

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 to the extent that such facilities comply with the FCC'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.
  - 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, unless ADA Compliance Standards can be met.~~

- 47 b. Conditional Use Permit Review – Conditional use permit approval as outlined in §185-74 shall  
48 be required for all Wireless Facilities except for those circumstances in which administrative  
49 review is permitted.
- 50 c. Administrative Review - The following types of Wireless Facilities shall not require conditional  
51 use permits and shall be reviewed administratively for compliance with this Section 90A:  
52 i. Small Cell Facilities located on any existing Wireless Support Structures in any zoning  
53 district;  
54 ii. Small Cell Facilities located on a new Wireless Support Structure in any designated State  
55 or Town rights of way or on Town- or State-owned Utility Poles or structures;  
56 iii. Modifications to a Wireless Facility Support structure which involves: Collocation of new  
57 Transmission Equipment; removal of Transmission Equipment; or replacement of  
58 Transmission Equipment provided the modification does not result in Substantial Change  
59 in the physical dimensions of an Eligible Support Structure.

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

- 62 4. Design Standards. All Wireless Facilities shall comply with the Town’s Design Standards.
- 63 5. Collocation. To the extent practical, all Wireless Facilities and associated equipment that are placed in the  
64 Town shall be attached to a preexisting Wireless Support Structure or a replacement Wireless Support  
65 Structure located in the same footprint as the removed Wireless Support Structure and which complies  
66 with all other requirements of this Section 90A. If an applicant demonstrates that no collocation  
67 opportunities exist in the area where a technologically documented need for a facility exists, the applicant  
68 may request that a new Wireless Support Structure be installed in that area for the purposes of constructing  
69 the Wireless Facilities. Before any new Wireless Support Structure is permitted, the following must occur:  
70 a. The applicant must have provided the Town written evidence that no practical collocation  
71 opportunity exists. This evidence shall include, but not be limited to, affidavits, correspondence,  
72 or other written information that demonstrates that the applicant has taken all commercially  
73 reasonable actions to achieve collocation in the required location or area, that the applicant has  
74 pursued but been denied access to all potential collocation sites in the subject area (including the  
75 reasons for such denials), and otherwise show that the applicant is unable to collocate on an  
76 existing Wireless Support Structure.

77 6. Application Process. Applicants shall utilize application forms provided by the Town to initiate a review  
78 depending on the type of proposed wireless facility.

79 7. Annual Plan: Every applicant for permit for Wireless Facility must submit to the Town of Dewey Beach  
80 a Wireless Facility Location Plan (“Annual Plan”) if a plan from the applicant is not already on file. The  
81 Town shall review the Annual Plan, and determine if it meets the ordinance and design standards for  
82 acceptance. The Annual Plan must clearly identify the location of every existing facility, and the  
83 general location of each proposed facility to be constructed or located within the Town of Dewey Beach.  
84 The applicant must update the Annual Plan each year. In the event a proposed facility is not reflected  
85 on the applicant's existing Annual Plan, the applicant shall amend the Annual Plan on file to reflect  
86 the proposed facility. The Town of Dewey Beach shall not accept an application that includes any  
87 Wireless Facility that:

88 (1) is not reflected on an applicant's existing Annual Plan, or

89 (2) has been submitted by an applicant who does not have an existing and current Annual Plan on  
90 record with the Town of Dewey Beach.

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

95 8.(3).—Additional Fees Related to Applications and Annual Plan:

96 a. Five Hundred Dollars (\$500.00) at the time of filing an update to the Wireless Facility Location  
97 Plan required by the Town of Dewey Beach.

98 b. Two Hundred Fifty Dollars (\$250.00) for modification or revision of the application and/or plans. The  
99 fee shall be a minimum of Two Hundred Fifty Dollars (\$250.00) unless an extensive application and/or  
100 plan review is required. The fee shall then be determined by the Town and sufficient to offset the cost of  
101 the additional plan review and services.

102 c. Permit applications filed by wireless provider will be reviewed by the Town, Building Official,  
103 Town's Attorney and Town's consultant. All costs for review of the application shall be reimbursed to  
104 the Town by the applicant.

105 d. ~~(4)~~The Town requires all permit applications to include costs of materials and labor to be  
106 included in all applications, which would be subject to 3% permit fee cost, in addition to the  
107 above fees.

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111 9. Time frame for Approval. The Town shall comply with all federal and state timing requirements in  
112 consideration of applications for New Tower Facilities and Collocation and Modification of Existing Wireless  
113 Facilities. Wireless facilities that do not fall under such requirements will follow the plan review scheduling  
114 requirements outlined for site plans and conditional uses.

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

121 11. Bonding requirements. Whenever any Tower Facility is constructed, the operator thereof shall obtain  
122 and keep in force:

- 123 a. A performance bond payable to the Town to cover the cost of removal of the Tower Facility. The  
124 performance bond shall remain in force throughout the time the Tower is located on the Site.  
125 b. The amount of the bond shall be equal to the reasonable proposed construction cost of the project.

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

128 13. Reimbursement. In addition to permit fees as described in this Section, every Wireless Facility in the right  
129 of way and upon beach lands is subject to the Town's right to recover its actual costs incurred as a result of  
130 construction in the right of way, including, but not limited to, the costs of administration and performance of  
131 all reviewing, inspecting, permitting, supervising and other management activities by the Town. The owner  
132 of each wireless facility shall reimburse the Town for the Town's costs reasonably incurred in connection  
133 with the activities described above. All fees shall comply with applicable state and federal law and not exceed  
134 amounts presumed reasonable by the FCC.

135 14. Nonconforming uses.

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

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

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

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

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

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

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

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

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

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

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

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

177 “FAA” means the Federal Aviation Administration.

178 “FCC” means the Federal Communications Commission.

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

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

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

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

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

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

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

200 “Small Cell Facility” means

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

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

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

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

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

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

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

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

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

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222 “Small Cell Facility” means a Wireless Facility that that meets the following qualifications: (a) each  
223 Antenna associated with the Facility is located inside an enclosure of not more than six (6) cubic feet in volume;

224 or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit  
225 within an enclosure of not more than six (6) cubic feet in volume; (b) all other Wireless Equipment associated  
226 with the Facility is cumulatively not more than twenty-eight (28) cubic feet in volume. The calculation of  
227 equipment volume shall not include electric meters, concealment elements, telecommunications demarcation  
228 boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for power and  
229 other services; and (c) if the Facility is placed on a Wireless Support Structure, the Wireless Support Structure is  
230 either (i) fifty feet or less in height or (ii) no more than 10% taller than other adjacent structures or (iii) not  
231 extended to a height of more than fifty feet or by more than 10% above its preexisting height as a result of the  
232 collocation of new Facilities.

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

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

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

**Commented [GP1]:** How is this consistent with height limitations on support structure?

**Commented [RE2R1]:** 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.

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

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

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

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

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

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

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

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

284 “Wireless service” shall be defined in the same manner as in Title 47, United States Code, Section  
285 332(c)(7)(C), as may be amended now or in the future, and includes facilities for the transmission and reception  
286 of radio or microwave signals used for communication, cellular phone, personal communications, services,  
287 enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless  
288 service facilities.

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

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

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

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300 \_\_\_\_\_  
301 Dale Cooke, Mayor

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305 Bill Zolper, Town Manager

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308 SYNOPSIS

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