

Ordinance No. 761

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

1. 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.
2. Applicability. This section applies to all Wireless Facilities within the Town of Dewey Beach including the expansion, collocation and/or modification of any existing Small Cell Facilities, subject to the following procedures.
 - a. Permit. No Wireless Facility shall be erected, constructed, installed or modified without first obtaining a permit from the Town of Dewey Beach.
 - b. 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, collocating 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.
 - c. This Section 90A 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; (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.
 - d. The following are exempt from the provisions of this Section 90A: (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.
3. Wireless Facilities Review.
 - a. Prohibited on Certain Property.
 - i. Wireless Facilities shall not be permitted on any property used for residential purposes.
 - ii. Wireless Facilities shall not be permitted on the beach dunes or east of the beach dunes
 - ~~iii.~~ Wireless Facilities shall not be permitted on pedestrian sidewalks.

- b. Conditional Use Permit Review – Conditional use permit approval as outlined in §185-74 shall be required for all Wireless Facilities except for those circumstances in which administrative review is permitted.
- c. Administrative Review - The following types of Wireless Facilities shall not require conditional use permits and shall be reviewed administratively for compliance with this Section 90A:
 - i. Small Cell Facilities located on any existing Wireless Support Structures in any zoning district;
 - ii. Small Cell Facilities located on a new Wireless Support Structure in any designated State or Town rights of way or on Town- or State-owned Utility Poles or structures;
 - iii. Modifications to a Wireless Facility Support structure which involves: Collocation 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.

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

- 4. Design Standards. All Wireless Facilities shall comply with the Town’s Design Standards.
- 5. Collocation. To the extent practical, all Wireless Facilities and associated equipment that are placed in the Town shall be attached to a preexisting Wireless Support Structure or a replacement Wireless Support Structure located in the same footprint as the removed Wireless Support Structure and which complies with all other requirements of this Section 90A. If an applicant demonstrates that no collocation opportunities exist in the area where a technologically documented need for a facility exists, the applicant may request that a new Wireless Support Structure be installed in that area for the purposes of constructing the Wireless Facilities. Before any new Wireless Support Structure is permitted, the following must occur:
 - a. The applicant must have provided the Town written evidence that no practical collocation opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence, or other written information that demonstrates that the applicant has taken all commercially reasonable actions to achieve collocation in the required location or area, that the applicant has pursued but been denied access to all potential collocation sites in the subject area (including the reasons for such denials), and otherwise show that the applicant is unable to collocate on an existing Wireless Support Structure.
- 6. Application Process. Applicants shall utilize application forms provided by the Town to initiate a review depending on the type of proposed wireless facility.
- 7. Annual Plan: Every applicant for permit for Wireless Facility must submit to the Town of Dewey Beach a Wireless Facility Location Plan (“Annual Plan”) if a plan from the applicant is not already on file. The Annual Plan must clearly identify the location of every existing facility, and the general location of each proposed facility to be constructed or located within the Town of Dewey Beach. The applicant must update the Annual Plan each year. In the event a proposed facility is not reflected on the applicant's existing Annual Plan, the applicant shall amend the Annual Plan on file to reflect the proposed facility. The Town of Dewey Beach shall not accept an application that includes any Wireless Facility that:
 - (1) is not reflected on an applicant's existing Annual Plan, or
 - (2) has been submitted by an applicant who does not have an existing and current Annual Plan on record with the Town of Dewey Beach.

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The Annual Plan should include a map and accompanying database listing of sites which exist and those planned for the future.

8.(3).—Additional Fees Related to Applications and Annual Plan:

- a. Five Hundred Dollars (\$500.00) at the time of filing an update to the Wireless Facility Location Plan required by the Town of Dewey Beach.
- b. Two Hundred Fifty Dollars (\$250.00) for modification or revision of the application and/or plans. The fee shall be a minimum of Two Hundred Fifty Dollars (\$250.00) unless an extensive application and/or plan review is required. The fee shall then be determined by the Town and sufficient to offset the cost of the additional plan review and services.
- c. Permit applications filed by a wireless provider will be reviewed by the Town of Dewey Beach including the Town Manager, Town Attorney, and Town Wireless Consultant. All costs for review of the application shall be reimbursed to the Town by the applicant.
- d. (4) The Town of Dewey Beach requires all permit applications to include costs of materials and labor to be included in all applications, which would be subject to 3% permit fee cost, in addition to the above fees.

Commented [RE1]: Added Town Manager per Jim

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9. Time frame for Approval. The Town shall comply with all federal and state timing requirements in consideration of applications for New Tower Facilities and Collocation 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.

10. 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.

11. 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.

12. Permit Fees. The permit fee for each Wireless Facility shall be calculated and assessed in accordance with Chapter 71 of the Dewey Beach Code of Ordinances.

13. Reimbursement. In addition to permit fees as described in this Section, every Wireless Facility in the right of way and upon beach lands is subject to the Town's right to recover its actual costs incurred as a result of construction in the right of way, 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.

14. Nonconforming uses.

- b-a. Preexisting Towers. Preexisting Towers shall be allowed to continue their usage as they presently exist. Routine maintenance (including replacement with a new Tower of like construction and height) shall

136 be permitted on such preexisting Towers. New construction other than routine maintenance on a
137 preexisting Tower shall comply with the requirements of this Section 90A.

138 ~~e-b.~~ Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding §185-
139 90A.2.a, bona fide nonconforming Towers or Antennas that are damaged or destroyed may be rebuilt
140 without first having to obtain administrative approval or a conditional use permit. The type, height,
141 and location of the Tower on-site shall be of the same type and intensity as the original facility
142 approval. Building permits to rebuild the facility shall comply with the then applicable building codes
143 and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit
144 is obtained or if said permit expires, the Tower or antenna shall be deemed abandoned as specified
145 in §185-90A.7.
146

147 15. Definitions. As used in this Section 90A, the following terms shall have the meanings set forth below:

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

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

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

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

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

165 “Collocation” shall mean and refer to the mounting or installation of transmission equipment on a wireless
166 support structure for the purpose of transmitting and/or receiving radio frequency signals for communications
167 purposes. This definition includes the first placement of transmission equipment on a Tower or base station.

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

170 “Design Standards” means those standards governing the appearance of a Wireless Facility, including
171 such features as its material, color, and shape, as outlined in the manual entitled “Design Standards for Small Cell
172 Wireless Facilities and Telecommunications Towers.”

173 “Eligible Support Structure” means any Tower or Base Station that is existing at the time the Proposed
174 Eligible Wireless Facilities Modification application is filed with the Town.

175 “FAA” means the Federal Aviation Administration.

176 “FCC” means the Federal Communications Commission.

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

179 “Minor modification” means a modification of an existing wireless facility; the modification does not
180 substantially change the size of the structure or wireless facilities.

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

186 “New” means a proposal to install a new structure where none exists and to attach wireless facilities on
187 the new structure.

188 “Preexisting Tower” and “preexisting antenna” means any Tower or antenna for which a building permit
189 or conditional use permit has been properly issued prior to the effective date of the ordinance codified in this
190 Section 90A, including permitted Towers or antennas that have not yet been constructed so long as such approval
191 is current and not expired.

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

196 “Replacement” means a proposal to replace an existing structure without wireless facilities with a new
197 structure and to attach wireless facilities on the replacement structure.

198 “Small Cell Facility” means

199 (1) The wireless support structure on which antenna facilities are mounted shall not exceed the
200 Town’s height restriction of 35 feet unless the wireless company can prove that the 35 feet height
201 is not sufficient for signal, and in this case shall be:

202 The Town’s height restriction is 35 ft. and should the wireless company apply for a height beyond the 35 ft
203 restriction, they must prove that the height is not sufficient for signal?

204 (a) ~~is~~ 50 feet or less in height including antenna, ~~or~~ and

205 (b) ~~is~~ no more than 10 percent taller than other adjacent structures in the public right-of-way
206 including antenna, and ~~or~~

207 (c) ~~is~~ not extended to a height of more than 50 feet or by more than 10 percent above its
208 preexisting height as a result of the collocation of new antenna facilities, whichever is
209 lesser. ~~and~~

210 (2) All wireless equipment associated with the Facility (excluding antennas) are cumulatively no
211 more than 28 cubic feet in volume.

212 (3) The facilities do not require antenna structure registration under 47 CFR Part 17;

213 (4) The facilities do not result in human exposure to radiofrequency radiation in excess of the
214 applicable safety standards specified in 47 CFR 1.1307(b); and

215 (5) Each antenna is located inside an antenna enclosure of no more than three cubic feet in volume
216 or, in the case of an antenna that has exposed elements, the antenna and all of its exposed
217 elements are cumulatively no more than three cubic feet in volume.

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~~“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 is placed on a Wireless Support Structure, the Wireless Support Structure is either (i) fifty feet or less in height or (ii) no more than 10% taller than other adjacent structures or (iii) not extended to a height of more than fifty feet or by more than 10% above its preexisting height as a result of the collocation of new Facilities.~~

“Stealth Technology” means camouflaging or screening methods applied to Wireless Facilities and accessory equipment which render them more visually appealing or blend the proposed facility into the existing structure or visual backdrop in a manner appropriate to the site's context and surrounding environment. Such methods include, but are not limited to, architecturally screened roof-mounted antennas building-mounted antennas painted to match the existing structure and facilities constructed to resemble trees, shrubs, and light poles.

“Substantial Change” or “Not an Eligible Facilities Request” for small cell facility in ROW means a Proposed Wireless Facilities Modification that meets any of the following criteria:

1. The proposed installation increases the height of the structure by: (i) more than 10% or (ii) more than 10 feet, whichever is greater.
2. The proposed installation increases the width by adding appurtenance to the body of the structure that would protrude from the edge of the structure by more than 6 feet.
3. The proposed installation requires excavation or expansion outside the current boundaries of the site.
4. The structure or proposed installation would defeat the concealment elements/measures.
5. The proposed installation involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure.

Commented [GP3]: How is this consistent with height limitations on support structure?

Commented [RE4R3]: Gary, this is direct language from the FCC definition for a substantial change. Also, any substantial change would still need to comply with the height limitations also in place.

~~“Substantial Change” means a Proposed Wireless Facilities Modification that meets any of the following criteria:~~

- ~~a. For a facility other than wireless support facilities in the State rights of way or on a State structure, it increases the size (height or width) of the facility by more than 10 percent. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from the dimensions of the wireless support facility or Base Station.~~
- ~~b. For any Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed three cabinets; or, for Towers in the public rights of way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure; or~~
- ~~c. It would defeat the Concealment Elements of the Eligible Support Structure.~~

“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.

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

“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 devise 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.”

Section 2. This Act shall become effective upon the date of adoption of a Resolution to consider the amendment to §185 of the zoning code or the date of introduction of the ordinance whichever is earlier.

Passed by a majority vote on May 2, 2021; effective October 9, 2020.

Dale Cooke, Mayor

Bill Zolper, Town Manager

SYNOPSIS

This Act establishes criteria governing the installation of small cell wireless facilities.