

Town of Palermo

Electric Transmission Facilities and Corridors Ordinance

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Section 1. Title

This Ordinance shall be known and cited as the Town of Palermo "Electric Transmission Facilities and Corridors Ordinance" (hereinafter referred to as "this Ordinance")

Section 2. Authority

This Ordinance is adopted pursuant to the enabling provisions of Article VIII, Part 2, Section 1 of the Maine Constitution; the provisions of Title 30-A M.R.S.. Section 3001, and the provisions of the Planning and Land Use Regulation Act, Title 30-A M.R.S. Section 4312 *et seq.*

Section 3. 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 Palermo, and to ensure that Palermo can continue to fairly and responsibly encourage orderly growth and development while protecting the Town's rural character; and to safeguard 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 impacts, environmental impacts, impacts to historically significant areas, health and safety impacts, 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

Section 4. Applicability

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

Section 5. Effective Date

This Ordinance is effective upon adoption at Town Meeting.

Section 6. 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 Palermo, according to the fee schedule adopted by the Selectboard of Palermo.

B. Escrow Fund Fees:

See Section 12: Financial Standards for any applicable escrow fees.

Section 7. Enforcement

- i. It is the Code Enforcement Officer's duty to enforce the provisions of this Ordinance. 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, 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 notices shall be submitted to the Town Office and maintained as a permanent record.
- ii. When the above action does not result in the correction of abatement of the violation or nuisance condition, the Town Select Board, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations 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 Palermo.
- iii. 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.
- iv. Any violation of this Ordinance shall be deemed a nuisance. Any person, including but not limited to a landowner or easement owner, a landowner's or easement owner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with Title 30-A M.R.S.. Section 4452.
- v. The Code Enforcement Officer shall investigate all complaints of alleged violations of this Ordinance.
- vi. Development of any kind without Planning Board Approval 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.

- vii. 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.

Section 8. Definitions

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

CEO: Town of Palermo Code Enforcement 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 system with an operating voltage of 35 kV or greater.

ETFC: Electric Transmission Facility or Corridor

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

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

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.

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

Project Boundary: The boundaries of the ETFC within 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.

Waiver: A legal decision that may be granted by the Planning Board that waives one or more of the submission requirements required under any section of this Ordinance.

Section 9. Review and Compliance Standards for Electric Transmission Facilities and Corridors

- i. This Ordinance applies to all ETFCs, as defined herein, proposed to be constructed and operated after the effective date of this Ordinance.

- ii. It shall be a violation of this Ordinance to begin construction or operate and ETFC, as defined herein, without a Permit.
- iii. It shall be a violation of this Ordinance to construct or expand an ETFC with an operating capacity of 35 kV or more, except that, in situations where the proposed ETFC and its infrastructural components cannot meet the 35 kV operating capacity limitation, the ETFC may be buried underground with Planning Board approval.
- iv. It shall be a violation of this Ordinance to construct or erect any infrastructural components for an ETFC that exceed 45 feet in height, except that, in situations where the proposed ETFC and its infrastructural components cannot meet the height limitation, the ETFC may be buried underground with Planning Board approval.
- v. Underground power and transmission lines shall be buried at a depth consistent with state public utility engineering standards to prevent transient ground currents and stray voltage.
- vi. The burden of compliance with all aspects of this Ordinance is on the Applicant and the Owner/Operator of the ETFC. Approval of a Permit by the Planning Board does not abrogate or reduce the responsibility of the Applicant or the Owner/Operator to comply with this Ordinance.
- vii. Decisions regarding approval of an Applicant's Permit must be made in light of the entire Ordinance.

Section 10. Public Health and Safety Standards

A. Stray Voltage

- i. An Application for ETFC shall include reports of stray voltage analysis in accordance with this section. The Applicant shall conduct and include a report of a pre-construction stray voltage test on all Occupied Structures located within a 0.5 mile radius 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 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' property. The

Applicant shall not be required to perform testing on property 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 a 0.5 mile radius 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 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' property. The Applicant shall not be required to perform testing on property where owners have refused to grant permission to conduct the testing.
- iii. The Applicant or subsequent Owner/Operator shall provide neutral isolation devices to property owners where testing reveals neutral-to-earth voltages in excess of 0.5 volts caused by the project.

B. Fire and Extraordinary Events

- i. Fire Prevention: An Application for a permit to construct a ETFC shall include a Fire Prevention and Fire Fighting Plan that has been approved by the Town of Palermo 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 Palermo Planning 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 and pesticides.

Section 11. Environmental Standards

- i. ETFC projects shall be designed, constructed, and maintained so as to avoid undue adverse impacts to groundwater, wells and aquifers. The Planning Board may require as condition of issuing a permit for a ETFC that a pre-construction baseline study of all wells, springs, and other water sources within the watershed of the project site 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 by the Applicant.
- ii. Within two years after completion of construction of a ETFC for which the Planning Board has required a pre-construction baseline water quality study as described in Section 11, part i of this Ordinance, a post-construction water quality study of all wells, springs and other water sources within the watershed of the project site shall be designed and carried out by a water quality professional chosen by the Owner/Operator from a list provided and contracted by the Planning Board and paid by the Owner/Operator. If degradation or contamination is found to have occurred, fines and/or permanent remedies as required by the Town of Palermo or the State of Maine shall be the responsibility of the Owner/Operator.
- iii. Owner/Operator of ETFC shall not undertake any blasting without notifying the Town of Palermo and submitting a blasting plan in accordance with the latest DEP and MSHA Standards. The blasting plan shall be reviewed and approved by the Palermo Planning Board before any blasting takes place. Forty-eight (48) hour notice shall be given to all residents within a two mile radius of the blasting area (measured horizontally) before blasting can take place.

Section 12. Financial Standards

An Applicant for development of a ETFC shall provide evidence satisfactory to the Town of Palermo 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

In reviewing an application and/or ongoing project operations for compliance with his 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. If the Planning Board deems that such services are indeed necessary they shall inform the Applicant who will then have fourteen (14) days to

deposit in a joint escrow account with the Town of Palermo 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 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 Operational License 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.

Section 13. Decommissioning Standards

The Owner/Operator of a EFTC shall at their own expense be responsible for the complete decommissioning of the project and site restoration if the EFTC does not transmit electricity for a period of twelve (12) consecutive months. Abandonment will be grounds for immediate decommissioning.

Decommissioning shall include timely removal and disposal outside the Town of Palermo of all parts of the project 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.

All Maintenance and downtime of all EFTCs, or any other situation leading to the interruption of electricity transmission by the EFTC shall be promptly reported to the Town of Palermo.

Section 14. Permit Submission Requirement and Procedural Review Standards

A. Initial Application Submission Requirements and Review Process

An Initial Application for a Permit to construct and expand a EFTC shall include 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 EFTC project.
- iv. Evidence that the project as proposed has been presented to and reviewed by the following agencies: Maine Natural Areas Program, the Maine Department of Inland Fisheries and Wildlife, the Maine Historic Preservation Commission, the Maine

Department of Transportation, the Maine Department of Agriculture, Conservation & Forestry and the Maine Department of Environmental Protection.

- v. A written summary prepared by a qualified engineer detailing all required permits for the construction of a EFTC.
- vi. For all required permits listed in the preceding sub-paragraph, operator shall submit all required permits issued by all local, state and federal agencies for both the construction and operation of the proposed EFTC.
- vii. Evidence that the Applicant has identified the location of the underground Buckeye Pipeline and will conduct all construction operations in accordance with M.R.S.. Title 23, §3360-A Protection of Underground Facilities.
- viii. Payment of the Initial Application Fee payable to the Town of Palermo.
- ix. Within ninety (90) days of receipt of an Initial 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 at its discretion.
- x. After the Planning Board determines that an Initial Application for a Permit is complete, the Planning Board shall determine whether the Initial Application meets the requirements of this Ordinance. In determining whether the Application meets the requirements of this Ordinance, the Planning Board may obtain services from such staff and consultants as it deems appropriate which will be paid for by the Applicant.
- xi. Within ninety (90) days of determining that an Initial Application for a Permit meets the requirements Planning Board shall approve the Application for a Permit with conditions, or disapprove the Application for a Permit. The time limit for review may be extended by mutual agreement between the Planning Board and Applicant.
- xii. The Planning Board shall make findings of fact and conclusions relative to the standards in this Ordinance. If the Planning Board finds that all standards have been met, they shall approve the Application for a Permit. If the Planning Board finds that any of the standards of this Ordinance have not been met, the Planning Board shall either deny the Application or approve the Application with conditions to ensure the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

B. Final Application

The Final Application for a Permit to construct and operate a EFTC shall include the following:

- i. Updates to information provided in the Initial Application.
- ii. Any and all relevant updates, changes or modifications to the project that may impact the Planning Boards ability to make a sound decision to approve or deny an application.
- iii. 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. Failure of the Applicant to make such payments renders the Application void.
- iv. Payment of the Final Application Fee, payable to the Town of Palermo
- xiii. Within ninety (90) days of receipt of a Final 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 at its discretion.
- xiv. After the Planning Board determines that a Final Application for a Permit is complete, the Planning Board shall determine whether the Final Application meets the requirements of this Ordinance. In determining whether the Application meets the requirements of this Ordinance, the Planning Board may obtain services from such staff and consultants as it deems appropriate which will be paid for by the Applicant.
- xv. Within ninety (90) days of determining that a Final Application for a Permit meets the requirements Planning Board shall approve the Application for a Permit with conditions, or disapprove the Application for a Permit. The time limit for review may be extended by mutual agreement between the Planning Board and Applicant.
- xvi. The Planning Board shall make findings of fact and conclusions relative to the standards in this Ordinance. If the Planning Board finds that all standards have been met, they shall approve the Final Application for a Permit. If the Planning Board finds that any of the standards of this Ordinance have not been met, the Planning Board shall either deny the Application or approve the Application with conditions to ensure the standards will be met. The reasons for any conditions shall be stated in the findings of facts and conclusions.

- v. If construction or operation of the activity is not begun within 2 years, this permit shall lapse and the Applicant shall reapply to the Planning Board for a new permit. The Applicant may not begin construction until a new permit is granted.

Section 15. Conflict and Severability

- i. **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.
- ii. **Severability**
The invalidity or any part of this ordinance shall not invalidate any other part of this ordinance.

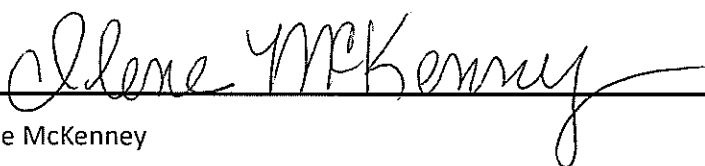
Section 16. Waivers

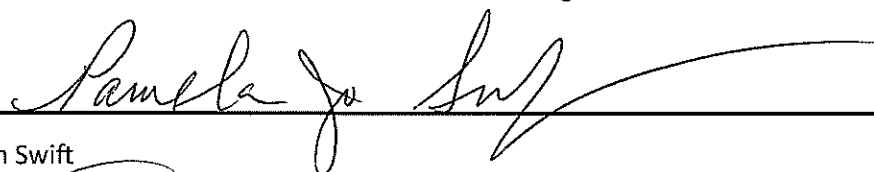
The Planning Board of the Town of Palermo, Maine shall have the authority to waive any provision or requirement of this Ordinance. The Planning Board shall first determine that any requested waiver is in the public interest, is consistent with purpose and intent of this Section, and will not have a significant, adverse effect upon public safety and the environment. For consideration of the grant of a waiver:

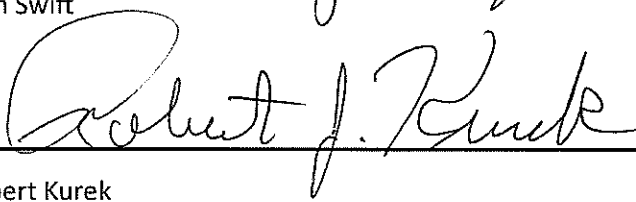
- i. The applicant must submit a written waiver request to the Planning Board citing the relevant Ordinance provision and stating the relief sought and the reasons for the relief.
- ii. In the event that the waiver requested pertains to a line with operating voltage of more than 35kv, the Planning Board shall present to the Town of Palermo voters at a Town Meeting a statement of the waiver request and the reasons or factual findings for the consideration to grant a waiver.
- iii. To be approved, the waiver request must receive a Majority Vote from the Town of Palermo voters at a Town Meeting.

Section 17. Amendments

The Planning Board of the Town of Palermo, Maine shall have the authority to initiate amendments to this Ordinance. The 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 from the Town of Palermo voters at a Town Meeting.


Ilene McKenney


Pam Swift


Robert Kurek