

## CHAPTER 6. WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE

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### SECTION 1. TITLE

This Ordinance shall be known and cited as the “Wireless Telecommunications Facilities Siting Ordinance” of China, Maine, (hereinafter referred to as the “ordinance”).

### SECTION 2. AUTHORITY

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

### SECTION 3. PURPOSE

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

- Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities;
- Establish clear guidelines, standards and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities;
- Allow competition in telecommunications service;
- Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions and residents of China;
- Permit and manage reasonable access to the public rights of way of China for telecommunications purposes on a competitively neutral basis;
- Ensure that all telecommunications carriers providing facilities or services within China comply with the ordinances of China;
- Ensure that China can continue to fairly and responsibly protect the public health, safety and welfare;
- Require the collocation of wireless telecommunications facilities, thus helping to minimize adverse visual impacts on the community;
- Enable China to discharge its public trust consistent with rapidly evolving federal and state regulatory policies, industry competition and technological development;
- Further the goals and policies of the Comprehensive Plan, while promoting orderly development of the town with minimal impacts on existing uses; and
- Protect the scenic and visual character of the community in accordance with the Comprehensive Plan.

### SECTION 4. APPLICABILITY

This local land use ordinance applies to all construction and expansion of wireless

telecommunications facilities, except as provided in section 4.1.

#### 4.1. Exemptions

The following are exempt from the provisions of this ordinance:

- A. Emergency Wireless Telecommunications Facility. Temporary wireless communication facilities for emergency communications by public officials.
- B. Amateur (ham) radio stations. Amateur (ham) radio stations licensed by the Federal Communications Commission (FCC).
- C. Parabolic antenna. Parabolic Antennas less than seven (7) feet in diameter, that are an accessory use of the property.
- D. Maintenance or repair. 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. Temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) consecutive days.
- F. Antennas as Accessory Uses. An antenna that is an accessory use to a residential dwelling unit.

### SECTION 5. REVIEW AND APPROVAL AUTHORITY

#### 5.1. Approval Required

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

- A. Expansion of an Existing Facility and collocation. 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; accessory use of an existing wireless telecommunications facility; or collocation 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 more than twenty (20) feet.

#### 5.2. Approval Authority

In accordance with Section 5.1 above, the CEO or Planning Board shall review applications for wireless telecommunications facilities, and make written findings in accordance with Chapter 2, Section 6, Administration, of the China Land Development Ordinance on whether the proposed facility complies with this Ordinance.

## SECTION 6. APPROVAL PROCESS

A public hearing shall be required, with all notification costs to be borne by the applicant. Furthermore, the applicant shall conduct a "balloon test" (i.e. floating a balloon above the proposed tower site at the height of the proposed tower that is visually recognizable from the ground). The balloon test shall be established at least forty-eight (48) hours prior to the date set for the public hearing, and the balloon test shall continue until the public hearing is closed, unless otherwise determined by the Planning Board.

### 6.1. Site Plan Review Application

Wireless telecommunications facilities, including expansions of existing facilities, shall comply with the application requirements of Chapter 2, Section 6, Administration, of the China Land Development Code and shall also 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 shall comply with current FCC regulations.
3. A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities up to 195 feet in height above ground level, except antennas located on rooftops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty days of the date the application is filed) from the FCC Tower Registration Database.
4. A facility site plan:
  - a.) Prepared and certified by a professional engineer registered in Maine indicating the 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. The site plan must include certification by a professional engineer registered in Maine that the proposed facility complies with all applicable American National Standards Institute (ANSI) technical and structural codes; and
  - b.) A boundary survey for the project performed by a land surveyor licensed by the State of Maine.
5. A 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.

c.) Photo simulations of the proposed facility taken from perspectives determined by the Planning Board. 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 or within a designated scenic resource,

ii.) the tree line elevation of vegetation within 100 feet of the facility, and

iii.) the distance to the proposed facility from the designated scenic resources noted viewpoints.

6. A written description of how the proposed facility fits into the applicant's telecommunications network, including a definition of the target market area. This submission requirement does not require disclosure of confidential business information.

7. Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed facility, the evidence for which may consist of any one or more of the following:

a.) Evidence that no existing facilities are located within the targeted market coverage area as required to 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:

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/Site Plan Review and Subdivision 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 Site Plan Review and Subdivision Ordinance or amendment thereto;

- 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;
8. Identification of districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed, in the National Register of Historic Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800) or listed in the current Town of China comprehensive plan.
  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 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 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 collocation;
    - 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, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.
  10. A form of acceptable surety approved by the Board of Selectmen to pay for the costs of removing the facility if it is abandoned.

### 6.3. 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 in accordance with Chapter 2, Section 6, Administration, of the China Land Development Code that due to special circumstances of the application, the information is not required to determine compliance with the standards of this Ordinance.

### 6.4. Fees

#### A. CEO Application Fee

An application for CEO approval shall include payment of an application fee as designated by the Board of Selectmen. The application shall not be considered complete until this fee is paid. The applicant is entitled to a refund of the application fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the Town of China to review the application.

#### B. Planning Board Application Fee

An application for Planning Board approval shall include payment of an application fee as designated by the Board of Selectmen. The application shall not be considered complete until this fee is paid. An applicant is entitled to a refund of the application portion of fee if the application is withdrawn within fifteen (15) days of date of filing, less all expenses incurred by the town of China to review the application.

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. All fees shall be paid in full prior to the start of construction.

That portion of the review fee not used shall be returned to the applicant within fourteen (14) days of the Planning Board's decision.

### SECTION 7. STANDARDS OF REVIEW

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

#### 7.1. CEO Approval Standards

An application for approval by the CEO under Section 5.1(A) must meet the following standards.

- A. The proposed facility is an expansion, accessory use, or collocation to a structure existing at the time the application is submitted in accordance with Section 4, Uses, of the China Land Development Code.
- B. The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- C. The proposed facility increases the height of the existing structure by no 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, to the maximum extent practicable. The proposed facility shall not display any permanent or temporary signs, writing, or symbols, or any graphic representation, except those needed to identify the property and the owner, and to warn of any danger, and placed no higher than six (6) feet above finished grade level.
- E. The proposed facility shall have no unreasonable adverse impact upon districts, sites, buildings, structures or objects, significant in American history, architecture, archaeology, engineering or culture, that are listed in the National Register of Historic

Places (see 16 U.S.C. 470w(5); 36 CFR 60 and 800) or the current Town of China Comprehensive Plan.

## 7.2 Planning Board Approval Standards

An application for approval by the Planning Board under Section 5.1(B) must meet the following standards.

- A. Priority of Locations. New wireless telecommunications facilities must be located according to the priorities below. The applicant shall demonstrate that a facility of a higher priority cannot reasonably accommodate the applicant's proposed facility.
- 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 adequate liability insurance and a lease agreement with the municipality that includes reasonable compensation for the use of the property and other provisions to safeguard the public rights and interests in the property.
- C. Design for Collocation. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future collocation of at least three additional wireless telecommunications facilities or providers. However, the Planning Board may waive or modify this standard where the district height limitation effectively prevents future collocation.
- D. Height. The maximum height of new or expanded wireless telecommunications facility shall be 195 feet. The facility shall be designed to collapse in a manner that does not harm other property.
- E. Setbacks. A new or expanded wireless telecommunications facility must comply with the minimum set back requirements for the respective district, or be set back one hundred five percent (105%) of its height from all property lines and roads, whichever is greater. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The following exemptions apply:
  - 1.) In all town districts, the setback may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse within the confinements of the facility compound.
- F. Landscaping. A new wireless telecommunications facility and related equipment must be screened with a planted buffer to maintain aesthetic value for abutting properties, the limits and dimensions of which shall be determined by the permitting authority.
- G. Driveways. A new wireless telecommunications facility should use existing entrances and driveways, if available, unless the applicant can demonstrate that a new entrance and

driveway will result in less visual traffic and environmental impact. New driveways to serve the facility shall not exceed twelve (12) feet in width. A gravel or crushed stone surface is minimally required.

- H. Fencing. A new wireless telecommunications facility must be fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.
- I. Lighting. A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. However, security lighting may be used as long as it is shielded to be down-directional to retain light within the boundaries of the site.
- J. 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, to the maximum extent practicable. Unless otherwise required, muted colors, earth tones, and subdued hues shall be used. The facility shall not display any permanent or temporary signs, writing, or symbols, or any graphic representation, except those needed to identify the property and the owner, and to warn of any danger, and placed no higher than six (6) feet above finished grade level.
- K. Structural Standards. A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled “Structural Standards for Steel Antenna Towers and Antenna Supporting Structures.” The monopole structure is the preferred structure and other options would be left to the discretion of the Planning Board.
- L. Visual Impact. The proposed wireless telecommunications facility will have no unreasonable adverse impact upon designated scenic resources within the Town, as identified either in the municipality adopted comprehensive plan, or by a State or federal agency.
  - 1.) In determining the potential unreasonable adverse impact of the proposed facility upon the designated scenic resources, the Planning Board shall consider the following factors:
    - a.) The extent to which the proposed wireless telecommunications facility is visible above the tree line, from the viewpoint(s) of the impacted designated scenic resource;
    - b.) The type, number, height, and proximity of existing structures and features, and background features within the same line of sight as the proposed facility;
    - c.) The extent to which the proposed wireless telecommunications facility would be visible from the viewpoint(s);
    - d.) The amount of vegetative screening;
    - e.) The distance of the proposed facility from the viewpoint and the facility’s location within the designated scenic resource; and



- f.) The presence of reasonable alternatives that allow the facility to function consistently with its purpose.
- M. Noise. 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. shall not exceed 85d.b. 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 existing noise standards.
- N. Historic & Archaeological Properties. The proposed facility, to the greatest degree practicable, will have no unreasonable adverse impact upon a historic district, site or structure which is currently listed on the National Register of Historic Places or the current Town of China Comprehensive Plan.

### 7.3 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 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:

- 1.) The owner of the wireless telecommunications facility and his or her successors and assigns agree to:
  - a.) Respond in a timely, comprehensive manner to a request for information from a potential 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 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 collocation.
  - d.) Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design. Construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.
- 2.) Upon request by the municipality, the applicant shall certify compliance with all applicable FCC radio frequency emissions regulations.
- 3.) The owner of the facility shall maintain the facility in good condition. Such maintenance

shall include, but shall not be limited to, painting, ensuring the structural integrity of the mount and security barrier, maintenance of buffer areas, landscaping, and camouflage materials, if any.

- 4.) The owner of the wireless telecommunications facility shall provide the Town with a structural evaluation prepared by a professional civil engineer licensed in Maine every five (5) years from the date of the Planning Board's approval of the site plan.
- 5.) The Planning Board shall determine the form and amount of security, to be approved by the Selectmen pursuant to 6.1.10, representing the cost for removal and disposal of abandoned wireless telecommunications facilities in the event that a facility is abandoned and its owner is unwilling or unable to remove the facility in accordance with Section 9 of this document. The amount of the security shall be based upon the removal cost plus fifteen per cent (15%), provided by the applicant and certified by a Maine licensed professional engineer. The owner of the facility shall provide the Planning Board with revised removal cost estimates and amended bond amounts, every five (5) years from the date of the Planning Board's approval of the site plan.

#### SECTION 8. 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 9. ABANDONMENT

A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The CEO shall notify the owner of an abandoned facility in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from the receipt of the notice to demonstrate to the CEO that the facility has not been abandoned.

If the Owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and reestablishment of vegetation according to a surety bond issued at the time of permitting.

If a surety has been given to the municipality for removal of the facility, the owner of the facility may apply to the Planning Board for release of the surety when the facility and related equipment are removed to the satisfaction of the Planning Board.

#### SECTION 10. APPEALS

Any person aggrieved by a decision of the CEO or the Planning Board under this ordinance may appeal the decision to the Board of Appeals, as provided by Chapter 9 of the China Land Development Code. Written notice of an 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.

## SECTION 11. ADMINISTRATION, ENFORCEMENT AND PENALTIES

Administration, enforcement, and penalties under this ordinance shall be consistent with Chapter 10 of the China Land Development Code.

## SECTION 12. CONFLICT AND SEVERABILITY

### 12.1 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. Consult Chapter 1, Purpose and Administration, of the China Land Development Code for guidance.

### 12.2 Severability

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

## SECTION 13. EFFECTIVE DATE

This ordinance becomes effective on February 3, 2009.