

ZONING

BYLAWS

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ARTICLE #1
PURPOSE

Section 1

The purpose of this Bylaw is to provide for the Town of Montgomery all the protection authorized by the General Law of the Commonwealth of Massachusetts, Chapter 40A and any amendments thereof.

ARTICLE #2
ESTABLISHMENT OF DISTRICTS

Amended December 19, 2006, approved by the Office of the A.G., February 20, 2007

Section 1

Types of Districts: For the purpose of this Bylaw the Town of Montgomery shall be considered an Agricultural-Residential District with a Floodplain Overlay District.

ARTICLE #3 USE REGULATIONS

No structure or land shall hereafter be used or occupied and no structure shall hereafter be erected, maintained or altered unless in conformity with the regulations for an Agricultural-Residential District.

Section 1

Agricultural-Residential District

A. Permitted uses:

1. Farm (excluding commercial raising of swine or fur-bearing animals) and nursery, including the display and sale of natural products raised in the Town.
2. Detached one-family dwelling.
3. Religious, educational or municipal use.
4. Renting of rooms or furnishing of board for not more than four (4) persons in a dwelling regularly occupied for residential purposes.

B. Uses Permitted on Special Authorization of the Board of Appeals. The Board of Appeals, may, in a specific case, after a public hearing, with due notice given, authorize the following:

1. Private club not conducted for profit.
2. Conversion of a one-family dwelling, existing at the time of adoption of this Bylaw, into a two family dwelling, provided the lot is at least 60,000 square feet in area.
3. Use of a trailer or mobile home as a temporary dwelling for a period of 60 days while a permanent home is being constructed. Renewals may be granted at the discretion of the Board of Appeals. This Bylaw is not to be construed as meaning a trailer or mobile home is permitted as a permanent dwelling. The term "trailer or mobile home", as used here is defined in General Laws, Chapter 140, ss32L, as follows:—"a dwelling unit built on a chassis and containing complete electrical, plumbing and sanitary facilities, and designed to be installed on a temporary or permanent foundation for permanent living quarters.
4. Commercial use of property, including billboards and advertising on buildings, subject to appropriate conditions where such are deemed necessary to protect the neighborhood and town.

C. Accessory Uses in Agriculture - Residential District:— In an Agricultural - Residential District the following uses are hereby specifically declared to be customary accessory uses within the meaning of this Bylaw:--

1. Use of a room or rooms in a dwelling for customary home occupations conducted by resident occupants, such as dressmaking, millinery, or for the work of a resident member of a recognized profession.
2. Use of premises or building thereon in connection with his trade by a resident carpenter, electrician, painter, plumber or other similar trade, provided that no manufacturing or business requiring continuous employment of more than one person be carried on therein.
3. Display of not more than two signs pertaining to a permitted use with a total area of not more than twelve (12) square feet.

ARTICLE #4
AREA, YARD, FLOOR AREA AND COVERAGE REGULATIONS
Amended July 16, 1973, approved by AG Sept. 5, 1973

Section 1

A dwelling hereafter erected in Agricultural-Residential District shall be located on a plot having not less than 2 ½ acres of area and not less than 300 feet of frontage on a way. A lot or parcel of land having an area or frontage of lesser amounts than required above may be considered as coming within the area and frontage requirements of this section provided such lot or parcel of land was listed in the Assessor's records, or shown in a plan or described in a deed duly recorded or registered at the Registry of Deeds at the time of adoption of this Bylaw.

Section 2

A dwelling hereafter erected and any addition to an existing structure shall be located not less than 40 feet from the nearest part of any way.

Section 3

A dwelling hereafter erected and any addition to an existing structure shall be so located on the lot as to provide a side yard of not less than 25 feet, and a rear yard of not less than 25 feet.

Section 4

A dwelling hereafter erected shall have not less than a minimum first floor area of 600 square feet.

ARTICLE #5
TELECOMMUNICATIONS FACILITIES

*Added 11/18/98, approved February 17, 1999 by Office of Attorney General
Amended 12/4/02, approved by Office of Attorney General, 4/16/03*

Section I - Purpose of Bylaw

The authority to write and enact this bylaw is granted under the Telecommunications Act of 1996 and the Home Rule Amendment to the Constitution of Massachusetts Article II, Section 1. This bylaw is intended to serve the best interests of the citizens of Montgomery.

The express purpose of this bylaw is not to restrict the construction or use of the telecommunication facilities within the Town of Montgomery, but rather to minimize the adverse impacts of the siting of personal wireless service facilities on adjacent properties, residential neighborhoods and the overall health, safety, environmental quality and visual character of the Town of Montgomery.

The Town seeks to achieve this by regulating the placement, construction and appearance of telecommunications facilities and by promoting the shared use of existing facilities to reduce the need for new facilities, thereby lessening the impact upon the environment and character of the Town, It is the intent of this bylaw to require any and all providers of personal wireless services, telecommunications facilities and communication devices to seek reasonable and viable alternatives to tower construction.

For purposes of this section of the Zoning Bylaw, the following definitions shall apply.

A. Personal Wireless Services, (“Services”) - Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services.

B. Personal Wireless Services Facilities (“Facilities”) - Any and all materials, equipment, storage structures, towers, dishes and antennas, used by a commercial carrier to provide telecommunications and/or data services.

C. Tower - Any antennae mounting structure (excluding buildings), used by a commercial carrier to provide telecommunication and/or data services, that is utilized primarily to support reception or transmission equipment and that is measured twelve (12') feet or more in its longest vertical dimension. The term “Tower” includes, but is not limited to, self supporting, monopole and lattice towers.

D. Communication Device - Any antennae dish or panel mounted out of doors on telecommunications and/or data services. The term “communications device” does not include a tower.

Section II - General Requirements

A. Special Permits

No personal wireless services facility or tower shall be built in the Town of Montgomery unless the Planning Board issues a special permit. The special permit shall be issued if the Planning Board finds that the permit is consistent with this Bylaw under Section III.B. The Special Permit that has been issued for any personal wireless service facility over fifty (50) feet in height shall be valid for fifteen (15) years. At the end of that time period, the wireless facility shall be removed by the carrier or a new Special Permit shall be required.

An application for a special permit for a personal wireless services facility shall include: A topographical site plan, including contour lines at intervals no greater than 2 feet and in an appropriate scale prepared by a professional engineer licensed to practice in the Commonwealth, shall be provided to the Planning Board for any proposed wireless communication facility.

This plan shall include a map of appropriate scale showing the location and orientation of the proposed site and the areas covered by proposed devices(s) of different signal strengths and their interface with adjacent service areas. It shall also include:

1. The seal(s) of the licensed professional(s) who prepared the plans
2. All access roads
3. The placement of all proposed towers and structures as may be necessary.
4. Adequate safety precautions for the protection of the facility and the public.
5. The clearing of natural vegetation, showing that it is limited to that which is necessary for the construction, operation and maintenance of the facility.
6. All setbacks
7. Adequate drainage to prevent erosion.
8. All pre-existing conditions, including buildings and natural features.
9. Topographical site plan showing the entire fall zone.
10. A town-wide map showing the other existing personal wireless service facilities in the Town and outside the Town within one mile of its corporate limits.
11. Applicant shall provide individual propagation charts for the proposed facility as well as all known facilities, either proposed or existing, in Montgomery and all abutting towns. Propagation charts shall be provided in overlay format which allows comparison as both individual and overlapping footprints at typical transmission range for PCS, Cellular and any other signal type likely to apply. Overlays shall clearly demonstrate signal interface/overlap.

B. Type of Tower

The only free-standing towers allowed are monopoles and lattice towers with associated antenna and/or panels.

C. Exemptions

This bylaw does not apply to the construction or use facilities by a federally licensed amateur radio operator as protected by Mass. Gen. Laws c.40A, sec. 3, provided that (1) the tower is not used or licensed for any commercial purpose; (2) the tower does not exceed 100 feet; and (3) the tower will be removed if the use is discontinued for one year.

D. Setbacks

1. The minimum distance from the tower to the property line on which it is located shall be the height of the tower plus 25 feet, with a minimum of one hundred seventy-five feet (175') plus one half the width of the tower base.
2. The setbacks for equipment storage buildings or storage sheds shall comply with the setback requirements for buildings of the zoning district within which the tower is located.

E. Safety

1. Towers, necessary facility structures, buildings and appurtenances shall be installed, maintained and operated in accordance with applicable federal, state and local codes, standards and regulations and shall be designed to withstand sustained winds and gusts of all applicable standards. A certification of compliance must be made by a Massachusetts registered structural engineer that the applicant has complied with all requirements outlined herein.
2. A "fall zone" radius, equal to the height of the tower plus 25 feet, with a minimum of one hundred seventy-five feet (175') plus one half the width of the tower base, shall be required for all towers. Height shall be measured above grade, at the center of the proposed facility. Fall zone radius must be contained entirely, within the boundaries of the parcel of land on which the facility is located. "Fall zone" radius shall not contain structures (i.e. houses, barns, sheds, garages, etc.) unrelated to the telecommunications facility, but should contain "buffer" trees. A fall zone beyond the standard setbacks is not required for telecommunication facilities mounted on existing structures. (i.e. church steeples, silos, etc.)
3. No tower climbing apparatus shall be lower than fifteen (15) feet from the ground.

4. Fencing shall be provided to control access to the site of the tower and shall be of sufficient height to prevent access. Access gate shall be locked at all times. Fence shall be minimum of 8 feet from base of tower and of a minimum height of 6 feet high, no razor wire shall be used.

5. Lighting shall be limited to that only needed for emergencies and/or as required by the FAA. Lighting of equipment structures and other facilities on site shall be shielded from abutting properties. There shall be total cutoff of all light at the property lines of the parcel to be developed, and foot-candle measurements at the property line shall be 0.0 initial foot-candles when measured at grade.

6. In a case where an emergency generator might be required, the generator and accompanying fuel tank shall be installed under the direction of the town fire chief or his or her agent.

F. Height

1. There shall be a presumption that towers shall be no higher than 100 feet (height shall be measured above grade, at the center of the proposed facility), with an allowance for an additional ten(10) feet extension for each co-location spot.

2. In no case shall a tower exceed 150 feet in the Town of Montgomery.

G. Aesthetics

1. Any Wireless communications facility shall minimize, to the extent feasible, adverse visual effects on the environmental landscape. Facilities shall be designed and constructed to be suitably screened from abutters and residential neighborhoods. The maximum amount of natural vegetation shall be preserved and additional vegetative screening from abutters and residential neighborhoods shall be planted where deemed necessary by the Planning Board.

2. Communications devices shall be situated on or attached to a building or structure in such a manner that they are screened whenever possible, shall be painted or otherwise colored to minimize their visibility, and shall be integrated into such structures or buildings in a manner that blends with the structure or building. The above shall be at the discretion of the Planning Board. Any wireless facilities located on or within a historic structure shall not alter the character-defining features, distinctive construction methods, or original historic materials of the building. Any alteration made to a historic structure to accommodate a wireless facility shall be fully reversible. Wireless facilities within a historic district shall be concealed within or behind existing architectural features, or shall be located so that they are not visible from public roads and viewing areas within the district.

3. Free standing antennas or dishes shall be located on the landscape, screened and painted in a manner so as to minimize visibility from abutting streets and residents. To the extent feasible, all network interconnections shall be installed under ground, and all electric services to the site shall be installed underground.
4. Proposed buildings or structures shall be specifically designed and constructed to be aesthetically and architecturally appropriate to the site and zoning district.
5. Any personal wireless service facility that is located within 300 feet of a scenic vista, scenic landscape or scenic road - as designated by the Selectboard of the Town of Montgomery - shall not exceed the height of vegetation at the proposed location.

H. Signs

1. The Special Permit Holder shall post the following signs:
 - a. A “No Trespassing” sign,
 - b. Any signs required to warn of danger,
 - c. A sign providing the following information,
 - 1.) Identification of the facility
 - 2.) Name, address, phone number, and emergency phone number of the landowner
 - 3.) Name, address, phone number, and emergency phone number of the Special Permit Holder
 - 4.) If the land owner is the Town, the name, address, phone number and emergency number of the police.
2. The signs shall comply with the requirements of the zoning bylaws of the Town of Montgomery. The Special Permit Holder shall file all of the information listed in “H” with the police within seven (7) days of the granting of a special permit. The Special Permit Holder shall not post any other signs.

I. Discontinuation and Modification

1. The Special Permit Holder shall file with the Town Clerk, with copies to the Planning Board, and the Building Inspector, by December 31st of each year, a statement that the Special Permit Holder continues to operate the Tower, personal wireless services and communications devices. The statement will also list all co-locators using the towers.
2. Towers and/or facilities, etc. that are not used for more than one (1) year shall be removed by the person or entity to whom the special permit is issued. Removal of the tower or facility and restoration of the site to its

pre-existing condition shall occur within 180 days of the discontinuance of use. The special permit holder may request that the Planning Board extend the 180 day period. An extension of time shall not be allowed unless the Planning Board finds that special circumstances warrant granting the extension

Removal of the tower or facility shall include, but not be limited to:

- a. Removal of antennas, foundations and all subsurface utilities, mount, equipment shelters and security barriers from the subject property.
- b. Proper disposal of the waste materials from the site in accordance with local and state regulations.

3. A plan shall be submitted, as part of the application for a special permit for any wireless communications facility, to return the site to pre-existing condition including the plantation of replacement trees, grading and removal of all structure and waste or any other work that may be required with a bond to be held by the town in the amount of an applicant-provided estimate at equivalent costs for such work. To ensure that this subsection is complied with, the applicant for the siting of a tower shall provide a performance bond payable to the Town of Montgomery. The amount shall be determined by using the industry standard of “R.H. Means” or some comparable engineering firm.

4. The Planning Board shall not issue a special permit until the Treasurer receives the performance bond referred to above in subsection II.I.3.

5. If the facility is not removed within 180 days, the Town shall be empowered to use the bond referred to in Subsection II.I.4 for the removal of said facility. No facility shall remain out of operation for a period of two years without being removed at the owner’s expense.

6. If a tower or facility permitted under this Bylaw is damaged or destroyed, it may not be rebuilt without obtaining a new special permit.

7. A modification of a wireless facility may be considered equivalent to an application for a new personal wireless facility and will require a Special Permit when the following events apply:

- a. The applicant and/or co-applicant wants to alter the terms of the Special Permit by changing the personal wireless service facility in one or more of the following ways.
 - 1.) Change in the number of facilities permitted on the site
 - 2.) Change in technology used for the personal wireless service facility
- b. The applicant and/or co-applicant wants to add any equipment or additional height not specified in the original design filing.

8. At such time that a licensed carrier plans to abandon or discontinue operation of a wireless facility, such carrier shall notify the Town by certified U.S. mail of the proposed date of abandonment or discontinuation of operations. Such notice shall be given no less than 30 days prior to abandonment or discontinuation of operations. In the event that a licensed carrier fails to give such notice, the wireless facility shall be considered abandoned upon such discontinuation of operations.

J. Environmental Standards

1. Audible impacts from generators and/or other sources shall be minimized. Noise levels are to be measured from the property lines of each abutter of the land on which the tower is installed and shall not exceed 50 decibels. Roof- mounted or side-mounted equipment or wireless facilities shall not generate noise in excess of 50 db at ground level at the base of the building closest to the antenna.

The applicant shall provide a statement listing the existing and maximum future projected measurements of noise from the proposed wireless facility, measured in decibels Ldn (logarithmic scale, accounting for greater sensitivity at night) for the following:

- a. Existing, or ambient: the measurements of existing noise.
- b. Existing plus proposed wireless facility: maximum estimate of noise from the proposed wireless facility plus the existing noise environment. Such statement shall be certified and signed by a qualified acoustical engineer, stating that the noise measurements are accurate and meet the Noise Standards of this Bylaw. Noise measurements shall be certified on a yearly basis, and the Town shall be given a written report of said certification.

2. The applicant shall provide a statement listing the existing and maximum future projected measurements of RFR from the proposed wireless facility, for the following situations:

- a. Existing, or ambient: the measurement of existing RFR
- b. Existing plus proposed personal wireless facilities: maximum estimate of RFR from the proposed wireless facility plus the existing RFR environment.

Such statement shall be certified and signed by a qualified RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines. RFR measurements shall be certified on a yearly basis, and the Town shall be given a written report of said certification.

3. Personal wireless service facilities shall not be located in wetlands. Locating of wireless facilities in wetland buffer areas shall be avoided whenever possible and disturbance to wetland buffer areas shall be minimized.
4. The applicant shall list location, type and amount (including trace elements) of any materials proposed for use within the personal wireless services facility that are considered hazardous by the federal, state or local government. No hazardous waste shall be discharged on the site of any personal wireless service facility. If any hazardous materials are to be used on site, there shall be provisions for a full containment of such materials. An enclosed containment area shall be provided with a sealed floor, designed to contain at least 110% of the volume of the hazardous materials stored or used on the site.
5. Stormwater run-off shall be contained on-site to the extent possible.

Section III - Filing Procedure and Standard of Review

A. Procedure

1. The Planning Board shall promulgate regulations for submission of applications under this bylaw. These regulations will be used by the Planning Board to review applications and to attach conditions to the Special Permit.
2. If the applicant is not the owner of the land, the owner shall sign the application. The applicant shall also submit a signed contract between the applicant and the owner. If the owner is a public entity, the applicant shall submit authorization from the entity. If the Town is the owner, a lease agreement between the Town and the applicant shall establish authorization from the Town.
3. The Planning Board shall not approve any application that does not comply with all requirements of this bylaw.
4. The Planning Board shall, because of the Town of Montgomery's proximity to the Barnes Airport of Westfield, refer all applications to the City of Westfield Airport Commission for Review. The Airport Commission shall certify that the application is acceptable to the Commission prior to any action on the special permit. If the Airport Commission fails to act within forty-five (45) days of submission of the application, the application shall be deemed approved by the Commission.

B. Standard of Review

1. The Planning Board shall act in accordance with the standards and requirements set forth herein. The Planning Board may grant a Special Permit if it finds that the applicant has met the requirements of the bylaw and the General Laws Chapter 40A and that the proposal is in harmony with the general purpose and intent of the Town of Montgomery zoning ordinances.
2. The Planning Board shall act on a Special Permit request within the time required by Mass. General Laws c40A, sec..9 and any denial shall be in writing and supported by substantial evidence contained in the record.

C. Requirements

1. Upon submission of the application for a Special Permit, the applicant shall arrange to fly a three foot diameter fluorescent colored balloon at the primary site at the maximum height of the proposed installation, or at the request of the applicant and discretion of the Planning Board, request to substitute a crane for the balloon at the tower location. The balloon or crane shall be flown or in place for a minimum of three (3) days, one day of which must be a weekend day. Said object must be in place for a minimum of six (6) daylight hours on each of the above days. In the case of inclement weather, the Planning Board may require additional days of “testing”.

In either case, photos shall be taken from eight (8) locations by the Montgomery Planning Board, clearly showing the balloon or crane during the test. These shall be labeled as to the location from which the photo was taken, in order to ascertain the visual impact on the public. The date and location of the test described above shall be advertised at least fourteen (14) days, but not more than twenty-one (21) days, before a public hearing on a special permit under this bylaw in the Country Journal, Springfield Union News and the Westfield Evening News newspapers with a general circulation in the Town of Montgomery. The cost of said advertising shall be borne by the applicant. The Montgomery Planning Board shall be granted access to the site to verify the exact location of the test.

2. Communication Devices shall, if feasible, be located on pre-existing buildings, structures or towers, provided such installation shall preserve the character of the structure. The applicant shall have the burden of proving that there are no feasible pre-existing building, structures or towers. If a pre-existing tower is not appropriate but the site is, the old structure may be dismantled and the new tower constructed in its place. In the event that a co-location is found to be not feasible, a written statement of the reasons for the infeasibility shall be submitted to the Town. The Town may retain a technical expert in the field of RF

engineering to verify if co-location at the site is not feasible or is feasible given the design configuration most accommodating to co-location. The cost for such a technical expert will be at the expense of the applicant. The Town may deny a Special Permit to an applicant that has not demonstrated a good faith effort to provide for co-location.

3. Shared use of towers by commercial carriers is required unless such shared use is shown to be not technologically feasible. Whenever feasible, accommodations shall be made for the installation of antennae, repeaters or other such devices to benefit Montgomery Town services.

4. All Towers and associated structures shall be designed to accommodate the maximum number of users technologically practical, with a minimum of three (3) additional users each utilizing three (3) bays of panel type antenna arrays.

5. Annual certification of compliance with the Federal Communications Commission, Federal Aviation Administration and all applicable federal, state and local laws, rules and regulations must be provided for all Facilities. Copies of this certification shall be sent to the Town of Montgomery for their files.

6. If a tower is on Town property, a Certificate of Insurance for liability coverage in the amount of \$1,000,000.00 must be provided naming the Town as the additional insured.

7. If a tower is on Town property, an agreement shall be made whereby the applicant agrees to indemnify and hold the Town harmless against any claim for injury or damage resulting from or arising out of the use or occupancy of the Town owned property by the applicant.

8. Necessary Equipment storage buildings or storage sheds shall not exceed one (1) story in height, no more than three hundred (300) square feet in floor area shall be available for each user; any necessary buildings or storage sheds added to a site must be attached to and abut the original building or storage shed and must be compatible in appearance with it.

9. The Planning Board may require the investigation and testing of more than 1 site by the applicant. No site shall be closer than 2.5 miles, measured in a straight, level line to any other tower, existing or proposed.

10. The applicant shall provide equipment brochures for the proposed personal wireless service facility - such as manufacturer's specifications or trade journal reprints shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.

11. The applicant shall provide a list of materials for the proposed wireless facility specified by generic type and specific treatment (e.g. anodized aluminum, stained wood, painted fiberglass, etc.) These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.

12. Appearance of the proposed wireless facility shall be shown by at least two photographic superimposition's of the facility within the subject property. The photographic superimposition's shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any, for the total height, width and breadth.

13. The applicant shall be responsible for an application fee of \$225.00 which will cover mailing costs, advertisements in local newspapers and any necessary inspections by town officials. This application fee shall be subject to change by the Selectboard in order to cover all necessary costs incurred by the town.

Upon approval of the special permit, a building permit must be secured by the applicant. The cost of said building permit is based upon a fee of five dollars (\$5.00) per Thousand dollars (\$1,000.00) of projected cost of any and all related structures - include, but not limited to, the telecommunication tower and its out-buildings. The cost of said building permit shall include a minimum of three (3) inspections by the town building inspector and/or his assigns.

14. The applicant shall be responsible for all fees and expenses incurred by the Town of Montgomery during the initial application and annual inspection processes; including but not limited to site visitation fees, newspaper publishing fees, and impartial Cell Tower Consultant fees, RF engineer fees, acoustical engineer fees and all Town Attorney fees.

Section IV - Regulatory Compliance

Annual certification demonstrating structural integrity and continuing compliance with current standards of the FCC, FAA and the American National Standards Institute shall be filed with the Building Inspector by the Special Permit Holder, and shall be reviewed by a licensed professional engineer hired by the Town and paid for by the Special Permit Holder. Annual certification shall be obtained on the anniversary date of completion of the tower structure as established by the Montgomery building inspector.

A. If the FCC or FAA regulations are changed, the Special Permit Holder shall bring the facility into compliance within six months or earlier if a more stringent compliance standard is included in the regulation.

B. Failure to comply with any provision of this bylaw or regulations promulgated hereunder shall be grounds for removal of non-complying structures, buildings or devices at the owner's expense.

C. Notwithstanding the provisions of Section II.I.6 of this Bylaw, if a facility becomes obsolete, the special permit holder shall promptly remove the facility.

D. Any special permit for wireless communications facilities shall be subject to review for renewal at five year intervals. Prior to renewal, the Planning Board may require the replacement of the current facility with the least obtrusive and/or lowest height facility available at the time of the permit renewal. The topographical site survey shall be reviewed and any necessary adjustments shall be made to the performance bond as part of the renewal process.

E. The National Environmental Policy Act (NEPA) applies to all applications for personal wireless service facilities. It requires that an Environmental Assessment (EA) be filed with the FCC prior to beginning operations for any wireless facility proposed in or involving any of the following:

- a. Wilderness areas
- b. Wildlife preserves
- c. Endangered species habitat
- d. Historical sites
- e. Indian religious sites
- f. Flood plain
- g. Wetlands
- h. High intensity white lights in residential neighborhoods
- i. Excessive radio frequency radiation exposure

At the time of application filing, an EA that meets FCC requirements shall be submitted to the Town for each wireless facility site that requires such and EA to be submitted to the FCC.

F. After the personal wireless services facility is operational, the applicant shall submit, within 60 days of the completion of beginning operations, and at annual intervals from the beginning of operations, existing measurements of noise from the wireless facility. Such measurements shall be signed by an acoustical engineer, stating that noise measurements are accurate and meet the Noise Standards sub-section of this Bylaw.

G. After the wireless facility is operational, the applicant shall submit, within 60 days after beginning operations, and at annual intervals from the date of beginning operations, existing measurements of RFR from the wireless facility. Such measurements shall be signed and certified by a RF engineer, stating that RFR measurements are accurate and meet FCC Guidelines as specified in the Radio frequency Standards section of this Bylaw.

H. The applicant and co-applicant shall maintain the wireless facility in good condition. Such maintenance shall include, but shall not be limited to, painting, structural integrity of the mount and security barrier, and maintenance of the buffer areas and landscaping.

I. A copy of all annual certifications and reports shall be sent to the Clerk of the Town of Montgomery for filing with their records.

Section V.

A determination of invalidity or unconstitutionality of any specific section of this bylaw shall not invalidate any other section; and every other provision and section shall continue in full force and effect.

ARTICLE #6
DRIVEWAY STANDARDS

Added 12/4/02, approved April 16, 2003 by Office of Attorney General

Section 1. Definition:

1. A driveway shall be defined as the portion of a lot which is prepared for vehicular access to and from a public way.
2. Common driveways shall not be allowed in the Town of Montgomery.

Section 2. Procedure:

1. The property owner, or authorized agent, shall follow the driveway permit process as outlined on the driveway application form. The property owner shall be liable for all fines for non-compliance and all damages to the public road.
2. No driveway shall be constructed without having obtained a driveway application from the Montgomery Town Secretary. The completed application must be reviewed and approved by the Conservation Commission, the Highway Superintendent and the Planning Board. If it is determined that the driveway will impact a “wet-land”, then the applicable laws regarding wet-lands will apply to the construction of the Driveway.
3. The Planning Board shall issue the permit within twenty-one (21) days or shall render a decision in writing specifying the reasons for denial, and shall base that decision upon the opinion of the Highway Superintendent’s considerations of Public Safety. If no action is taken by the Planning Board, the permit shall be deemed granted.
4. The construction of the driveway shall conform in all respects to the construction standards set by the Town of Montgomery, and shall be performed within one (1) year of the date of issuance of the permit. A permit may be extended by the Planning Board for one additional year upon written request by the applicant.

Section 3. Construction:

1. The Superintendent of Highways will inspect the installation of driveway entrances from the property line to the intersection of any public way. This shall include any necessary culverts, ditches, embankments, warning signs, paving or blacktop.
2. These standards shall apply to all new driveway openings and shall apply to any existing driveway openings when a change to layout, size, width, drainage or location occurs.
3. Driveways shall be connected to the street in such a way as to provide safe vehicular entry to and exit from the street at an angle of between 60 and 90 degrees, and so as not to create any hazards for other vehicles, or impede the use of said public way, to emergency vehicles such a Police, Fire trucks and Ambulances.

4. Driveways shall be constructed to allow emergency vehicles to turn into the driveway from both directions on the road and to traverse the full length of the driveway up to the dwelling (zoning regulation). Driveways shall begin at the edge of the paved or dirt road with a minimum six (6) foot radius transitions on each side of the driveway and containing to its terminus, maintaining the minimum twelve (12) foot width.
5. The entrance grade must be no more than a 6% slope from that of the road grade, back to the property line - or twenty (20) feet into the driveway from the edge of the existing road surface, so that there is a flat area for a vehicle to rest before proceeding out into the road.
6. Driveways shall be connected to the public street in such a way as not to create a danger of overloading or impeding the operation of street drainage facilities, and so as not to create a danger of flooding or erosion on other lots.
7. If it is deemed by the Highway Superintendent that a culvert or culverts is required, he shall determine the size (width and length) of said culvert.
8. The driveway must be located no less than 25 feet from the abutter's property line.

Section 4. Costs:

1. Any and all costs incurred in the construction of such Driveway(s) shall be the responsibility of the landowner or his agent. Driveway permits may require that the landowner or his agent install, at his own expense, such facilities as are deemed necessary to insure all standards are met. This may include culverts, ditches, embankments, warning signs, paving or blacktop, (if the driveway is being paved) from the edge of the road surface back to the property line.

Section 5. Penalties and Fines:

1. The following penalties and fines shall be imposed upon the landowner or his agent for any infractions of the standards set forth in this Bylaw regarding Driveway Standards.

Upon being cited in writing by the Highway Superintendent, the landowner will have 30 days in which to correct (or have corrected) the infraction. Unless the infraction is corrected, fines will be imposed on the 31st day after written notice has been received.

Enforcement Agent: Selectboard

Maximum Fine Allowed:	\$100.00 daily
1 st Offense	Warning
2 nd Offense	\$25.00
3 rd Offense	\$50.00
4 th Offense	\$100.00 each day

ARTICLE #7
FLOODPLAIN OVERLAY DISTRICT
Adopted Dec. 19, 2006, approved Feb. 20, 2007

Section 1: Statement of Purpose

The purposes of the Floodplain Overlay District are to:

- A. Ensure public safety through reducing the threats to life and personal injury
- B. Eliminate new hazards to emergency response officials;
- C. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- D. Avoid the loss of utility services which, if damaged by flooding, would disrupt or shut down the utility network and impact regions of the municipality beyond the site of flooding;
- E. Eliminate costs associated with the response and cleanup of flooding conditions;
- F. Reduce damage to public and private property resulting from flooding waters;
- G. To protect, preserve, and maintain the water table and water recharge areas within the Town so as to preserve present and potential water supplies for public health and safety;
- H. To assure the continuation of the natural flow pattern of the water course(s) within the Town in order to provide adequate and safe floodwater storage capacity to protect persons and property against the hazards of flood inundation.

Section 2: Floodplain Overlay District Boundaries and Base Flood Elevation and Floodway Data

- A. Floodplain Overlay District Boundaries and Base Flood Elevation Data

The Floodplain Overlay District is herein established as an overlay district. This District includes all special flood hazard areas designated on the Town of Montgomery Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program (NFIP) dated November 22, 1974 as Zone A, which indicates the 100-year regulatory floodplain. The FIRM is incorporated herein by reference and is on file with the Town Clerk, Planning Board, Building Official, and Conservation Commission.

B. Base Flood Elevation and Floodway Data

1. Floodway Data. In Zone A along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the municipality during the occurrence of the base flood discharge.
2. Base Flood Elevation Data. Base flood elevation data is required for subdivision proposals.

Section 3: Notification of Watercourse Alteration

In a riverine situation, the Building Inspector shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Municipalities
- NFIP State Coordinator
Massachusetts Department of Conservation and Recreation
251 Causeway Street, Suite 600-700
Boston, MA 02114-2104
- NFIP Program Specialist
Federal Emergency Management Agency, Region I
99 High Street, 6th Floor
Boston, MA 02110

Section 4: Use Regulations

A. Reference to Existing Regulations

The Floodplain Overlay District is established as an overlay district to all other districts. All regulations in the Town of Montgomery Zoning Bylaw applicable to such underlying districts shall remain in effect, except that where the Floodplain Overlay District imposes additional regulations, such regulations shall prevail. All development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts State Building Code which addresses floodplain areas (currently 780 CMR 3107, "Flood Resistant Construction");
- Wetlands Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetlands Restriction, DEP (currently 310 CMR 13.00);
- Minimum Requirements for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5)

If any variance from the above-referenced state regulations has been granted, such variance must be included in any building and/or special permit issued for a use in the Floodplain Overlay District.

B. Other Use Regulations

1. All applications for a preliminary or definitive subdivision plan must be designed to assure that:
 - (i) Such plans minimize flood damage;
 - (ii) All public utilities and facilities are located and constructed to minimize or eliminate flood damage; and
 - (iii) Adequate drainage is provided to reduce exposure to flood hazards.
2. Existing contour intervals of site and elevations of existing structures must be included on the preliminary and definitive subdivision plan proposal.

C. Permitted Uses

In areas of potential minimal flood damage, the following uses are allowed, providing that the use causes no obstructions to flood flows. Potential uses must not include permanent structures, fill, storage of materials or equipment.

1. Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
2. Forestry and nursery uses.
3. Outdoor recreational uses, including fishing, boating, play areas, etc.
4. Conservation of water, plants, wildlife.
5. Wildlife management areas, unpaved foot, bicycle, and/or horse paths.
6. Temporary non-residential structures used in connection with fishing, growing harvesting, storage, or sale of crops raised on the premises.
7. Structures lawfully existing prior to the adoption of these provisions.

D. Uses Allowed by Special Permit are:

1. The following uses may be allowed by special permit from the Zoning Board of Appeals in accordance with the requirements of the Zoning Bylaw and the additional restrictions and criteria contained herein regarding the Floodplain Overlay District:
 - (i) Single family detached dwelling;
 - (ii) Recreation or camp facility
2. No structure or building shall be erected, constructed, substantially improved over 50 percent of market value or otherwise created or transferred to the Floodplain Overlay District; no earth or other materials dumped, filled, excavated, or transferred, unless a special permit is granted by the Zoning Board of Appeals. Such permit shall be subject to the provisions set forth in this Bylaw.

E. Additional Special Permit Criteria

In addition to the Special Permit criteria specified in the Zoning Bylaw, the Zoning Board of Appeals may grant a Special Permit if it finds:

1. Within Zone A where base flood elevation is not provided on the FIRM the applicant shall obtain any existing base flood elevation data.
2. The proposed use will not create increased flood hazards which shall be detrimental to the public health, safety and welfare.
3. The proposed use will comply in all respects to the provisions of the underlying District or Districts within which the land is located.
4. The proposed use is in compliance with all applicable state and federal laws, including the Massachusetts Building Code and the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131, Section 40)

F. Prohibited Uses

The following uses are specifically prohibited and shall not be allowed:

1. Solid waste landfills, junkyards and dumps.
2. Business and industrial uses, which manufacture, use, process, store, or dispose of hazardous materials or wastes as a principal activity, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning and auto body repair.
3. The outdoor storage of salt, other de-icing chemicals, pesticides or herbicides shall be prohibited without suitable overhead protection from weather and an impervious containment area to hold the volume of stored chemicals.
4. Any encroachments including fill, new construction, substantial improvements and other development that would result in any increase in flood levels in the municipality during the occurrence of the base 100 year flood discharge.

Section 5: Procedural Requirements

A. Within ten (10) days of receipt of application, there shall be established a “routing procedure” which will circulate or transmit one copy of the application to the Conservation Commission, Planning Board, Board of Health, and Building Inspector for comments, which will be considered by the appropriate permitting board prior to issuing applicable permits. Final action shall not be taken until comments have been received from all of the above, or until thirty-five (35) days from the date of transmission.

B. Application for special permit shall include plans showing all proposed work with certification by a registered professional engineer that these plans show full compliance with Section 4 (A) above.

Section 6: Definitions

The following Definitions shall apply to the Floodplain Overlay District:

AREA OF SPECIAL FLOOD HAZARD is the land in the floodplain within a municipality subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, AI-30, AE, A99, VI-30, VE, or V.

BASE FLOOD means the flood having a one percent chance of being equaled or exceeded in any given year.

DEVELOPMENT means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DISTRICT means Floodplain Overlay District.

FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for municipalities as well as regulatory standards for development in the flood hazard areas.

FLOOD BOUNDARY AND FLOODWAY MA means an official map of a municipality issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500 year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

FLOOD HAZARD BOUNDARY MAP (FHBM) means an official map of a municipality issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

FLOOD INSURANCE RATE MAP (FIRM) means an official map of a municipality on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the municipality.

FLOOD INSURANCE STUDY means a examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

FLOODWAY means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

NEW CONSTRUCTION means structures for which a building permit has been issued commenced on or after the effective date of the Floodplain Overlay District Zoning Bylaw.

ONE-HUNDRED-YEAR FLOOD - see BASE FLOOD.

REGULATORY FLOODWAY - see FLOODWAY

RIVERINE - Relating to, formed by, or resembling a river (including tributaries, streams, creeks, or brooks).

SPECIAL FLOOD HAZARD AREA means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, AH, V, V1-30, VE.

STRUCTURE means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

ZONE A means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, use the best available federal, state, local, or other data.

ZONE A1-30 and ZONE AE (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

ZONE AH and ZONE AO means the 100-year floodplain with flood depths of 1 to 3 feet.

ZONE A99 means areas to be protected from the 100-year flood by federal flood protection system under construction. Base flood elevations have not been determined.

ZONES B, C, AND X are areas identified in the municipality Flood Insurance Study as area of moderate or minimal flood hazard. Zone X replaces Zones B and C on new and revised maps.

ARTICLE #8

Discontinued/Private Road Bylaw

*Added at Town Meeting, May 16, 201, ATM
Approved June 17, 2011 by the Attorney General*

1.0 Purpose:

The intent of this bylaw is to preserve the right of landowner to build a house(s) on road designated as discontinued while protecting the Town of Montgomery from the expenses associated with design, construction and maintenance of the road.

2.0 Definitions:

- 2.1 Discontinued Road: A road that has been formally designated as no longer needed for public use or convenience
- 2.2 Private Road: A road for private use that is not maintained by the town or used as a public way
- 2.3 Right of Way: A specific grant of land or “easement”, which is a right to pass across another’s land

3.0 General Provisions:

Discontinued Roads within the Town of Montgomery shall be deemed Private Roads granting the Right of Way for all property owners along said roads. Property with road frontage along a Private Road, that meets all criteria for a building lot, may be used for that purpose so long as the property owner(s) assume all responsibility for the design, construction and maintenance, including snow plowing, of the Private Road. Private roads must be of suitable construction, as determine by the Planning Board, and meet a minimum width of 12 feet for a single house and improved to a minimum width of 20 feet if an additional house(s) is constructed on the road; the 12 foot minimum applies to the road between the last two houses on the road. The Private Road shall be improved along the centerline of the Discontinued Road with the property owners along each side of the road yielding land easement for the construction, maintenance and passage of the Private Road. Unless otherwise agreed to by the abutting property owners, the owner requesting the modification is responsible for the cost of the modification. No structure shall be erected or any addition to an existing structure constructed less than 50 feet from the centerline and 40 feet from the closest part of any private road.

4.0 Validity:

The invalidity of any section or provision of this bylaw shall not invalidate any other section or provision hereof.

ARTICLE 9
NON-INCOME GENERATING LIVING UNIT
Adopted Dec. 19, 2006, approved by the Office of the Attorney General, Feb. 20, 2007

I. Introduction

Non-income generating living unit shall be permitted in single family residential districts by Special Permit only. The Special Permit Granting Authority (SPGA) shall be the Zoning Board of Appeals which will apply the standards specified herein and may attach other conditions it deems appropriate.

II. Intent

1. To provide homeowners with alternatives for caring for elder or disabled relatives while allowing them independence:
2. To protect stability, property values and the residential character of a neighborhood by ensuring that NIGLU's are installed only in owner-occupied houses and under such additional conditions as may be appropriate to further the purposes of this bylaw.

III. Definitions:

Non-Income Generating Living Unit (NIGLU): A non-revenue generating, self-contained housing unit incorporated within a single family dwelling complete with its own sleeping, cooking and sanitary facilities and a separate means of egress.

Dwelling, Single-Family: A building designed or used exclusively as a residence and including only one dwelling unit.

Primary Residence: A building in which is conducted the principal use of the lot on which it is located. For residentially zoned lots, such building would be a dwelling.

IV. General Description

1. A NIGLU shall mean a second dwelling unit within a single-family structure.
2. The legal owners of the single-family structure/NIGLU must be year-round residents of the premises.
3. The NIGLU shall mean a separate housekeeping unit, complete with its own sleeping, cooking and sanitary facilities, that is designed to maintain the appearance of a single-family dwelling with a separate entrance located on the side or rear of the building. An NIGLU shall not have more than one bedroom.
4. The NIGLU address must be the diminutive form (i.e. 109 Main Street for the main dwelling and 109A Main St. for the NIGLU) of the address of the single family dwelling from which it has been created.
5. Occupancy of an NIGLU shall be restricted to a maximum of two persons.

V. Standards and Requirements

The Zoning Board of Appeals may grant a Special Permit to allow an NIGLU in an existing or new single family dwelling, provided the following standards and requirements are met:

1. The NIGLU must be a separate housekeeping unit from the original unit, but must be attached to the original unit. The units may, however, share some utilities such as heat, water, sewer, sanitary disposal, electricity, etc.
2. Only one NIGLU will be allowed on a single-family house lot.
3. The lot on which the single-family house is located must meet the minimum lot size requirement and must comply with the other applicable zoning requirements for its district. The SPGA may allow a NIGLU on a legally non-conforming lot with a finding that doing so would not increase the nonconformity.
4. The NIGLU shall be designed so that the appearance of the building remains that of a single-family residence as much as possible. Any new entrances should be located on the side or rear of the building. Any exterior changes made should be consistent with the character of the neighborhood.
5. Adequate provision shall be provided for ingress (entrance) and egress (exit) for each unit. An interior doorway shall be provided between dwelling units as a means of access for purposes of supervision and emergency response.
6. Any NIGLU shall be limited to 500 square feet in floor area.
7. The NIGLU shall clearly be subordinate to the single-family dwelling. It shall have no more than one (1) bedroom.
8. The SPGA may allow reasonable deviation from these conditions where necessary to install features that facilitate access and mobility for disabled individuals.
9. Prior to issuance of a NIGLU permit, a floor plan must be submitted showing the proposed interior and exterior changes to the building.
10. The construction of any NIGLU must conform with all State Building and Health Code requirements, as well as the bylaws of the Town of Montgomery and any other applicable codes.

VI. Application Procedure:

1. An application for permit may be received from the Montgomery Town Secretary upon request.
2. A non-refundable fee shall be included with the application for an NIGLU to cover the cost of processing the application. The applicant shall be responsible for the costs of legal notices. As part of the public hearing process, parties of interest, including abutters, as defined in M.G.L. Chapter 40A, Section 11 must be notified.
3. If the property is transferred to another owner, the current NIGLU permit shall become null and void. The new owner must reapply for a special permit for a NIGLU, if so desired.

VII. Administration and Enforcement:

1. It shall be the duty of the Building Inspector to administer and enforce the

provision of this bylaw.

2. No building shall be constructed or changed in use or configuration, until the Building Inspector has issued a permit. No permit shall be issued until a sewage disposal works permit, when applicable, has first been obtained from the Board of Health and the proposed building and location thereof conform with the town laws and bylaws. Any new building or structure and all work shall conform to all adopted state and town laws, bylaws, codes and regulations. The NIGLU shall not be occupied until a certificate of occupancy has been issued by the Building Inspector where required.

3. The Building Inspector shall refuse to issue any permit, which would result in a violation of any provision of this section or in a violation of the conditions or terms of any special permit or variance granted by the Board of Appeals or its agent.

4. The Building Inspector shall issue a cease and desist order on any work in progress or on the use of any premises, should either be in violation of the provisions of this section.

VII. Conflict and Severability:

1. The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

2. The invalidity of any section or sections or part thereof of this bylaw shall not affect the validity of the remainder of this bylaw or of the town's zoning bylaws.

ARTICLE 10 SMALL WIND ENERGY BYLAW

Approved as Article #8

Added at STM November 18, 2008, Approved by AG, November 15, 2016 under Defect Waiver due to article not being published at time of Special Town Meeting, 11/18/2008

1. **Purpose:**

This bylaw applies to the new construction of wind energy systems for the purpose of power generation.

- a. To protect the long-term health and security of the people of Montgomery, Massachusetts.
- b. To help the Commonwealth reach its renewable energy goals
- c. To improve the reliability of electricity supply in the region through diversification of generation resources.

2. **Definitions:**

Building Inspector: The inspector of buildings or person designated by local ordinance charged with the enforcement of zoning bylaws.

Building Permit: The required approval to commence a project insuring compliance with local, state and federal building codes.

Height: The height of a wind turbine measured from natural grade to the tip of the rotor blade at its highest point, or blade-tip height.

Special Use Permit: A permit provided by the special permitting authority.

Special Permit Granting Authority: The special permit granting authority shall be the Planning Board as designated by zoning bylaw for the issuance of special permits, or by this section for the issuance of special permits to construct and operate small wind energy systems.

Rated Nameplate Capacity: The maximum rated output of electric power production equipment. This output is typically specified by the manufacturer with a "nameplate" on the equipment.

Small Wind Energy System: All equipment, machinery and structures utilized in connection with the conversion of wind to electricity. This includes, but is not limited to, storage, electrical collection and supply equipment, transformers, service and access roads and one or more wind turbines on a single tower which have a rated capacity of 60 kW or less.

Wind Turbine: A device that converts kinetic small wind energy into rotational energy that drives an electrical generator.

Meteorological Tower: A tower having equipment to test wind speeds; generally used to ascertain a site's potential for wind energy.

3. **General Requirements:**

No more than 1 (one) small wind energy system shall be allowed per household in the Town of Montgomery.

Special Permit.

No small wind energy system shall be erected, constructed, installed or modified unless the Planning Board issues a special permit.

- a) All such Small Wind Energy systems shall be constructed and operated in a manner that minimizes any adverse visual, safety and environmental impacts. Such permits may also impose reasonable conditions, safeguards and limitations on time and use and may require the applicant to implement all reasonable measures to mitigate unforeseen adverse impacts of the small wind energy system, should they occur.

Variations and Appeals. If the proposed small wind energy system does not satisfy the criteria of this bylaw, then the applicant may petition the Zoning Board of Appeals. Any variance from the special permit criteria will only be applicable to that specific nonconforming project.

Compliance with Laws, Ordinances and Regulations. The construction and operation of all such proposed small wind energy systems shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, insurance, construction, environmental, electrical, communications and FAA aviation requirements.

Utility Notification. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

Notification of Abutters. The Special Permit Granting authority shall mail certified letters to all property abutters and abutters-of-abutters notifying them of the proposed small wind energy system.

Electrical Requirements. An electrical permit shall be secured from the Town of Montgomery before construction of a small wind energy system can begin. All electrical wires originating at the small wind energy system shall be in appropriately rated and approved conduit, the entire length of their run from the energy system to the owner's house and/or other place of use.

Temporary Meteorological Towers. Meteorological towers shall be permitted under the same standards as a small wind energy system, except that the requirements apply to a temporary structure. A permit for a temporary meteorological tower shall be valid for a maximum of three (3) years.

4. General Siting Standards.

Tower Height & Setbacks. No small wind energy system tower shall be more than 130 (one-hundred thirty) feet in height. Wind turbines shall be set back a distance equal to 1.5 times the overall height of the wind turbine, including blades from the nearest existing residential or commercial structure and from the nearest property line, overhead public utility line and private or public road or right of way.

Compliance with FAA Regulations. Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports.

5. Design Standards.

Appearance, Color and Finish. The wind generator and tower shall remain painted or finished in the non-reflective color or finish that was originally applied by the manufacturer.

Lighting. Wind turbines shall be lighted only if required by the Federal Aviation Administration. Lighting of other parts of the small wind energy system, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties.

6. Safety, Aesthetic and Environmental Standards.

Signage.

a.) Signs shall be restricted to reasonable identification of the manufacturer or operator of the small wind energy facility.

b.) The tower shall bear at least one sign that reads “No Trespassing-Do Not Climb”, of a size that is legible from a distance of ten(10) feet and shall defer to the requirements of the town sign regulations.

Unauthorized Access. Wind turbines or other structures part of a small wind energy system shall be designed and installed so as not provide step bolts or a ladder readily accessible to the public for a minimum height of eight (8) feet above the ground.

Noise. The small wind energy system and associated equipment shall conform to the provisions of the Department of Environmental Protection’s, division of Air Quality Noise Regulations (310 CMR 7.10), unless the Department and the Permit Granting Authority agree that those provisions shall not be applicable. Except during short-term events such as high windstorms or utility outages, small wind energy systems shall not cause a noise level in excess of 60 (sixty) dBA, as measured from the nearest property line.

7. Monitoring and Maintenance.

System Conditions. The applicant shall maintain the small wind energy system in good condition. Maintenance shall include, but not be limited to, painting, structural repairs and security measures.

8. Abandonment or Decommissioning.

Removal Requirements. Any small wind energy system which has reached the end of its useful life, been deemed unsafe or has been abandoned shall be removed.

A small wind energy system shall be considered abandoned when it fails to operate for one year. Upon a Notice of Abandonment issued by the Building Inspector, the small wind energy system owner shall have thirty (30) days to:

a.) Provide sufficient evidence that the system is safe and has not been abandoned.

b.) Or remove the wind energy system.

In the absence of the above, the Town and/or its Agent shall have the authority to enter the owner’s property and remove the system at the owner’s expense.

9. Permit Process, Requirements and Enforcement

Permit Requirements:

Building Permit. A Building Permit shall be required for the installation of a small wind energy system.

Documents. The building permit application shall be accompanied by the following:

- a.) A plot plan showing:
 - 1.) Property lines and physical dimensions of the subject property within two (2) times the total height of the tower from the proposed location of the tower.
 - 2.) Location, dimensions and types of existing major structures on the property.
 - 3.) Location of the proposed wind system tower, foundations, guy anchors and associated equipment.
 - 4.) The right-of-way of any public road that is contiguous with the property.
 - 5.) Any overhead or underground utility lines.
 - 6.) Location of the well and septic system.
- b.) Wind system specifications, including manufacturer and model, rotor diameter, tower height, tower type (freestanding or guyed).
- c.) Standard blueprints or drawings of the wind turbine structure showing the tower, base and footings.
- d.) An engineering analysis of the tower showing compliance with the Massachusetts Building Code and certified by a licensed Professional Engineer. This analysis may be provided by the manufacturer.
- e.) Building permit applications for small wind energy systems shall be accompanied by a line drawing of the electrical components in sufficient detail to allow for a determination that the manner of installation conforms to the most current National Electric Code. This information may be supplied by the manufacturer.

Fees. Fees for the special permit application includes the costs for notification of abutters, legal postings and any other cost borne by the Town for the purpose of processing the application. Building permit and inspection fees shall be as required for a building permit for a Permitted Accessory Use.

Expiration. A permit issued pursuant to this bylaw shall expire if the small wind energy system is not installed and functioning within twenty-four (24) months from the date the permit is issued.

Violations. It is unlawful for any person to construct, install, or operate a small wind energy system that is not in compliance with this bylaw or with any condition contained in a building permit issued pursuant to this bylaw.

Administration and Enforcement. This bylaw shall be administered and enforced by the Zoning Enforcement Officer or other official as designated. The Zoning Enforcement Officer may enter any property for which a building permit has been issued under this bylaw to conduct an inspection to determine whether the conditions stated in the permit have been met.

Penalties. Any person who fails to comply with any provision of this bylaw or a building permit issued pursuant to this bylaw shall be subject to enforcement and penalties as allowed by the bylaws of the Town of Montgomery.

Severability. The provisions of this bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.

ARTICLE 11
TEMPORARY MORATORIUM ON MARIJUANA
ESTABLISHMENTS

Added at Special Town Meeting, March 5, 2018
Approved by the Attorney General, June 6, 2018

A – Authority and Purpose

By vote at the State election on November 8, 2016, the voters of the Commonwealth approved a Law regulating the cultivation, distribution, possession and use of marijuana for recreational purposes. This law was amended on December 30, 2016 by extending certain deadlines by six months and the Cannabis Control Commission is required to issue regulations regarding implementation by March 15, 2018 and to begin accepting applications for licenses on April 1, 2018.

Currently under the Zoning Bylaw, Marijuana Establishments and Marijuana Retailers are not a permitted use in the Town and any regulations promulgated by the State Cannabis Control Commission are expected to provide guidance to the Town in regulating Marijuana Establishments and Marijuana Retailers. Further, the ballot measure establishes two important provisions that require ballot action by the Town prior to the adoption of zoning: First, the Town must, by ballot, determine whether it will issue licenses for Marijuana Establishments and Marijuana Retailers, and, second, by ballot that cannot occur prior to November 6, 2018, the next biennial state election, on whether to allow on-site consumption of marijuana products should the Town decide to allow licenses for such facilities.

The regulation of Marijuana Establishments and Marijuana Retailers raise novel and complex legal planning and public safety issues and the Town needs time to study and consider the regulation of Marijuana Establishments and Marijuana Retailers and address such novel and complex issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Bylaw regarding regulation of Marijuana Establishments and Marijuana Retailers and other uses related to the regulation of marijuana. The Town intends to adopt a temporary moratorium on the use of land and structures in the Town for Marijuana Establishments and Marijuana Retailers so as to allow the Town sufficient time to engage in a planning process to address effects of such structures and uses in the Town and to adopt provisions of the Zoning Bylaw in a manner consistent with sound land use planning goals and objectives.

B – Definitions

For purposes of this moratorium, the definitions set forth in G.L. c. 94G, Sec 1 shall apply.

C – Temporary Moratorium

For the reasons set forth above and notwithstanding any other provisions of the Zoning Bylaw to the contrary, the Town hereby adopts a temporary moratorium on the use of land or structures for Marijuana Establishments and other uses related to recreational marijuana. Because of the statutory requirement to have the state Attorney General's Office approve all Zoning changes approved at Town Meeting, and the time that it takes to prepare such submission and for the Attorney General's Office to conduct their review and respond, the moratorium shall take effect through December 31, 2018 or 120 days from the date of the Town Meeting action, whichever occurs later; or until such time as the Town adopts Zoning Bylaw amendments that regulate Marijuana Establishments and obtain the Attorney General's Office approval, whichever occurs earlier. During the moratorium period, the Town shall undertake a planning process to address the potential impacts of marijuana in Montgomery, consider the Cannabis Advisory Board regulations regarding marijuana establishments and marijuana retailers and related uses, determine whether the Town shall restrict any or all licenses for such marijuana establishments and marijuana retailers, and consider such other and further matters as set forth in G.L. c. 94G, Sec 3 and G.L. c 64N, Sec 3.

ARTICLE 12
AS-OF-RIGHT ZONING: LARGE-SCALE GROUND-MOUNTED
SOLAR PHOTOVOLTAIC INSTALLATIONS

Added at Special Town Meeting, March 5, 2018
Approved by the Attorney General, June 20, 2018

1.0 Purpose

The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth herein shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

1.1 Applicability

This bylaw applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this bylaw. This bylaw also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

2.0 Definitions

As-of-Right Siting: As-of-right siting shall mean that development may proceed without the need for permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited by can be reasonably regulated by the Planning Board, or other person or board designated by local ordinance or bylaw.

Building Inspector: The inspector of buildings, or person or board designated by local ordinance or bylaw charged with the enforcement of the zoning ordinance.

Building Permit: A construction permit issued by an authorized building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning bylaws, including those governing ground-mounted, large-scale solar photovoltaic installations.

Large-Scale Ground-Mounted Solar Photovoltaic Installation: A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 KW DC.

On-Site Solar Photovoltaic Installation: A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

Rated Nameplate Capacity: The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

Site plan Review: Review by the Montgomery Planning Board to determined conformance with local zoning ordinances or bylaws.

Solar Photovoltaic Array: An arrangement of solar photovoltaic panels.

Zoning Enforcement Authority: The person or board charged with enforcing the zoning ordinances or bylaws. In the case of Montgomery, it is the Building Inspector.

3.0 General Requirements for all Large-Scale Solar Power Generation Installations

The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

3.1 Compliance with Laws, Ordinances and Regulations

The construction and operation of all large-scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

3.2 Building Permit

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

3.3 Fees

The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit. The applicant shall be responsible for all fees and expenses incurred by the Town of Montgomery during the initial application: including, but not limited to site visitation fees, newspaper publishing fees, impartial Photovoltaic Consultant fees, and all Town Attorney fees.

The applicant shall be responsible for an application fee of \$1,000.00 which will cover mailing costs, advertisements in local newspapers and any necessary inspections by town officials. This application fee shall be subject to change by the Selectboard in order to cover all necessary costs incurred by the town.

Upon approval of the application, a building permit must be secured by the applicant. The cost of said building permit is based upon a fee of five dollars (\$5.00) per thousand dollars (\$1,000.00) of projected cost of any and all related structures- to include, but not limited to, the ground-mounted large scale photovoltaic installation and its out-buildings. The cost of said building permit shall include a minimum of three (3) inspections by the town building inspector and/or his assigns.

3.4 Site Plan Review

Ground-mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Planning Board prior to construction, installation or modification as provided in this section.

3.4.1 General

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

3.4.2 Required Documents

Pursuant to the site plan review process, the project proponent shall provide the following documents:

- (a) A site plan showing:
 - i. Property lines and physical features, including roads, for the project site.
 - ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures and visual buffer zone;
 - iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures.
 - iv. One or three-line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and overcurrent devices;
 - v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
 - vi. Name, address, and contact information for proposed system installer;
 - vii. Name, address, phone number and signature of the project proponent, as well as all proponents or property owners, if any;
 - viii. The name, contact information and signature of any agents representing the project proponent; and
- (b) Documentation of actual or prospective access and control of the project site (See also Section 3.5);
- (c) An operation and maintenance plan (see also Section 3.6)
- (d) Proof of liability insurance; and
- (e) Description of financial surety that satisfies Section 3.12.3

3.5 Site Control

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

3.6 Operation & Maintenance Plan

The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, vegetation, plantings and other landscaping features originally designed to screen the energy system from public view, as well as general procedures for operational maintenance of the installation.

3.7 Utility Notification

No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Montgomery Planning Board that the utility company that operated the electrical grid where the installation is to be located has entered into a purchase power agreement, or a net metering contract with the installation owner.

3.8 Dimension and Density Requirements

3.8.1 Setbacks

For large-scale ground-mounted solar photovoltaic installations, setback shall be as follows:

- (a) Front yard: The front yard depth shall be at least 200 feet;
- (b) Side yard: Each side yard shall have a depth of at least 200 feet.
- (c) Rear yard: The rear yard depth shall be at least 200 feet.

3.8.2 Placement

Large-scale ground-mounted solar photovoltaic installations shall be limited to land parcels of at least 5 acres in order to encourage large setbacks for screening purposes. Parcels should directly abut a transmission utility line or right of way of such.

3.8.3 Appurtenant Structures

All appurtenant structures to large-scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other, Structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

3.9 Design Standards

3.9.1 Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

3.9.2 Signage

Signs on large-scale ground-mounted solar photovoltaic installations shall comply with Montgomery's sign bylaw. A sign consistent with Montgomery's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number.

Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

3.9.3 Screening

No portion of the large-scale ground mounted solar photovoltaic installation or appurtenant structures shall be visible from any neighboring property or road. Vegetation, plantings and other natural landscaping features that are aesthetically consistent with the surroundings are required to completely screen the energy system from public view during all four seasons.

No portion of said screening shall obstruct or interfere with the long-range view from any property or road.

3.9.4 Fencing

Fencing shall be provided to control access to the photovoltaic installation site. Access gates shall be locked at all times; however, a key shall be provided to the Montgomery Fire Department for use in an emergency. The fence shall be a minimum of 10 feet from any structures or photovoltaic panels and of a minimum of 6 feet high. No razor wire shall be used.

3.10 Safety and Environmental Standards

3.10.1 Emergency Services

The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. The owner or operator shall cooperate with

and train local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The installation must be capable of being shut down at the modular level. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

3.10.2 Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large-scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

3.11 Monitoring and Maintenance

3.11.1 Solar Photovoltaic Installation Conditions

The large-scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

3.11.2 Modifications

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Montgomery Planning Board.

3.12 Abandonment or Decommissioning

3.12.1 Removal Requirements

Any large-scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section 3.12.2 of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Montgomery Planning Board by certified mail of the proposed date of discontinued operations and plans for removal.

Decommissioning shall consist of:

- (a) Physical removal of all large-scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.

- (c) Stabilization and re-vegetation of the site as necessary to minimize erosion. The Montgomery Planning Board may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

3.12.2 Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the large-scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation at the expense of the owner.

3.12.3 Financial Surety

Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety 125 percent of the cost of removal, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape. Such surety will not be required for municipally or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation. The Town shall reserve the right to consult a third party, at the expense of the applicant, to insure the fairness of the surety estimate.

3.12.4 Severability

The provisions of this bylaw are severable, and the invalidity of any section, subdivision, paragraph, or other part of this bylaw shall not affect the validity or effectiveness of the remainder of the bylaw.

ARTICLE 13
MARIJUANA NOT MEDICALLY PRESCRIBED

Approved at Special Town Meeting, October 22, 2018

Approved by the Attorney General, March 25, 2019

Consistent with MGL Ch. 94G, Section 3, all types of marijuana establishments as defined in MGL 94G, Section 1(j), to include all marijuana cultivators, marijuana testing facilities, marijuana product manufacturers, marijuana retailers or any other types of licensed marijuana related businesses, shall be prohibited within the Town of Montgomery.