

ARTICLE 17 - WIRELESS COMMUNICATIONS FACILITIES

[NEW ARTICLE FEBRUARY 22, 2012]

SECTION 17.01 PURPOSE

The City of Bath recognizes that Wireless Communications Facilities (also referred to as personal wireless service facilities as that term is defined in Title 47, United States Code, Section 332 (c) (7) (C) as may be amended) provide a valuable and necessary service to the public. The City also recognizes the goal to minimize the proliferation of these facilities through proper planning and design. These regulations are intended to balance the interests of the telecommunication providers, their customers, and the public by:

- A. Establishing appropriate submission criteria, standards, and approval process for Wireless Communication Facilities (WCFs).
- B. Encouraging the co-location of WCFs with existing facilities and requiring new support structures to be designed to permit co-location.
- C. Requiring the use of finishes and colors that minimize visual impact by matching or blending the appearance of the new facilities with the surrounding natural or built environment.
- D. Ensuring that new WCFs, either by themselves or in combination with other existing on- or off-site WCFs, will not interfere with any public safety communications.
- E. Establishing a process to protect the important view sheds, which have been identified in the Comprehensive Plan.
- F. Requiring that WCFs that are no longer in use are removed in a timely manner and not at the expense of the City of Bath.

SECTION 17.02 DEFINITIONS

In addition to the definitions in Article 2 of this Code, the following definitions are applicable to this Article.

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

Camouflaged -- A WCF, including the support structure, which is disguised, hidden, part of an existing or proposed non-tower structure, or placed within an existing or proposed non-tower structure.

Carrier -- A company licensed by the Federal Communications Commission (FCC) that provides personal wireless services; also sometimes referred to as a provider.

Co-location – The use of a support structure by more than one carrier.

Environmental Assessment (EA), Environmental Impact Statement (EIS) - EAs and EISs are documents required by the FCC when a WCF is placed in certain designated areas.

NEPA Review - A review required as part of the National Environmental Policy Act (NEPA) by multiple local, state and federal agencies to determine if a proposed WCF will negatively impact certain environmental, historic or Native American resources.

Equipment Shelter – A building, cabinet, vault, box, or similar structure near the base of the support structure within which is housed equipment for a WCF such as batteries and electrical equipment. Equipment shelters are sometimes referred to as base transceiver stations.

Expansion of WCF – The addition of antennas or other devices to an existing support structure.

Fall Zone -- The area on the ground from the base of a WCF support structure that forms a circle within a radius equal to 125% of its height, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material. [amended June 24, 2015]

Height -- The height above ground level from the natural grade of a site to the highest point of a support structure.

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

Radio Frequency (RF) Engineer -- An engineer specializing in the design of wireless networks and frequency planning, especially the study of the impacts of radio frequencies.

Radio Frequency Radiation (RFR) -- The energy or emissions transmitted from the antennas as part of the WCFs.

Support structure – Any built structure, including guy wires and anchors to which antennas and associated hardware are mounted. Support structures include:

Self-Supported Lattice Tower – A support structure that consists of a network of crossed metal braces, which is usually triangular or square in cross section. A self-supported lattice tower is attached to a foundation and does not require guy wires and anchors. Also includes support structures referred to as “masts” and “radio masts.”

Guyed Lattice Tower – A support structure that consists of a network of crossed metal braces, which is usually triangular or square in cross section. A guyed lattice tower is attached to a foundation and is held erect by the use of guy wires and anchors. Also includes support structures referred to as “masts” and “radio masts,” if such structures are guyed.

Monopole – A support structure that consists of a single pole that is tapered from the base to the top, attached to a concrete pad, building, or other foundation and does not require guy wires and anchors.

Existing Nonresidential Structure – An existing non-residential structure, having an original principal use other than a WCF, to which wireless facility components may be attached under certain conditions.

Targeted Coverage Area – The geographic area that is targeted to be served by a WCF.

Ten-Percent Tree Canopy Height -- An average height found by inventorying the height, at above ground level, of the tallest 10 percent of the trees within the area that extends for a distance of 150 feet from the base of the mount, security barrier, or designated clear area for access to equipment, whichever is greatest. Trees that will be removed for construction are not to be used in this calculation.

Wireless Communications Facility (WCF) – The facilities that may include an equipment shelter, support structure, one or more antennas or other device that provides radio/television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio telecommunications (SMR), common carrier wireless exchange phone services, common carrier wireless exchange access services, and personal communications service (PCS) or pager services.

SECTION 17.03 APPLICABILITY

A. This Article applies to all WCFs except the following:

1. Parabolic antennas less than 3 feet in diameter, which are receiving-only antennas, and are accessory to the principal use of the property on which they are located.
2. The maintenance, repair, or reconstruction of a WCF and related equipment, provided it does not constitute an expansion of a WCF and there is no change in the height, appearance, or any dimension of the support structure or any antennas.

3. An antenna that is an accessory use to a permitted residential use.

B. Locations where WCFs are not Permitted

1. A WCF is not allowed if closer than ½ mile from an existing public safety WCF, unless it can be demonstrated by an RF engineer that the proposed WCF will not cause interference with the existing public safety WCF.
2. A WCF is not allowed in the Historic Overlay District unless it is placed within an existing or proposed non-tower structure.
3. A WCF is not allowed in certain other zones, according to the Land Use Table in Section 9.02.

SECTION 17.04 REVIEW AUTHORITY

A. Approval by the Planning Board

Construction of a new WCF or new support structure, structural modification to an existing support structure, an increase of 10 percent or more in height of a support structure or antennas on a support structure, or the addition of one or more new antennas on an existing support structure is permitted only after Site Plan Approval from the Planning Board in accordance with the provisions of this Code, including this Article.

B. Approval by the CEO

The replacement of an existing antenna with one of the same size may be permitted subject to review by and approval from the CEO in accordance with this Article 17 and any other applicable City Codes.

SECTION 17.05 APPLICATION PROCESS AND SUBMISSION REQUIREMENTS

A. WCFs allowed with approval from the Planning Board

Prior to submitting an application to the Planning Office in accordance with the requirements of Article 12 of this Code, an applicant for a new WCF must schedule a Pre-application Workshop with the Planning Board in order to discuss the application. An applicant may request a Pre-application Workshop with the Planning Board according to Section 12.05, A.

In addition to the submission requirements of Section 12.08 of this Code, an application for a WCF allowed with approval from the Planning Board must contain the following information:

1. Name, address, and contact information of the applicant for the WCF.

2. Name, address, and contact information of the owner of the land on which the WCF is to be, if other than the applicant.
3. A topographic map or maps showing the locations of all WCFs within a 5-mile radius of the proposed WCF (noting the number of carriers located on each WCF and the number of available carrier locations), and the existing and proposed propagation of service within five miles.
4. A site plan prepared and certified by a professional engineer registered in the State of Maine showing the location, type, and height of the proposed WCF; antenna capacity; on-site and abutting off-site land uses; buildings within 200 feet of the proposed support structure; access drives; property lines of the lot on which the WCF is to be located; Setbacks and Yard Areas; and the locations of any other existing or proposed WCFs on the site.
5. The site plan must include said engineer's certification that the proposed WCF complies with all applicable American National Standards Institute (ANSI) and other applicable technical codes.
6. Elevation drawings of the proposed WCF and any other proposed structures, showing height above ground level, guy wires, and existing and proposed tree line within 100 feet of the lot on which the WCF is proposed. Reference must be made to any design characteristics that have the effect of reducing or eliminating visual obtrusiveness.
7. Details of the support structure base (foundation), support structures, access road, fencing, and gate.
8. Landscaping plan prepared by a Landscape Architect registered in the State of Maine showing the location of proposed screening and fencing, location of trees and the heights of the trees used in the Ten-Percent Tree Canopy Height Calculation, proposed plantings, existing trees and other plant materials to be retained and their means of protection during construction, trees or shrubs to be removed, and a landscape maintenance plan.
9. An analysis of the visual impact of the proposed facility, including the tower and supporting structures, which may include photo-simulations or other techniques, that identify the potential visual impacts of the proposed facility. Consideration must be given to views from streets, public areas, water bodies, private residences, and historic resources including historic districts and structures listed in the National Register of Historic Places and archaeological resources. The analysis of the impact on historical and archaeological resources must meet the requirements of the Maine State Historical Preservation Officer in his/her review capacity for the FCC.

10. A written report from a qualified forestry or environmental consultant that describes the Ten-Percent Tree Canopy Height and the methodology used to determine it.
11. Written description of how the WCF fits into the applicant's communications network.
12. Evidence that an evaluation has taken place, as well as the results of such evaluation, satisfying the requirements of the National Environmental Policy Act (NEPA) further referenced in applicable FCC rules. If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, submission of the EA or EIS to the City prior to the beginning of the federal 30-day comment period, and the City's review process, is required.
13. Photographs of the site showing existing conditions, including existing vegetation and structures, at the perimeter of the site, within Setbacks and Yard Areas, and in the vicinity of proposed improvements.
14. An estimate of the cost of construction and cost of removal of the WCF, prepared by a professional engineer registered in the State of Maine, plus evidence of financial capacity to construct, operate, and remove the WCF.
15. For proposals to construct a new support structure, evidence that no existing building, site, or structure can accommodate the proposed facility. Such evidence may consist 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, structural strength, or capacity and cannot be reasonably improved to address these deficiencies to meet the applicant's engineering requirements.
 - (c) An inventory of all of the provider's existing and approved towers, antennas, or sites within the City of Bath and locations in surrounding municipalities where wireless communications are proposed to be utilized in conjunction with the facility proposed in the application.
 - (d) Evidence that the fees, costs, or contractual provisions required by the owner of an existing facility in order to permit co-location on an existing facility are unreasonable. Costs exceeding the pro rata share of a new facility development are presumed to be unreasonable.
16. A letter signed by the applicant committing the applicant and its successors to allow future co-location of WCFs to FCC licensed wireless service providers without discrimination, based on a reasonable charge for shared use, based on

existing rates in the Maine Midcoast area and generally accepted accounting principles.

17. An analysis prepared and certified by a Radio Frequency Engineer or qualified engineer registered in the State of Maine demonstrating that the WCF will not interfere with any public safety communications.
18. Evidence of an agreement with an FCC licensed carrier to utilize the support structure to provide wireless communication services.
19. The applicant has submitted some form of surety, which must be approved by the Planning Board, for an amount agreed upon by the Planning Board and determined sufficient to cover the cost of removal of the WCF.
20. A letter of intent must be provided that commits the WCF owner and its successors in interest to:
 - (a) Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant; and
 - (b) Negotiate in good faith for shared use by third parties that have received an FCC license or permits.

B. WCFs Allowed with approval from the Codes Enforcement Officer (CEO)

An application for a WCF that is allowed by this Article with approval from the CEO as described in Section 17.04 must contain the following information:

1. Name, address, and contact information of the applicant for the WCF.
2. Name, address, and contact information of the owner of the land if other than the applicant.
3. Copy of City Tax Map showing the location of the proposed facility.
4. A copy of the FCC license for the Carrier proposing to use the WCF.
5. A description of the change of antennas including the height of the existing antenna and the replacement antenna.

SECTION 17.06 PERFORMANCE STANDARDS FOR WCFs

In addition to the applicable standards in Article 10, the Planning Board must find that the following standards have been met before they may approve an application. The

purposes of these standards are to balance the rights of applicants to install WCFs with the requirement of the City to protect the public's health, safety, and general welfare. If an applicant can meet the intent and purpose of the performance standard by an equivalent method, that equivalent method may be approved. The burden of proof as to whether the performance standard and the intent and purpose of the performance standard are met is that of the applicant. The Planning Board may waive the requirement to meet a standard if the applicant requests the waiver in writing and the Planning Board finds that, due to special circumstances, meeting the standard is not required in the interest of public health, safety, and general welfare, or is inappropriate. Waivers may be granted only in writing with written findings of facts and conclusions, and may be subject to conditions. The Planning Director or the Planning Board is authorized to retain experts at the applicant's expense to evaluate technical information or conduct studies that it finds necessary in order to determine whether these standards will be met.

- A. All new WCF support structures must be designed as monopoles. The Planning Board may allow a WCF as a self-supporting lattice tower or guyed lattice tower upon a finding by the Board that the particular conditions of a site (including but not limited to geologic or weather-related conditions) cause the erection of a self-supporting lattice tower or guyed lattice tower to reduce the potential hazard of a tower fall or other public safety concern.
- B. WCF consisting of a new or expanded support structure must be designed to accommodate future co-location of at least 3 additional WCFs or carriers.
- C. The fall zone area, as defined in Section 17.02, shall be located on the property of the developer, or if on leased property, the property of the lessor, except where the Planning Board allows a portion of the fall zone to encroach upon an abutter's property pursuant to this Section. The Planning Board may allow a portion of the 125% radius around the WCF support structure to extend upon the property of an abutting property owner(s), upon showing that the abutting property owner(s) has agreed to allow a portion of the fall zone to be extended onto their property. The allowed activity within the fall zone may be addressed under either of the following options. Option 1: If there are to be no restrictions on the placement or erection of structures within the fall zone area, then the lessor of the property where the WCF support structure is located and/or the abutting property owner if encroachment of the fall zone distance is approved by the Planning Board on that abutting property owner(s) property, then the lessor or abutter will provide a recordable document(s) that identifies by suitable metes and bounds description or survey depiction the area of the lessor or abutter(s) property within the fall zone area outside of the area controlled by the developer, acknowledging the potential hazard for falling debris. Option 2: Where the owners of property within the area defined as a fall zone are agreeable to prohibiting the placement of structures within that area, then the owners of all property so affected shall provide a recordable easement which defines the area affected by suitable metes and bounds description or survey depiction of the area and which restricts the placement of structures within that area for the duration of time that the support structure is in place.

The distance requirement for the fall zone shall be provided on the developer's property or property of the lessor if the developer is leasing property to locate the structure. The Planning Board, however, may decrease the amount of the fall zone on the developer or lessor's property by allowing a portion of the fall zone to extend into the abutting property(s). In such instance, however, the support structure may not be sited closer to the abutting property line than the minimum front, side and/or rear setback requirement of the zone and district in which the fall zone is located and the combined distance from the boundary and the portion of setback on the abutting property(s) shall be equivalent to the fall zone radius.

The 125% setback shall not apply to Wireless Communication Facilities installed within Existing Nonresidential Structures. [amended June 24, 2015]

- D. An equipment shelter must be surrounded by a buffer of tree growth, vegetation, or topography sufficiently dense to screen views of such shelter from abutting properties and all public streets.
- E. A lockable gated perimeter fence at least 8 feet in height, must be constructed and maintained, which adequately protects the site from trespassers. The fence must include barbed wire around the top. A copy of the key or of the combination to the gate lock must be provided to the Bath Police Department and the Bath Fire Department.
- F. Lighting must be limited to shielded nighttime (sunset to sunrise) lighting as well as any illumination required by State or Federal regulations.
- G. All colors and materials must be designed to allow the support structure as well as antennas, cables, and other appurtenances to match or blend with the surrounding natural or built environment to the maximum extent practicable. Muted colors, earth tones, and subdued hues and metals having non-reflecting finishes must be used.
- H. The use of a generator to provide electricity is only allowed at times when the power supply from the electric utility is cutoff due to a power outage. When any backup, emergency generator is tested it may not be tested earlier than 7 am or later than 8 pm and it must be muffled so as to not emit sound (measured in dB (a) scale) greater than 50. Sound levels will be measured 4 feet above ground at the lot lines or lease lines of the lot or lease-hold area on which the generator is located.
- I. A new or expanded WCF must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Towers and Antenna Supporting Structures."
- J. A WCF must not, either by itself or in combination with other existing on- or off-site WCFs, interfere with any public safety communications.

- K. No advertising signage is allowed on any portion of a WCF.
- L. No tower may project higher than 30 feet above structures within 200 feet of the proposed facility or, if there are no structures within 200 feet, such facilities may not project higher than 30 feet above the Ten-Percent Tree Canopy Height. The Planning Board may allow a WCF to project higher upon a finding by the Board that existing trees or structures interfere with antenna signal such that it would limit the ability to serve up to four different licensed carriers.
- M. A self-supported lattice tower or a guyed lattice tower must be screened by existing trees, topography, or a combination of trees and topography, such that no more than the top 30 feet of the tower is visible from ground level within 200 feet of the base of the tower.
- N. All wires and cables must be bundled together or contained inside a conduit. The bundled wires and conduit must be of a color that blends in with the rest of the tower.
- O. The height of any WCF may not exceed 120 feet.
- P. A WCF that is disguised as another type of structure is limited in height to the maximum height allowed, in Article 8, of the structure the WCF is disguised as.
- Q. A WCF that is hidden as a part of a non-tower structure or is placed within a non-tower structure is not constrained by height limitations except to the extent that Article 8 restricts the height of such non-tower structure.
- R. All views and viewsheds identified in the Comprehensive Plan must be protected to the greatest extent practicable.
- S. Expansions located on any of the following existing structures are exempt from the height restriction of this Article provided that there is no more than a one-time 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 other similar existing utility structures, and water towers.

SECTION 17.07 APPROVAL FROM STATE AND FEDERAL AGENCIES

Before a building permit may be issued by the CEO for any WCF, the applicant must provide the Codes Enforcement Office with a copy of all required approvals from all applicable state and federal agencies including, a Determination of No Hazard from the Federal Aviation Administration (FAA), a copy of the carrier's FCC license and any additional approvals as may be required, including a description of any conditions of an approval, or a statement from the agency that no approval is required.

SECTION 17.08 ABANDONMENT

A WCF that is not operated as a WCF for a continuous period of 12 months or for which the City has received notice that the removal surety is to be canceled is considered abandoned. The CEO must then notify the owner of an abandoned WCF in writing and order the removal of the facility within 60 days of receipt of a written notice. The owner of the facility has 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 has not been abandoned, the owner has 60 days to remove the facility. If the facility is not removed within the time period, the City may exercise the removal surety to pay for the costs of removing the WCF and returning the site to its pre-construction condition, including removal of access drives and reestablishment of vegetation.

The owner who removes an abandoned WCF 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 17.09 APPEALS

An appeal from a decision of the CEO or the Planning Board is to be made to the Superior Court in accordance with the Maine Rules of Civil Procedure, Rule 80B.