

Town of Sedgwick, Maine

Wireless Telecommunications Facilities Ordinance

Section 1. Ordinance Administration

A. Title

This Ordinance shall be known as the "Town of Sedgwick Wireless Telecommunications Facilities Ordinance"

B. Purpose

The purposes of this Ordinance are (a) to provide reasonable conditions, standards for and regulation of wireless telecommunications facilities in order to protect the public's health, safety and general welfare, and (b) to balance the interests of the residents of the Town of Sedgwick with the needs of modern telecommunications providers and their customers in the siting of wireless telecommunications facilities within the town.

C. Authority

This Ordinance has been prepared in accordance with the provisions of Article VIII, Part 2, §1 of the Maine Constitution (Municipal Home Rule), the provisions of 30-A, M.R.S.A. § 3001 (Home Rule) and the provisions of the Planning and Land Use Regulation Act, 30-A M.R.S.A. § 4312, etc. seq. {*Comprehensive Planning and Land Use Regulation, or "Growth Management Act"*) and 30-A M.R.S.A. § 4452 ("Enforcement and Land Use Laws and Ordinances")

D. Conflicts with Other Ordinances, Laws and Regulations

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 administered by the municipality, the more restrictive provision shall control.

E. Validity and Severability

Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

F. Permitting Authority

The Planning Board shall review applications for wireless telecommunications facilities.

G. Applicability

This Ordinance applies to all construction, maintenance, repair, replacement, removal and expansion of wireless telecommunications facilities, existing or proposed, within the Town of Sedgwick except as provided in Section 2.

H. Effective Date

The effective date of this Ordinance is March 2, 2013, as adopted by the Municipal Legislative body.

I. Availability

A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public upon request. Copies shall be made available to the public at reasonable cost at the expense of the person making the request.

Section 2. Exemptions

The following are exempt from the provisions of this Ordinance as long as the fall setback distance from the property perimeter meets or exceeds one and one-half (1 1/2) times the height of the antenna and the individually listed restrictions on tower and antenna height are followed.

A. Emergency Wireless Telecommunications Facility: Temporary wireless communications facilities for emergency communications by public agencies.

B. Amateur (Ham) Radio Stations: Amateur (ham) radio station antennas licensed by the Federal Communications Commission (FCC) that are less than thirty-five (35) feet high.

C. Parabolic Antennas: Parabolic Antennas less than (7) seven feet in diameter, that are an accessory use of the property under thirty-five (35) feet high.

D. Routine repair and maintenance or repair: Routine maintenance or repair of a wireless telecommunications facility and related equipment provided that there is no change in height or any other dimension of the facility.

E. Temporary Wireless Telecommunication Facility: Temporary wireless telecommunications facility in operation for a maximum period of less than one hundred and eighty (180) days. This may include, but is not limited to, "cellular on wheels" mobile equipment. Prior written notice to the Code Enforcement Officer and height limited to 190 feet or less is required.

F. Antennas as accessory uses:

An antenna that is an accessory use to a residential dwelling unit and is under thirty- five (35) feet high.

G. "Special event"¹¹ (see Definitions) Wireless Telecommunication Facility:

Temporary special event wireless telecommunication facilities for a period not to exceed five days preceding an event and five days after a special event. The height is restricted to one hundred ninety (190) feet or less.

Section 3. Review and Approval Authority

A. Approval Required

No person shall construct, reconstruct or expand a wireless telecommunications facility without approval of the Planning Board and notice to the Code Enforcement Officer as follows:

1. New Construction, Expansion of an Existing Facility.

Approval by the Planning Board is required for construction of a new wireless telecommunications facility; and expansion of an existing wireless telecommunications facility that increases the height or any other dimension of the facility or adds any accessory use not originally permitted for an existing wireless telecommunications facility.

2. Reconstruction of an Existing Facility.

Approval by the Code Enforcement Officer is required for reconstruction of a damaged wireless telecommunications facility. Reconstruction is allowed provided there is no change in the use, height or any other dimension of the facility. All damaged materials must be removed from the site as a condition of replacement and the CEO must be notified, inspect, and provide written approval before the facility can recommence operations. Reconstruction is allowed only within eighteen (18) months of date of damage and the full surety bond must be maintained during this time. After eighteen (18) months, a new application and surety bond must be submitted to the Planning Board or the facility will be declared abandoned and subject to removal pursuant to Section 8 (C) of this Ordinance.

3. Expiration of Approved Applications.

All site plan approvals shall expire within (1) one year of the date of issuance unless work thereunder is substantially commenced (substantially commenced means at least 30% of the total value of the project is completed). If work is not substantially completed (substantially completed means work equal to at least 90% of the estimated total project cost has been completed) within two (2) years from the date of issuance, a new application to the Planning Board must be made or the partially completed structure will be declared abandoned and subject to removal pursuant to Section 8 (C) of this Ordinance.

B. Approval Authority

In accordance with Section 3A above, the Planning Board shall review applications for all wireless telecommunications facilities, and make written findings in accordance with Section 6.C.5 of this Ordinance.

Section 4. Requirements for All Applicants

A. Pre-Application Conference

The Pre-application conference is not optional. All persons seeking approval of the Planning Board under this Ordinance shall meet with the Code Enforcement Officer, no less than thirty (30) days before filing an application. The Code Enforcement Officer has the authority to request a pre-application conference with the Planning Board. At this meeting, the Code Enforcement Officer shall explain to the applicant the Ordinance provisions, possible locations to avoid for tower sites (including areas identified as Scenic Resources in the Town Comprehensive Plan) as well as application forms and submissions that will be required under this Ordinance. There is no fee for the Pre-Application Review. Any review or comment by the Code Enforcement Officer is not binding upon either the Code Enforcement Officer or the Planning Board. The use of this procedure shall not render an application to be a pending application.

Section 5. Application Submission Requirements for Planning Board Review

All persons seeking review by the Planning Board for construction, reconstruction, or replacement of a wireless telecommunications facility under this Ordinance shall submit an application with the information as provided below. These materials shall be contained in a bound report or a three-ring notebook.

A. General Information:

1. Name of landowner of record and address;
2. Applicant's name and address or his authorized agent;
3. The name of the proposed development;
4. Names and addresses of all abutting and adjacent property owners;

- 5.** Location of the site within the Town of Sedgwick shown on a USGS 7.5 minute topographic map including the location of all structures and wireless telecommunications facilities above one hundred fifty (150) feet in height above ground level, except antennas located on rooftops, within a five (5) mile radius of the proposed facility, unless this information has been previously made available to the municipality. This requirement may be met by submitting current information (within thirty (30) days of the date the application is filed) from the FCC Tower Registration Database;
- 6.** Tax map(s) with lot numbers showing the relationship of the proposed project to adjacent properties and to the general surrounding area within three thousand + -(3,000+ -) feet of any property line of the site. The scale shall not be smaller than 1"=400';
- 7.** A copy of the deed to the property, option to purchase or lease the property and all other documentation to demonstrate the applicant's legal standing, right, title, or interest in the property upon which the facility is to be sited;
- 8.** A copy of the FCC license for the facility, or a signed statement from the owner or operator of the wireless telecommunications facility attesting that the facility complies with current FCC regulations;
- 9.** A schedule of construction, including anticipated beginning and completion dates;
- 10.** Projects involving the storing, generating, handling, and disposal of hazardous wastes or materials, oil or radioactive wastes shall specify the exact amount and nature of all such substances that will be on the site and the specific method of handling, containing, and removing those substances that will be used;
- 11.** Notification of the application must be sent by the Applicant, by Registered US Mail, return receipt required, to all abutting and adjacent landowners of the proposed development, the Sedgwick Board of Selectmen, the Code Enforcement Officer and Planning Board notifying them of the proposed development; and
- 12.** A surety performance bond indemnifying the town for 100 % of the costs of removal, allowing for inflation over the estimated useful life of the facility, less salvage value, as determined by the Planning Board shall be submitted to the Selectmen and Code Enforcement Officer before construction starts and renewed annually as long as the structure exists. The bond must be provided by an insurance company licensed to do business in the State of Maine and presented in a format and monetary amount acceptable to the Board of

Selectmen and reviewed by the Sedgwick Town Attorney. Notice of the renewal of the surety bond, the coverage amount and penal sum adjusted for inflation by the CPI, shall be sent by US Registered Mail to the Selectmen yearly thirty (30) days prior to the anniversary date of the initial surety bond purchase by the owner or the bonding agent. Should the surety bond not be renewed, the bonding company must give the Selectmen and CEO sixty (60) days notice of non-renewal and advise the Selectmen of steps required to renew the bond. For the Selectmen to assure and approve adequate coverage by the surety bond, the owner or the bonding agent should provide written estimates, adjusted for inflation, of salvage value, removal costs, procedures, and timeline by two removal contractors licensed to do business in the State of Maine. When the removal of the facility has been completed and certified by the CEO, the owner may apply to the Planning Board for release of all or part of the surety bond, such requested release not to be unreasonably withheld.

B. Consent to Terms of the Surety Bond

Consent by the Planning Board to the terms of any surety bond submitted by the Applicant must be obtained prior to the following:

1. Approval by the Planning Board of any wireless telecommunications facility;
2. Sale or assignment of any existing wireless telecommunications facility to a third party; and
3. Cancellation or substitution of an existing surety bond.

C. Location Information-Mapping

1. The following information regarding proposed development and existing conditions are required. This information must accompany, or be submitted on, a site plan prepared and certified by a professional engineer registered in the State of Maine using the following scale and showing the date of the plan, magnetic north, the scale and the identity of the draftsman:

Acres	Scale
1-10	1"=10' to 1" = 50'
10-50	1"=50' to 1" = 100'

50+ (lots 4 acres) 1" = 100'

50+ (lots > 4 acres) 1" = 200'

- a.** Zoning classification(s) of the property and the location of zoning district boundaries if the property is wholly or partially located in an area subject to Shoreland Zoning;
- b.** Listings, locations, descriptions, and maps of all historic, archaeological, environmental, and natural features, as defined in Section 11, located on the site, on adjacent and abutting properties, or on additional properties located within twenty-five hundred (2500) feet of the site boundaries.
- c.** 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;
- d.** Location and size of all existing and proposed wells, sewer and water mains, culverts, drains, above or below ground utilities and waste water disposal systems on the property to be developed, and of any of these items that currently serves or will serve the development from abutting streets;
- e.** Location, names, and widths of all existing and proposed streets and rights-of-way adjacent to the proposed development;
- f.** The location, dimensions, and ground floor elevations of all existing and proposed buildings on the site;
- g.** The location and dimensions of all existing and proposed driveways, streets, parking and loading areas, and walkways on the site;
- h.** The existing and proposed topography of the site at an appropriate contour interval (not greater than five (5) feet) depending on the nature of the use and character of the site
- i.** The delineation of all the fall zones, one and a half (1 and 1/2) times the height of the tower from existing and proposed buildings, yards, property lines and buffers required by this Ordinance shall be shown on the applicant's plan.

2. A boundary survey for the project performed by a licensed professional surveyor licensed by the State of Maine including the following:

a. The bearings and distance of all property lines of the property to be developed and the source of this information shall be on the survey; and

b. A survey of the lessor's or current owner's entire property shall be presented.

3. A copy of such covenants or deed restrictions, if any, as are intended to cover all or part of the site. Such covenants or deed restrictions shall be referenced on the site plan.

D. Location Information- Soils and Erosion Control

1. Soils information if on-site sewage disposal is proposed. This information should be detailed enough to allow those portions of the site not suitable for on-site disposal systems to be identified, if applicable.

a. The direction and amount of pre-development and proposed surface water drainage flow across and from the site, based upon 24-hour, 2-, 10- and 25-year storms. Where proposed flow exceeds pre-development flows by 10% or more, the applicant shall submit a storm-water management plan, showing the steps taken to minimize the impact of storm water runoff. The storm water management plan shall be based upon 24-hour, 2-, 10- and 25-year storms.

b. An erosion control and sedimentation control plan shall be included which sets forth the measures to be taken to comply with BMP's in Maine Erosion and Sedimentation Control Laws M.R.S.A. 420-C and all other applicable Environmental Laws pertaining to erosion and sedimentation control.

E. Location Information- Visual Impact

1. The location, front view, dimensions and type of all existing and proposed exterior signs.

2. A visual assessment consisting of the following:

- a.** Elevation drawings of the proposed wireless telecommunications facility, and any other proposed structures, showing height above ground level;
- b.** A landscaping plan indicating the proposed placement of the wireless telecommunications facility on the site: location of existing structures, trees and other significant 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 wireless telecommunications facility taken from perspectives determined by the Planning Board, or their designee. 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 the extent to which the proposed wireless telecommunications facility would be visible from or within a designated scenic resource, the tree line elevation of vegetation within 100 feet of the facility, and the distance to the proposed facility from the designated scenic resource's noted viewpoints.

F. Location Information -- Propagation Studies

- 1.** Propagation studies of areas already covered by wireless telecommunications facilities as well as areas proposed to be covered by the applicant.
- 2.** A written description of how the proposed wireless telecommunications facility fits into the applicant's telecommunications network. This submission requirement does not require disclosure of confidential business information.
- 3.** Certification by the applicant that the proposed wireless telecommunications facility complies with all FCC standards for radio emissions is required.
- 4.** Evidence demonstrating that no existing building, site, or structure can accommodate the applicant's proposed wireless telecommunications facility, the evidence for which may consist of any one of the following:
 - a.** Evidence that no existing wireless telecommunications facilities are located within the targeted market coverage area as required to meet the applicant's engineering requirements.

b. Evidence that existing wireless telecommunications facilities do not have sufficient height or cannot be increased in height at a reasonable cost to meet the applicant's engineering requirements up to the limit of 190 feet.

c. Evidence that existing wireless telecommunications facilities do not have sufficient structural strength to support the applicant's proposed antenna and related equipment. Specifically:

i. Planned, necessary equipment would exceed the structural capacity of the existing wireless telecommunications facility, considering the existing and planned use of those facilities, and these existing facilities cannot be reinforced to accommodate the new equipment.

ii. The applicant's proposed antenna or equipment would cause electromagnetic interference with the antenna on the existing towers or structures, or the antenna or equipment on the existing wireless telecommunications facility would cause interference with the applicant's proposed antenna.

iii. Existing or approved wireless telecommunications facilities do not have space on which planned equipment can be placed so it can function effectively.

d. For wireless telecommunications facilities existing prior to the effective date of this Ordinance, there is evidence that the fees, costs, or contractual provisions required by the owner in order to share, or adapt an existing wireless telecommunications facility are unreasonable. Costs exceeding the pro rata share of a new wireless telecommunications facility development are presumed to be unreasonable. This evidence shall also be satisfactory for a tower built after the passage of this Ordinance.

e. Evidence that the applicant has made diligent good faith efforts to negotiate co-location on an existing wireless telecommunications facility, building, or structure, and has been denied access.

G. Location Information -- Submission Waivers

1. The Planning Board, as appropriate, may waive any of the submission requirements based upon a written list of requested waivers submitted by the

applicant at the time of application, accompanied by the written reasons why each waiver is being requested.

2. A waiver of any submission requirement may be granted only if the Planning Board finds in writing that due to special circumstances of the application, the information is not required to determine compliance with the standards of the Ordinance.

Section 6. Fees, Public Hearing and Final Application Review Procedure

A. Permit Application Fee

An application for Planning Board approval shall include payment of a permit application fee of \$2,500 or .25 cents per square foot of total area fenced compound, whichever is higher. Each accessory building included in this area requires an additional fee of \$500.00. The application shall not be considered complete until these fees are paid. An applicant is entitled to a refund of the application portion of the fee if the application is withdrawn within fifteen (15) days of the date of filing.

B. Planning Board Review Fee (held in Escrow)

1. An applicant requesting approval by the Planning Board shall deposit with the Town a \$5,000.00 fee to cover all reasonable and customary fees to include engineering studies, consultant fees, legal costs, and out-of-pocket expenses incurred by the municipality that are necessary to review the application and to hold public meetings and render its decision. The review fee shall be paid at the time of application. If the applicant appeals the final decision to a court of competent jurisdiction, that applicant shall pay the Town's costs and reasonable expert witness and attorney fees should the Town prevail.

2. This Review Fee shall be held in Escrow. That portion of the review fee not used shall be returned to the applicant with an accounting of expenditures within thirty (30) days of the Planning Board's final decision.

C. Application Procedure

1. Filing the Application & Fees

Nine (9) copies of the application shall be filed with the Code Enforcement Officer or Planning Board two (2) weeks prior to the scheduled meeting for review. The application shall be accompanied by the Permit Application Fees (Section 6 A) and the Planning Board Review Fee (Section 6 B.1).

2. Planning Board Preliminary Review

Within forty-five (45) days of the filing of the application, the Planning Board shall review the application and determine if the application meets the submission requirements. The Planning Board, as appropriate, shall review any written requests for a waiver from the submission requirements and shall act on these requests prior to determining the completeness of the application. An application will be considered to be complete, and pending under 1 M.R.S.A. Section 302, when the Board has conducted at least one substantive application review and found by affirmative vote that it meets all applicable submission requirements under Section 5.

3. Complete Application

If the application is complete, the Planning Board shall notify the applicant in writing of this determination, or if the application is incomplete, the Planning Board shall notify the applicant in writing, specifying the additional materials or information required to complete the application. After the Planning Board has determined that a complete application has been filed, and has notified the applicant in writing of such, it will begin the review process of the proposed development.

4. Public Hearing & Abutter's Notices

The Planning Board will hold a Public Hearing within thirty-five 35 days after finding the application complete. The Code Enforcement Officer or the Planning Board shall publish the time, date and place of the hearing at least two (2) times at least fourteen (14) days prior to the hearing in a newspaper of area-wide circulation. The applicant must supply to the Planning Board a list of the abutting landowners. The Code Enforcement Officer shall send notice by registered mail, return receipt requested, to each abutting or adjacent landowner of record as listed in the town office. Said notice shall be sent at least twenty-one days in advance of any hearing. The Planning Board shall maintain a list of property owners to whom notice is mailed, together with return receipts, in the application file. Failure on the part of any abutter or adjacent property owner to receive such notice shall not be grounds for delay of any consideration of the application nor denial of the project.

5. Final Planning Board Review

The review period from the date of application is considered complete to the final public hearing is one hundred and eighty (180) days. Within sixty (60) days of the final Public Hearing, the Planning Board shall approve, approve with conditions, or deny the application in writing, together with the findings on which that decision is based. This time limit for review may be extended by mutual agreement between the Planning Board and the applicant.

Section 7. Planning Board Review Standards

An application for approval by the Planning Board for New Construction or Expansion of an Existing Facility must meet the following standards:

A. Designed for Co-Location

A new wireless telecommunications facility and related equipment must be designed and constructed to accommodate expansion for future co-location of at least three additional wireless telecommunications facilities or providers at commercially reasonable rental rates which will be subject to review and approval of the Planning Board.

B. Height

A wireless telecommunications facility must be no more than one hundred ninety (190) feet in height.

C. Setbacks

A new or expanded wireless telecommunications facility must be set back one and one half (1-1/2) times its height, measured from the outer edge of the fence, from all property lines. The setback may be satisfied by including the areas outside the property boundaries if secured by an easement. The height of the tower shall be measured from the base of the Tower.

D. Landscaping and Noise

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

extent practicable. The noise of operation, generators, or other structural parts of the installation must be designed to protect adjacent property owners. Complaints shall be reviewed by the Code Enforcement Officer and recommended solutions required of the facility operator.

E. Fencing

A new wireless telecommunications facility must be fenced to discourage trespass on the facility by persons and animals and to discourage climbing on any structure by trespassers. The fence must encircle the entire facility, stand no less than ten (10) feet tall, and be constructed of materials that conform to the security requirements and the requirements of Section 7 G below.

F. Lighting

A new wireless telecommunications facility must be illuminated only as necessary to comply with FAA or other applicable state and federal requirements. Lighting must meet the standards of the Sedgwick Site Plan Review Ordinance.

G. 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.

H. Structural Standards

A new wireless telecommunications facility must comply with the current Electronic Industries Association/Telecommunications Industries Association (EIA/TIA) 222 Revision Standard entitled "Structural Standards for Steel Antenna Towers and Antenna Supporting Structures," and with Hancock County Standards for wind shear and ice load.

I. Visual Impact

(i) The proposed wireless telecommunications facility shall not have an unreasonable adverse visual impact upon (1) designated scenic resources as defined in Sections 11 of this Ordinance or by any other State or Federal Agency; and (2) an historic district, site or structure which is currently listed or eligible for listing on the National Register of Historic Places.

(ii) Determination of Adverse Visual Impact of Scenic Resources:

In determining whether the proposed facility has an unreasonable adverse visual impact upon the designated scenic resources, the Planning Board shall consider the following criteria:

- a. The extent to which the proposed wireless telecommunications facility is visible above the tree line from designated scenic resources and viewpoints from public roads within one (1) mile in any direction of designated scenic resources.
- b. The distance of the proposed facility from said viewpoints and the designated scenic resources.
- c. The type, number, height and proximity of existing structures and features, and background features within the same line of sight as the proposed facility from the designated scenic resources.
- d. The amount of vegetative screening.
- e. The presence of reasonable alternatives that allow the facility to function consistently with its purpose.

J. Natural & Environmental Resources

The proposed wireless telecommunications facility shall have no unreasonable adverse impact on natural and environmental resources on abutting and adjacent properties or within adjoining natural areas or watersheds surrounding the site as location or habitat containing non-game and endangered species as listed by the United States or State of Maine Departments of Environmental Protection, or as conservation areas owned or protected by easement by the State, the town, adjoining towns, or not-for-profit conservation organizations, such impact to be defined by specific review and findings by the relevant federal and state agencies and/or testimony presented at the

public hearing by qualified non-governmental organizations and individuals.

Section 8. Standard Conditions of Approval

A. Site Plan Review Ordinance --Town of Sedgwick

An approved project must meet the Site Plan Review Ordinance of the Town of Sedgwick in addition to satisfying all the review criteria in this Wireless Telecommunications Facilities Ordinance.

B. Amendment to an Approved Application

Any changes to an approved application must be approved by the Planning Board, in accordance with Section 4.

C. Abandonment

1. A wireless telecommunications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned. The Code Enforcement Officer shall notify the owner of an abandoned facility and the surety bond provider as described in Section 5.A.12 in writing and order the removal of the facility within ninety (90) days of receipt of the written notice. The owner of the facility shall have thirty (30) days from receipt of the notice to demonstrate to the Code Enforcement Officer that the facility has not been abandoned. If the owner fails to show that the facility is in active operation, the owner shall have sixty (60) days to remove the facility. If the facility is not removed within this time period, the municipality may remove the facility at the owner's expense. The owner of the facility shall pay all site reclamation costs deemed necessary and reasonable to return the site to its pre-construction condition, including the removal of roads, and re-establishment of vegetation. The owner of the facility may apply to the Select Board for release of the surety bond when the facility and related equipment are removed to the satisfaction of the Planning Board.

2. A wireless telecommunications facility may also be considered abandoned if it does not complete all lot improvements, fencing, and landscaping, or any other requirements under this ordinance. The CEO shall notify the owner of the facility and surety bond holder in writing and order the completion of said facility within ninety (90) days from the date of notification and, if the required actions are not taken within the specified period, the Town may either complete the requirements at the facility owner's expense with costs first taken from the surety bond, or may take legal action to consider the

facility abandoned and to exercise the requirements for removal as established in Section 8.C.1.

D. Co-Location

As a condition of approval, the owner of the wireless telecommunications facility, his or her successors and assigns agree to:

1. 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.
2. Negotiate in good faith for shared use of the wireless telecommunications facility by third parties;
3. Allow shared use of the wireless telecommunications facility if an applicant agrees in writing to pay reasonable charges for co-location as defined in Section 8.D.4.
4. Require no more than a reasonable charge for shared use of the wireless telecommunications facility, based on community rates and generally accepted accounting principles. This charge may include, but is not limited to, a pro rata share of the cost of site selection, planning project administration, land costs, site design, construction and maintenance, financing, return on equity, depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference. The amortization of the above costs by the facility owner shall be accomplished at a reasonable rate, over the life span of the useful life of the wireless telecommunications facility.

E. Change of Ownership

As a further condition of approval, any new owner of the wireless telecommunications facility whether by assignment, transfer, succession or inheritance shall be bound by the provisions of this permit. The Select Board and Code Enforcement Officer shall be notified in writing sixty (60) days in advance of a change of ownership of the facility and that the permit issued is conditioned upon Planning Board review and the surety bond being continued or replaced in the name of the new owner.

F. Emissions

As a further condition of approval, and upon request by the Town, the applicant shall, no less than annually, while the wireless telecommunications facility is in operation, certify to the Town in writing that it is in full compliance with all applicable FCC radio frequency emissions regulations.

Section 9. Administration and Enforcement

A. Administration

1. It shall be unlawful for any person to violate or fail to comply with or take any action that is contrary to the terms of this Ordinance, or to violate or fail to comply with any permit issued under the Ordinance, or cause another to violate or fail to comply or take any action which is contrary to the terms of the Ordinance or any permit under the Ordinance.

2. The Board of Selectmen, following Planning Board review, is authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without court action only upon Planning Board review that the consent agreement shall comply with the terms of this Ordinance. Such agreements, however, shall not allow any illegal facility, structure, or use, to continue unless there is clear evidence that the facility, structure or use was constructed or conducted as the direct result of erroneous advice provided by an authorized town official and there is no evidence that the owner or operator acted in bad faith.

B. Enforcement

1. The Code Enforcement Officer, as appointed by the Board of Selectmen, shall enforce this Ordinance and the terms of all permits issued pursuant to this Ordinance. If the Code Enforcement Officer determines that a violation of these ordinances or the permit has occurred, the Code Enforcement Officer shall provide written notice to any person alleged to be in violation of this Ordinance or permit.

2. If, after thirty (30) days from the date of notice of violation, the violation has not been resolved, the Board of Selectmen may institute civil proceedings or any other remedy at law to ensure compliance with the Ordinance or permit.

3. In other cases, when directed by the Board of Selectmen, the Code Enforcement Officer and/or Town Attorney are hereby authorized to initiate enforcement proceedings, either legal or equitable, that they deem appropriate to enforce the Ordinance.

4. Each violation identified by the Code Enforcement Officer shall constitute a separate offense for which the civil penalties may be assessed on a per day basis as provided in Title 30-A, Section 4452(3) of the Maine statutes. In addition, the violator may be subject to correct violations and pay the Town's attorney and expert witness fees as provided in Section 4452.

Section 10. Appeals

Any person aggrieved by a decision of the Code Enforcement Officer or the Planning Board under this Ordinance, including the Applicant, an abutter or an objector at a public hearing, may appeal the decision to the Sedgwick Board of Appeals, as provided by Section XI of the town's Site Plan Review Ordinance and/or Section 16.H. 1(a), 3 and 4 of the Sedgwick Shoreline Zoning Ordinance. The Board of Appeals shall commence an appellate hearing to review the record of the Planning Board and Code Enforcement Officer to affirm or reverse the appealed decision based on the provisions of the applicable requirements of this Ordinance, other town and state ordinances, and the facts as presented in the original Planning Board/Code Enforcement Officer hearing and procedures.

Under the Federal Telecommunications Act (TCA) a person adversely affected by the final decision may also commence an action in any court of competent jurisdiction within thirty (30) days of the final municipal decision.

Section 11. Definitions

Accessory Building – Any structure other than an antenna within the property perimeter.

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

Antenna Height - The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure, even if said highest point is an antenna, not to exceed 190 feet. Measurement of tower height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the facility site. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Co-Location - The use of a wireless telecommunications facility by more than one wireless telecommunications provider.

Designated Scenic Resource - The specific location, view or corridor, as identified as a scenic resource in a municipally adopted comprehensive plan or by a State or Federal agency that consists of:

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.
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.

Environmental or Natural Resources – Threatened natural features such as lakes, ponds, rivers, streams, marshes and other watershed elements, habitats or locations for non-game and endangered species as designated by the United States and State of Maine Departments of Environmental Protection.

Expansion - The addition of antennas, towers or other devices to an existing structure or the addition of new users other than the original owner proposing to utilize the telecommunications facility.

FAA - Federal Aviation Administration

Fall Setback Distance - The distance measured from the base of the wireless communications facility antenna to the property perimeter.

FCC— Federal Communications Commission, or its lawful successor.

Historic or Archeological Resources - Resources that are:

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 or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs 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 Secretary of the Interior through the Maine Historic Preservation Commission;

5. Areas identified by a government agency, such as the Maine Historic Preservation Commission, as having significant value as an historic or archaeological resource.

Historic Landmark - Any improvement, building or structure of particular historic or archeological significance to the Town relating to its heritage, cultural, social, economic or political history, or which exemplifies historic personages or important events in local, state, or national history identified in the municipality's comprehensive plan, which have been listed or are eligible to be listed on the National Register of Historic Places.

Line of sight - The direct view of the object from the designated scenic resource.

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

Principal Use - The use other than one that is wholly incidental or accessory to another use on the same premises.

Propagation Study – A computer simulated model of how a radio telecommunications system should perform, analyzing the coverage, dead-spots and performance of a proposed radio system for planning purposes, as suggested by the Telecommunications Industry Association (TIA) Service Bulletin 88 or TSB-88 with addendum B.

Public Recreational Facility - A regionally or locally significant facility, as defined and identified either by State statute or in the municipality's adopted comprehensive plan, designed to serve the recreational needs of municipal property owners.

Reconstruction - Replacement or repair of a damaged portion or portions of a wireless telecommunications facility.

Special Event - A rare and unpredicted event.

Substantial Start - The completion of thirty percent (30%) of a structure or use measured as a percentage of estimated total cost.

Targeted Market Coverage Area - The area that is targeted to be served by this proposed telecommunications facility.

Tree Line – Where the trees meet the horizon when viewed from designated scenic resources and viewpoints from public roads within one (2) mile in any direction of designated scenic resources.

Vegetative Screening – Live trees, shrubs, and other plants used to screen the structures associated with the wireless telecommunications facility.

Viewpoint - That location which is identified either in the municipally adopted 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.

Wireless Telecommunications Facility or Facilities - Any structure, antenna, tower, or other device which provides radio/television, commercial mobile wireless services, unlicensed wireless services, cellular phone services, specialized mobile radio communications (SMR), common carrier wireless exchange access services, and personal communications service (PCS) or pager services, or any kind of wireless communication transmissions.