

ELECTRIC TRANSMISSION FACILITIES AND CORRIDORS ORDINANCE TOWN OF BENTON, MAINE

Adopted: June 1, 2024 Annual Town Meeting
June 3, 2024 Select Board Adoption

Revised:

Town of Benton, Maine – ETFC Ordinance

Table of Contents

Town Of Benton Select Board, ETFC Ordinance Approval	3
Section I: Preamble	4
A. Authority	4
B. Title	4
C. Purpose	4
D. Administrative Body	4
E. Rules of Construction	4
F. Conflict and Severability	4
G. Repeal or Prior Ordinance	5
H. Effective Date	5
I. Revisions	5
Section II: Fee Schedule	6
Section III: Applicability	6
Section IV: Enforcement	7
Section V: Definitions	8
Section VI: Review and Compliance Standards for Electric Transmission Facilities and Corridors	9
Section VII: Public Health and Safety Standards	9
Section VIII: Environmental Standards	11
Section IX: Financial Standards	11
Section X: Decommissioning Standards	12
Section XI: Permit Submission Requirements and Procedural Review Standards	13
Addendum A – ETFC Ordinance Town of Benton Maine Revision History	15

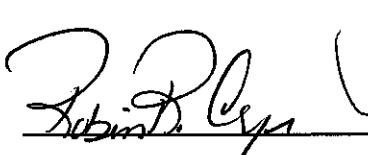
Town of Benton, Maine – ETFC Ordinance

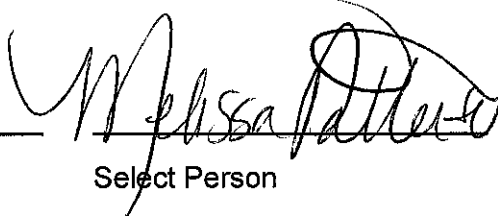
Town Of Benton Select Board, ETFC Ordinance Approval

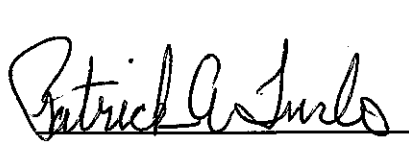
The Town of Benton, Maine, General Government Ordinance was approved by the Town June 1, 2024 at our Annual Town Meeting.

The Town of Benton Select Board adopts the plan June 3, 2024

Select Board Signatures:


Select Person


Select Person


Select Person

Select Person

Select Person

Municipal Clerk Signature & Certification:


Town Clerk or Designee

June 10, 2024
Date

Town of Benton, Maine – ETFC Ordinance

Section I: Preamble

A. Authority

The regulations contained in this Electric Transmission Facilities and Corridors Ordinance are enacted under the Home Rule Authority granted by the State of Maine (30-A M.R.S.A. as 3001) and as adopted by the Town of Benton Residents at the June 1, 2024, Annual Town Meeting.

B. Title

This Ordinance shall be known and cited as the “**Electric Transmission Facilities and Corridors Ordinance, Town of Benton, Maine.**”

C. Purpose

The purpose of this Ordinance is to provide a set of standards for the construction and expansion of Electric Transmission Facilities and Corridors in the town of Benton, and to ensure that Benton can continue to fairly and responsibly encourage orderly growth and development while protecting the Town’s rural character; and to safeguard economic, agricultural, forest and scenic resources from development which threatens those resources. These standards are also intended to:

- i. Minimize the adverse impacts of electrical transmission lines on surrounding land use, including: visual, environmental, historically significant areas, health and safety, and property value impacts;
- ii. Allow the Town to protect the public health, safety, and welfare;
- iii. Support the goals and policies of the Town’s Comprehensive Plan

For clarity, the Electric Transmission Facilities and Corridors Ordinance may be also referred to as ETFC Ordinance throughout this document.

D. Administrative Body

The provisions of this ordinance shall be administered by the Planning Board.

E. Rules of Construction

Captions and headings within this Ordinance are intended to form a part of the Ordinance and to be utilized in determination of the meaning and applicability of the sections they identify with.

F. Conflict and Severability

Conflict. 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.

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

Town of Benton, Maine – ETFC Ordinance

G. Repeal or Prior Ordinance

Intentionally Omitted.

H. Effective Date

This ordinance shall take effect and be in force from the date of its adoption.

I. Revisions

The Select Board and/or Planning Board of the Town of Benton shall have the authority to initiate amendments to this Ordinance. The Select Board and/or Planning Board shall first determine that such an amendment is in the public interest, is consistent with purpose and intent of this Section, and will not have a significant, adverse effect upon public safety and the environment. All proposed amendments shall be adopted only by a majority vote of the Town of Benton voters at a Town Meeting.

To preserve the integrity of this document starting in calendar year 2024 revisions to this ordinance will be maintained in an addendum labeled Addendum A – ETFC Ordinance Town of Benton Maine Revision History. Each revision will denote:

1. Warrant Article Language
2. Date of Town Hearing
3. Date of Town's Approval and Adoption by the Select Board
4. Detail of the revision including reference to Section, etc. To ensure the revision is understood, the revision will be reflected as follows:
 - a. Language additions are reflected with underline text, e.g. TEXT ADDITION
 - b. Language removal are reflected with strike-thru text, e.g.

Town of Benton, Maine – ETFC Ordinance

Section II: Fee Schedule

A. Application Fees

All applications for Electric Transmission Facilities and Corridor development shall be accompanied by a nonrefundable fee payable to the Town of Benton, according to the fee schedule adopted by the Select Board of Benton.

B. Escrow Fund Fees

See Section IX: Financial Standards for any applicable escrow fees.

Section III: Applicability

This Ordinance applies to all Electric Transmission Facilities and Corridors in the Town of Benton proposed to be constructed or expanded after the effective date of this Ordinance.

All ETFCs are subject to location and permitting requirements as set forth in the Land Use Ordinance Town of Benton, Maine, Sections: Establishment of Districts, General Performance Standards, and Performance Standards for Specified Uses.

Table A below provides the Table of Land Use for ETFCs in the associated district.

KEY

A – Allowed; if in compliance with applicable performance standards.

P – Permitted; land use permit required.

N – Not permitted.

C – Conditional; conditional use permit required in accordance with Land Use Ordinance, Section IV.

All other land use / structure not listed in the table below related to ETFC technology will be considered, N – Not Permitted.

Use / Structures	Growth Districts			Rural District	Industrial District
	Benton Station Village District	Benton Falls	Benton Proper		
Electric Transmission Facility or Corridor (ETFC)	N	N	N	C	C

Town of Benton, Maine – ETFC Ordinance

Section IV: Enforcement

- A. It is the Code Enforcement Officer's duty to enforce the provisions of this Ordinance, and any state or federal laws or enforcement requirements adopted before or after the adoption of this Ordinance, including Title 38 M.R.S.A. §484 and Title 30-A M.R.S. Section 4452. If the Code Enforcement Officer ("CEO") shall find that any provision of this Ordinance is being violated, the CEO shall notify in writing the person responsible for such violation, providing a 90 day notice to cure and indicating the nature of the violation and ordering the action necessary to correct it, including the discontinuance of illegal structures, illegal work being done and abatement of nuisance conditions. A copy of such notice shall be submitted to the Town Office and maintained as a permanent record.
- B. When the above action does not result in the correction or abatement of the violation or nuisance condition, the Town Select Board, upon notice from the Code Enforcement Officer, is hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the Town of Benton.
- C. The CEO shall keep a complete record of all essential transactions of the office, including applications submitted, revocation of permits, appeals, court actions, violations investigated, violations found and fees collected.
- D. Any violation of this Ordinance shall be deemed a nuisance. Any person, including but not limited to a landowner or lessee or easement owner, a landowner's, or lessee's or easement owner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in an accordance with Title 30-A M.R.S. Section 4452.
- E. The Code Enforcement Officer shall investigate all complaints of alleged violations of this Ordinance.
- F. Development of any kind without issuance of a Permit by the Town of Benton, Code Enforcement Officer following the process outlined in the Land Use Ordinance Town of Benton, Maine, Sections III – V, shall be a violation of law. Development includes grading or construction of roads, grading land or lots, or construction of structures which require a plan approved as provided in this Ordinance.
- G. The Code Enforcement Officer shall conduct on-site inspections at the CEO's discretion to ensure compliance with all applicable laws and conditions attached to permit approvals.

Town of Benton, Maine – ETFC Ordinance

Section V: Definitions

Abutter: The owner of property adjoining or located within 200 feet of a boundary of the parcel proposed to be developed.

Applicant: Person, or persons, or entity applying for a permit or license to the Town of Benton, pursuant to this Ordinance.

Code Enforcement Officer (CEO): A person appointed by the Municipal Officers to administer and enforce this Ordinance for the Town of Benton. Reference to the Code Enforcement Officer is intended to include references to Building Inspector, Plumbing Inspector, and Health Officer.

Electric Transmission Facility or Corridor (ETFC): Any project whose main purpose is the transmission or distribution of electricity, and all its affiliated building and facilities that contain electrical transmission or distribution systems with an operating voltage of 35 kV or greater.

Kilovolt (kV). Unit of electrical potential equal to 1,000 volts.

Permit: An official document of the Town of Benton, issued by the Code Enforcement Officer and authorizing a specific activity in accordance with an approval by the CEO or Planning Board.

Occupied Structure: A building in which people live, work or frequent including seasonal/recreational uses, or building in which animals are housed.

Owner/Operator: The person or entity that is the legal owner of the ETFC including successors and assigns, and that has the authority and responsibility to operate the ETFC on a day-to-day basis. An Owner/Operator must have the legal authority to represent and bind the ETFC.

Permit: Written approval issued by the Town of Benton, empowering the holder thereof to construct a facility in accordance with this Ordinance.

Person: A natural person or legal entity.

Project Boundary: The boundaries of the ETFC wherein the Owner/Operator has legal right, title or interest, or the option to acquire the same, and as shown on the site plan submitted to and approved by the Planning Board in accordance with this Ordinance.

Project Parcel: Any parcel of real estate on which all or any part of the ETFC will be constructed.

Property Line: The imaginary line along the ground surface and the vertical extension of that line which constitutes a legally enforceable boundary which separates real property owned or controlled by owner(s) from contiguous real property owned or controlled by another person.

Town of Benton, Maine – ETFC Ordinance

Section VI: Review and Compliance Standards for Electric Transmission Facilities and Corridors

- A. This Ordinance applies to all ETFCs, as defined herein, proposed to be constructed and operated after the effective date of this Ordinance.
- B. It shall be a violation of this Ordinance to begin construction or operate an ETFC, as defined herein, without a Permit.
- C. All ETFC transmission lines shall be buried underground. They shall be buried at a depth consistent with state public utility engineering standards to prevent transient ground currents and stray voltage.

In the event this compliance standard (ETFC transmission lines shall be buried underground), becomes invalid due to a requirement by law than, all new ETFC transmission lines and related equipment must be screened with plants/trees from view by abutting properties to the maximum extent possible. Existing trees, shrubs and natural landforms on the site shall also be preserved to the maximum extent possible. In addition, the maximum height will be measured to the top of the ETFC transmission lines.

- D. All ETFC transmission lines shall be setback from any existing residential lot, public building, occupied structure or property lines by a distance of not less than 400 feet for ETFC buried transmission lines and 750 feet for ETFC above ground transmissions lines.
- E. All ETFC transmission lines shall be constructed and maintained without significant impact to the natural environment, existing uses, scenic character, air and water quality, other natural resources and with consideration of wildlife and fisheries habitats, as described in Title 38 M.R.S.A §484. Placement of transmission lines shall be away from habitat used by protected species and post construction activities will include replanting of cleared areas and limiting public and vehicular access.
- F. A new ETFC transmission lines and related equipment must be designed and constructed to accommodate expansion for future co-location of at least three (3) additional facilities or providers.

Section VII: Public Health and Safety Standards

- A. Stray Voltage
 - i. An Application for ETFC shall be required by the Planning Board to include a stray voltage analysis report in accordance with this section. The Applicant shall conduct and include a report of pre-construction stray voltage tests on all Occupied Structures located within a radius, of up to .5 miles of the Project Parcels. The tests shall be performed by a Planning Board approved investigator, using a protocol which is also approved by the Planning Board and paid for by the Applicant. A report of the tests shall be provided with the Permit Application and shall be provided to the owners of all property included in the study area. The Applicant shall seek written permission from property owners prior to conducting testing on such owners' properties. The Applicant shall not be required

Town of Benton, Maine – ETFC Ordinance

to perform testing on properties where owners have refused to grant permission to conduct the testing.

- ii. Following construction of the ETFC, and within one year after commencing operation, the Applicant shall conduct a post-construction stray voltage test on all Occupied Structures located within the radius of the Project Parcels determined by the Planning Board in Section VII(i) above. The tests shall be performed by a Planning Board approved investigator, using a protocol which is also approved by the Planning Board and paid for by the Applicant. A report of the tests shall be provided to the Planning Board, CEO, Select Board and the owners of all property included in the study area. The Applicant shall seek written permission from property owners prior to conducting testing on such owners' property. The Applicant shall not be required to perform testing on property where owners have refused to grant permission to conduct the testing. At the Town's option or as requested by the property owners included in the study area, the results of the testing may be shared with State of Maine departments which provide regulatory oversight and as required or directed by the State of Maine, the Town's Select Board may request the CEO and/or Planning Board to add additional permit requirements to address any unsatisfactory testing results.

B. Fire and Extraordinary Events

- i. Fire Prevention: An Application for a permit to construct an ETFC shall include a Fire Prevention and Fire Fighting Plan that has been approved by the Town of Benton Fire Chief. The plan shall include a list of hazardous materials that may be encountered.

The Owner/Operator of any ETFC shall notify the Town of Benton Select Board of any "extraordinary event" within 24 hours of that event. Extraordinary events shall include but not be limited to catastrophic component failure, fire, injury caused by the ETFC or any other event that affects the public health and safety of the town or its residents.

C. Maintenance

- i. Prior to energizing any ETFC a written Operations and Maintenance plan shall be submitted to the Town Office with shall include a vegetation maintenance plan for all land within the Project Boundary.
- ii. Vegetation Maintenance for all land within the Project Boundaries shall be performed by mechanical means and without the use of chemical herbicides or pesticides.

Town of Benton, Maine – ETFC Ordinance

Section VIII: Environmental Standards

- A. ETFC projects shall be designed, constructed, and maintained so as to avoid undue adverse impacts to groundwater, wells and aquifers. The Planning Board shall require as a condition of issuing a permit for an ETFC that a pre-construction baseline study of all wells, springs, and other water sources within two-thousand (2000) feet of the Project Boundary be conducted. The study shall be designed and carried out by a water quality professional chosen by the Applicant from a list provided and contracted by the Planning Board and paid for by the Applicant.
- B. Within two years after completion of construction of an ETFC a post-construction water quality study of all wells, springs and other water sources within two-thousand (2000) feet of the Project Boundary shall be performed by a water quality professional chosen by the Owner/Operator from a list provided by the State of Maine and paid for by the Owner/Operator. If degradation or contamination is found to have occurred, fines may be imposed and remediation required by the Town of Benton or the State of Maine.
- C. The Owner/Operator of an ETFC shall not undertake any blasting without notifying the Town of Benton and submitting a blasting plan meeting all state and federal requirements. The blasting plan shall be reviewed and approved by the Code Enforcement Officer before any blasting takes place. Notice to all residents within two-thousand (2000) feet of the blasting area (measured horizontally) shall be provided by certified mail, return receipt, at the Applicant's expense a minimum of 7 days before blasting can take place.

Section IX: Financial Standards

An Applicant for development of an ETFC shall provide evidence satisfactory to the Town of Benton Planning Board that the project is financially viable. Evidence of financial viability shall include:

- i. A budget for the construction of the project.
- ii. Proof of adequate financing for all aspects of the construction and maintenance.

In reviewing an application and/or ongoing project operations for compliance with this Ordinance, The Planning Board and/or CEO may, at their discretion, retain professional services as necessary to assist with its review, including but not limited to those of an attorney, engineer, biologist, land use planner or other professional. The Planning Board may also hire a Project Manager to provide assistance and oversight of the application submissions, reviewing and approval processes. If the Planning Board deems that such services are indeed necessary they shall inform the Applicant in writing who will then have fourteen (14) days to deposit in a joint escrow account with the Town of Benton the sum of \$50,000 as partial payment towards such expenses.

If such a fund is established and the balance of the funds falls below \$25,000 the Applicant, upon written notice shall submit an additional \$25,000 to replenish the fund. If, at any time after such notification, the balance of this fund stays below \$25,000 for a period of 30 days, the Application or Permit shall be considered to have been withdrawn. The balance of the escrow account shall be returned to the Owner/Operator after all expenses have been paid. If any delay in replenishing the fund generates a delay in reviewing the application or operations, then the deadline for completing the review is extended accordingly.

Town of Benton, Maine – ETFC Ordinance

Section X: Decommissioning Standards

- A. The Owner/Operator of an ETFC shall, at their expense, be responsible for complete decommissioning of the project and site restoration within twelve months after it ceases to transmit electricity, or after its operational license has been revoked. Abandonment will be grounds for immediate revocation of the permit.
- B. Decommissioning shall include removal and disposal outside the Town of Benton of all parts of the project (including foundations) in accordance with local, state and federal laws and regulations. Areas of disturbed earth shall be graded, seeded, or otherwise re-vegetated following guidelines provided by the CEO.
- C. A Professional Engineer shall be chosen by the Applicant from a list provided by the State of Maine and paid for by the Applicant to estimate the total cost of decommissioning without consideration of the salvage value of the equipment. No permit for a Project shall be issued until decommissioning funds in the form of a performance or surety bond, letter of credit or other form of financial assurance approved by the Town of Benton Select Board has been provided.
- D. Estimates, as described above, shall be redone every five (5) years on the anniversary of the granting of a project permit and the Owner/Operator of the project shall be required to maintain decommissioning funds that are at least equal to the most recent estimate. Estimates will be provided to the Town's Select Board.
- E. If the Owner/Operator of the project does not complete decommissioning within the time prescribed in this Ordinance, the Town of Benton may take such action as necessary (including court action) to secure the posted decommissioning funds and to ensure completion of the decommissioning.
- F. Decommissioning funds shall not be released except upon written approval of the Town of Benton Select Board.

Town of Benton, Maine – ETFC Ordinance

Section XI: Permit Submission Requirements and Procedural Review Standards

- A. An Application for a Permit to construct or expand an ETFC shall include the requirements in the Land Use Ordinance Town of Benton, Maine, and the following:
- i. Applicant's name, address and contact information.
 - ii. A complete and detailed site plan including all characteristics of the proposed project.
 - iii. Evidence that the Applicant owns the subject land or has a satisfactory land easement for all the land associated with the ETFC project.
 - iv. A written summary prepared by a qualified engineer detailing all required permits for the construction of an ETFC.
 - v. For all required permits listed in the preceding sub-paragraph, the Applicant shall submit all required permits issued by all local, state and federal agencies for both the construction and operation of the proposed ETFC.
 - vi. Payment of the Application Fee to the Town of Benton.
 - vii. Within ninety (90) days of receipt of an Application for a Permit, the Planning Board shall, with assistance from such staff, consultants, committees, or commissions as it deems appropriate, notify the Applicant in writing that the application is complete, or if the application is incomplete, shall inform the Applicant of the specific additional material needed to complete the application. The Planning Board may extend this ninety (90) day period if resources do not allow for completion of the review in the allotted time.
- B. Application Review Process
- i. The Applicant shall pay for the services of all consultants that the Planning Board deems necessary to evaluate the Application. Such consultants shall be chosen by the Planning Board. The failure of the Applicant to make such payments when required renders the Application void.
 - ii. Within 90 days of determining an Application is complete the Planning Board will hold an initial hearing to determine if the Application meets the requirements of this Ordinance. The initial hearing will be a public hearing with Notice being mailed to abutters by certified mail, at the Applicant's expense, a minimum of 15 days prior to the hearing.
 - iii. Within 15 days of the conclusion of hearings the Planning Board will issue a written decision either granting the permit, which may include conditions, or denying the permit. The decision will include findings of fact and conclusions of law necessary to support the decision made.
 - iv. If construction of the ETFC does not begin within 2 years, which will be defined as improvements to land and will not include designs and planning documents, the permit shall lapse and the

Town of Benton, Maine – ETFC Ordinance

Applicant shall reapply to the Planning Board for a new permit. The Applicant may not begin construction until a new permit is granted.

Town of Benton, Maine – ETFC Ordinance

Addendum A – ETFC Ordinance Town of Benton Maine Revision History

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