

**A RESOLUTION
OF THE COMMISSIONERS OF TOWN OF DEWEY BEACH, DELAWARE,
PROPOSING THAT A PUBLIC HEARING BE HELD ON THE SUBJECT OF AMENDING
CHAPTER 185, SECTION 90, UTILITIES OF THE MUNICIPAL CODE OF THE
TOWN OF DEWEY BEACH, DELAWARE BY ADDING THERETO A NEW SECTION
90A RELATING TO THE WIRELESS FACILITIES**

WHEREAS, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes”;

WHEREAS, Section 23(a)1 of the Charter of the Town of Dewey Beach authorizes the Town Commissioners to exercise all powers “[t]o provide for the health, peace, safety, cleanliness, ornament and good order of the Town”;

WHEREAS, Section 23(a)5 of the Charter of the Town of Dewey Beach authorizes the Town Commissioners to exercise all powers to provide “[f]or the prevention of fire and the preservation of the beauty of the Town, to regulate and control the number of buildings or removal of dwelling houses and other buildings; to establish a code for the same and to provide for the granting of permits for the same; to establish a building line for buildings to be erected; zones or districts with regard to building or building materials; and, generally to exercise all the powers and authorities vested in the legislative body of cities and incorporated towns under the Constitution and Laws of this State”;

WHEREAS, the Commissioners of the Town of Dewey Beach have deemed it desirable to consider revising and amending Chapter 185 of the Municipal Code of the Town of Dewey Beach by adding a new Section 90A relating to Wireless Facilities; and

WHEREAS, the Commissioners of the Town of Dewey Beach deem it desirable to consider the question whether it is in the public interest to amend Chapter 185 of the municipal code, as aforesaid.

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the Town of Dewey Beach, in session met, a quorum pertaining at all times thereto, that a public hearing shall be held virtually on _____, to consider whether it is in the public interest to amend the municipal code, as follows:



SEE EXHIBIT 1

**AN ORDINANCE TO AMEND CHAPTER 185, SECTION 90, UTILITIES OF
THE MUNICIPAL CODE OF THE TOWN OF DEWEY BEACH, DELAWARE BY
ADDING THERETO A NEW SECTION 90A RELATING TO THE WIRELESS
FACILITIES**



BE IT FURTHER RESOLVED that parties in interest and citizens shall have an opportunity to be heard at said public hearing.

BE IT FURTHER RESOLVED, that the Town Clerk be and is hereby directed to cause a notice which shall consist of a true copy of this Resolution, in full or by title only, to be published in an official newspaper of general circulation in the Town at least fifteen (15) days prior to the date set forth in this Resolution for the public hearing.

BE IT FURTHER RESOLVED, that the Town Clerk be and is hereby directed to post a notice and agenda of said public hearing at Town Hall and upon the Town's official website more than fifteen (15) days prior to the date set forth in this Resolution for the public hearing.

Adopted by the Commissioners of the Town of Dewey Beach
_____, 2020

I, _____, Clerk of the Town of Dewey Beach, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the Commissioners at its meeting on October _____, 2020 at which a quorum was present and voting throughout and the same is still in full force and effect.

Town Clerk

EXHIBIT 1

Ordinance No. _____

AN ORDINANCE TO AMEND CHAPTER 185, SECTION 90, UTILITIES OF THE CODE OF THE TOWN OF DEWEY BEACH, DELAWARE BY ADDING THERETO A NEW SECTION 90A RELATING TO THE WIRELESS FACILITIES.

Section 1. Amend the Code of Ordinances of the Town of Dewey Beach, Chapter 185, Zoning by adding thereto a new section to read as follows:

“§185-90A Wireless Facilities

A. Purposes. The Town of Dewey Beach has a critical interest in preserving and promoting the aesthetics of beach lands, streets and roads within its municipal boundaries and jurisdiction. The installation of small cell technology is designed to enhance wireless capabilities while harmoniously blending into the existing character and context of the beach lands, streets and roads within the Town. Installation of small cell technology shall take into consideration the aesthetics of the area in which it will be placed. The Town desires to ensure its small beach town character and the maintenance of the natural beauty of its beaches when development occurs in any form.

B. Applicability. This section applies to all wireless communications facilities within the Town of Dewey Beach including the expansion, co-location and/or modification of any existing small cell wireless communications facilities, subject to the following procedures.

(1) Permit. No wireless facility shall be erected, constructed, installed or modified without first obtaining a permit from the Town of Dewey Beach.

(2) Town reviews of installations or maintenance of wireless facilities covered by federal or state legislation are confined to the procedures and limits on review and approval for siting, co-locating and modifying wireless facilities and equipment as defined by those regulations, as amended and all applicable codes regarding building standards. Applications that include changes to or new wireless facilities not specified by federal or state laws will be subject to additional Town review procedures, guidelines, and fees.

(3) This Section is not intended to, nor shall it be interpreted or applied to: (i) prohibit or effectively prohibit any personal wireless service provider’s ability to provide personal wireless services; (ii) prohibit or effectively prohibit any entity’s ability to provide any interstate or intrastate telecommunications service, subject to any competitively neutral and nondiscriminatory rules or regulation for rights-of-way management; (iii) unreasonably discriminate among providers of functionally equivalent services; (iv) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such facilities comply with the Federal Communication Commission’s regulations concerning such emissions; (v) prohibit any collocation or modification that the Town may not deny under federal law; or (vi) otherwise authorize the Town to preempt any applicable federal or Delaware state law.

(4) The following are exempt from the provisions of this Section: (i) Amateur radio station operators; (ii) Public safety agencies; (iii) Satellite dish antenna; (iv) Industrial scientific and medical equipment operations; and (v) Routine maintenance or repair of personal wireless service facilities.

C. Wireless Facilities Review.

(1) Administrative Review - The following types of Wireless Facilities shall be reviewed administratively:

(a) Small Cell Facilities located on any existing wireless support structures in any zoning district that comply with defined design standards;

(b) Small Cell Facilities located on a new wireless support structure in any designated State right of way or on Town or State owned structures;

(c) Small Cell Facilities located on a new wireless support structure in any designated right of way that comply with defined design standards;

(d) Building/Structure Mounted Facilities in the all zoning districts;

(e) Modifications to a Wireless Facility Support structure which involves: Co-Location of new Transmission Equipment; removal of Transmission Equipment; or replacement of Transmission Equipment provided the modification does not result in Substantial Change in the physical dimensions of an Eligible Support Structure.

(f) Any decision to administratively approve or deny a permit application is subject to review by the Commissioners of the Town of Dewey Beach

(2) Conditional Use Permit Review - The following types of applications require review through the conditional use permit procedures as identified in §185-74:

(a) Building Mounted Facility in any zoning district, not listed in the above Section C. 1 under Administrative Review;

(b) A new Tower Facility over 50 feet in height in any zoning district;

(c) Co-Locations and modifications resulting in a substantial change to an existing facility.

(3) Application Process – Applicants shall utilize application forms provided by the Town to initiate a review depending on the type of proposed wireless facility.

(4) Time frame for Approval. The Town shall comply with all federal and state timing requirements in consideration of applications for New Tower Facilities and Co-location and Modification of Existing Wireless Facilities. Wireless facilities that do not fall under such requirements will follow the plan review scheduling requirements outlined for site plans and conditional uses.

(5) Removal of abandoned antennas and towers. Any antenna or tower that is not operated for a continuous period of 12 months shall be considered abandoned, and the owner of such Antenna or Tower shall remove the same and any supporting equipment within 90 days of receipt of notice from the Town notifying the owner of such abandonment. Failure to remove an abandoned Antenna or Tower within said 90 days shall be grounds to remove the Tower or Antenna at the owner's expense. If there are two or more users of a single Tower, then this provision shall not become effective until all users cease using the Tower.

(6) Bonding requirements. Whenever any Tower Facility is constructed, the operator thereof shall obtain and keep in force:

(a) A performance bond payable to the Town to cover the cost of removal of the Tower Facility. The performance bond shall remain in force throughout the time the Tower is located on the Site.

(b) The amount of the bond shall be equal to the reasonable proposed construction cost of the project.

(7) Reimbursement. In addition to permit fees as described in this section, every wireless facility in the ROW and upon Beach Lands is subject to the Town's right to recover its actual costs incurred as a result of construction in the ROW, including, but not limited to, the costs of administration and performance of all reviewing, inspecting, permitting, supervising and other management activities by the Town. The owner of each wireless facility shall reimburse the Town for the Town's costs reasonably incurred in connection with the activities described above. All fees shall comply with applicable state and federal law and not exceed amounts presumed reasonable by the FCC.

(8) Definitions –As used in this section, the following terms shall have the meanings set forth below:

“Antenna” means any exterior transmitting or receiving device mounted on a Tower, building or structure and used in communications that radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

“Antenna height” or “height” means the vertical distance measured from the base of the wireless support facility at grade to the highest point of the structure even if said highest point is an antenna. Measurement of height shall include antenna, base pad, and other appurtenances and shall be measured from the finished grade of the parcel.

“Applicant” means any provider or any person, partnership, or company who files an application for any permit necessary to install, maintain, modify, co-locate, replace or remove a personal wireless service facility within the Town.

“Approval authority” is the Town Manager or designee, as provided by the Town Code

“Backhaul network” means the lines that connect a provider’s Towers/cell sites to one or more cellular telephone switching office, and/or long distance provider, or the public switched telephone network.

“Base station” shall mean and refer to the structure or equipment at a fixed location that enables wireless communications licensed or authorized by the FCC, between user equipment and a communications network. The term does not encompass a Tower as defined in this chapter or any equipment associated with a Tower. A wireless support structure becomes a base station when wireless telecommunications equipment is attached.

“Cell site” or “site” means a tract or parcel of land that contains wireless service facilities including any antenna, support structure, accessory building, and parking, and may include other uses associated with an ancillary to personal wireless services.

“Town Standards” means the Town Standard’s for Wireless Attachments on Municipal Utility Poles and Non-Utility Municipal Structures as may be amended from time to time.

“Co-location” shall mean and refer to the mounting or installation of transmission equipment on a wireless support structure for the purpose of transmitting and/or receiving radio frequency signals for

communications purposes. This definition includes the first placement of transmission equipment on a Tower or base station.

“Conceal” or “concealment” shall mean and refer to wireless support structures and transmission facilities designed to look like some feature other than a Tower or base station.

“Design” means the appearance of a personal wireless service facility, including such features as its material, color, and shape.

“Distributed Antenna System” means a network or facility to which all of the following apply: (i) it distributes radio frequency signals to provide Wireless Service; (ii) it meets the height and size characteristics of a Small Cell Facility, as defined herein; (iii) it consists of the following: (i) remote antenna nodes deployed throughout a desired coverage area, (ii) a high capacity signal transport medium connected to a central hub site, and (iii) equipment located at the hub site to process or control the radio frequency signals through the antennas; and (d) it conforms to the size limitations specified in City’s Standards or is otherwise consistent with any other applicable law. “Eligible Support System” any Tower or Base Station that is existing at the time the Proposed

Eligible Wireless Facilities Modification application is filed with the Town.

“FAA” means the Federal Aviation Administration.

“FCC” means the Federal Communications Commission.

“Lattice Tower” means a type of mount that is self-supporting with multiple legs and cross bracing of structural metal.

“Mount” means the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts: Building Mount. A wireless service facility mount fixed to the roof or side of a building. Ground Mount. A wireless service facility mount fixed to the ground, such as a Tower. Structure Mount. A wireless service facility fixed to a structure other than a building, such as light standards, utility poles, water towers and bridges

“Panel antenna” means a “directional antenna” as included in the definition of “antenna” above.

“Preexisting Tower” and “preexisting antenna” means any Tower or antenna for which a building permit or conditional use permit has been properly issued prior to the effective date of the ordinance codified in this chapter, including permitted Towers or antennas that have not yet been constructed so long as such approval is current and not expired.

“Proposed wireless facilities modification” shall mean and refer to a proposal submitted by an applicant to modify a support structure which the applicant asserts is subject to review under FCC and State regulations, and involving: (i) Co-location of new transmission equipment; (ii) Removal of transmission equipment; or (iii) Replacement of transmission equipment.

“Small Cell Facility” means a Wireless Facility that that meets the following qualifications: (a) each Antenna associated with the Facility is located inside an enclosure of not more than six (6) cubic feet in volume, or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an enclosure of not more than six (6) cubic feet in volume; (b) all other Wireless Equipment associated with the Facility is cumulatively not more than twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for power and other services; and (c) if the Facility

were placed on a Wireless Support Structure, the increased height would not be more than ten (10) feet or the overall resulting height would be not more than fifty (50) feet.

“Tower” means and refers to any structure built for the sole or primary purpose of supporting any antennas and their associated facilities, licensed or authorized by the FCC, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site.

“Transmission equipment” shall mean and refer to equipment that facilitates transmission for any wireless communication service licensed or authorized by the FCC, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

“Utility Pole” shall mean a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service, but not including structures owned by a Municipal Electric Utility.

“Wireless Facility” or “Facility” shall mean all Antenna, Transmission Equipment or other wireless device or equipment used to provide Wireless Service.

“Wireless facilities modification” shall mean and refer to any proposed facilities modification that has been determined pursuant to the provisions of this chapter to be subject to this chapter and which does not result in a Substantial Change in the physical dimensions of a support structure.

“Wireless service” shall be defined in the same manner as in Title 47, United States Code, Section 332(c)(7)(C), as may be amended now or in the future, and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal communications, services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless service facilities.

“Wireless Support Structure” means any pole, monopole (either guyed or self-supporting), light pole, traffic signal, sign pole, telescoping mast, Tower, tripod, Utility Pole or other structure which supports or is capable of supporting a device used in the transmitting or receiving of radio frequency signals. For purposes of requesting consent for a Microcell Facility, the term Wireless Support Structure excludes a Municipal Electric Utility Pole, or other structure owned or operated by a Municipal Electric Utility.”

SYNOPSIS