

CHAPTER 407
WIRELESS TELECOMMUNICATIONS FACILITIES SITING ORDINANCE
TOWN OF GRAY MAINE

Enacted August 7, 2001 - Effective September 6, 2001
Amended May 18, 2010 – Effective June 17, 2010

SECTION 1 TITLE

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

SECTION 2 AUTHORITY

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section I 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:

- A. Implement a municipal policy concerning the provision of wireless telecommunications services, and the siting of their facilities within the Town of Gray.
- B. Establish clear guidelines, standards, and time frames for the exercise of municipal authority to regulate wireless telecommunications facilities.
- C. Allow competition in telecommunications service.
- D. Encourage the provision of advanced telecommunications services to the largest number of businesses, institutions, and residents of the Town of Gray.
- E. Authorize and facilitate reasonable access to the public rights of way of the Town of Gray for telecommunications purposes on a competitively neutral basis.
- F. Ensure that all telecommunications carriers providing facilities services within the Town of Gray comply with the Ordinances of the Town of Gray.
- G. Ensure that the Town of Gray can continue to fairly and responsibly protect the public health, safety, and welfare.
- H. Encourage the co-location of wireless telecommunications facilities thus helping to minimize adverse visual impacts on the community.
- I. Enable the Town of Gray to discharge its public trust consistent with rapidly evolving Federal and State regulatory policies, industry competition, and technological development.
- J. Further the goals and policies of the Comprehensive Plan of the Town of Gray, while promoting orderly development of the town with minimal impacts on existing uses.
- K. Protect the scenic and visual character of the community. Minimize the adverse impacts of such facilities including: scenic and visual impacts, environmental impacts, impacts to historically significant areas, health and safety impacts, and property value impacts.

SECTION 4 APPLICABILITY

This local land use Ordinance applies to all construction and expansion of wireless telecommunications facilities with the exception that the following are exempt from the provisions of this Ordinance:

- A. Emergency Wireless Telecommunications Facility – A temporary wireless communication facility for emergency communications by public and private officials.
- B. Amateur (ham) radio station antenna – An antenna of an amateur (ham) radio station licensed by the Federal Communications Commission (FCC) provided that it is not more than thirty-five (35) feet in height.
- C. Parabolic antenna – A parabolic antenna less than seven (7) feet in diameter, and not more than thirty-five (35) feet in height, that is an accessory use of a 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 – A temporary wireless telecommunications facility, in operation for a maximum period of one hundred eighty (180) days.
- F. Antenna as Accessory Use – An antenna that is an accessory use to a residential dwelling unit provided that it does not exceed thirty-five (35) feet in height.
- G. Public Service Use or Facility – A use operated or used by a public body or public utility as a public service that has a maximum height of no more than one hundred (100) feet.

SECTION 5 APPROVAL AUTHORITY

5.1 APPROVAL REQUIRED

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

- A. New Construction
 - 1. Construction of a new wireless telecommunications facility requires approval by the Planning Board.
- B. Expansion of an Existing Facility and Co-location
 - 1. Expansion of an existing wireless telecommunications facility that increases the height of the facility by more than twenty (20) feet requires approval by the Planning Board.
 - 2. Expansion of an existing wireless telecommunications facility, accessory use of an existing wireless telecommunications facility, or co-location on an existing wireless telecommunications facility that does not increase the height of the facility by more than twenty (20) feet requires approval by the CEO.

5.2 APPROVAL AUTHORITY

In accordance with Section 5.1 above, the Planning Board or the CEO shall review applications for wireless telecommunications facilities and provide written findings on whether or not the proposed facility complies with this Ordinance.

SECTION 6 APPLICATION AND REVIEW

6.1 PRE-APPLICATION CONFERENCE

All persons seeking approval of the Planning Board or the CEO under this Ordinance shall meet with the CEO before filing an application. At this meeting, the CEO shall explain to the applicant the Ordinance provisions as well as application forms and submissions that will be required under this Ordinance.

6.2 APPLICATION

All persons seeking approval of the Planning Board or the CEO under this Ordinance shall submit an application as provided below. The Town Planner or the CEO, as the case may be, shall be responsible for ensuring that notice of the application is published in a newspaper of general circulation in the community.

A. General Rules for Applications

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 name and address of 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 proposed facility complies with all current FCC regulations for radio emissions.
3. Identification of districts, sites, building, structures, or objects, significant in American history, architecture, archaeology, engineering, or culture that are listed, or are eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w (5); 36 CFR 60 and 800) from which the facility is visible.
4. Location map and elevation drawings of the proposed facility and any other proposed structures showing colors and identifying structural materials.
5. For a proposed new facility or for a proposed expansion of an existing facility, a signed statement that the owner of the wireless telecommunications facility and his or her successors and assigns agree to:
 - a. Respond in a timely, comprehensive manner to a request for information from a potential co-location applicant in exchange for a reasonable fee not in excess of the actual cost of preparing a response.
 - b. Negotiate in good faith for shared use of the wireless facility by third parties.
 - c. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location.
 - d. Require no more than a reasonable charge for shared use, based upon 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 use without causing electromagnetic interference. The amortization of the above cost by the facility owner shall be accomplished at a reasonable rate, over the useful life span of the facility.

B. Application for Planning Board Approval

An application for approval by the Planning Board must be submitted to the Town Planner. In addition to the general rules of Section 6.2 A, the application must include the following information:

1. A USGS 7.5 minute topographic map showing the location of all structures and wireless telecommunications facilities more than one hundred fifty (150) feet in height above the ground level except antennas located on roof tops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the Town of Gray.
2. A site plan prepared and certified by a qualified Professional Engineer registered in State of 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, and all applicable American National Standards Institute (ANSI) technical and structural codes.
3. A boundary survey of the site performed by a Land Surveyor licensed by the State of Maine.
4. 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, or their designee, during the pre-application conference. Each photo must be labeled with the line of sight, elevation, and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
 - d. A narrative discussing:
 - (i) The extent to which the proposed facility would be visible from or within a designated scenic resource.
 - (ii) The tree line elevation of vegetation within 100 feet of the facility.
 - (iii) The distance to the proposed facility from the noted viewpoints of a designated scenic resource.
5. A written description of how the proposed facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.
6. 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 that are suitable 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 the existing facilities cannot be reinforced to accommodate the new equipment.
 - (ii) Existing or approved facilities do not have space on which planned equipment can be placed so it can function effectively.
 - d. 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.
 - e. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing facility, building, or structure and has been denied access.
 - f. The applicant's proposed antenna or equipment would cause electromagnetic interference with antennas on the existing towers or structures.
 - g. Antennas or equipment on the existing facility would cause electromagnetic interference with the applicant's proposed antenna.
7. A sample of a form of surety approved by the Planning Board to pay for the costs of removing the facility if it is abandoned. Actual surety is to be obtained after approval of the application by the Planning Board.

C. Application for CEO Approval

Applications for permit approval by the CEO must be in accordance with the general rules of Section 6.2 A

6.3 SUBMISSION WAIVER

At the time of application, an applicant may submit a written request for a waiver of some submission requirements. A waiver of any submission requirement may be granted only if the Planning Board, Town Planner, or CEO finds in writing that the information is not required to determine compliance with the standards of this Ordinance due to special circumstances of the application.

6.4 FEES

A. Application Review Fees

An applicant shall pay all reasonable and customary fees for the costs incurred by the Town of Gray that are necessary to review an application for approval by the Planning Board or CEO. The review fees shall be paid in full prior to the start of construction. Any portion of the review fees not used shall be returned to the applicant within fourteen (14) days of the decision by the Planning Board or CEO.

B. Planning Board Application Fee

An application for Planning Board approval shall include payment of an application fee of one-hundred-fifty dollars (\$150.00). The application shall not be considered complete until this fee is paid. If an application is withdrawn within fifteen (15) days of the date of filing, the applicant is entitled to a refund of the application portion of the fee less all expenses incurred by the Town of Gray to review the application.

C. CEO Application Fee

An application for CEO approval shall include payment of an application fee of one-hundred-fifty dollars (\$150.00). The application shall not be considered complete until this fee is paid. If an application is withdrawn within fifteen (15) days of the date of filing, the applicant is entitled to a refund of the application portion of the fee less all expenses incurred by the Town of Gray to review the application.

6.5 NOTICE OF COMPLETE APPLICATION

- A. Upon receipt of an application, the Town Planner or CEO, as the case may be, shall provide the applicant with a dated receipt. Within five (5) working days of receipt of an application the Town Planner or CEO, as appropriate, shall review the application and determine if the application meets the submission requirements. The Planning Board, Town Planner, or CEO, as appropriate, shall review any requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application.
- B. If the application is complete, the Town Planner or CEO, as appropriate, shall notify the applicant in writing of this determination and require the applicant to provide a sufficient number of copies of the application to the Planning Board, Town Planner, Code Enforcement Officer, Town Engineer, and Fire Department.
- C. If the application is incomplete, the Town Planner or CEO, as the case may be, shall notify the applicant in writing, specifying the additional materials or information required to complete the application.
- D. If the application is deemed to be complete, and requires Planning Board review the Town Planner or CEO, as appropriate, shall notify all abutters to the site as shown on the Assessor's records, by first-class mail, that an application has been accepted. This notice shall contain a brief description of the proposed activity and the name of the applicant, give the location of a copy of the application available for inspection, and provide the date, time, and place of the Planning Board meeting at which the application will be considered. Failure on the part of any abutter to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

6.6 PUBLIC HEARING

A public hearing shall be held within thirty (30) days of the notice of the completed application for an application that requires Planning Board approval under Section 5.1 A or 5.1 B.

6.7 APPROVAL

A. Planning Board Approval

Within ninety (90) days of receiving a completed application for approval under Section 5.1 A or 5.1 B, the Planning Board shall approve, approve with condition, or deny the application in writing, together with the findings on which that decision is based. The Town Planner shall notify all abutters within five hundred (500) feet of the proposed site of the decision to approve a permit under this section. The time period may be extended upon agreement between the applicant and the Planning Board. If the Planning board has a waiting list of applications that would prevent the Planning Board from making a decision within the required ninety (90) day time period, then a decision on the application shall be issued within sixty (60) days of the public hearing or within sixty (60) days of the completed Planning Board review. This time period may be extended upon agreement between the applicant and the Planning Board.

B. CEO Approval

Within thirty (30) days of receiving a completed application for approval under Section 5.1 C, the CEO shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based.

The CEO shall approve the application if the CEO finds that the application complies with the provisions in Section 7.1 of this Ordinance. The CEO shall notify all abutters within five-hundred (500) feet of the proposed site of the decision to issue a permit under this section. The time period may be extended upon agreement between the applicant and the CEO.

SECTION 7 STANDARDS OF REVIEW

7.1 PLANNING BOARD APPROVAL STANDARDS

An application for approval by the Planning Board under Section 5.1 A or 5.1 B must meet the following standards:

A. Location

1. New wireless telecommunications facilities are not permitted in the Well Head Protection Zone 2 (WH2).
2. New wireless telecommunications facilities are not permitted in any areas that are subject to Shoreland Zoning restrictions.
3. New wireless telecommunications facilities may be permitted as architectural co-locations attached to any structures such as church steeples, water towers, power poles, tall buildings, and similar structures anywhere in the Town of Gray, with the following restrictions:
 - a. Architectural co-locations are not permitted in the restricted zones of Sections 1 and 2 above.
 - b. New wireless telecommunications facilities that are architectural co-locations are not permitted to extend more than twenty (20) feet above the structures to which they are attached.
4. New wireless telecommunications facilities may be permitted on any State of Maine or Municipal Property except that new wireless telecommunications facilities are permitted in the Village Center Zone (VC) only in areas where the ground elevation is three-hundred-fifty (350) feet or more above MSL.
5. New wireless telecommunications facilities may be permitted in the following Telecommunications Overlay Zones: (Note: The series of Gray Quadrangle U. S. Geological Survey Topographic Maps dated 1980 and revised on file in the Town Office shall be used as reference maps for ground elevation above mean sea level.)
 - a. Telecommunications Overlay Zone 1 shall include all areas in the vicinity of Adams Hill (Mountain View Road) where the ground elevation is five-hundred (500) feet or more above MSL.
 - b. Telecommunications Overlay Zone 2 shall include all areas in the vicinity of Hunt's Hill (Eagle's Nest Road) where the ground elevation is four-hundred (400) feet or more above MSL.

- c. Telecommunications Overlay Zone 3 shall include all areas in the vicinity of Long Hill (Long Hill Road) where the ground elevation is four-hundred (400) feet or more above MSL.
- d. Telecommunications Overlay Zone 4 shall include all areas in the vicinity of Dutton Hill (Dutton Hill Road) where the ground elevation is four-hundred (400) feet or more above MSL.
- e. Telecommunications Overlay Zone 5 shall include all areas in the vicinity of Colley Hill (on the East side of Gray Village) where the ground elevation is three-hundred-fifty (350) feet or more above MSL.
- f. Telecommunications Overlay Zone 6 shall include all areas in the vicinity of Libby Hill (Libby Hill Road) where the ground elevation is three-hundred-seventy (370) feet or more above MSL.
- g. Telecommunications Overlay Zone 7 shall include all areas in the vicinity of Knudsen Road between Cambell Shore Road and the Windham Town Line where the ground elevation is four-hundred (400) feet or more above MSL.
- h. Telecommunications Overlay Zone 8 shall include all areas in the vicinity of the small hill on Libby Brook where the ground elevation is two-hundred-fifty (250) feet or more above MSL.
- i. Telecommunications Overlay Zone 9 shall include all areas in the vicinity of the hill at Weathervane Road where the ground elevation is three-hundred (300) feet or more above MSL.
- j. Telecommunications Overlay Zone 10 shall include all areas in the vicinity of the hill at Merrill Road and Bull Run Road where the ground elevation is three-hundred (300) feet or more above MSL.

B. Siting on Municipal Property

An application to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, must show the following:

- 1. The proposed location complies with applicable Town of Gray 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 Town of Gray that will include reasonable compensation as determined by the Town Council after a public hearing for the use of the property and other provisions to safeguard the public rights and interests in the property.

C. Siting on State Property

An application to locate a new wireless telecommunications facility, or expand an existing facility on municipal property, must show the following:

- 1. The proposed location complies with applicable Town of Gray policies and ordinances.
- 2. The proposed facility or facility expansion serves essential government services and does not serve commercial purposes.

D. Design for Co-location

- 1. A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansions for future co-location of at least three additional

wireless telecommunications facilities or providers. The Planning Board, however, may waive or modify this standard where special circumstances effectively preclude future co-location.

2. An exception to Section 1 above shall be allowed in the case of architectural co-location where a new facility may stand alone without any provisions for future co-locators.

E. Height

1. The height any new wireless telecommunications facility must be less than an amount that would require illumination in order to be in accordance with FAA or other applicable State and Federal requirements.
2. On any new site, the height of a new wireless telecommunications facility may be no more than two hundred (200) feet at the highest point including antennas or accessories. The highest point shall exclude farm building components, flagpoles, chimneys, ventilators, skylights, domes, water towers, bell towers, church spires, and processing towers, tanks, bulkheads, or other building accessory features usually erected at a height greater than the main roofs of buildings.
3. For any allowed location where there are one or more existing wireless telecommunications facilities, a new wireless telecommunications facility that is located at a horizontal distance of no more than four-hundred (400) feet from a facility that was in existence at the time of Adoption of this Ordinance may have a height such that the highest point including antennas or accessories may be as much as, but no more than, the height of that existing facility. The new facility is not permitted to be illuminated except for security lighting in accordance with Section H below.
4. Facility height shall be the vertical distance measured from the finished grade of the facility site to the highest point of the structure, including base pad, all antennas, and other appurtenances. If the support structure is on a sloped grade, the average between the highest and lowest grades shall be used in calculating the height.

F. Setbacks

A new or expanded wireless telecommunications facility 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 setback may be satisfied by including areas outside the property boundaries if secured by easements. The following exemptions apply:

1. The setback requirement may be reduced by the Planning Board upon a showing by the applicant that the facility is designed to collapse in a manner that will not harm other property.
2. A horizontal antenna is exempt from the setback requirement if it extends no more than five (5) feet horizontally from the edge of the structure to which it is attached, and it does not encroach upon abutting property.

G. Landscaping

A new wireless telecommunications facility and related equipment must be screened with plants from being viewed by abutting properties, to the maximum extent practicable. Existing plants and natural land forms on the site shall also be preserved to the maximum extent practicable.

H. Fencing

A new wireless telecommunications facility must be suitably fenced to discourage trespass on the facility and to discourage climbing on any structure by trespassers.

I. Lighting

Any new wireless telecommunications facility must not be illuminated except for security lighting that is directed down in a manner to retain light within the boundaries of the site, to the maximum extent practicable.

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.

K. Structural Standards

For a building permit to be issued, a new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) Standard 222 Revision F entitled “Structural Standards for Steel Antenna Towers and Antenna Supporting Structures” and the Town of Gray Building Code.

L. Visual Impact

The proposed wireless telecommunications facility must not have any unreasonable adverse impact upon designated scenic resources within the Town of Gray as identified either in the Comprehensive Plan, or by a State or Federal agency. In determining the potential unreasonable adverse impact of the proposed facility upon designated scenic resources; the Planning Board shall consider the following factors:

1. The extent to which the proposed wireless telecommunications facility is visible above the tree line as seen from one or more viewpoints of the impacted designated scenic resource.
2. The type, number, height, and proximity of existing structures and features and background features within the same line of sight as the proposed facility.
3. The extent to which the proposed wireless telecommunications facility would be visible from viewpoints.
4. The amount of vegetative screening.
5. The distances of the proposed facility from viewpoints and the location of the facility.
6. The presence of reasonable alternatives that would allow the facility to function consistently with its purpose.

M. Fuels

The risk of environmental contamination that might result from fuel leakage or fuel spills is to be minimized by the use of propane or other suitable alternative fuel for facility heating or for operation of a back-up power generator. Gasoline or diesel fuel is to be used for operation of a back-up power generator only if specially approved by the Planning Board.

N. Noise

Any noise resulting from the operation of a back-up power generator at any time during a general power failure or the testing of a back-up generator shall not exceed seventy (70) dBA at the boundaries of a telecommunications site, excluding any easements.

O. Historic and Archaeological Properties.

The proposed facility, to the greatest degree practicable, shall have no unreasonable adverse impact

upon a historic district, site, or structure which is currently listed on or eligible for listing on the National Register of Historic Places from which the facility is visible.

7.2 CODE ENFORCEMENT OFFICER APPROVAL STANDARDS

An application for approval by the CEO under Section 5.1 C must meet the following standards:

- A. The applicant has sufficient right, title, or interest to locate the proposed facility on the existing structure.
- B. The proposed facility is an expansion, accessory use, or co-location to a structure existing at the time the application is submitted. An architectural co-location must be in accordance with Section 7.1 A 3 above.
- C. The proposed facility does not increase the height of the existing structure by more than twenty (20) feet.
- D. The proposed facility will be constructed with materials and colors that match or blend with the surrounding natural or built environment to the maximum extent practicable.
- E. The proposed facility, to the greatest degree practicable, 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 or eligible for listing, in the National Register of Historic Places (see 16 U.S.C. 470w (5); 36 CFR 60 and 800).

SECTION 8 AMENDMENT TO AN APPROVED APPLICATION

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

SECTION 9 TOWER INSPECTION

- A. All telecommunications towers must be inspected for structural integrity by a qualified Registered Professional Engineer at time intervals of no more than ten (10) years.
- B. A copy of the inspection report shall be provided to the Town Engineer within thirty (30) days of its receipt by the owner or operator of the tower. Failure to provide required inspection reports in accordance with the required time schedule shall be deemed *prima facie* evidence of abandonment.
- C. Upon recommendation by the Town Engineer, the CEO may require the tower to be repaired or to be demolished based upon the results of the inspection.
- D. Any repairs that are required as a result of the inspection shall be completed within ninety (90) days from the receipt of notice by the owner of the tower. Repairs may be required to be completed more quickly if the Town Engineer determines that a safety or impending environmental emergency exists.
- E. Within ninety (90) days of receipt of notice, the owner must complete the removal of a tower that has been ordered demolished. After the demolition of a tower has been completed, the site may be converted to another use or an application to build a new tower may be submitted to the Planning Board. When applicable, the site must be returned to its pre-construction natural condition as much as may be feasible to the satisfaction of the CEO. The CEO may require the removal of all associated above ground structures, equipment, foundations, guy anchors, utilities, and access roads or driveways constructed to specifically service the demolished tower.

- F. If demolition of a tower has not been completed within ninety (90) days of receipt of notice, then the Municipal Officers may proceed at the owner's expense to demolish the tower and return the site to its pre-construction natural condition or convert the site to another appropriate use. The Municipal Officers may act more quickly if the Town Engineer has determined that a safety or environmental emergency exists. Upon completion of demolition or conversion of the facility to the satisfaction of the CEO and the Planning Board, any balance remaining in the surety provided to the Town of Gray by the owner may be returned to the owner.
- G. After the completion of each inspection and completion of any required repairs, the amount of the surety provided to the Town of Gray by the owner or operator of a tower shall be reviewed. The amount of the surety may be increased if deemed necessary to be adequate to pay for the estimated future costs of demolishing the tower.
- H. All the costs of inspections, reports, repairs, review of surety, or demolition required under this Section of this Ordinance shall be borne entirely by the owner or operator of the tower.

SECTION 10 ABANDONMENT

A wireless telecommunication facility that has not been used or operated at any time during a continuous period of the preceding twelve (12) months shall be considered to be abandoned. The CEO shall provide written notice to the owner of an abandoned facility that the facility is deemed to be abandoned and that the abandoned facility is required to be removed or to be converted to another use.

- A. Within thirty (30) days of receipt of a notice of abandonment, the owner of the facility shall exercise one of the following three options:
 - 1. The owner may demonstrate to the CEO that the facility has not been abandoned, is in use, or has been in use during the continuous period of the preceding twelve (12) months, is being properly maintained, and is not a safety hazard.
or
 - 2. The owner may submit a plan to the CEO for conversion of the facility to another use that will be in accordance with all applicable zoning requirements including approval by the Planning Board or CEO as appropriate.
or
 - 3. The owner may submit a plan for completion of removal of the abandoned facility to be accomplished within ninety (90) days. When applicable, the site must be returned to its pre-construction natural condition as much as may be feasible to the satisfaction of the CEO. The CEO may require the removal of all associated above ground structures, equipment, foundations, guy anchors, utilities, and access roads or driveways constructed to specifically service the abandoned facility.
- B. If there is more than one wireless telecommunication facility at a particular site, then the requirements of Section A above are to be applied only to an abandoned facility.
- C. If the owner of the abandoned facility has not exercised one of the three options of Section A above within ninety (90) days of receipt of the notice of abandonment, then the Municipal Officers may proceed at the owner's expense to remove the abandoned facility and return the site to its pre-construction natural condition or convert the site to another appropriate use. Upon completion of removal or conversion of the facility to the satisfaction of the CEO and the Planning Board, any

balance remaining in the surety provided to the Town of Gray by the owner may be returned to the owner.

SECTION 11 APPEALS

Any persons aggrieved by a decision of the Planning Board or CEO under this Ordinance may appeal the decision directly to the Maine Superior Court within forty-five (45) days of receipt of the written decision in accordance with the rules for such appeals.

SECTION 12 ADMINISTRATION AND ENFORCEMENT

The CEO, as appointed by the Town Manager, shall enforce this Ordinance. If the CEO finds that any provision of this Ordinance has been violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. The CEO may take any other legal action to ensure compliance with this Ordinance. The Municipal Officers, or their agents, are authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering penalties without court action. Such agreements shall not allow a violation of this Ordinance to continue unless:

- A. There is clear and convincing evidence that the violation occurred as a direct result of erroneous advice given by an authorized Municipal Official upon which the applicant reasonably relied to its detriment and there is no evidence that the owner acted in bad faith.
- B. The removal of the violation will result in a threat to public health and safety or cause substantial environmental damage.

SECTION 13 PENALTIES

Any person who owns or controls any building or property that violates this Ordinance shall be penalized 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.

SECTION 14 CONFLICT AND SEVERABILITY

14.1 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.

14.2 SEVERABILITY

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

SECTION 15 DEFINITIONS

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

- A. “Antenna” means any system of poles, panels, rods, reflecting discs, parabolic antenna, or similar devices used for the transmission or reception of radio frequency or other electromagnetic signals.
- B. “Architectural Co-location” means the installation of a wireless telecommunications facility on structures such as church steeples, water towers, power poles, tall buildings, and similar structures other than new or existing telecommunications towers.
- C. “Co-location” means the use of a wireless telecommunications facility by more than one wireless telecommunications provider.

- D. “Comprehensive Plan” means the Comprehensive Plan of the Town of Gray
- E. “Designated Scenic Resource” means that specific location, view, or corridor, as identified as a scenic resource in the Comprehensive Plan or by a State or Federal agency, that consists of any of the following:
1. A three dimensional area extending out from a particular viewpoint on a public way or within a public recreational area, focusing on a single object, such as a mountain, resulting in a narrow corridor, or a group of objects such as a downtown skyline or mountain range resulting in a panoramic view corridor.
 2. Lateral terrain features such as valley sides or woodland as observed to either side of the observer, constraining the view into a narrow or particular field, as seen from a viewpoint on a public way or within a public recreational area.
- F. “Expansion” means the addition of antennas, towers, or other devices to an existing telecommunications facility .
- G. “FAA” means the Federal Aviation Administration
- H. “FCC” means the Federal Communications Commission, or its lawful successor.
- I. “Height” means the vertical measurement from a point on the ground at the mean finish grade adjoining the foundation as calculated by averaging the highest and lowest finished grade around a structure, to the highest point of the structure.
- J. “Historical or Archaeological Resources” means resources that are any of the following:
1. Listed individually in the National Register of Historic Places or eligible for listing on the National Register.
 2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district.
 3. Individually listed on a State inventory of historic places approved by the Secretary of the Interior.
 4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by the Secretary of the Interior through the Maine Historic Preservation Commission.
 5. Areas identified by a governmental agency such as the Maine Historic Preservation Commission as having significant value as an historic or archaeological resource and any areas identified in the Comprehensive Plan which have been listed or are eligible to be listed on the National Register of Historic Places.
- K. “Historic District” means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development and identified in the Comprehensive Plan which is listed or is eligible to be listed on the National Register of Historic Places. Such historic districts may also comprise individual elements separated geographically, but linked by association or history.
- L. “Historic Landmark” means any improvement, building, or structure of particular historical or architectural significance to the Town of Gray relating to its heritage, cultural, social, economic, or

political history, or which exemplifies historical personages or important events in local, State, or National history identified in the Comprehensive Plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

- M. “Line of Sight” means a direct view from a designated scenic resource.
- N. “MSL” means mean sea level.
- O. “Parabolic Antenna” (also known as a satellite dish antenna) means an antenna which is bowl-shaped, designed for the reception and or transmission of radio frequency communication signals in a specific directional pattern.
- P. “Principal Use” means a use other than one which is wholly incidental or accessory to another use on the same premises.
- Q. “Public Recreational Facility” means a regionally or locally significant facility, as defined and identified either by State statute or in the Comprehensive Plan, designed to serve the recreational needs of people.
- R. “Targeted Market Coverage Area” means the area which is targeted to be served by a proposed telecommunications facility.
- S. “Unreasonable Adverse Impact” means that a proposed project would produce an end result which is excessively out-of-character with designated scenic resources affected, including existing buildings, structures, and features within a designated scenic resource, and would significantly diminish the scenic value of the designated scenic resource.
- T. “Viewpoint” means a location which is identified either in the Comprehensive Plan or by a Federal or State agency, and which serves as the basis for the location and determination of a particular designated scenic resource.
- U. “Wireless Telecommunications Facility” means any structure, antenna, tower, or device which provides radio or television transmission, commercial mobile wireless services, unlicensed wireless services, cellular phone services, common carrier wireless exchange phone services, specialized mobile radio communications (SMR), personal communications service (PSC), or pager service.

SECTION 16 EFFECTIVE DATE

September 6, 2001