

Wireless Telecommunications Facilities Ordinance



Town of York, Maine

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ENACTMENT BY THE LEGISLATIVE BODY

Date of the vote to enact/amend this Ordinance: November 8, 2016

Certified by the Town Clerk: Mary-Anne Germano on 11/10/16
(signature) (date)

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Wireless Communications Facilities Ordinance

1.1 Title and Effective Date

This Ordinance shall be known and cited as the “Wireless Communications Facility Ordinance” of York, Maine (hereinafter “the Ordinance”). This Ordinance becomes effective as of November 5, 2002.

1.2 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.

1.3 Purpose

The purpose of this Ordinance is to provide a process and to set standards for the construction, Expansion and Modification of wireless communications facilities (WCF), to protect the historical, scenic and visual character of the Town of York, to comply with federal laws and regulations regarding wireless communications facilities and to provide for Reasonable Access.

1.4 Applicability

This Ordinance applies to all construction, Expansion, Modification, maintenance, and operation of wireless communications facilities except:

- A. **Emergency WCF** - Temporary wireless communications facilities for emergency communications by public officials.
- B. **Maintenance or repair** - Maintenance or repair of a WCF and related equipment provided that there is no change in the height or any other dimension of the facility.
- C. **Temporary wireless communications facility** - Temporary WCF, in operation for a maximum period of seven (7) days.
- D. **Antenna as Accessory Uses** - An antenna, other than parabolic dish antenna greater than five (5) feet in diameter, that receives only and is accessory to a permitted use, that is, related to such use but clearly incidental and subordinate.
- E. **Utility District Facilities** – A Yagi or omni antenna utilized solely by a utility district which provides water or sewer services within the Town, and which complies with the following standards:
 - 1. The antenna dimensions are less than 4’ in every dimension; and
 - 2. The maximum height of the antenna either:
 - a. Complies with the structure height limit for the base zoning district in which it is located, regardless of that to which the antenna is mounted; or
 - b. Exceeds the structure height limit for the base zoning district in which it is located, provided the antenna is mounted on an un-guyed wooden utility pole of any height. The antenna may be mounted directly on the pole, or on a mast attached to the pole. The antenna mounting height shall be the minimum height necessary to provide the required function, as demonstrated to the CEO by a path study.

F. Municipal WCF – any Town-owned wireless communications facility to be used for conduct of operations by the Town of York, provided such facility is not located in or within 500 feet of an historic district. Collocation by users other than the Town shall be allowed but is subject to the standard permitting process.

1.5 Approval Authority

No person or agency shall construct or expand a WCF without approval of the Code Enforcement Officer (CEO) or the Planning Board as follows:

A. Approval by the CEO is required for:

1. A WCF no greater than 65 feet in height used for licensed amateur (“Ham”) radio, which is not additionally licensed or used for any commercial purpose, other than by the licensed amateur radio operator, but only if there is no other WCF on the parcel on which the WCF is to be located.
2. Collocation on an existing Monopole WCF or other existing WCF, and which does not increase the height of the Support Structure.
3. A Disguised WCF no greater than 35 feet in height.
4. A Hidden WCF.

The CEO may, at his discretion, elect to have the Planning Board, rather than the CEO, review any such application for a WCF for approval.

B. Approval by the Planning Board is required for any other WCF permitted under this Ordinance.

1.6 Technical Assistance

The CEO or Planning Board may obtain services of professional engineers and other consultants to review and inspect the applicant’s proposal or any portion thereof. Such services are permitted to include but are not limited to engineering and technical review, planning review, environmental assessment review, soils review, mechanical and structural engineering review, and the investigation of possible alternative WCFs described in the lists of preferences herein. Such costs shall be borne by the applicant.

1.7 Locations for WCFs

A. Prohibited WCFs

New WCFs with either guy wires or latticed towers are prohibited.

B. Monopole WCFs

Ground Mounted WCFs greater than 85 feet in height are deemed to be Monopole WCFs, for the purposes of this ordinance. WCFs with Monopole Support Structures (that is, a single pole set into the ground or concrete pad) are permitted only in the Monopole WCF Overlay Districts, but not in the Shoreland Overlay Zone. The Monopole WCF Overlay Districts are as designated on the Zoning Map of York, and initially they are these two areas: the area between Route 1 and the Maine Turnpike, and the east-west corridor which is 2500 feet wide and bounded on the southwest by Route 91, on the southeast by New Boston Road and Boulter Pond and its outlet, and on the northwest by the York town line.

C. Other WCFs

Disguised WCFs, roof mounted WCFs, structure mounted WCFs, ground mounted WCFs, micro cell WCFs, Mast WCFs, Whip antenna WCFs and other short and small WCFs are permitted in any area of the Town of York, other than Historic Districts or attached to Historic Buildings. Hidden WCFs are permitted in any area of the Town of York.

D. Priority List for WCFs

New WCF must be located according to this list of preference or priority, listed from most preferred to least preferred:

1. Hidden WCFs.
2. Collocation on an existing Support Structure.
3. Disguised WCFs.
4. Location on existing structures, including but not limited to buildings, water towers, utility poles and towers, light poles or light stanchions, provided that such installation preserves the character and integrity of those structures.
5. Ground Mounted WCFs.
6. Location on a new Monopole WCF in the Monopole WCF Overlay Districts.

1.8 Approval Process

In accordance with Section 1.5 above, the CEO or Planning Board shall review applications for WCFs. The Planning Board shall follow the procedure for site plan approval in the Zoning Ordinance, and all of the substantive as well as procedural requirements for site plan approval shall apply. The CEO shall follow the procedure for building permits in the Zoning Ordinance, and other pertinent York Ordinances.

A. Pre-Application Conference

Applicants seeking approval of either the CEO or the Planning Board under this ordinance shall meet with the Town Planner or his or her designee prior to filing an application according to this ordinance. At this meeting, the Planner or the designee shall explain the ordinance provisions as well as application forms and fees required under this ordinance.

B. Public Notice

For WCFs requiring approval of the Planning Board, the applicant shall give public notice as provided for site plan applications, except that for notice purposes the term “abutter” shall mean an owner of property within 2500 feet of the property on which a Monopole WCF is proposed and such notice shall be mailed 14 days prior to the Public Hearing. For WCFs which the CEO is reviewing, the applicant shall give public notice as provided for site plan applications, except that for notice purposes the term “abutter” shall mean an owner of property immediately adjacent to the property on which a WCF is proposed.

When a Monopole WCF is proposed, a sign giving notice of the application shall be posted on a public way at or near the proposed site, and must contain the words “Tower Proposed” in large enough format to be readable from a motor vehicle driving by at 35 mph. The CEO shall review and approve the sign design and location before it is posted, the sign must contain the same information required in the public notice required for site plan applications, and the sign must be in place at least 21 days and before any balloon or crane visual testing, giving the date and time for such testing, and any alternate dates for such testing.

C. Fees

Fees associated with permits and reviews required under this Ordinance shall be in accordance with the fee schedule as adopted by the Board of Selectmen. Planning Board applications shall also be subject to any fees as outlined in Town of York Site Plan Regulations. In addition to the application fee, the applicant shall reimburse the Town for costs of professional engineers and other consultants hired by the Town to review and inspect the applicant’s proposal when the Town is unable to do so with its existing staffing resources. Such services include but are not limited to engineering

and technical review, legal review, planning review, environmental review, soils review, and mechanical and structural engineering review. In the event that a project requires professional services beyond that which is included in the base fee, the applicant shall reimburse the Town at the cost rate for those professional services. The Town is permitted to require that the applicant deposit an amount with the Town to cover anticipated costs of retaining services or consultants. The Town shall return to the applicant any unused funds within thirty (30) days of the decision by the CEO or Planning Board on an application.

D. Applications

Persons seeking approval of the CEO or of the Planning Board under this Ordinance shall submit an application which shall include all of the information and materials required for site plan approval, and in addition the following:

1. **Qualification as an Applicant and Statement of Compliance with FCC Regulations**
A copy of the FCC license for the facility, or license to operate within an assigned geographic area including the Town of York, and a signed statement from the owner or operator of the facility attesting that the facility complies with and will comply with FCC regulations. So long as such a licensee joins the application as a co-applicant, another party may seek the approval described herein.
2. **Identification of Existing Facilities** - A USGS 7.5 minute topographical map showing the location of all WCFs within a three (3) mile radius of the proposed facility.
3. **Visual impacts of the proposed facility:**
 - a. Elevation drawings of the proposed facility, and any other proposed structures, showing height above ground level;
 - b. Computer generated photographic simulations of the proposed facility at full capacity, showing the facility from all public rights of way and from representative nearby properties from which the facility will be visible. Each photograph must be labeled with the line of sight, elevation, and the date taken imprinted on the photograph. The photographs must show the color of the facility and the method of screening, if any screening is required.
4. A written description of the need for the particular facility in the particular location. It should also describe reasonably anticipated Expansion of the proposed facilities on the proposed site and related facilities in the region, and on reasonably anticipated changes of technology and their effect on Expansions of the proposed facility. This submission requirement does not require disclosure of confidential business information, but failure to cite reasonably anticipated expansions in this application will be a matter of public record that can be an issue to be considered in later applications for Expansion.
5. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which shall comprise one or more of the following:
 - a. Evidence that no existing facilities are located within the area targeted to be served by a proposed WCF which meet the applicant's engineering requirements;
 - b. Evidence that existing facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements;
 - c. Evidence that existing facilities do not have sufficient structural strength to support applicant's proposed antenna and related equipment, specifically:

- (1) 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;
 - (2) 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; and
 - (3) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
- d. For WCFs existing prior to the effective date of this Ordinance, the fees, costs, or contractual provisions required by the owner in order to share or modify an existing facility are considered to be 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 Support Structure built after the passage of the Ordinance.
 - e. Evidence that the applicant has made diligent good faith efforts to negotiate collocation on an existing facility, building, or structure, and has been denied access.
 - f. Evidence that the applicant has analyzed the feasibility of using repeaters or micro cells in conjunction with existing or proposed WCFs to provide coverage to the intended service area.
6. A signed, acknowledged statement to be recorded in the York County Registry of Deeds stating that the owner of the WCF and his or her successors and assigns agree to:
 - a. Respond in a timely and comprehensive manner to a request for information from a potential collocation 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 WCF by third parties, including those that can reasonably be deemed commercial competitors;
 - c. Allow shared use of the WCF if an applicant agrees in writing to pay reasonable charges for collocation;
 - d. Require no more than a reasonable charge for shared use, based on regional rates and generally accepted accounting principles. This charge is permitted to include but is not limited to a pro rata share of the cost of site selection, planning project administration, land costs site design, construction, financing, return on equity, depreciation, and all of the costs of adapting the Support Structure 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.

E. Waiver of Submission Requirements

1. The applicant is permitted to apply for a waiver of any of the listed submission requirements for the application in lieu of fulfilling the listed submission requirement. The applicant shall bring the application for permit before the CEO or the Planning Board, as required for the particular application, with an attached application for waiver of every submission requirement not complete. The CEO or the Planning Board, as appropriate to the application, is permitted to waive any of the submission requirements only if the CEO or Planning Board finds in writing, that due to special circumstances of the application, the specific information for which waiver is requested is not required to determine compliance with the standards of this Ordinance. If any request for waiver is rejected, the application shall be

immediately rejected as incomplete and the application for permit shall not be further considered. The applicant shall be permitted to resubmit the application when all submission requirements are fulfilled.

2. It is expected that an application for a WCF serving a Ham Radio may include a number of requests for waiver. While such waiver requests may well be granted, the CEO or Planning Board in such cases shall, at a minimum, require evidence concerning the structural integrity and strength of the WCF in all weather conditions (e.g., heavy winds and ice loading), and the visual impact of the WCF.

F. Permit Conditions and Limitations

Construction of a WCF shall commence within one (1) year from the date of the Town's approval, with the opportunity for a six-month extension at the discretion of the CEO. If construction is not begun within one year, or within the six-month extension when granted by the CEO, the permit shall become null and void.

After approval by the CEO or Planning Board and prior to receiving a building permit, the applicant shall post a performance guarantee with the Town prior to obtaining a permit, such guarantee to include an Irrevocable Letter of Credit or a bond satisfactory in form to the Town's counsel or funds delivered to the Town of York to be held in escrow equal to one hundred twenty-five (125) percent of the cost of removing the WCF.

1.9 Standards of Review

To obtain approval from the CEO or the Planning Board, an application must comply with the standards in this section, and the CEO or Planning Board shall make written findings with respect to each of these standards.

- A. Qualification of Applicant and Right to Build** - The application shall be complete and the notification of abutters as required by this Ordinance and the York Site Plan and Subdivision Regulations shall have occurred before the Planning Board reviews the application. The applicant shall meet the requirements to apply for construction, Expansion or Modification of a WCF in accordance with this Ordinance. The applicant shall demonstrate the right, title, or interest in the property on which the construction is proposed. The applicant shall demonstrate compliance with all relevant FCC regulations.
- B. Priority for WCF Location** - New WCFs must be located according to the priorities in Section 1.7 above. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.
- C. Placement on Municipal Property** - If an applicant proposes to locate a new WCF on municipal property or on a public right of way, 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 or right of way.
 3. The applicant has adequate liability insurance.
 4. The applicant has a lease agreement with the Town that has been approved by the Board of Selectmen and that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interest of the property.

- D. Design for Collocation** - A new WCF and related equipment must be designed and constructed to accommodate collocation of additional WCFs or providers when technically feasible and when not in conflict with the height limitations set forth in this Ordinance.
- E. Height** - A WCF shall comply with following requirements specific to the type of facility:
1. *Height, Monopole WCF Overlay Districts* - Where the Town establishes Monopole WCF Overlay Districts (as designated in the Town zoning map), a Monopole WCF shall not exceed one hundred twenty (120) feet in height.
 2. *Height of Hidden WCF* - The WCF shall not be constrained by height limitations except to the extent that Town zoning ordinances restrict the height of the structure in which the facility is concealed or hidden.
 3. *Height, Ground-Mounted Facilities* - In areas other than the Monopole WCF Overlay District, a ground mounted WCF shall not project higher than twenty (20) feet above the average height of buildings within three hundred (300) feet of the proposed facility or, if there are no buildings within three hundred (300) feet, such facilities shall not project higher than twenty (20) feet above the average tree canopy height, measured from ground level. The height of the ground-mounted facility, having neither buildings nor tree canopy within three hundred (300) feet, shall not exceed the height limit of the zoning district within which the facility is located. If there are no buildings or trees within three hundred (300) feet of the proposed site of the facility, all ground mounted WCFs shall be surrounded by a buffer of tree growth, as required by this Ordinance, sufficiently dense to screen views of the base of the facility from abutting properties and all public roads and ways.
 4. *Height, Side- and Roof-Mounted Facilities* - Side- and roof-mounted WCFs shall not project more than the lesser of ten (10) feet above the height of an existing building or ten (10) feet above the height limit of the zoning district within which the facility is located and does not result in Unreasonable Adverse Visual Impact.
 5. *Height, Existing Utility Structures* - Expansions located on any of the following existing structures shall be exempt from the height restrictions of this ordinance provided that there no more than a ten (10) foot increase in height of the existing structure as a result of the installation of the WCF: electric transmission and distribution towers, telephone poles and similar existing utility structures, and water towers.
 6. *Height, Disguised Structures* - The foregoing height limits notwithstanding, WCFs that are constructed as disguised structures, such as flagpoles or steeples, shall not exceed the height that is permitted or reasonably attributable to such structures not as disguised WCFs for the zoning district in which the facility is to be located.
- F. Setbacks** - The setback shall be the separation of the corresponding border of the footprint of the base area of the WCF, as defined by the required fencing, from the property lines, buildings, or other feature from which the setback is defined. It shall not refer to the center point of the WCF.
1. A new Monopole WCF must be set back from Route 1 and Route 91 at least one hundred fifty (150) feet.
 2. A new or expanded Monopole or Ground Mounted WCF must comply with the setback requirements for the zoning district in which it is located, or be set back one hundred twenty five percent (125%) of its height from all property lines, whichever is greater. The Planning Board is permitted to reduce this 125% set back upon a showing that the support structure is reliably designed to collapse upon itself in an area shorter than its height. The Planning Board is permitted to accept setbacks obtained by including areas outside of the property

boundaries if secured by an easement from the owners of the affected properties. This easement shall be specifically noted on the plan and permit, and shall be recorded in the York County Registry of Deeds and indexed under the name(s) of the owners of the affected abutting property.

3. All structures accessory to a WCF and all peripheral supports used to support a WCF structure shall be located in accord with the setback requirements for the underlying zone.
4. All WCFs shall be located a minimum of sixty-five (65) feet from any residential structure located on any abutting property at the time the structure is initially constructed, unless the affected abutting property owner waives this requirement, and Monopole WCFs shall be located five hundred (500) feet from any residence located on any abutting property at the time the structure is initially constructed, unless the affected abutting property owner waives this requirement. This requirement shall not be waived with respect to the Fall Zone of any Monopole WCF. Any waiver shall be specifically noted on the plan and permit, and shall be recorded in the York County Registry of Deeds and indexed under the name(s) of the owners of the affected abutting property.
5. WCF is permitted to be located on a property on which another principal or accessory use is located, subject to concurrence of all parties that have an interest in the parcel at the time the structure is initially constructed. There shall be no minimum setback requirements from other structures located on the same property as the WCF.
6. The following exceptions apply:
 - (a) The Planning Board is permitted to reduce the required setback for a WCF to be constructed on public property or on public right of ways provided that there is a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.
 - (b) An antenna attached to a WCF shall be exempt from the setback requirement if it extends no more than three (3) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon an abutting property.

G. Visual Impact - A WCF that fully meets the definition of Hidden WCF shall not be subject to the requirements of this section except to the extent that the existing structure in which the WCF is concealed is required to meet the zoning requirements of the Town of York.

1. *Visual impact by certain larger WCFs* - New Monopole WCFs and new Ground Mounted WCFs, including its related equipment and required fence, must be substantially screened from view from abutting properties. The screening must be evergreen trees when such screening is to be newly planted in construction of the WCF. All such WCFs shall maintain a buffer, except for an access road, beginning at a minimum of one hundred (100) feet from the fence at the base of the WCF and extending toward the WCF, on all sides of the parcel on which the WCF is located. The Planning Board is permitted to accept buffer obtained by including areas outside of the property boundaries if secured by an easement recorded for the deed of that property, requiring maintenance of the buffer. The Planning Board is permitted to reduce the buffer adjacent to I-95 to no less than a distance equal to one hundred (100) percent of the total height of the WCF, consistent with the goal that a buffer shall consist of mature trees having a height at least as high as the required fencing and having a density sufficient to substantially screen the base of the WCF from observation when viewed from a distance greater than 100 feet from the fence at the base of the WCF. When the WCF is placed in an area that is wooded prior to construction of the WCF, existing plants and natural landforms on the site shall also be preserved to the maximum extent practicable.

The Planning Board is permitted to require additional plantings in the buffer area, particularly when the construction area is not of the character of a wooded buffer, to enhance the quality and effectiveness of the buffer area as a visual screen, including requiring the planting of trees that will achieve effective screening within three (3) years after construction. Inside the buffer area, existing plants and natural land forms on the site shall be preserved to the maximum extent practicable while achieving the safe construction of the Support Structure, accessory structures, and required fencing.

Monopole WCFs and new WCFs to be placed (e.g., collocated) on existing Monopole or other Support Structures shall be designed to minimize their visual, perceived bulk or mass, including, but not limited to, avoiding the use of any platform, if possible, and minimizing the distance the antenna array extends out from the Support Structure, which distance may not exceed 10 feet without explicit approval of the Planning Board. The Planning Board is permitted to require the applicant to present evidence of compliance with this requirement to minimize bulk.

2. *Visual impact by Certain Smaller WCFs* - A new WCFs which is of the types roof-mounted, structure-mounted, mast, whip or micro cell, including its related equipment, must be camouflaged from view from abutting properties, to the maximum extent practicable, including but not limited to: use of compatible building materials and colors, screening, landscaping and placement within trees. When a WCF is mounted on an existing structure, every effort shall be made to conceal the facility within or behind existing architectural features to limit its visibility from public ways, including but not limited to the stepping back of the WCF from the front facade in order to limit their impact on the structure's silhouette and the blending with the existing structure's architecture by painting or by shielding with material which is consistent with the design features and materials of the building.
 3. *Disguised WCFs* - A disguised WCF, made to appear as an unrelated object such as a tree, church steeple, or flagpole, shall be sufficiently realistic in size and proportion to adjacent features as to be reasonably perceived as the intended image. The disguise must encompass the entirety of the WCF including its base facilities or, alternatively, such base facilities are permitted to be isolated from the disguised support structure, for example by underground cable connections to a separate building not closely associated with the Support Structure. For the purposes of determining compliance with zoning requirements, the disguised device shall be treated as the object as which it is intended to be recognized. For example, a WCF disguised as a flagpole shall comply with all requirements that would be applicable to a flagpole that is not a disguised WCF if proposed for construction in that location.
 4. *Lighting* - A new WCF must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements.
 5. *Color and Materials* - A new WCF must be constructed with materials and colors that match or blend with the surrounding natural or built environment, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues, or metals having dull, non-reflecting finishes shall be used. For disguised WCF, the colors and materials shall be typical of the object simulated by the disguise.
- H. Fencing** - A WCF must be fenced to discourage trespass on the facility and climbing on the structure by trespassers, except as further provided below for cases of use of disguised construction. A fence of not less than eight (8) feet in height from the finished grade shall be constructed around a WCF. The fence shall include barbed wire around the top. Access through the fence shall be through a locked gate. The fence shall not be located in the required buffer area. In the absence of a buffer, the fence shall be screened from view through use of appropriate landscaping and planting. A disguised

WCF shall provide for security of the supporting structure and its separate base equipment facilities against trespass and damage in a manner appropriate to the object simulated by the disguise, but shall not be required to have fencing if fencing is not typically associated with the disguised object. If a disguised WCF does have fencing, such fencing being compatible with the object simulated by the disguise, the WCF and fencing shall have a buffer as described. Security for a hidden WCF or WCF serving a Ham radio shall be provided in a reasonable manner, but need not be fencing. This fencing requirement may be waived or modified by the Planning Board or CEO in the course of their review and approval of WCFs, except in the case of a Monopole WCF.

- I. Structural Standards** - A new WCF must comply with all applicable standards of the American National Standards Institute, including ANSI EIA/TIA Standard 222 entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," current revisions or versions as of the time of the application for the WCF.
- J. Certifications from Applicant** - Agreement by the applicant to provide the CEO with a signed statement stating whether the WCF complies with all FCC regulations, including radio frequency emission regulations, at these times: (i) within six (6) months after the construction of a new WCF; (ii) annually after construction is complete, within 30 days after the anniversary date of the commencement of operation, and (iii) after each Expansion of an existing WCF. If upon review of the statement the CEO finds that WCF does not comply with FCC regulations, the CEO, after the applicant has been given a reasonable time based on the nature of the problem to comply with the federal regulations, is permitted to revoke or modify the permit. If the permit is revoked, then the WCF shall be removed in accordance with Section 1.12 Abandonment.
- K. Interference with Other Signals** - Certification by the applicant that the operation of the proposed facility will not interfere with other adjacent or neighboring transmission or reception functions, including but not limited to other WCFs and reception of television and radio broadcasts. If on review the CEO finds that there is significant interference, the CEO is permitted to revoke or modify the permit. The applicant shall be given a reasonable time, based on the nature of the problem, but at least 2 days and no more than 30 days, to comply with the federal license requirements or other federal standards. Providing devices designed to effectively eliminate the interference, to another party with whose signal there is interference, may be an acceptable resolution. If the permit is revoked, then the facility shall be removed in accordance with Section 1.12 Abandonment.

1.10 Amendment to an Approved Application

All substantive changes (e.g., changes to the appearance, nature, size, shape, color, bulk of a WCF) to a previously approved or pre-approved application must be resubmitted to the Planning Board, or in the case of a WCF which CEO may approve, the CEO.

1.11 Abandonment

- A.** A WCF that is inactive for a period of twelve (12) consecutive months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.
- B.** If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. All above ground structures, equipment, foundations, utilities and access roads or driveways specifically constructed to service a WCF shall be removed, and the land returned to a condition as near to the original pre-construction condition as possible. If the facility is not removed within this time period, the Town is permitted to 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 removal of roads and re-establishment of

vegetation.

- C. If a surety has been given to the Town for removal of the WCF, the owner of the WCF is permitted to apply to the Board of Selectmen for release of the surety when the WCF and related equipment are removed to the satisfaction of the Planning Board.

1.12 Appeals

Any person aggrieved by a decision of the CEO or the Planning Board under this Ordinance is permitted to appeal the decision to the Board of Appeals, as provided in Town of York Charter, Zoning Ordinances and Regulations. Written notice of appeal must be filed with the Board of Appeals within thirty (30) days of the decision. The notice of appeal shall clearly state the reasons for the appeal.

1.13 Administration and Enforcement

The procedure and substance for the administration and enforcement of this Ordinance shall be as provided in the Town of York Zoning Ordinance for the administration and enforcement of those Ordinances.

1.14 Penalties

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

1.15 Conflict and Severability

- A. Conflicts with Other Ordinances – Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation, or statute, the more restrictive provision shall apply.
- B. Severability – The invalidity of any part of this Ordinance shall not invalidate any other part of this Ordinance.

1.16 Definitions

The terms used in this ordinance shall have the meanings here listed. Definitions for the listed terms from other sources shall not take precedence over the definitions here listed for the interpretation and implementation of this Ordinance. Applications and correspondence relating to applications shall use terminology consistent with these listed definitions.

Active Operation - The continuous transmitting or receiving of radio frequency signals.

Antenna - Any system of poles, panels, and rods, reflecting discs or similar devices used for the transmission or reception of radio or electromagnetic frequency signals.

Antenna Height - 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. Measure of Support Structure height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the Support Structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating antenna height.

Antenna, Parabolic - (also known as a satellite dish antenna) - An antenna that is bowl-shaped, designed for the reception and/or transmission of radio frequency communication signals in a specific directional pattern.

Antenna, Whip- An antenna characterized by its “whip” shape and size, and its ability (an “omni directional antenna”) to transmit and/or receive signals in a three hundred sixty (360) degree pattern.

Average Tree Canopy Height - The average height of all trees greater than twenty (20) feet in height located within three hundred (300) feet of the footprint of the facility as determined by the required fencing in Section 1.9.B.8, provided that all such trees shall remain in place subsequent to construction and provided that the number of such trees within three hundred (300) feet of the fence shall exceed fifty (50) trees, and provided that the distribution of such trees shall satisfy the requirements for a buffer of tree growth as required in Section 1.9.B.7, Visual Impact.

Collocation - The use of a support structure or an alternative support structure by more than one wireless communication provider.

Disguised WCF - a WCF made and designed to appear to be an object recognized as other than a WCF.

Expansion - The addition of antennas or other devices to an existing structure.

FAA - The Federal Aviation Administration, or its lawful successor.

Fall Zone - The area on the ground within a radius from the base of a WCF equal to the total height of the WCF. The Fall Zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

FCC - The Federal Communications Commission, or its lawful successor.

Functionally Equivalent Services - Functionally Equivalent Services are Cellular, Personal Communication Services (PCS), Enhanced Special Mobile Radio, Specialized Mobile Radio and Paging. The Communications Act of 1996 requires local government treat these five services equally.

Ground Mounted WCF - A WCF which is mounted on the ground, and which is mast or similar structure and not a lattice tower or guy tower, and is less than 85 feet in height.

Height - 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. 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.

Hidden WCF – A WCF fully hidden from view. A WCF is hidden when it is contained within an existing structure unrelated to a WCF, such as a building, wall or roof.

Historic District – An area designated as an historic district or area by the Town of York or one of its municipal committees or bodies, or any State or Federal Agency.

Historic Building – A building which is designated as historic by Town of York or one of its municipal committees or bodies, or any State or Federal Agency.

Line of Sight - The direct view of the object from a point or location. To avoid confusion, the applicant to describe issues of coverage should not use the phrase “line of sight”.

Micro Cell WCF - A low power radio service WCF used to provide increased capacity in high call demand areas or to improve coverage in areas of weak coverage.

Modification - The changing of any portion of a WCF from its description in a previously approved permit, including but not limited to changes in design.

Monopole WCF – A WCF with a monopole Support Structure.

Reasonable Access - The opportunity for a licensed carrier to provide one or more Functionally Equivalent Services to the extent that all or most of the Town of York may be reasonably served.

Repeater - A small receiver/relay transmitter of not more than twenty (20) watts output designed to provide service to areas that are not able to receive adequate coverage from the primary sending and receiving site in a wireless communications network.

Support Structure - Any built structure, including guy wires and anchors if used, to which antennas and associated hardware are mounted. Support structures include but are not limited to:

1. **Lattice tower** - A support structure that consists of a network of crossed metal braces, forming a tower, which is usually triangular or square in cross section, not normally requiring guy wires and anchors.
2. **Guy tower** - A support structure such as a pole or narrow metal framework that is held erect by use of guy wires and anchors.
3. **Monopole** - A support structure that consists of a single pole sunk into the ground and/or attached to a concrete pad or other foundation.
4. **Mast** - A type of mount that is thinner and shorter than a monopole.
5. **Existing nonresidential structure** - An existing structure, having an original principal use other than a WCF, to which wireless facility components may be attached under certain conditions.

Unreasonable Adverse Visual Impact - End results of a proposed project that: (1) would be excessively out-of-character with existing buildings, structures, and features; or (2) would significantly diminish the scenic value in an Historic District or Historic Building.

Wireless Communications Facility (or Facility) (WCF) – Any facility, building, pole, tower, or structure used to provide wireless telecommunication services, which may consist of antennae, equipment, storage and other accessory structures used to provide wireless telecommunication services. The definition of WCF includes personal wireless service facilities as that term may be defined in Title 47, United States Code, Section 332 (c)(7)(C), as may be amended.

Wireless Communications Facilities Ordinance Overlay Zone.

