

**Introduced: January 24, 2005**  
**Public Hearing: February 28, 2005**  
**Adoption: April 25, 2005**

**TOWN OF FALMOUTH, MAINE**

**ORDINANCE CONCERNING THE SITING OF PERSONAL WIRELESS SERVICE FACILITIES**

Be it ordained by the Town Council of the Town of Falmouth, Maine, in Town Council assembled, as follows:

Section 1. The Code of Ordinances of the Town of Falmouth, Maine is hereby amended by adding a new Article X to Chapter 8, which Article shall read as follows:

**ARTICLE X. PERSONAL WIRELESS SERVICE FACILITIES SITING**

**Sec. 8-350. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Personal Wireless Service Facility: A facility for the provision of personal wireless service, as that term is defined by 47 U.S.C. Section 332 (Section 704 of the Telecommunications Act of 1996), and includes, by way of illustration and not limitation, federally licensed commercial wireless telecommunications services such as cellular, personal communications services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), and also includes unlicensed wireless services and common carrier wireless exchange access services. A facility includes monopole type towers and any attached transmitting or receiving devices and equipment shelters and cabinets.

Reference Tree Height: The height in elevation proposed by the applicant and approved by the Planning Board for determining the top elevation of a treetop facility's monopole mounting structure. This may be either: a) the average crown elevation of the highest quartile of trees with a diameter at breast height (DBH) greater than 10 inches within 75 feet of the proposed monopole; or b) the crown elevation of a shorter tree that has been strategically identified for screening and camouflaging purposes. Approval by the Planning Board shall be based upon its determination of which alternative best promotes the objectives of this Article X in the particular circumstances of the application.

Skylining: Locating a personal wireless service facility in such a way that the sky is the backdrop of any portion of the facility.

Tier I Personal Wireless Service Facility or Tier I Facility: A personal wireless service facility that (i) is located entirely within an existing building but which may include a self-contained shelter or cabinet not exceeding one hundred fifty (150) square feet that is not within the building; (ii) is located within or camouflaged by an addition to an existing structure determined by the reviewing entity to be in character with the structure and its surroundings; or (iii) is located within or camouflaged by a new structure determined by the reviewing authority to be in character with and scale of its surroundings. Permits for Tier I Facilities are issued by the Code Enforcement Officer.

Tier II Personal Wireless Service Facility or Tier II Facility: A personal wireless service facility that either (i) consists of one or more antennas, other than a microwave dish, attached to an existing structure, other than a flag pole, that conforms to existing zoning regulations, that do not exceed the height of the structure, and are flush mounted to the structure, together with associated personal wireless service equipment; or (ii) is a treetop facility. Permits for Tier II Facilities are issued by the Planning Board.

Tier III personal wireless service facility or Tier III facility: A personal wireless service facility which is not a Tier I or Tier II facility and which is located on a monopole that does not exceed two hundred feet (200') in height as measured from the facility base to the highest point of the facility (the word facility includes any attached receiving or transmitting device). Permits for Tier III Facilities are issued by the Planning Board after approval of a conditional rezoning by the Town Council.

Treetop Facility: A personal wireless service facility consisting of a self supporting monopole having a single shaft, and includes associated antennas, mounting structures, equipment cabinets and other essential personal wireless service equipment.

### **Sec. 8-351. Zoning.**

Personal Wireless Service Facilities shall be allowed, with a permit issued under this ordinance, in accordance with the land use tables of Section 3 of the Falmouth Zoning and Site Plan Review Ordinance and, more specifically, shall be allowed as follows:

- (a) Tier I Facilities shall be permitted use in all zoning districts.
- (b) Tier II Facilities shall be a permitted use in the following zoning districts: SB-1, BP, MUC, VMU, CO, Exit 10 and Village Center.
- (c) Tier III Facilities where the tower base is at or above four hundred feet (400') based on the United States Geological Survey datum referred to mean sea level. Additionally, Tier III Facilities may be allowed by conditional rezoning as approved by the Town Council pursuant to section 3.12 of the Zoning and Site Plan Review Ordinance upon a showing by the applicant that (a) except for the height limitations on Tier I and Tier II Facilities, the provisions of this Article X have been met; (b) it is impractical to meet coverage and/or capacity needs of the applicant through one or more Tier I or Tier II Facilities; and (c) the visual impact of a single facility would be

less than the visual impact of the number of Tier I and/or Tier II facilities required to meet such need.

In case of conflict between this section 8-351 and the Zoning and Site Plan Review Ordinance, the latter ordinance shall control.

**Sec. 8-352. Purpose.**

This ordinance is intended to regulate the location, siting and design of Personal Wireless Service Facilities throughout the Town in order to:

- (1) Minimize adverse visual impacts of Personal Wireless Service Facilities through careful design, siting and vegetative screening; and
- (2) Avoid damage to adjacent properties from structural failure of facilities and falling ice from facilities through engineering and careful siting.

**Sec. 8-353. Permit required.**

A Personal Wireless Service Facility (hereinafter sometimes “facility”) may not be established after the enactment of this ordinance without a Tier I, Tier II or Tier III Facility permit issued by the appropriate authority.

- (1) Application for approval.

Each request for approval of a facility shall include the following information:

- a) A completed application form, signed by (i) the parcel owner, the owner’s agent (with proof of the agency) or a person with a contract to purchase or lease the parcel and (ii) the proposed facility’s owner. If the contract purchaser or lessee signs the application, they shall also submit the parcel owner’s written consent to the application.
- b) A boundary survey by a Maine registered surveyor of the parcel on which the facility will be located. In cases where the facility will be on leased land, references in this ordinance to “parcel” and to “lot” shall mean the underlying fee ownership tract and not the boundaries of the leased land.
- c) Whenever the application is signed by other than a natural person, the complete legal name of the entity, a description of the type of entity, and written documentation that the person signing on behalf of the entity is authorized to do so shall accompany the application.
- d) Except where the facility will be located entirely within an existing structure, a scaled plan and a scaled elevation view and other supporting drawings, calculations and documentation as may be required by the Planning Board, signed and sealed by an

appropriate professional licensed or registered in the State of Maine. The plans and supporting drawings, calculations, and documentation shall show:

- i) The location and dimensions of all existing and proposed improvements on the parcel including access roads and structures, the location and dimensions of significant natural features and the maximum height of the facility, measured both as height above existing grade and height above sea level.
  - ii) The benchmarks and datum used for elevations: The datum shall coincide with NAD83 or the most current version.
  - iii) The design of the facility, including the specific type of support structure and the design, type, location, size, height, elevation and configuration of all existing and proposed antennas and other equipment.
  - iv) Identification of each paint color on the facility, by manufacturer color name and color number. A paint chip or sample shall be provided for each color.
  - v) The topography within a one mile radius of the proposed facility, in contour intervals not to exceed twenty (20) feet for all lands within Falmouth, and in contour intervals shown on the US Geological Survey topographic survey maps or the best topographic data available for lands not within Falmouth (This submission is not required if the facility will be attached to an existing structure).
  - vi) The height, crown elevation, caliper, and species of all trees greater than ten (10) inches diameter at breast height where the drip line is located within seventy five feet (75') of the facility that are relied upon to establish the proposed height and/or screening of the monopole. All trees that will be adversely impacted or removed during installation or maintenance of the facility shall be noted regardless of their distance to the facility. (This submission is not required if the facility will be attached to an existing structure).
  - vii) All existing and proposed setbacks from lot lines and lease area perimeter lines, parking, fencing and landscaping.
  - viii) The location of all existing access ways and the location and design of all proposed access ways.
  - ix) Residential and commercial structures on site and within 200' of the facility, and residential and zoning district boundaries. (This submission is not required if the facility will be attached to an existing structure.)
- e) Photographs, where possible, or perspective drawings of the facility, all existing facilities within two hundred (200) feet of the site, if any, and the area surrounding the site.

- f) For any proposed monopole, photographs taken of a balloon test, which shall be conducted as follows:
- i) The applicant shall contact the Planning Board within ten (10) days after the date the application was submitted to schedule a date and time when the balloon test will be conducted. The test shall be conducted within forty (40) days after the date the application was submitted, and the applicant shall provide the Town with sufficient notice so that the Town may provide sufficient notice to the public and members of the Planning Board of the date of such test, and provided that this notice shall include a provision for a fall back date for the test, in the event of inclement weather.
  - ii) Prior to the balloon test, the locations of the access road, the lease area, the facility site, the reference tree and the tallest tree (in elevation) within twenty five (25) feet of the proposed monopole, and a representative “average” tree shall be surveyed and staked or flagged in the field.
  - iii) The test shall consist of raising one or more balloons from the site to a height equal to the top elevation of the proposed facility.
  - iv) The balloons shall be of a color or material that provides maximum visibility.
  - v) The photographs of the balloon test shall be taken from the nearest residence and from appropriate locations on abutting properties, along each section of a publicly used road from which the balloon is visible, and from other properties and locations as deemed appropriate by the Planning Board. For sections of publicly used roads with view corridors more than one thousand feet (1,000’) in length, photographs shall be taken at the beginning, middle and end of the corridor. The applicant shall identify the camera type, film size, and focal length of the lens for each photograph. At a minimum, one set of photographs shall be provided using a focal length equivalent to 50 mm.
- g) If antennas are proposed to be added to an existing structure, all existing antennas and other equipment on the structure, as well as all ground equipment, shall be identified by owner, type and size. The method(s) by which the antennas shall be attached to the mounting structure shall be depicted.
- h) A scaled map (1 inch equal to or less than 2,000 feet) showing the location along publicly used roads illustrating where the tower will be visible based on the results of the balloon test. The map shall be keyed to clearly identify areas where the tower is or will be visible during leaf-on and leaf-off conditions.
- i) If the proposed facility would be located on lands subject to a conservation easement or an open space easement, a copy of the recorded deed of easement and the express written consent of all easement holders to the proposed facility.

(2) Setbacks; Exemption from regulations otherwise applicable:

Except as otherwise exempted in this paragraph, each facility shall be subject to all applicable regulations in this Article X.

- a) The tower or other mounting structure shall be set back from all property lines by a distance of one hundred (100) percent of the total facility height, provided, however, the Planning Board may authorize a facility to be located closer to any lot line if there are no structures used as dwelling units, places of employment or shelter for animals within the facility's fall zone and if the applicant obtains an easement or other recordable document, acceptable to the Town Attorney, prohibiting such structures on the portion of the abutting parcel that is within the facility's fall zone (e.g., the setback of an eighty foot (80') tall facility could be reduced to thirty feet (30') if an easement is established prohibiting development on the abutting lot within a fifty foot (50') fall zone). If the right of way for a public street is within the fall zone, the Town Public Works Department and/or the Maine Department of Transportation shall be included in the staff review in lieu of recording an easement or other document for the right of way. However, the Planning Board may waive this requirement for facilities which are mounted on or contained within a structure used for another purpose.
- b) Personal Wireless Service Facilities shall not be subject to the minimum lot size requirements, minimum site size requirements, maximum lot coverage requirements, minimum net residential area requirements, or minimum setback requirements contained in the applicable provisions of section 3 of the Zoning and Site Plan Review Ordinance.
- c) Site plan review under section 9 of the Zoning and Site Plan review Ordinance shall not be required for a Personal Wireless Service Facility application.

(3) **Facilities not permitted in certain areas.**

Except for Tier I facilities, Personal Wireless Service Facilities shall not be sited or built on the following:

- a) Land shown to be in the flood way or coastal high hazard area on the Flood Boundary of Flood Insurance Rate Maps of the Town;
- b) Land which is unsuitable for development in its natural state because of topography, drainage, or subsoil conditions. Specific conditions include but are not limited to:
  - i) Areas having unstable soils subject to slumping, mass movement, or accelerated erosion;
  - ii) Areas classified as wetlands by state or federal law;
  - iii) Areas characterized by "coastal wetlands" as that term is defined in 38 M.R.S.A. subsection 472(2); and

iv) Land in Resource Protection Districts.

**(4) Standards for Tier I Facilities.**

Each Tier I Facility may be established upon Code Enforcement Officer approval of a Tier I Facility permit application satisfying the requirements of subsection (1) and demonstrating that the facility will be installed and operated in compliance with all applicable provisions of this Article X, and meeting the following conditions:

- a) The facility shall comply with subsection (3).
- b) The facility shall be designed, constructed and maintained as follows: (i) guy wires shall not be permitted; (ii) outdoor lighting for the facility shall be permitted only during maintenance periods, regardless of the lumens emitted; (iii) any equipment cabinet not located within an existing structure shall be screened from all lot lines either by terrain, existing structures, existing vegetation, or by added vegetation approved by the Code Enforcement Officer with the advice of a landscape architect; (iv) a grounding rod, whose height shall not exceed two (2) feet and whose width shall not exceed one (1) inch in diameter at the base and tapering to a point, may be installed at the top of the facility or the structure; and (v) within one month after the completion of the installation of the facility the applicant shall provide a statement to the Code Enforcement Officer certifying that the height of all components of the facility complies with this regulation.
- c) Equipment shall be attached to the exterior of a structure only as follows: (i) the total number of arrays of antennas attached to the existing structure shall not exceed three (3), and each antenna proposed to be attached shall not exceed the size shown on the application, which size shall not exceed one thousand one hundred fifty two (1152) square inches; (ii) no antenna shall project from the structure beyond the minimum required by the mounting equipment, and in no case shall any point on the face of an antenna project more than twelve (12) inches from the existing structure; and (iii) each antenna and associated equipment shall be a color that matches the existing structure. For purposes of this section, all types of antennas and dishes regardless of their use shall be counted toward the limit of three arrays.
- d) Any fence needed for the facility shall blend with its surroundings and shall fence in the minimum area necessary to protect equipment and to protect the owner from liability.

**(5) Standards for Tier II Facilities.**

Each Tier II Facility may be established upon Planning Board approval of a Tier II Facility permit application satisfying the requirements of subsection (1) and demonstrating that the facility will be constructed, installed and operated in compliance with all applicable provisions of this Article X and satisfying the following criteria:

- a) The facility shall comply with subsection (3) and subsection (4).
- b) The site shall provide adequate opportunities for screening and the facility shall be sited to minimize its visibility from adjacent parcels and streets, regardless of their distance from the facility. If the facility would be visible from a river, bay or lake, regardless of whether the site is adjacent thereto, the facility also shall be sited to minimize its visibility from such river, bay, or lake. If the facility would be located on lands subject to a conservation easement or an open space easement, the facility shall be sited so that it is not visible from any natural feature specifically identified for protection in the deed of easement.
- c) The facility shall not have an unreasonable adverse visual impact on resources identified in the town's open space plan.
- d) A facility may not be located so that it and three (3) or more existing or approved personal wireless service facilities would be within an area comprised of a circle centered anywhere on the ground having a radius of two hundred (200) feet.
- e) The maximum base diameter of the monopole shall be thirty (30) inches and the maximum diameter at the top of the monopole shall be eighteen (18) inches.
- f) The top of the monopole, measured in elevation above mean sea level, shall not exceed the height approved by the Planning Board. The facility shall not be more than ten (10) feet taller than the Reference Tree Height and shall include any base, foundation, or grading that raises the pole above the pre-existing natural ground elevation; provided that the height approved by the Planning Board may be up to thirty (30) feet taller than the tallest tree and further provided that:
  - i) The applicant demonstrates to the Planning Board that there is not a substantial difference in the visibility of the monopole at the proposed height when compared to a height of ten (10) feet above the Reference Tree Height;
  - ii) There is not a substantial difference in adverse impacts to resources identified in the Town's open space plan caused by the monopole at the proposed height; and
  - iii) There is not an increase in skylining of the proposed facility. For purposes of evaluating skylining, the skylining determination shall be based on the line of site at ground or water level observations from a viewpoint not less than 750 feet and not greater than one statutory mile on publicly used roads, navigable waters, or from property where the general public has legal right of access. The Planning Board may as part of the approval to a height of thirty (30) feet above the tallest tree require that the facility use "stealth" technology, i.e., to camouflage the monopole by, for example, creating the appearance of a tree.
- g) Each monopole shall be a color that will blend into the surrounding trees. The antennas, supporting brackets, and all other equipment attached to the monopole shall be a color that closely matches that of the monopole. The ground equipment,



the ground equipment cabinet, and the concrete pad shall also be a color that closely matches that of the monopole, provided that the ground equipment and the concrete pad need not be of such a color if they are enclosed within or behind an approved structure, façade or fencing that (i) is a color that closely matches that of the monopole, (ii) is consistent with the character of the area, and (iii) makes the ground equipment and concrete pad invisible at any time of the year from any other parcel or public or private street.

- h) Each wood monopole shall be constructed so that all cables, wiring and similar attachments that run vertically from the ground equipment to the antennas are placed on the pole to face the interior of the property and away from public view, as determined by the Code Enforcement Officer. Metal monopoles shall be constructed so that vertical cables, wiring and similar attachments are contained within the monopole's structure.
- i) The following shall be submitted with the permit application: (i) certification by a Maine registered surveyor stating the Reference Tree Height that is used to determine the permissible height of the monopole; and (ii) a final set of revised plans for the construction of the facility. The Planning Board shall review the surveyor's certificate and the plans to assure that all applicable requirements have been satisfied before a building permit may be issued.
- j) The following shall be submitted to the Code Enforcement Officer after installation of the monopole is completed and prior to the issuance of certificate of occupancy: (i) certification by a registered surveyor stating the height of the monopole, measured both in feet above ground level and in elevation above mean sea level, using the benchmarks or reference datum identified in the application; and (ii) certification stating that the lightning rod's height does not exceed two (2) feet above the top of the monopole and width does not exceed a diameter of one (1) inch.
- k) Notice of the Planning Board's consideration of an application for a Tier II facility shall be sent by the Town to the owner of each lot abutting the lot and the owner of lots located within a 750' radius on which the proposed facility will be located. The notice shall describe the nature of the facility, its proposed location on the lot, its proposed height, the location where the complete Tier II application may be viewed, and the date, time and location where the Planning Board will consider the application. The notice shall be mailed by first class mail or hand delivered at least ten (10) days prior to the Planning Board meeting. Mailed notice shall be mailed to the last known address of the owner, and mailing the notice to the address shown on the current real estate tax assessment records of the town shall be deemed compliance with this requirement. The failure of an owner to receive the notice as provided herein shall not affect the validity of an approved Tier II facility and shall not be the basis for an appeal.
- l) The following shall apply only to a Tree Top Facility:

- i) As part of an application for a Tier II Facility permit involving a Tree Top Facility, the applicant shall submit a tree conservation plan prepared by a certified arborist. The plan shall be submitted to the Planning Board for review and approval to assure that all applicable requirements have been satisfied. The plan shall specify tree protection methods and procedures, and identify all existing trees to be removed on the parcel for the installation, operation and maintenance of the facility. Except for the tree removal expressly authorized by the Planning Board, the applicant shall not remove or cause to be removed existing trees within the facility's fall zone, i.e., a distance equal to the height of the facility, measured in all directions of any part of the facility. In addition, the Planning Board may identify additional trees or lands up to two hundred (200) feet from the facility to be included in the plan.
- ii) The installation, operation and maintenance of the facility shall be conducted in accordance with the tree conservation plan. Dead and dying trees identified by the arborist's report may be removed if so noted on the tree conservation plan. If tree removal is later requested that was not approved by the Planning Board when the tree conservation plan was approved, the applicant shall submit an amended plan. The Planning Board may approve the amended plan if the proposed tree removal will not adversely affect the visibility of the facility from any location off of the parcel. The Planning Board may impose reasonable conditions to assure that the purposes of this paragraph are achieved.
- iii) The facility shall be disassembled and removed from the site within ninety (90) days of the date of its use for personal wireless service purposes is discontinued.
- iv) No slopes associated with the installation of the facility and accessory uses shall be created that are steeper than 2:1 unless retaining walls, revetments, or other stabilization measures acceptable to the Planning Board are employed.

**(6) Standards for Tier III facilities.**

Each Tier III facility may be established upon Planning Board approval of a Tier III Facility permit application satisfying the requirements of subsection (1), and demonstrating that the facility will be constructed, installed and operated in compliance with all applicable provisions of this Article X, and satisfying the following criteria. In cases where a conditional rezoning approval from the Town Council is required, the applicant shall obtain the Town Council approval before submitting an application to the Planning Board. The Town Council shall follow the conditional rezoning procedures contained in the Zoning and Site Plan Review Ordinance and section 8-351 of this ordinance. The Planning Board shall consider the following criteria in addition to the requirements of subsection (1):

- a) The facility shall comply with subsection (3), subsection (4), and subsection (5)(b), (c), (d), (g) and (k).
- b) In no event shall a Tier III facility exceed 200 feet above grade level.

- c) Tier III facilities that are not subject to special painting or lighting standards of any federal agency shall meet as far as is practical the visual standards for Tier II Facilities and at a minimum shall have a galvanized finish or be painted in a sky tone above the top of surrounding trees and shall be painted in an earth tone below treetop level or should be camouflaged by a “stealth” treatment.
- d) Unless existing vegetation provides a buffer strip the width of the required fall zone, calculated as the equivalent of the facility’s height, the Planning Board shall require that all property lines along roadways or visible to existing abutting or nearby buildings (within 1/4 mile radius) be landscaped as follows:
  - i) With six to eight (6-8') foot evergreen shrubs planted in an alternate pattern, five (5') on center and within fifteen (15') feet of the site boundary.
  - ii) With at least one row of deciduous trees, not less than 2 1/2" to 3" caliper measured three (3') feet above grade, and spaced not more than twenty (20') feet apart and within twenty-five (25') feet of the site boundary.
  - iii) With at least one row of evergreen trees at least four to five (4-5') feet in height when planted, and spaced not more than fifteen (15') feet apart within forty (40') feet of the site boundary.
  - iv) In lieu of the foregoing, the Planning Board may determine that the existing vegetation must be supplemented to meet an equivalent means of achieving the desired goal of minimizing the visual impact. To assist in making that determination, the Planning Board may require the applicant to provide a visual impact analysis by a qualified professional.

**Sec. 8-354.** Transmission towers, as defined in the Zoning and Site Plan Review Ordinance, existing on the date of enactment of this ordinance shall continue to be governed by the terms of section 5.33 of the Zoning and Site Plan Review Ordinance. All personal wireless service facilities created after the date of enactment of this ordinance shall comply with the terms of this ordinance.

Section 2. Section 2 – Definitions of the Zoning and Site Plan Review Ordinance is amended by adding the following new definitions in the appropriate alphabetical order and renumbering the existing definitions accordingly:

Tier I Personal Wireless Service Facility or Tier I Facility: As defined in the Personal Wireless Service Facilities Ordinance.

Tier II Personal Wireless Service Facility or Tier II Facility: As defined in the Personal Wireless Service Facilities Ordinance.

Tier III Personal Wireless Service Facility or Tier III Facility: As defined in the Personal Wireless Service Facilities Ordinance.

Section 3. Section 3 of the Zoning and Site Plan review Ordinance is amended as follows:

- a. By adding in the appropriate alphabetical order under the column entitled “Permitted Structures and Uses” for the zoning districts appearing as subsections 3.2 through 3.10 and 3.14: “Tier I Personal Wireless Service Facilities.”
- b. By adding in the appropriate alphabetical order under the column entitled “Permitted Structures and Uses” for the zoning districts appearing as subsections 3.6 through 3.10 and 3.14: “Tier II Personal Wireless Service Facilities.”
- c. By adding in the appropriate alphabetical order under the column entitled “Permitted Structures and Uses” for the zoning district appearing as subsection 3.2 (“F” – Farm and Forest District): “Tier III Personal Wireless Service Facilities.”
- d. By deleting from the column entitled “Conditional Uses” for the zoning district appearing as subsection 3.2 (“F” – Farm and Forest District): “15. Transmission tower.”

Section 4. Section 5.33 of the Zoning and Site Plan Review Ordinance is amended by adding a new subsection “h.” to read as follows:

- h. The provisions of this subsection 5.33 shall apply to all transmission towers existing in the Town on the date of enactment of the Personal Wireless Service Facilities Ordinance and shall continue to apply to such existing transmission towers notwithstanding the enactment of the Personal Wireless Service Facilities Ordinance. No new transmission towers may be erected after enactment of the Personal Wireless Services Facilities Ordinance except in compliance with that ordinance.

Section 5. Application fees for permits required under this ordinance shall be as the Town Council may by order determine. The fee schedule shall be maintained at the Office of the Town Clerk. The application fee is \$100.00.