

ORDINANCE NO. []

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BETHANY BEACH TO AMEND THE TOWN CODE; CHAPTER 525, PERSONAL WIRELESS SERVICES FACILITIES.

WHEREAS, pursuant to the Delaware Code Title 22 Section 802, the Town of Bethany Beach (“Town”) has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the Town, to protect and preserve the Town’s rights, property and privileges, and to preserve peace, safety and good order; and

WHEREAS, the Town deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the Town, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Town Council:

SECTION 1: The foregoing Recitals are adopted as findings of the Town Council as though set forth in fully within the body of this ordinance.

§ 525-1 Purpose.

The purpose of this Article and the standards established herein is to govern the use, construction and siting of Personal Wireless Facilities so as to:

- A. Accommodate the need for Personal Wireless Facilities while regulating their location and number in the Town and to ensure compliance with all applicable governmental regulations.
- B. Minimize any adverse and visual effects of Personal Wireless Facilities including Antenna(s) and Antenna Support Structures through proper design, siting, and screening.
- C. Ensure the structural integrity of the Personal Wireless Facilities including Antenna Support Structures through compliance with applicable industry standards and regulations.
- D. Encourage the joint use of any new Personal Wireless Facilities including Antenna Support Structures to reduce the number of such structures needed in the future.
- E. Promote the health, safety, and welfare of the residents of the Town.

§ 525-2 **Definitions.** For the purpose of this Article, the following definitions shall apply:

ANTENNA

A device used to collect and/or transmit Personal Wireless Services or radio signals.

ANTENNA SUPPORT STRUCTURE

Any pole, telescope mast, Tower, tripod, lattice construction steel structure or any other structure which supports or has attached to it, an Antenna(s).

ANTENNA SUPPORT STRUCTURE HEIGHT

The vertical distance measured from the base of an Antenna Support Structure at grade to the highest point of the structure, including any Antenna(s) affixed thereto. If the Antenna Support Structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna support structure height.

APPLICATION

A formal request, including all required and requested documentation and information, submitted by an applicant to the Town for a Wireless Permit.

APPLICANT

A person filing an Application for placement or modification of a Wireless Facility outside of the Public Right-of-Way.

BASE STATION

Shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(1), or any successor provision.

ELIGIBLE FACILITIES REQUEST

Shall have the meaning as set forth in 47 C.F.R. Section 1.6100(b)(3), or any successor provision.

FCC

The Federal Communications Commission or its lawful successor.

LAND SITE, OR SITE

A tract or parcel of land that contains a Personal Wireless Facility and associated parking, and may include other uses associated with and ancillary to the transmission of Personal Wireless Services.

PERMITTEE

Any person or entity granted a Wireless Permit pursuant to this Article.

PERSONAL WIRELESS FACILITIES

Means a Wireless Facility used for the provision of Personal Wireless Services.

PERSONAL WIRELESS SERVICES

Shall have the same meaning as set forth in 47 U.S.C. Section 332(c)(7)(C)(i).

PUBLIC RIGHT-OF-WAY

Means the surface and space above, on, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public easement, right-of-way or any other public ground or water within or in which the Town now or hereafter holds any property interest.

SMALL CELL FACILITY

Shall have the same meaning as “small wireless facility” in 47 C.F.R. 1.6002(l), or any successor provision

SUPPORT STRUCTURE

Any structure capable of supporting a Base Station.

TOWER

Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for Personal Wireless Services including, but not limited to, private, broadcast, and public safety services, as well as Unlicensed Wireless Services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.

UNDERGROUND AREAS

Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the Public Right-of-Way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled to be converted from overhead to underground. Electrical facilities are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.

UNLICENSED WIRELESS SERVICE

The offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services.

WIRELESS FACILITIES, OR FACILITY

The transmitters, antenna structures and other types of installations used for the provision of Personal Wireless Services at a fixed location, including, without limitation, any associated Tower(s), Support Structure(s), and Base Station(s).

WIRELESS INFRASTRUCTURE PROVIDER

A person that owns, controls, operates or manages a Personal Wireless Facility or portion thereof outside of the Public Rights-of-Way.

WIRELESS PERMIT

A permit issued pursuant to this Article authorizing the placement or modification of a Personal Wireless Facility of a design specified in the permit at a particular location outside of the Public Rights-of-Way; and the modification of any existing Support Structure to which the Facility is proposed to be attached.

WIRELESS REGULATIONS

Those regulations that may be adopted pursuant to this Article and implementing the provisions of this Article.

WIRELESS SERVICE PROVIDER

An entity that provides Personal Wireless Services to end users.

§ 525-3 Exclusions.

The following Facilities are exempt from the requirements of this Article but may be governed by other laws and other portions of Town Code.

- A.** Consumer-End Antennas. Consumer-end antennas shall be exempt from the provisions of this Article if they meet the following requirements, as applicable.
 - (1) A satellite dish less than one meter (39.37 inches) in diameter and that, if mounted on a mast, is mounted no higher than needed to receive or transmit an acceptable quality signal and in no event higher than twelve (12) feet above roofline.
 - (2) An antenna designed to receive over-the air broadcast signals, no higher than needed to receive or transmit an acceptable quality signal and in no event higher than twelve (12) feet above roofline.
 - (3) A broadband radio service antenna one meter or less in diameter or diagonal measurement and that, if mounted on a mast, is mounted no higher than needed to receive or transmit an acceptable quality signal and in no event higher than twelve (12) feet above roofline.

- B.** Amateur Radio Antennas. Any federally licensed amateur radio operator may apply to the Building Inspector and be approved by the Town Manager for an exemption from any provision of this Article upon a showing that strict conformance therewith would interfere with the operator's ability to receive or transmit signals or would impose unreasonable costs on the amateur radio operator. Such application must be accompanied by:
 - (1) Proof of a current federal license for an amateur radio operator;
 - (2) Site plans drawn to scale and dimensions showing the proposed location of the antenna;
 - (3) Manufacturer's specifications of the antenna structure;
 - (4) Details of footings and supports;

- (5) If applicable, details of attaching or affixing the antenna to the roof; and
 - (6) Elevations drawn to scale and dimensioned so as to fully describe the proposed structure.
- C. Certain Temporary Facilities. The following temporary Wireless Facilities that will be placed for less than fourteen (14) consecutive days, provided any necessary building permit or other approval is obtained and the landowner's written consent is provided to the Town:
- (1) Facilities installed and operated for large-scale events; and
 - (2) Facilities needed for coverage during the temporary relocation of an existing and already-approved Facility.
- D. Legally Existing Wireless Facilities. Any Wireless Facility already legally constructed and in operation as of this ordinance's effective date shall remain subject to the provisions of the version of the Town Code in effect prior to this revision, unless and until a revised permit, substantial conformance, or other modification is approved on such Facility, at which time the provisions of this ordinance shall apply in full force going forward as to such Facility.

§ 525-4 Administration for Wireless Permit.

- A. The Town Manager or its designee is responsible for administering the part of this Article. As part of the administration of this Article, the Town Manager may:
- (1) Interpret the provisions of this Article;
 - (2) Develop and implement standards governing the placement and modification of Wireless Facilities consistent with the requirements of this Article, including regulations governing collocation and resolution of conflicting Applications for placement of Wireless Facilities;
 - (3) Develop and implement acceptable designs and development standards for Wireless Facilities outside of the Public Right-of-Way;
 - (4) Develop forms and procedures for submission of Applications for placement or modification of Wireless Facilities, and proposed changes to any Support Structure consistent with this Article;
 - (5) Determine the amount of and collect, as a condition of the completeness of any Application, any fee established by this Article;
 - (6) Establish deadlines for submission of information related to an Application, and extend or shorten deadlines where appropriate and consistent with state and federal laws and regulations;

- (7) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued;
 - (8) Require, as part of, and as a condition of completeness of any Application, notice to members of the public that may be affected by the placement or modification of the Wireless Facility and proposed changes to any Support Structure;
 - (9) Subject to appeal as provided herein, determine whether to approve, approve subject to conditions, or deny an Application; and
 - (10) Take such other steps as may be required to timely act upon Applications for placement of Wireless Facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an Application.
- B.** Appeal. Any person adversely affected by the decision of the Town Manager may present to the Superior Court a petition, duly verified, setting forth that such decision is illegal and specifying the grounds of the illegality. Such petition shall be presented to the Court within 30 days after the filing of the written decision of the Town Manager in the Town Office. An appeal by a Wireless Infrastructure Provider must be taken jointly with the wireless service provider that intends to use the Personal Wireless Facility.

§525-5 Standards.

- A.** Generally. Wireless Facilities outside of the Public Right-of-Way shall meet the minimum requirements set forth in this Article and the Wireless Regulations that may be authorized by this Article, in addition to the requirements of any other applicable law.
- B.** Regulations. The Wireless Regulations and decisions on Applications for placement of Wireless Facilities in the Town, outside of the Public Right-of-Way, shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that Applicant has established that denial of an Application would, within the meaning of federal law, prohibit or effectively prohibit the provision of Personal Wireless Services, or otherwise violate applicable laws or regulations. If that determination is made, the requirements of this Article may be waived, but only to the minimum extent required to avoid the prohibition or violation.
- C.** Minimum Standards. Wireless Facilities shall be installed and modified in a manner that minimizes risks to public safety and otherwise maintains the integrity and character of the areas in which the Facilities are located.

§ 525-6 Design Standards and Location Preferences.

The design and development standards for Wireless Facilities located outside of the Public Right-of-Way will be set by resolution adopted by the Town Council. The Town Manager shall have the authority to amend these standards without seeking Town Council approval.

§ 525-7 Eligible Facilities Requests.

- A.** Wireless Facilities which an Applicant believes qualify as an Eligible Facilities Request shall be clearly marked as such on all communications with the Town Manager, including Application forms. Applications for Eligible Facilities Requests shall be submitted on a form prescribed by the Town Manager and shall, consistent with applicable law, contain all information necessary to verify whether or not the Facility qualifies as an Eligible Facilities Request.

- B.** Findings for Approval of Eligible Facilities Request.
 - (1) The proposed Wireless Facility qualifies as an Eligible Facilities Request, satisfying each element specified in FCC regulations and orders defining an Eligible Facilities Request, as the same may be hereafter amended;
 - (2) The proposed development is located on a legally created lot;
 - (3) The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivision, setbacks, and any other applicable provisions of Town Code, and all applicable zoning violation enforcement and processing fees have been paid; and
 - (4) The proposed development is in compliance with all Town wide permits, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) permit.

§ 525-8 Small Wireless Facilities Outside of Right of Way.

- A.** There shall be a type of permit entitled a “Small Wireless Permit,” which shall be required to install or modify Small Wireless Facilities on structures outside of the Public Right-of-Way.

- B.** The Town Manager shall approve an Application for a Wireless Permit if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:
 - (1) The facility is not detrimental to the public health, safety, and welfare;
 - (2) The facility complies with this Article and all applicable design and development standards; and
 - (3) The facility meets applicable requirements and standards of state and federal law.

§ 525-9 Collocations.

- A.** There shall be a type of permit entitled a “Wireless Collocation Permit,” which shall be required to collocate Wireless Facilities on structures outside of the Public Right-of-Way on which there exists a permitted Wireless Facility.

B. The Town Manager shall approve an Application for a Wireless Collocation Permit if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:

- (1) The facility is not detrimental to the public health, safety, and welfare;
- (2) The facility complies with this Article and all applicable design and development standards; and
- (3) The facility meets applicable requirements and standards of state and federal law.

§ 525-8 Applications.

- A.** Unless the Wireless Regulations provide otherwise, Applicant shall submit a paper copy and an electronic copy of any Application, amendments, or supplements to an Application, or responses to requests for information regarding an Application to: Town Manager of the Town of Bethany Beach, at 214 Garfield Parkway, P.O. Box 109, Bethany Beach, DE 19930.
- B.** Unless otherwise prohibited by law or deemed the commencement of any applicable Shot Clock, an Applicant is encouraged to schedule a pre-Application meeting with the Town Manager to discuss the proposed Wireless Facility, the requirements of this Article, and any potential impacts of the proposed Facility prior to filing an Application for a Wireless Permit, .
- C.** An Applicant shall submit an Application on the form approved by the Town Manager, which may be updated from time-to-time, but in any event shall require the submission of all required fee(s), documents, information, and any other materials necessary to allow the Town Manger to make required findings and ensure that the proposed Wireless Facility will comply with applicable federal and state law, the Town Code, and will not endanger the public health, safety, or welfare. If no form has been approved, Applications must contain all information necessary to show that Applicant is entitled to the Wireless Permit requested, and must specify whether the Applicant believes state or federal law requires action on the Application within a specified time period.
- D.** Application fee(s) shall be required to be submitted with any Application for a Wireless Permit. Notwithstanding the foregoing, no Application fee shall be refundable, in whole or in part, to an Applicant for a Wireless Permit unless paid as a refundable deposit.
- E.** Requests for waivers from any requirement of this section shall be made in writing to the Town Manager or his or her designee. The Town Manager may grant or deny a request for a waiver pursuant to this subsection. The Town Manager may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the Town Manager will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought. All waivers approved pursuant to

this subsection shall be (1) granted only on a case-by-case basis, and (2) narrowly-tailored to minimize deviation from the requirements of the Town Code.

- F.** For Personal Wireless Facilities and Eligible Facilities Requests, Applications will be processed, and notices of incompleteness provided, in conformity with state, local, and federal law. If such an Application is incomplete, the Town Manager may notify the Applicant in writing, and specifying the material omitted from the Application.

§ 525-9 Findings; Decisions; Consultants.

- A.** Findings required for approval.

- (1)** Except for Eligible Facilities Requests, the Town Manager shall approve an Application if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:
 - (i)** The Wireless Facility is not detrimental to the public health, safety, and welfare;
 - (ii)** The Wireless Facility complies with this Article and all applicable design and development standards; and
 - (iii)** The Wireless Facility meets applicable requirements and standards of state and federal law.
- (2)** For Eligible Facilities Requests, the Town Manager shall approve an Application if, on the basis of the Application and other materials or evidence provided in review thereof, it finds the following:
 - (i)** That the Application qualifies as an Eligible Facilities Request; and
 - (ii)** That the proposed Wireless Facility will comply with all generally-applicable laws.

- B.** Decisions. Decisions on an Application by the Town Manager shall be in writing and include the reasons for the decision.

- C.** The Town Manager is authorized, in its discretion, to select and retain independent consultant(s) with expertise in telecommunications in connection with the review of any Application under this Article. Such independent consultant review may be retained on any issue that involves specialized or expert knowledge in connection with an Application, including, but not limited to, Application completeness or accuracy, structural engineering analysis, or compliance with FCC radio frequency (RF) emissions standards.

§ 525-10 Conditions of Approval.

- A. Generally. In addition to any supplemental conditions imposed by the Town Manager all Wireless Permits granted pursuant to this Article shall be subject to the following conditions, unless modified by the approving authority.
- (1) Code Compliance. The Permittee shall at all times maintain compliance with all applicable federal, state and local laws, regulations and other rules, including, without limitation, those applying to install or modify a Wireless Facility outside of the Public Right-of-Way.
 - (2) Permit Duration. A Wireless Permit shall be valid for a period of ten (10) years, unless pursuant to another provision of the Code or these conditions, it expires sooner or is terminated. At the end of ten (10) years from the date of issuance, such Permit shall automatically expire, unless an extension or renewal has been granted. A person holding a Wireless Permit must either (1) remove the Facility within thirty (30) days following the Wireless Permit's expiration (provided that removal of Support Structure owned by Town, a utility, or another entity authorized to maintain the Support Structure need not be removed, but must be restored to its prior condition, except as specifically permitted by the Town); or (2) at least ninety (90) days prior to expiration, submit an Application to renew the Wireless Permit, which Application must, among all other requirements, demonstrate that the impact of the Wireless Facility cannot be reduced. The Wireless Facility must remain in place until it is acted upon by the Town Manager and all appeals from the Town Manager's decision exhausted.
 - (3) Timing of Installation. The installation and construction authorized by a Wireless Permit shall begin within one (1) year after its approval, or it will expire without further action by the Town. The installation and construction authorized by a Wireless Permit shall conclude, including any necessary post-installation repairs and/or restoration to the Town or private property, within thirty (30) days following the day construction commenced.
 - (4) Commencement of Operations. The operation of the approved Wireless Facility shall commence no later than one (1) month after the completion of installation, or the Wireless Permit will expire without further action by the Town.
 - (5) As-Built Drawings. The Permittee shall submit an as-built drawing within ninety (90) days after installation of the Wireless Facility. As-builts shall be in an electronic format acceptable to the Town.
 - (6) Inspections; Emergencies. The Town Manager or its designee may enter onto the Wireless Facility area to inspect the Facility upon 48 hours prior notice to the Permittee. The Permittee shall cooperate with all inspections and may be present for any inspection of its Facility by the Town Manager or its designee. The Town Manager reserves the right to enter or direct its designee to enter the Facility and support, repair, disable, or remove any elements of the Facility in emergencies or when the Facility threatens imminent harm to persons or property. The Town

Manager or its designee shall make an effort to contact the Permittee prior to disabling or removing any Facility elements, but in any case shall notify Permittee within twenty-four (24) hours of doing so.

- (7) **Contact.** The Permittee shall at all times maintain accurate contact information for all parties responsible for the Wireless Facility, which shall include a phone number, street mailing address and email address for at least one natural person.
- (8) **Insurance.** Permittee shall obtain and maintain throughout the term of the permit commercial general liability insurance with a limit of \$1,000,000.00 per occurrence for bodily injury and property damage and \$2,000,000.00 general aggregate including premises operations, contractual liability, personal injury, and products completed operations. The relevant policy(ies) shall name the Town, its elected/appointed officials, commission members, officers, representatives, agents, and employees as additional insureds. Permittee shall use its best efforts to provide thirty (30) days prior notice to the Town of to the cancellation or material modification of any applicable insurance policy.
- (9) **Indemnities.** The Permittee and, if applicable, the owner of the property upon which the Wireless Facility is installed shall defend, indemnify and hold harmless the Town , its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the Town or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the Town 's approval of the Wireless Permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with the activities or performance of the Permittee or, if applicable, the property owner or any of each one's agents, employees, licensees, contractors, subcontractors, or independent contractors. In the event the Town becomes aware of any such actions or claims the Town shall promptly notify the Permittee and, if applicable, the property owner and shall reasonably cooperate in the defense. The Town shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the Town 's defense, and the property owner and/or Permittee (as applicable) shall reimburse Town for any costs and expenses directly and necessarily incurred by the Town in the course of the defense.
- (10) **Performance Bond.** Prior to issuance of a Wireless Permit, the Permittee shall file with the Town, and shall maintain in good standing throughout the term of the approval, a performance bond or other surety or another form of security for the removal of the Wireless Facility in the event that the use is abandoned or the Wireless Permit expires, or is revoked, or is otherwise terminated. The security shall be in the amount equal to 150% of the cost of physically removing the Facility and all related facilities and equipment on the Site, based on the higher of two

contractor's quotes for removal that are provided by the Permittee. The Permittee shall reimburse the Town for staff time associated with the processing and tracking of the bond, based on the hourly rate adopted by the Town Council. Reimbursement shall be paid when the security is posted and during each administrative review.

- (11) **Adverse Impacts on Adjacent Properties.** Permittee shall undertake all reasonable efforts to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the Wireless Facility. The Facility shall be designed and constructed in accordance with all applicable national building standards for such facilities and structures, including but not limited to the standards developed by the Electronics Industry Association, Institute of Electrical and Electronics Engineers, Telecommunications Industry Association, American National Standards Institute and Electrical Industry Association.
- (12) **Noninterference.** Permittee shall not move, alter, temporarily relocate, change, or interfere with any existing structure, improvement, or property without the prior consent of the owner of that structure, improvement, or property. No structure, improvement, or property owned by the Town shall be moved to accommodate a permitted activity, unless the Town determines that such movement will not adversely affect the Town or any surrounding businesses or residents, and the Permittee pays all costs and expenses related to the relocation of the Town's structure, improvement, or property. Prior to commencement of any work pursuant to a Wireless Permit, the Permittee shall provide the Town with documentation establishing to the Town's satisfaction that the Permittee has the legal right to use or interfere with any other structure, improvement, or property to be affected by Permittee's Facilities.
- (13) **No Right, Title, or Interest.** The permission granted by a Wireless Permit shall not in any event constitute an easement on or an encumbrance against the Public Right-of-Way or any other Town property. No right, title, or interest (including franchise interest) in the Public Right-of-Way or other Town property, or any part thereof, shall vest or accrue in Permittee by reason of a Wireless Permit or the issuance of any other permit or exercise of any privilege given thereby.
- (14) **No Possessory Interest.** No possessory interest is created by a Wireless Permit. However, to the extent that a possessory interest is deemed created by a governmental entity with taxation authority, Permittee acknowledges that Town has given to Permittee notice pursuant to **Delaware State Code Section 5402** that the use or occupancy of any public property pursuant to a Wireless Permit may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes, fees, and assessments levied against Permittee's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this Wireless Permit.

- (15) **General Maintenance.** The Site and the Wireless Facility, including, but not limited to, all landscaping, fencing, and related transmission equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on Facilities must be removed at the sole expense of the Permittee within forty eight (48) hours after notification from the Town.
- (16) **RF Exposure Compliance.** All Wireless Facilities must comply with all standards and regulations of the FCC and any other state or federal government agency with the authority to regulate RF exposure standards. After transmitter and antenna system optimization, but prior to unattended operations of the Facility, Permittee or its representative must conduct on-Site post-installation RF emissions testing to demonstrate actual compliance with the FCC OET Bulletin 65 RF emissions safety rules for general population/uncontrolled RF exposure in all sectors. For this testing, the transmitter shall be operating at maximum operating power, and the testing shall occur outwards to a distance where the RF emissions no longer exceed the uncontrolled/general population limit.
- (17) **Testing.** Testing of any equipment shall take place on weekdays only, and only between the hours of 8:30 a.m. and 4:30 p.m., except that testing is prohibited on holidays that fall on a weekday. In addition, testing is prohibited on weekend days.
- (18) **Safety.** The Wireless Facility shall be safe and in accordance with applicable Town Code, and the surrounding properties will not be negatively affected by the Facility, falling ice or debris. All Wireless Facilities shall be fitted with anti-climbing devices, as comply with industry standards.
- (19) **Modifications.** No changes shall be made to the approved plans without review and approval in accordance with this Article.
- (20) **Agreement with Town.** If not already completed, Permittee shall enter into the appropriate agreement with the Town, as determined by the Town Manager, prior to constructing, attaching, or operating a Wireless Facility on Town-owned infrastructure outside of the Public Rights-of-Way. This permit is not a substitute for such agreement.
- (21) **Abandonment.** If a Wireless Facility is not operated for a continuous period of six (6) months, the Wireless Permit and any other permit or approval therefor shall be deemed abandoned and terminated automatically, unless before the end of the six (6) month period (i) the Town Manager has determined that the Facility has resumed operations, or (ii) the Town has received an Application to transfer the Wireless Permit to another service provider. No later than ninety (90) days from the date the Wireless Facility is determined to have ceased operation or the Permittee has notified the Town Manager of its intent to vacate the Site, the Permittee shall remove all equipment and improvements associated with the use and shall restore the Site to its original condition to the satisfaction of the Town Manager. The Permittee shall

provide written verification of the removal of the Wireless Facilities within thirty (30) days of the date the removal is completed. If the Wireless Facility is not removed within thirty (30) days after the Wireless Permit has been discontinued pursuant to this subsection, the Site shall be deemed to be a nuisance, and the Town may cause the Facility to be removed at Permittee's expense or by calling any bond or other financial assurance to pay for removal. If there are two (2) or more users of a single Wireless Facility or Support Structure, then this provision shall apply to the specific elements or parts thereof that were abandoned, but will not be effective for the entirety thereof until all users cease use thereof.

- (22)** Encourage Collocation. Where the Wireless Facility Site is capable of accommodating a collocated Facility upon the same Site in a manner consistent with the Wireless Permit conditions for the existing Facility, the owner and operator of the existing Facility shall allow collocation of third party facilities, provided the parties can mutually agree upon reasonable terms and conditions.
- (23)** Notification. All Applicants seeking to construct, erect, relocate, or alter a Wireless Facility shall demonstrate that all property owners within a two-hundred-foot radius of the proposed Facility have been provided written notice of the Applicant's intent to construct, erect, relocate or alter a Facility. Such notice shall also contain the date and time of the hearing before the Town of Bethany Beach Town Council where the Applicant will appear and demonstrate compliance with the provisions of this Article.
- (24)** Annual report. In January of each year, the Permittee shall pay the registration fee established from time to time by the resolution of the Town Council and shall provide the Town Manager with the following information:

 - (i)** The name and address of the owner of the Facility and telephone number of the appropriate contact person in case of emergency.
 - (ii)** The name and address of the property owner on which the Facility is located.
 - (iii)** The location of the Facility by geographic coordinates, indicating the latitude and longitude.
 - (iv)** Output frequency of the transmitter.
 - (v)** The type of modulation, digital format and class of service.
 - (vi)** Antenna(s) gain.
 - (vii)** The certified and effective radiated power of the antenna(s).
 - (viii)** The number of transmitters, channels and antenna(s).
 - (ix)** A copy of the owner's or operator's FCC authorization.

- (x) Antenna(s) height.
 - (xi) Power input to the antenna(s).
 - (xii) Distance to the nearest base station.
 - (xii) A certification signed by two officers of the Applicant that Facility is continuing to comply with this Article and all applicable governmental regulations.
 - (25) FCC License. The Applicant shall submit a copy of its current Federal Communications Commission License.
 - (26) Records. The Permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the Wireless Facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the Permittee does not maintain such records as required in this condition or fails to produce true and complete copies of such records within a reasonable time after a written request from the Town , any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be construed against the Permittee.
 - (27) Attorney's Fees. In the event the Town determines that it is necessary to take legal action to enforce any of these conditions, or to revoke a Wireless Permit, and such legal action is taken, the Permittee shall be required to pay any and all costs of such legal action, including reasonable attorney's fees, incurred by the Town, even if the matter is not prosecuted to a final judgment or is amicably resolved, unless the Town should otherwise agree with Permittee to waive said fees or any part thereof. The foregoing shall not apply if the Permittee prevails in the enforcement proceeding.
- B. Eligible Facilities Requests.** In addition to the conditions provided in Section 525-10(A) of this Article and any supplemental conditions imposed by the Town Manager, all permits for an Eligible Facility Requests granted pursuant to this Article shall be subject to the following additional conditions, unless modified by the approving authority.
- (1) Permit subject to conditions of underlying permit. Any permit granted in response to an Application qualifying as an Eligible Facilities Request shall be subject to the terms and conditions of the underlying permit.
 - (2) No permit term extension. The Town Manager's grant or grant by operation of law of an Eligible Facilities Request permit constitutes a federally-mandated modification to the underlying permit or approval for the subject Tower or Base Station. Notwithstanding any permit duration established in another permit condition, the

Town Manager’s grant or grant by operation of law of a Eligible Facilities Request permit will not extend the permit term for the underlying permit or any other underlying regulatory approval, and its term shall be coterminous with the underlying permit or other regulatory approval for the subject Tower or Base Station.

- (3) No waiver of standing. The Town Manager’s grant or grant by operation of law of an Eligible Facilities Request does not waive, and shall not be construed to waive, any standing by the Town to challenge Section 6409(a) of the Spectrum Act, any FCC rules that interpret Section 6409(a) of the Spectrum Act, or any modification to Section 6409(a) of the Spectrum Act.

SECTION 3: The Town Manager is directed to execute all documents and to perform all other necessary acts to implement effect this ordinance.

SECTION 4: Severability. If any section, subsection, provision, sentence, clause, phrase or word of this ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this ordinance, it being the intent of the Town that the remainder of the ordinance shall be and shall remain in full force and effect, valid, and enforceable.

SECTION 5: In accordance with _____, this ordinance shall become effective on the _____ day following its passage and adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE TOWN OF BETHANY BEACH
this _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

ATTEST:

_____, **Town Clerk**

APPROVED AS TO FORM:

_____, **Town Attorney**