decision to issue a permit under this section.

- B. Planning Board Approval. Within ninety (90) days of receiving a complete application under Section 5.2.B, 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 thirty (30) days of the completed public hearing. This time period may be extended upon agreement between the applicant and the Planning Board.
- C. Wireless Telecommunications Facilities Alternative Support Structures. Any wireless telecommunications facilities, which are not attached to a tower may be permitted on any alternative support structure regardless of the zoning restrictions applicable to the zoning district where the structure is located. The owner of such structure shall, by written certification to the Code Enforcement Officer, Planning Board, establish the following at the time plans are submitted for a building permit:
- 1) That the height from grade of the Telecommunications Facilities shall not exceed the height from grade of the alternative support structure by more than twenty (20) feet.

The Planning Board shall review the available design options and approve the design option that would cause the least disturbance to surrounding properties and views.

SECTION VI. STANDARDS OF REVIEW

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section.

6.1. CEO Approval Standards

An application for approval by the CEO under Section 5.2.A. must meet the following standards.

- A. The proposed facility is an expansion, accessory use, or co-location 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 does not increase the height of the existing structure by 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, and incorporate stealth design to the extent practicable.
- E. The proposed facility, to the greatest degree practicable, will not have an undue adverse impact upon districts, suites, 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 USC 470w(5); 36 CFR 690 and 800).

6.2. Planning Board Approval Standards

An application for approval by the Planning Board under Section 5.2.B. must meet the following standards.

- A. **Priority of Locations.** New wireless telecommunications facilities must be located according to the priorities below, with 1 as the highest priority, 2 the next highest priority, etc. The applicant must first demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility before approval of a new facility will be permitted.
 - 1) Co-location on an existing wireless telecommunications facility or other existing alternative support structure as defined in Section 15.
 - 2) New facility on public or private property in an Industrial District.
 - 3) New facility on public or private property in a Roadside Commercial District or Narragansett Development District.
 - 4) New facility on public or private property in a Rural District.
 - 5) Any other location allowed by this ordinance.
- B. **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:

- 1) The proposed location complies with applicable municipal policies and ordinances.
 - 2) The proposed facility will not interfere with the intended purpose of the property.
 - 3) The applicant has 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.
 - 4) The applicant has adequate liability insurance of a minimum of \$1,000,000 coverage and has named the Town of Gorham as an additional insured. The Town may require higher limits of coverage where circumstances require more coverage to protect the community.
- C. Design for Co-location. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate future co-location of at least two additional wireless telecommunications facilities or providers.
- D. Height. A new wireless telecommunications facility must not exceed the following maximum height standards.
- | | |
|---|--|
| 1a. Suburban Residential District | 150 feet |
| b. Manufactured Housing Park - Overlay District | 150 feet |
| 2a. Rural District | Maximum height shall be 150 feet, except where there is evidence of acceptable design, an additional 20 feet of height for each additional user is permitted, up to a maximum height of one hundred ninety (190) feet. |
| b. Roadside Commercial District | |
| c. Industrial District | |
| 3a. Village Center District | A free standing wireless telecommunication facility is not allowed. An expansion, or attachment to an alternative support structure, as defined in Section 15, of up to 20 additional feet of height is allowed, provided that the facility is not required to be lighted pursuant to FAA or FCC requirements. |
| b. Urban Commercial District | |
| c. Urban Residential District | |
| d. Office-Residential District | |
| e. Commercial-Office District | |
| f. Narragansett District | |
| g. Any other District | |
- E. Setbacks. 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 ten percent (110%) of its height from all property lines, whichever is greater; provided, however, these setback requirements shall not apply to co-location on structures that exist as of the date of adoption of this ordinance.

In the districts where such towers are allowed, the setback may be satisfied by including the areas outside the property boundaries if secured by an easement. However, the setback may not be reduced to less than the standard setback for such districts in any case.

- 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.
- H. Lighting. A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. If lighting is required, the Planning Board shall review the available lighting options and approve the design option that would cause the least disturbance to surrounding properties and views. Security lighting may be approved as long as it is shielded to retain light within the boundaries of the site, to the maximum extent practicable, by using down-directional, sharp cutoff luminaries so that there is a minimum of spillage of illumination off-site.
- 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, and incorporate stealth design to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used.
- J. Structural Standards. A structural engineer, licensed in the State of Maine, must certify in writing that a new wireless telecommunications facility complies 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. Underground Utilities and Access Road. Except for new facilities that are attached to an alternate support structure, all wireless telecommunications facilities must be serviced by underground utilities and by an access road that provides space for at least one (1) vehicular parking space on site and is secured by a gate. Lots that have Wireless Telecommunications facilities do not have to meet the frontage requirements of Chapter I of the Land Use and Development Code.

The access road shall be constructed to the following minimum standards:

Minimum Required Right of Way Width	30 feet
Minimum Travel Way Width	12 feet
Paved Apron, at Intersection with Paved Public Way	20 feet in length
Maximum Grade at Street Intersection	5%
Minimum Pavement Radii at Street Intersection	15 feet
Minimum Centerline Radius	60 feet
Minimum Grade	0.7%
Depth and Type of Gravel Base Required	12" Type D

Depth and Type of Surface Gravel Required	3" Type A or equal
Maximum Grade for gravel for grades less than 6.0%	6%
for grades steeper than 6.0%	Gravel
Storm Water Drainage	3" bituminous per Town Engineer

Terminus: A suitable turn around shall be located outside any fenced area and at the end of the access road

- L. Noise. Except 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. are exempt from noise standards.
- M. Advertising. No advertising or signage is allowed on wireless telecommunication facilities.
- N. Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, must have no unreasonable adverse impact upon a historic district, site or structure which is currently listed or eligible for listing on the National Register of Historic Places.

6.3. Standard Conditions of Approval

The following standard conditions of approval shall be a part of any approval or conditional approval issued by the CEO or Planning Board . Where necessary to ensure that an approved project meets the criteria of this ordinance, the CEO or 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 the following language:

- A. That the owner of the wireless telecommunications facility and his or her successors and assigns agree to;
 - 1) Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant, in exchange for a reasonable fee not in excess of the actual cost of preparing a response;
 - 2) Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
 - 3) Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location.
 - 4) Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared 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.

- B. Upon request, the applicant shall certify continued compliance with all applicable FCC radio frequency emissions regulations.

SECTION VII. AMENDMENT TO AN APPROVED APPLICATION

Any changes to an approved application must be approved by the CEO or the Planning Board, in accordance with Section 5.

SECTION VIII. NONCONFORMING FACILITY

Except as otherwise expressly provided in this ordinance, a nonconforming structure or use may not be enlarged or increased in size or any additional wireless telecommunications facilities added. A nonconforming structure that is discontinued in use for a period of more than one hundred eighty (180) consecutive days (except while under active repair or reconstruction) shall be considered abandoned and shall lose its grandfathered status. This ordinance shall not be interpreted to legalize any structure, facility, or use existing at the time this ordinance is adopted which structure, facility, or use is in violation of any other ordinance at the time of enactment. Notwithstanding the above, the CEO may grant approval for the addition of antennas and antenna mounts to a nonconforming structure under the standards set forth elsewhere in this Chapter, provided there is no accompanying increase in height, structural mass or tower lighting. In other cases, the Board of Appeals may grant approval for the enlargement, increase in size or additional facilities of a non-conforming structure, provided that:

- A. The appearance of the structure will not be significantly [or extensively] more intrusive as viewed from abutting properties,
- B. The Board of Appeals finds that the increase will be the least amount necessary, and
- C. It complies with the Special Exception Standards found in the Land Use and Development Code.

SECTION IX. MAINTENANCE

- A. Tower owners shall at all times employ ordinary and reasonable care and shall install and maintain in use nothing less than commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public.
- B. Tower owners shall install and maintain towers, telecommunications facilities, wires, cables, fixtures, and other equipment in substantial compliance with the requirements of the National Electric Safety Code and all FCC, state, and local regulations, and in such manner that will not interfere unreasonably with the use of other property, with regard to these electrical and safety codes.
- C. All towers, telecommunications facilities, and antenna support structures shall at all times be kept and maintained in good condition, order, and repair so that the same shall not menace or endanger the life or property of any person.
- D. All towers shall maintain compliance with current RF emission standards of the FCC.
- E. In the event that the use of a tower is discontinued by the tower owners, the tower owner shall provide written notice to the Town of Gorham of its intent to discontinue use and the date when the use shall be discontinued.

SECTION X. ABANDONMENT

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The owner of an abandoned facility shall be notified in writing by the CEO to remove the facility within ninety (90) days of receipt of a written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to show that the facility has not been abandoned and has been in active use or under active repair during the period.

If the Owner fails to show that the facility has been in active operation or under active repair, he or she 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 re-establishment of plants.

If a surety has been given to the municipality to ensure 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 XI. APPEAL PROCEDURE

- A. Code Enforcement Officer Decision. Any person aggrieved by a decision of the Code Enforcement Officer shall commence their appeal within thirty (30) days of the issuance of a decision by following the appeals procedure established in Chapter I, Section IV (D) Appeals Procedure of the Land Use and Development Code of the Town of Gorham, as amended from time to time.

- B. Planning Board Decision. Appeals of any actions taken by the Planning Board with respect to the ordinance shall be to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.

SECTION XII. ADMINISTRATION AND ENFORCEMENT

The Code Enforcement Officer shall enforce this ordinance. If the Code Enforcement Officer finds that any provision of this ordinance has been violated, the Code Enforcement Officer 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 Code Enforcement Officer shall order correction of the violation and may take any other legal action to ensure compliance with this ordinance.

The Code Enforcement Officer, with the approval of the Town Manager, is authorized to enter into administrative consent agreements for the purpose of resolving 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 XIII. 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., Sec. 4452. Each day such violation continues after notification by the CEO shall constitute a separate offense.

SECTION XIV. CONFLICT AND SEVERABILITY

14.1 Conflicts with other Ordinances

This ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit or provision of law. 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.

14.2 Severability

If any section or provision of this ordinance is declared by the courts to be invalid or unconstitutional, such decision shall not invalidate any other part, section, or provision of this ordinance and shall remain in full force and effect.

SECTION XV. DEFINITIONS

Unless specifically defined below, words and phrases used in this Chapter shall have the same meaning as they have at common law and to give this Chapter its most reasonable application.

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

- A. "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.
- B. "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 parcel. 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.
- C. "Alternative Support Structure" means any building or structure such as bell steeples, light poles and water towers and other similar structures except towers which can be used for location of wireless telecommunication facilities.
- D. "Co-location" means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.
- E. "Designated Scenic Resource" means that specific location, view or corridor, as identified as a scenic resource in the municipality's 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 as 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.
- F. "Expansion" means the addition of antennas, towers, or other devices to an existing structure.
- G. "FAA" means Federal Aviation Administration or its lawful successor, authorized by Congress.
- H. "FCC" means Federal Communications Commission or its lawful successor, authorized by Congress.
- I. "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.
- J. "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 preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary 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 which have been 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 either (a) by an approved state program determined in the Secretary of the Interior, or (b) directly by the Secretary of the Interior in state without approved programs; 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.
- K. "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.
- L. "Scenic Resources" means specific locations or corridors within the municipality, as identified in its adopted comprehensive plans or by State statute, that consist of a vehicular right of way or vantage point that contains 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.
- M. "Stealth Design" means any tower or telecommunications facility which is designed to enhance compatibility with adjacent land uses, including, but not limited to, architecturally screened roof-mounted antennas, antennas integrated into architectural elements, and towers designed to look other than like a tower such as light poles, power poles and trees. The term "Stealth" does not necessarily exclude the use of uncamouflaged lattice, guyed, or monopole tower designs.
- N. "Targeted Market Coverage Area" means the area which is targeted to be served by this proposed telecommunications facility.
- O. "Tower" means a self-supporting lattice, guyed, or monopole structure constructed from grade which supports Telecommunications Facilities.
- P. "Undue Adverse Impact" means an impact which would not have occurred without the proposed development that violates a clear, written community standard(s), such as that enunciated in a locally adopted comprehensive plan; produces an end result which is out-of-character with the development's surrounding; significantly diminishes the scenic qualities of the area; or, produces deleterious effects which stem from the result of the developer(s) which may have been prevented through mitigation activities, such as screening or coloration.
- Q. "Wireless Telecommunications 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 XVI. EFFECTIVE DATE

Notwithstanding any law to the contrary, Chapter VI of this ordinance (Wireless Telecommunications Facilities) shall take effect as of October 25, 1999.