

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.
 - 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 plan, or
- (2) has been submitted by an applicant who does not have an existing and current plan on record with the Town of Dewey Beach.

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

(3) Additional Fees:

- 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.

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

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

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106 ~~6-8.~~ Time frame for Approval. The Town shall comply with all federal and state timing requirements in
107 consideration of applications for New Tower Facilities and Collocation and Modification of Existing
108 Wireless Facilities. Wireless facilities that do not fall under such requirements will follow the plan review
109 scheduling requirements outlined for site plans and conditional uses.

110 ~~7-9.~~ Removal of abandoned antennas and towers. Any antenna or tower that is not operated for a continuous
111 period of 12 months shall be considered abandoned, and the owner of such Antenna or Tower shall remove
112 the same and any supporting equipment within 90 days of receipt of notice from the Town notifying the
113 owner of such abandonment. Failure to remove an abandoned Antenna or Tower within said 90 days shall
114 be grounds to remove the Tower or Antenna at the owner's expense. If there are two or more users of a
115 single Tower, then this provision shall not become effective until all users cease using the Tower.

116 ~~8-10.~~ Bonding requirements. Whenever any Tower Facility is constructed, the operator thereof shall
117 obtain and keep in force:

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

121 ~~9-11.~~ Permit Fees. The permit fee for each Wireless Facility shall be calculated and assessed in
122 accordance with Chapter 71 of the Dewey Beach Code of Ordinances.

123 ~~10-12.~~ Reimbursement. In addition to permit fees as described in this Section, every Wireless Facility in
124 the right of way and upon beach lands is subject to the Town's right to recover its actual costs incurred as
125 a result of construction in the right of way, including, but not limited to, the costs of administration and
126 performance of all reviewing, inspecting, permitting, supervising and other management activities by the
127 Town. The owner of each wireless facility shall reimburse the Town for the Town's costs reasonably
128 incurred in connection with the activities described above. All fees shall comply with applicable state and
129 federal law and not exceed amounts presumed reasonable by the FCC.

130 ~~11-13.~~ Nonconforming uses.

- 131 a. Preexisting Towers. Preexisting Towers shall be allowed to continue their usage as they presently exist.
132 Routine maintenance (including replacement with a new Tower of like construction and height) shall
133 be permitted on such preexisting Towers. New construction other than routine maintenance on a
134 preexisting Tower shall comply with the requirements of this Section 90A.
- 135 b. Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas. Notwithstanding §185-
136 90A.2.a, bona fide nonconforming Towers or Antennas that are damaged or destroyed may be rebuilt
137 without first having to obtain administrative approval or a conditional use permit. The type, height,
138 and location of the Tower on-site shall be of the same type and intensity as the original facility
139 approval. Building permits to rebuild the facility shall comply with the then applicable building codes
140 and shall be obtained within 180 days from the date the facility is damaged or destroyed. If no permit
141 is obtained or if said permit expires, the Tower or antenna shall be deemed abandoned as specified
142 in §185-90A.7.

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144 ~~12-14.~~ Definitions. As used in this Section 90A, the following terms shall have the meanings set forth
145 below:

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

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

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

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

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

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

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

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

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

173 “FAA” means the Federal Aviation Administration.

174 “FCC” means the Federal Communications Commission.

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

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

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

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

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

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

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

196 “Small Cell Facility” means

197 (1) The wireless support structure on which antenna facilities are mounted:

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

200 (a) is 50 feet or less in height, or

201 (b) is no more than 10 percent taller than other adjacent structures in the public right-of-
202 way, or

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

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

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

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

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

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216 ~~“Small Cell Facility” means a Wireless Facility that that meets the following qualifications: (a) each~~
217 ~~Antenna associated with the Facility is located inside an enclosure of not more than six (6) cubic feet in volume,~~
218 ~~or, in the case of an Antenna that has exposed elements, the Antenna and all of its exposed elements could fit~~
219 ~~within an enclosure of not more than six (6) cubic feet in volume; (b) all other Wireless Equipment associated~~
220 ~~with the Facility is cumulatively not more than twenty-eight (28) cubic feet in volume. The calculation of~~
221 ~~equipment volume shall not include electric meters, concealment elements, telecommunications demarcation~~
222 ~~boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for power and~~
223 ~~other services; and (c) if the Facility is placed on a Wireless Support Structure, the Wireless Support Structure is~~
224 ~~either (i) fifty feet or less in height or (ii) no more than 10% taller than other adjacent structures or (iii) not~~
225 ~~extended to a height of more than fifty feet or by more than 10% above its preexisting height as a result of the~~
226 ~~collocation of new Facilities.~~

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

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

235 1. The proposed installation increases the height of the structure by: (i) more than 10% or (ii) more
236 than 10 feet, whichever is greater.

237 2. The proposed installation increases the width by adding appurtenance to the body of the structure
238 that would protrude from the edge of the structure by more than 6 feet.

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239 3. The proposed installation requires excavation or expansion outside the current boundaries of the
240 site.

241 4. The structure or proposed installation would defeat the concealment elements/measures.

242 5. The proposed installation involves installation of any new equipment cabinets on the ground if there
243 are no preexisting ground cabinets associated with the structure.

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

247 ~~a. For a facility other than wireless support facilities in the State rights of way or on a State structure, it~~
248 ~~increases the size (height or width) of the facility by more than 10 percent. Changes in height should~~
249 ~~be measured from the original support structure in cases where deployments are or will be~~
250 ~~separated horizontally, such as on buildings’ rooftops; in other circumstances, changes in height~~
251 ~~should be measured from the dimensions of the wireless support facility or Base Station.~~

252 ~~b. For any Support Structure, it involves installation of more than the standard number of new~~
253 ~~equipment cabinets for the technology involved, but not to exceed three cabinets; or, for Towers~~
254 ~~in the public rights of way and Base Stations, it involves installation of any new equipment cabinets~~
255 ~~on the ground if there are no preexisting ground cabinets associated with the structure; or~~
256 ~~e. It would defeat the Concealment Elements of the Eligible Support Structure.~~

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

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

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

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

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

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

277 “Wireless service” shall be defined in the same manner as in Title 47, United States Code, Section
278 332(c)(7)(C), as may be amended now or in the future, and includes facilities for the transmission and reception
279 of radio or microwave signals used for communication, cellular phone, personal communications, services,
280 enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless
281 service facilities.

282 “Wireless Support Structure” means any pole, monopole (either guyed or self-supporting), light pole,
283 traffic signal, sign pole, telescoping mast, Tower, tripod, Utility Pole or other structure which supports or is
284 capable of supporting a device used in the transmitting or receiving of radio frequency signals. For purposes of

285 requesting consent for a Microcell Facility, the term Wireless Support Structure excludes a Municipal Electric
286 Utility Pole, or other structure owned or operated by a Municipal Electric Utility.”

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

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

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Dale Cooke, Mayor

Bill Zolper, Town Manager

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SYNOPSIS

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