

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE  
TOWN OF DUCK, NORTH CAROLINA BY UPDATING STANDARDS  
FOR WIRELESS TELECOMMUNICATION FACILITIES**

**Ordinance No. 17-13**

**WHEREAS**, the Town of Duck has an interest in setting fair and reasonable standards for the location of wireless telecommunication facilities by encouraging the development of new communication technology that minimizes the visual impacts to the community; and

**WHEREAS**, the Town seeks compliance with Session Law 2017-159, *an Act to Reform Collocation of Small Wireless Communications Infrastructure to Aid in Deployment of New Technologies*, adopted by the N.C. State Legislature on July 21, 2017, a law that requires local governments to apply special approval procedures for small and micro wireless facilities; and

**WHEREAS**, the Duck Town Council and Planning Board have found that the proposed amendments also benefit property owners, contractors, and citizens of the Town of Duck by clarifying the approval process for stealth wireless telecommunication antennas; and

**WHEREAS**, the Duck Town Council and Planning Board have found that these standards are consistent with the recommendations of the Town's adopted CAMA Core Land Use Plan.

**NOW THEREFORE BE IT ORDAINED** by the Town Council for the Town of Duck, North Carolina that the Zoning Ordinance shall be amended as follows:

**PART I.** The Table found in Subsection 156.058(B) shall be amended by noting that stealth antennas may be approved through an administrative review process. The revised ordinance will read as follows:

156.058 WIRELESS TELECOMMUNICATIONS SYSTEMS (WTS).

(A) *Intent.*

(1) The purpose of this section is to establish general guidelines for the siting of telecommunications towers and antennas.

(2) The goals of this section are to:

(a) Encourage the location of towers in non-residential/non-historical areas and minimize the total number of towers throughout the community;

(b) Enhance the ability of the providers of telecommunications services to provide those services to the community quickly, effectively and efficiently;

(c) Strongly encourage the joint use of new and existing tower sites;

(d) Encourage the location of telecommunications towers and antennas, to the extent possible, in areas where the adverse impact on the community is minimal;

(e) Encourage the location of telecommunications towers and antennas in configurations that minimizes the adverse visual impact of the towers and antennas;

(f) Whenever possible, prioritize space on towers for public purpose use; and

(g) Ensure that the placement, construction, and modification of wireless communications facilities complies with all applicable state and federal laws in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to have the effect of prohibiting personal wireless services.

(B) *WTS development types permitted by zoning district.*

Zoning District	Stealth Antenna	Existing Wireless Facility Eligible Facilities Request	Existing Wireless Facility Substantial Modification	Free-standing Telecommunications Tower	Antenna Attached to Building or Structure	Small Wireless Facility
C-PR	Admin	Admin	Not Allowed	Not Allowed	Not Allowed	Admin
RS-1	CUP	Admin	Not Allowed	Not Allowed	Not Allowed	CUP
RS-2	CUP	Admin	CUP	Not Allowed	Not Allowed	CUP
R-2	Admin	Admin	Not Allowed	Not Allowed	Not Allowed	Admin
C-1	Admin	Admin	CUP	CUP	CUP	Admin
C-2	Admin	Admin	CUP	CUP	CUP	Admin
S-1	Admin	Admin	CUP	CUP	CUP	Admin
V-C	Admin	Admin	CUP	CUP	CUP	Admin
Admin - Requires administrative approval if applicable standards are met. CUP - Conditional use permit application process. Not allowed - Not permitted in the applicable zoning district.						

(B) *Review and approval.* All WTS development shall be subject to the following review and approval procedures:

(1) Planning Board review/Town Council approval as conditional uses in the applicable zoning district:

(a) Antenna attached to an existing principal building or structure up to 100 feet of maximum height including height of principal building or structure in the zoning district where permitted;

(b) Freestanding towers designed for co-location up to 200 feet in maximum height in the zoning districts where permitted;

(c) Freestanding towers designed for 1 provider up to 100 feet in maximum height in the zoning districts where permitted;

(d) Applications for co-location providers on an existing tower where application for co-location would result in tower height over 200 feet;

(e) Stealth antennas located in Single-Family Residential (RS-1 & RS-2) zoning districts; and

(f) Small wireless facilities and utility poles installed to support small wireless facilities located outside of public rights-of-way in Single-Family Residential (RS-1 & RS-2) zoning districts.

(2) *Board of Adjustment review (requires a 4/5 vote for approval).*

(a) Antenna attached to an existing principal building or structure over 100 feet of maximum height including height of principal building or structure in the zoning districts where permitted;

(b) Freestanding towers designed for co-location over 200 feet in maximum height in the zoning districts where permitted; and

(c) Freestanding towers designed for 1 provider over 100 feet in maximum height in the zoning districts where permitted.

(3) *Administrative review.*

(a) Stealth antennas located in other than single-family residential (C-PR, R-2, C-1, C-2, S-1 & V-C) zoning districts;

(b) Co-location providers on an existing tower where application for co-location would result in tower height of less than 200 feet of maximum height;

(c) Addition of antenna to existing utility pole, water tower, WTS tower or similar utility structure; and

- (d) Small wireless facilities located within public rights-of-way or other than single-family residential (C-PR, R-2, C-1, C-2, S-1 & V-C) zoning districts, subject to the standards in Subsection 156.058(I).

(4) *Exempt activities.* The following items are exempt from the provisions of this section:

(a) Routine maintenance of existing wireless support structures and facilities, as defined in this section.

(b) Replacement of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height;

(c) Noncommercial, amateur radio station antennae;

(d) A government owned wireless telecommunications system erected or installed for the purpose of providing communications for public health or safety;

(e) A temporary wireless telecommunications system, upon the declaration of a state of emergency by federal, state, or local government, or a determination of public necessity by the town; except that such system must comply with all federal and state requirements. No such wireless telecommunications system shall be exempt from the provisions of this section beyond the duration of the state of emergency; and

(f) Micro wireless facilities.

(C) *Application process.* All applications are subject to the review processes in accordance with the table in Subsection 156.058(B), pertaining to permitted uses by zoning district. The following approval process shall apply:

(1) *New wireless telecommunication systems, substantial modifications, and antenna element replacements.*

(a) Any application submitted pursuant to this section shall be reviewed by town staff for completeness. If any required item fails to be submitted, the application shall be deemed incomplete. Staff shall advise an applicant in writing within 45 calendar days after submittal of an application regarding the completeness of the application. If the application is incomplete, such notice shall set forth the missing items or deficiencies in the application, which the applicant must correct and/or submit in order for the application to be deemed complete.

(b) The town shall issue a written decision to approve or deny an application for new wireless telecommunication system, substantial modifications to an existing system, or antenna replacements within 150 calendar days of such application being deemed complete. Failure to issue a written decision within 150 calendar days shall constitute an approval of the application.

(2) *Eligible facilities requests (including co-location).*

(a) An eligible facilities request application is deemed complete unless the town provides notice that the application is incomplete in writing to the applicant within 45 days of submission or within some other mutually agreed time frame. Such notice shall identify the deficiencies in the application which, if cured, would make the application complete. An application is deemed complete upon re-submission if the additional materials cure the deficiencies indicated.

(b) The town shall issue a written decision approving an eligible facilities request application within 45 calendar days of such application being deemed complete. Failure to issue a written decision within 45 calendar days shall constitute an approval of the application.

(3) *Supplemental review.* The town reserves the right to require a supplemental review for any type of wireless telecommunication system, as determined necessary, subject to the following:

(a) Where due to the complexity of the methodology or analysis required to review an application for a wireless communications system, the town may require technical review by a third party expert, the costs of which shall be borne by the applicant, to the extent permitted by G.S. § 160A-400.52(f) and G.S. § 160A-400.53(a)(3), and shall be in addition to other applicable fees.

(b) Based on the results of the expert review, the approving authority may require changes to the applicant's application or submittals.

(c) The supplemental review may address any or all of the following:

1. The accuracy and completeness of the application and accompanying documentation;
2. The applicability of analysis techniques and methodologies;
3. The validity of conclusions reached;
4. Whether the proposed wireless communications facility complies with the applicable approval criteria set forth in this section; and
5. Other items deemed by the town to be relevant to determining whether a proposed wireless communications system complies with the provisions of these codes.

(D) *Application and site plan requirements.*

(1) Communication companies are encouraged to locate telecommunication antennae on or in structures other than a tower. These structures may include church steeples, transmission line towers, utility/light poles, water towers and the like hidden in a manner so as to not be readily visible (stealth).

(2) Where these facilities described in division (1) above are not available, co-location of facilities is encouraged.

(3) When a new tower is proposed to be sited, a determination of whether the location will provide a minimal level of coverage versus optimal coverage shall be taken into consideration.

(4) The following documentation must be submitted as part of any application for the approval of the siting of new towers:

(a) To determine if a better location or alternative exists, evidence must be provided that the applicant has investigated the possibilities for locating the proposed facilities on an existing tower, the use of stealth technology or location where the facilities would be permitted as an administratively approved use. The evidence shall consist of copies of letters sent to owners of all existing towers or other facilities within the applicant's designated search ring, requesting the following information:

1. Tower height;
2. Existing and planned tower users;
3. Suitability of the tower for co-location, including structural stability and potential for electromagnetic interference; and
4. A general description of the means and projected cost of shared use of the existing tower.

(b) A copy of all responses within 30 days from the mailing date of the letter required by division (D)(4)(a) above;

(c) A summary explanation of why the applicant believes the proposed facility cannot be located on an existing tower for 1 or both of the following reasons:

1. The structure does not meet the applicant's structural specifications or technical design requirements.
2. A co-location agreement cannot be obtained at a reasonable market rate and in a timely manner.

(d) A survey prepared by a licensed North Carolina surveyor showing the location of all existing property lines and improvements within a 1,000-foot radius of the proposed tower site and all proposed improvements including the tower, antennas, accessory structures and equipment. In addition, the survey must detail all proposed vegetation removal activities including an inventory of existing trees to be removed;

(e) Drawings of all proposed towers, antennas and accessory structures and equipment indicating elevations, height, colors and design;

(f) Documentation provided by the applicant that the proposed tower and all antennas and

equipment comply with all applicable FCC regulations. In order to protect the public from unnecessary exposure to electromagnetic radiation, the tower owner shall provide documentation indicating that the power density levels do not exceed levels permitted by the FCC;

(g) Documentation provided by the applicant that the proposed tower, antennas and equipment meet FAA aviation and navigation requirements. All proposed improvements shall not restrict or interfere with air traffic or air travel from or to any existing or proposed airport. Any lighting shall not project onto any surrounding residential property. To the extent required by the FAA, strobes shall be used for night-time lighting. Whenever strobes are not required by the FAA, flashing beacons are the preferred type of lighting;

(h) A copy of the approved National Environmental Policy Act of 1969 (NEPA) compliance report for all towers, antennas, accessory structures or equipment proposed for the site if one is required;

(i) Documentation signed and sealed from a North Carolina licensed engineer that the proposed tower and antennas meet the structural requirements of the North Carolina Building Code and the co-location requirements of this section;

(j) Written indemnification of the town and proof of liability insurance or financial ability to respond to claims up to \$1,000,000 in the aggregate which may arise from operation of the facility during its life at no cost to the town on a form approved by the Town Attorney;

(k) Evidence that the communications tower is structurally designed to support at least 1 additional telecommunication service provider, and an affidavit that the owner of the tower is willing to permit other user(s) to attach communication facilities, on a commercially reasonable basis, which do not interfere with the primary purpose of the tower. The tower owner may require that other users agree to negotiate regarding reasonable compensation to the owner from any liability that may result from the attachment. The site plan shall indicate a location for at least 1 equipment building in addition to that proposed for use by the applicant. Priority for co-location on the proposed tower shall be given to antennas that will serve a public safety need for the community;

(l) The proposed tower shall be designed to accommodate additional antennas equal in number to the applicant's present and future requirements;

(m) In addition to the other consideration of this chapter, the approving body in determining whether a tower is in harmony with the area or the effects and general compatibility of a tower with adjacent properties may consider the aesthetic effects of the tower as well as mitigating factors concerning aesthetics and may disapprove the tower on the grounds that the aesthetic effects are unacceptable. Factors relevant to the aesthetic effects are: the protection of the view in sensitive or particularly scenic areas and areas specifically designated in adopted plans such as unique natural features, scenic roadways and historic sites, the concentration of towers in the proposed area, and whether the height, design, placement or other characteristics of the proposed tower could be modified to have a less intrusive visual impact; and

(n) The approving body may request the applicant to conduct a balloon height test or similar tests on the proposed tower site to demonstrate the proposed height of the tower.

(E) *WTS format preference.* The following order of preference shall be used during the review and approval of WTS development:

- (1) Stealth antenna;
- (2) Antenna located on existing WTS facilities, utility poles, water towers or similar utility structure;
- (3) Antenna attached to or mounted on an existing building or structure (single or co-location provider);
- (4) Free-standing WTS development designed and constructed with co-location capability;
- (5) Free-standing WTS development designed and constructed for single-provider use; and
- (6) Signage within a wireless facility is only permitted consistent with the standards outlined in Section 156.130.

(F) *Use guidelines and dimensional requirements.*

(1) Antennas and towers may be considered either principal or accessory uses. A different existing use or an existing structure on the same lot shall not preclude the installation of an antenna or tower on the lot. For purposes of determining whether the installation of a tower or antenna complies with district development regulations, including but not limited to, setback requirements, lot size and coverage requirements, and other like requirements, the dimensions of the entire lot shall control, even though the antennas or towers may be located on leased parcels within the lots. Towers that are constructed, and antennas that are installed, in accordance with the provisions of this chapter shall not be deemed to constitute the expansion of a nonconforming use or structure.

(2) In order to provide spatial separation and create visual block from adjacent properties and streets, a buffer shall be installed around the outside of all improvements on the site, including the tower and guy anchors, any ground buildings or equipment, and security fencing. Ground buildings located in a residential district may be located outside the buffered area if they are constructed so the exterior appearance of the building has the appearance of a residential dwelling, including pitched roof and frame or brick veneer construction. The tower's guy anchors may be screened or fenced separately in order to comply with the requirements of this division.

(3) The base of the tower and each guy anchor shall be surrounded by a security fence or wall at least 8 feet in height unless the tower and all guy anchors are mounted entirely on a building over 8 feet in height. The tower's guy anchors may be screened or fenced separately in order to comply with the requirements of this section.



(4) An equipment compound shall only be used to house equipment and other supplies in support of the operation of the wireless communications facility or support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

(5) Accessory buildings shall not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.

(6) The proposed tower, antenna, or accessory structure and equipment shall be placed in a location and in a manner that will minimize the visual impact on the surrounding area.

(7) No commercial advertising, company logo, or signage shall be allowed on the tower or its related facilities. However, signs shall be posted that list a telephone number for the owner of the tower and "No Trespassing" information. This sign shall be located on the accessory building or fencing and shall not exceed 4 square feet in area.

(8) The proposed tower shall be set back from all publicly owned roads or rights-of-way a distance equal to the tower height. If visible from any public road or right-of-way, a landscape plan indicating how the applicant proposes to screen any accessory structure or equipment from view.

(9) Setbacks of the base of the tower from all adjacent property lines shall be 1 foot for each foot of tower height. To encourage shared use of towers, applications for towers which will operate with more than 1 user immediately upon completion may have a 10% reduction in the required setbacks, but in no case shall the setback be less than those required for the underlying zoning district. Also, to encourage the construction of monopole structures, monopole towers may have a 20% reduction in the required setbacks. To encourage location of towers in forested areas with a minimum depth of 65 feet, the tower may have a 20% reduction in the required setbacks. In no case shall the setback be less than those required for the underlying zoning district. The setback reductions shall only be allowed upon a professional engineering certification which states that the structure's construction will cause the tower to crumble inward so that in the event of collapse no damage to structures on adjacent zoning lots will result.

(10) The proposed tower shall be set back from all property lines a distance equal to the proposed tower's fall zone as certified by a registered North Carolina engineer, plus 20 feet.

(11) The proposed tower shall be set back a distance equal to the tower's height plus 50 feet from any residential structure.

(12) No towers shall be located in the public trust waters of the town.

(G) *Non-conforming towers.* Continuation, relocation and reconstruction of, and enlargements and modifications to towers and associated equipment that do not meet current requirements of this chapter (towers constructed prior to July 3, 2002) are subject to the following requirements:

(1) A site plan shall be submitted for any relocation or reconstruction of a non-conforming

tower.

(2) Increases in height shall not exceed 15% of the height of the tower as it existed in 2002, and shall not equal or exceed a height that would either require a special use permit or would require the tower, if unlit, to add lights.

(3) Any relocation or structural change:

(a) Must be on the tower's current site;

(b) Must eliminate the need for an additional tower or provide both additional co-location opportunities and additional antenna space beyond what is provided by the current tower; and

(c) May not change the style of the tower, if the tower is currently a monopole.

(4) Any relocation must comply with current ordinance setback requirements, if physically possible, or, if compliance is not possible, the relocation must not increase the amount by which setbacks are non-conforming, other than increases necessitated solely by changes in size of the base to support the new tower. If the foregoing setback requirements cannot be met, then setbacks may only be decreased by up to 15% of the originally constructed tower height(s).

(5) If a non-conforming tower is damaged beyond 50% of its replacement value, a replacement tower constructed on the same site or lot may not exceed the height of the previous tower, and must comply with all requirements of the current ordinance, except the requirement for a use permit.

(H) *Decommissioning or abandonment.*

(1) The owner of the wireless telecommunication facility shall complete decommissioning of the facility within 180 days of abandonment.

(2) The Town Manager may grant a 1 time, 6 month extension to the above decommissioning timeframe if it is determined that a special or unique circumstance exists.

(3) Decommissioning shall include the removal of all towers, buildings, cabling, electrical components, roads, and other associated facilities down to 36 inches below grade.

(4) Disturbed earth shall be graded and re-seeded, unless the landowner requests in writing that the access roads or other land surface areas not be restored.

(5) Should the wireless services provider fail to timely remove the abandoned wireless facility, the Town may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. The Town may take measures, including the execution of the surety bond, to remove the facility and restore the land to the condition existing prior to installation of the structure. If the surety bond amount

is insufficient for restoration of the land, the town may hold the property owner responsible for the difference in cost.

(6) To ensure removal of any abandoned tower, antennae, accessory structure or equipment, a non-cancellable structure removal surety bond or other security acceptable to the town shall be required, in a form subject to approval by the Town Attorney, for removal of the facility and naming the town as a beneficiary. The amount of the surety shall be calculated by an independent, North Carolina certified professional engineer immediately prior to the date it is required to be provided, at the expense of the applicant, and shall be equal to 150% of the cost of removing the facility. The surety amount shall be recalculated every 5 years thereafter using the same process, and proof of the updated bond amount shall be forwarded to the Town. The surety, which shall be in the form of a single instrument, shall be provided to the Town upon failure of the owner to complete the decommissioning of the facility within the time period specified above.

(I) *Small wireless facilities.*

(1) Standards. Small wireless facilities and utility poles installed to support small wireless facilities in the right-of-way shall comply with the following requirements:

(a) Height of new small wireless facilities. New small wireless facilities in the ROW may not extend (i) more than ten feet (10') above an existing utility pole in place as of the effective date of this Chapter; or (ii) for small wireless facilities on a new utility pole, above the height permitted for a new utility pole under this Chapter.

(b) Height of new or modified utility poles installed to support small wireless facilities. Each new or modified utility pole installed in the ROW shall not exceed the greater of (i) ten feet (10') above an existing utility pole; or (ii) fifty feet (50') above ground level. In the Single-Family Residential (RS-1, RS-2) zoning districts, where the existing utilities are installed underground, a utility pole or wireless support structure cannot exceed forty feet (40') above ground level, unless the applicant obtains a variance approving the taller utility pole or wireless support structure.

(c) Maximum Size. The small cell facility must conform to the size and height limitations as defined for a small cell facility in this Chapter.

(d) Utility Pole Modifications. Utility pole modifications relating to small wireless facility collocations shall be fabricated from material having a degree of strength capable of supporting the small wireless facility and shall be capable of withstanding wind forces and ice loads in accordance with applicable standards. A modification shall be securely bound in accordance with applicable engineering standards.

(e) Color. Small wireless facilities shall be the color for the antenna and related equipment that is consistent with or most blends into the wireless support structure on which they are installed, unless a different color is needed for public safety or service reliability reasons.

(f) Wiring and Cabling. Wires and cables connecting the antenna and appurtenances serving the small cell facility shall be installed in accordance with the version of the National Electrical Code and National Electrical Safety Code adopted by the Town and in force at the time of installation. In no event shall wiring and cabling serving the small wireless facility interfere with any wiring or cabling installed by a cable television or video service operator, electric utility, or telephone utility.

(g) Guy Wires Restricted. Guy wires and similar support structures may not be used as part of the installation of any small wireless facility, unless the small wireless facility is proposed to be attached to an existing utility pole that incorporated guy wires prior to the date of the small wireless application.

(h) Grounding. The small wireless facility including any ground-mounted equipment, shall be grounded in accordance with the requirements of the most current edition of the National Electrical Code adopted by the Town regarding grounding of wireless facilities.

(i) Signage. Other than warning or notification signs required by federal law or regulations, or identification and location markings, a small wireless facility shall not have signs installed thereon.

(j) Access. Wireless providers and their employees, agents, and contractors shall have the right of access to utility poles, wireless support structures and small wireless facilities in the right-of-way at all times for purposes consistent with this Chapter.

(2) Other Requirements.

(a) Small wireless facilities shall be located such that they do not interfere with public health or safety facility, such as, but not limited to a fire hydrant, fire station, fire escape, water valve, underground vault, valve housing structure, or any other public health or safety facility. New utility poles and small wireless facilities shall not be installed directly over any water, sewer, or reuse main or service line.

(b) Any tree disturbing activity necessary for the installation or collocation of small wireless facilities and utility poles installed to support them shall comply with Section 156.137, tree and vegetation preservation and planning.

(c) Small wireless facilities and utility poles or wireless support structures on which they are collocated shall not be lighted or marked by artificial means, except when small wireless facilities are collocated on a light pole or where illumination is specifically required by the Federal Aviation Administration or other federal, state, or local regulations.

(d) A wireless provider shall repair, at its sole cost and expense, any damages including but not limited to subsidence, cracking, erosion, collapse, weakening, or loss of lateral support to public streets, sidewalks, walks, curbs, gutters, trees, parkways, street lights, traffic signals, improvements of any kind or nature, or utility lines and systems, underground utility line and

systems, or sewer or water systems and water and sewer lines that result from any activities performed in connection with the installation and/or maintenance of a wireless facility in the right-of-way. The wireless provider shall restore such areas, structures and systems to substantially the same condition in which they existed prior to the installation or maintenance that necessitated the repairs.

(e) Small wireless facilities shall blend in with the surrounding environment or otherwise concealed to the extent practicable.

(3) Application process for small wireless facilities located within public rights-of-way or zoning districts other than Single-Family Residential (RS-1 & RS-2).

(a) An applicant seeking to locate small wireless facilities at multiple locations in the Town shall be allowed, at the applicant's discretion, to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. The Town may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The Town may issue a separate permit for each collocation that is approved.

(b) An application must include an attestation that the small wireless facilities shall be collocated on a utility pole or wireless support structure and that the small wireless facilities will be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(c) Within 30 days of receiving an application, the Town will determine and notify the applicant whether the application is complete. If an application is incomplete, the Town must specifically identify the missing information. The processing deadline is tolled from the time the Town sends the notice of incompleteness to the time the applicant provides the missing information. That processing deadline also may be amended by mutual agreement of the applicant and the Town.

(d) The permit application shall be deemed approved if the Town fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the Town and the applicant.

(e) The Town may deny a proposed collocation of a small wireless facility or installation or modification of a utility pole only if the application:

- i. Interferes with the safe operation of traffic control equipment;
- ii. Interferes with sight lines or clear zones for vehicles or pedestrians;
- iii. Interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
- iv. Fails to comply with reasonable and nondiscriminatory spacing requirements

that apply to other communications service providers and electric utilities in the right-of-way and that concern the location of ground-mounted equipment and new utility poles. Such spacing requirements shall not prevent a small wireless facility from serving any location; and

v. Fails to comply with the requirements and design standards outlined in this Chapter and other applicable codes, including screening of ground-mounted equipment.

(f) The permit may specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(4) A wireless provider may apply to the Town to place, replace, or modify utility poles in public rights-of-way to support the collocation of small wireless facilities. Such application shall be accepted and processed in accordance with the provisions of Subsection 156.058(I)(3) and other local codes governing the placement of utility poles in the public rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or town utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

#### (5) Removal, Relocation or Modification of a Small Wireless Facility

(a) Notice. Within ninety (90) days following written notice from the Town, the wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities or utility pole for which it has a permit hereunder whenever the Town has determined that such removal, relocation, change or alteration, is reasonably necessary for the construction, repair, maintenance, or installation of any Town improvement in or upon, or the operations of the Town in or upon, the public right-of-way.

(b) Emergency Removal or Relocation of Facilities. The Town retains the right to cut or move any small wireless facilities or utility poles located within the public right-of-way, as the Town may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Town shall notify the wireless provider and provide it an opportunity to move its small wireless facilities or utility poles prior to cutting or removing them and shall notify the wireless provider after cutting or removing a small wireless facility or utility pole.

(J) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ABANDONMENT.** Cessation of use of a wireless support structure, antenna, or equipment for wireless telecommunications activity with the intention to give up the use, maintenance, and control of the facilities. A wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is

180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the Town reasonable evidence that it is diligently working to place such wireless facility back in service.

***ACCESSORY EQUIPMENT STRUCTURE.*** A building or cabinet-like structure located adjacent to, or in the immediate vicinity of, a wireless telecommunications tower or antenna to house equipment customarily incidental to the receiving or transmitting of wireless broadcasts, cellular telephone calls, voice messaging and paging services.

***ALTERNATIVE TOWER STRUCTURE.*** Clock towers, sculptures, bell steeples, light poles and similar alternative-design mounting structures that conceal the presence of antennas or towers.

***ANTENNA.*** Equipment used for transmitting or receiving radio frequency signals which is attached to a tower, building or other structure usually consisting of a series of directional panels, microwave or satellite dishes or omni-directional "whip" antennae.

***ANTENNA, STEALTH.*** Wireless telecommunications antenna and related equipment designed to blend into surrounding environment or integrated into the physical structure to which it is attached.

***BASE TRANSCEIVER STATION.*** Equipment that provides the link between wireless communications and land-based public telephone switching networks, including radio frequency transceivers, back-up power sources, power amplifiers and signal processing hardware, typically contained in a small building or cabinet.

***COLLOCATION.*** The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on an existing wireless support structure, utility pole, or other structure capable of supporting the attachment of wireless facilities.

***ELIGIBLE FACILITIES REQUEST.*** A request for modification of an existing wireless tower or base station that involves co-location of new transmission equipment or replacement of transmission equipment but does not include a substantial modification (see definition below).

***MICRO WIRELESS FACILITY.*** A small wireless facility that meets the following qualifications: (i) is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and (ii) has no exterior antenna longer than 11 inches.

***PRE-EXISTING TOWERS AND ANTENNAS.*** Any tower or antenna on which a permit has been properly issued prior to the effective date of this chapter.

***ROUTINE MAINTENANCE.*** Any activities ensuring that wireless facilities and telecommunications towers are kept in good operating condition. ***ROUTINE MAINTENANCE*** includes inspections, testing, and modifications that maintain functional capacity and structural integrity. ***ROUTINE MAINTENANCE*** includes replacing antennas of a similar size, weight, shape, and color; replacing accessory equipment within an existing equipment compound; and

relocating antennas to different heights on an existing tower upon which they are located. **ROUTINE MAINTENANCE** does not include substantial modification.

**SEARCH RING.** A circle or other shape drawn on a map that indicates where a site could be located to meet the radio frequency engineering requirements of a wireless carrier. The size and shape of a search ring varies depending upon the topography, demographics, and other factors.

**SMALL WIRELESS FACILITY.** A wireless facility that meets both of the following qualifications: (i) each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and exposed elements could fit within an enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the wireless facility, whether ground- or pole-mounted, is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, and other support structures.

**SUBSTANTIAL MODIFICATION.** The mounting of a wireless facility on a telecommunications tower that substantially changes the physical dimensions of the tower. A mounting is presumed to be a substantial modification if it meets 1 or more of the criteria listed below:

- (a) Increasing the existing vertical height of the structure by the greater of:
  1. More than 10%; or
  2. The height of 1 additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater.
- (b) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of an antenna support structure that protrudes horizontally from the edge of an antenna support structure the greater of:
  1. More than 20 feet; or
  2. More than the width of the antenna support structure at the level of the appurtenance, whichever is greater.
- (c) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

**TELECOMMUNICATIONS TOWER.** Any structure that is designed and constructed primarily for the purpose of supporting 1 or more antennas, including self-supporting lattice towers, guy towers and monopole towers. The term includes radio and television transmission towers, personal communications service towers (PCS), microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures and the like. This definition does not include any structure erected solely for a residential, non-commercial individual use, such as television antennas, satellite dishes or amateur radio antennas.

**TOWER, GUY.** A tower design that features supporting cables and wires anchored to the ground surrounding the tower.



**TOWER, LATTICE.** Three- or 4-legged steel girdered structures typically supporting multiple communications users and services generally ranging from 60 to 200 feet in height.

**TOWER, MONOPOLE.** Single pole design, approximately 3 feet in diameter at the base narrowing to approximately 1 1/2 feet at the top, generally ranging from 25 to 150 feet in height.

**UTILITY POLE.** Pole used to support essential services such as power, telephone or cable TV lines, or used to support street or pedestrian way lighting, typically located in public rights-of-way. Such term shall not include structures supporting only wireless facilities.

**WIRELESS FACILITY.** Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. The term includes small wireless facilities. The term shall not include any of the following:

- a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.
- b. Wireline backhaul facilities.
- c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or public utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

**WIRELESS PROVIDER.** A wireless infrastructure provider or a wireless services provider.

**WIRELESS SUPPORT STRUCTURE.** A new or existing freestanding structure, such as a monopole, tower, or other structure designed to support or capable of supporting wireless facilities. Such term shall not include utility poles.

**WIRELESS TELECOMMUNICATION SERVICES (WTS).** Licensed or unlicensed wireless telecommunication services including cellular, digital cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (EPMR), commercial or private paging services or similar services marketed or provided to the general public. This definition does not include services by non-commercial entities in the Amateur Radio Service, Public Safety Radio Service, or licenses assigned to non-profit organizations, such as the Red Cross, Civil Air Patrol, Military Affiliated Radio Service (MARS), that are licensed by the Federal Communications Commission.

**PART II.** This ordinance shall be effective upon its adoption.



Don Kingston, Mayor

Lori A. Ack  
Lori Ackerman, Town Clerk

Date adopted: December 6, 2017

Motion to adopt by: Chuck Burdick

Vote: 5 AYES 0 NAYS