

ORDINANCE NO. []

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BETHANY BEACH TO AMEND THE CHAPTER 493; STREETS AND SIDEWALKS, TO ADD DESIGN AND DEVELOPMENT STANDARDS FOR WIRELESS FACILITIES IN PUBLIC RIGHTS-OF-WAY.

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’s Charter Section 4.2.23 allows the Town to regulate or prohibit the use of public streets, alleys, sidewalks, boardwalks, beaches, parks, Right-of-Ways, public places and Town-owned lands for commercial uses or activities not otherwise protected from such regulation or prohibition by the Constitutions of either the United States and the State of Delaware, or by any controlling federal statute; and

WHEREAS, the Town’s Code Section 493-32.E.1. provides that the Town Council may develop and implement acceptable designs and development standards for wireless facilities in the public Rights-of-Ways, taking into account the zoning districts bounding the public Rights-of-Ways; and

WHEREAS, the Town’s public Rights-of-Ways are a uniquely valuable public resource, closely linked with the Town’s character, making the regulation of wireless installations in the public Rights-of-Ways necessary to protect and preserve the aesthetics in the community; and

WHEREAS, being authorized to do so, the Town wishes to establish design and development standards applicable to wireless facilities in the public Rights-of-Ways;

WHEREAS, on [Date] the Town Council conducted a duly noticed public meeting and received testimony from Town staff and all interested parties regarding the design and development standards; and

WHEREAS, all legal prerequisites to the adoption of this ordinance have occurred.

BE IT HEREBY ENACTED by the Town Council of the Town of Bethany Beach, a majority thereof concurring in Council duly met, that the following Sections of the Town Code be and hereby are amended as follows:

§ 493-42 Design and Development Standards for All Facilities.

The following design and development standards shall apply to all wireless facilities in the public Right-of-Ways:

A. Visual Criteria.

- (1)** Generally. Wireless Facilities shall be designed in the least visible means possible and be aesthetically compatible with the surrounding area and structures (e.g., color, materials, size, and scale).
 - (a)** Materials. The materials used shall be non-reflective and non-flammable.
 - (b)** Concealment. The Wireless Facility and pole-mounted equipment should be camouflaged or concealed to blend the Facility with surrounding materials and colors of the Support Structure on which the Facility is installed. Concealment elements include, but are not limited to, the following:
 - (i)** Radio frequency (RF) transparent screening or shrouds;
 - (ii)** Matching the color of the existing Support Structure by painting, coating, or otherwise coloring the wireless Facility, equipment, mounting brackets, and cabling;
 - (iii)** Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
 - (iv)** Minimizing the size of the site;
 - (v)** Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
 - (vi)** Using paint of durable quality.

B. Location.

- (1)** Discouraged locations/zones.
 - (a)** East of Atlantic Avenue;
 - (b)** Municipal, Open Space, Recreation Facilities and Educational District (MORE).
- (2)** Poles Should be Utilized. Consistent with other above-ground infrastructure, Wireless Facilities should be supported by or within poles, and not Support Structures, unless the Support Structures are stealth facilities. Where Support Structures must be authorized, the Support

Structures should comply as closely as possible to the standards applicable to poles.

- (3) **Preference for Use on Existing Infrastructure.** To prevent clutter in the Rights-of-Ways, and to avoid creation of additional hazards in the Rights-of-Ways, existing poles should be used when feasible. New poles are not permitted in a corridor where there are existing poles that can be used, or existing poles that can be modified or replaced to support the facilities of a utility, unless it is shown that: (i) it is not technically feasible to use, modify or replace existing poles or (ii) use of the pole can be shown by Applicant to prohibit or effectively prohibit service.
 - (i) If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, height, color, materials, and distribution pattern/spacing.
- (4) **Collocations are Encouraged.**
- (5) **Curb Setback Requirements.** New or replacement poles shall be a minimum of 18 inches from the face of the curb.
- (6) **Strand-Mounted Facilities.** Strand-Mounted Facilities are prohibited unless they are necessary for technical reasons.

C. Equipment.

- (1) **Prohibition of Generators.** Generators are prohibited in the Right-of-Ways.
- (2) **Electric Service.** The Town strongly encourages site operators to use flat-rate electric service when it would eliminate the need for a meter. Where meters are required, use the narrowest electric meter, and disconnect available.
- (3) **Equipment Preferences.**
 - (a) The Town prefers stealth facilities (placement within a streetlight would be an example) or poles where all equipment is inside the pole to exterior mounts for new poles; and where undergrounding is not required, prefers pole-mounted to ground-mounted cabinets for new, existing or replacement poles.
 - (b) Pole-mounted equipment other than antennas should be mounted high on a pole; concealed in an integrated base; or contained within a pole, as appropriate for the corridor and the type of pole proposed.
 - (c) While a higher placement should be used except where technically infeasible, the lowest point of any equipment installed on the exterior of a pole should be 8 feet from ground level, and the equipment may not be placed in a manner

that would intrude upon a street, interfere with parking or interfere with safe pedestrian/bicycle passage.

- (d) Ground-mounted above-ground equipment, other than approved stealth equipment, or equipment in an integrated base is not permitted in a corridor where there is not already ground-mounted equipment nearby. Where there is ground-mounted equipment, the facilities proposed should be similar in size, and should be placed and shielded in a manner other equipment is placed and shielded (see also location standards). Any equipment not used in direct support of such operations shall not be stored on site.
 - (e) In an area where other utility equipment is underground, a wireless provider will be expected to place equipment below ground absent a showing of technical infeasibility. However, the Town recognizes that antennas and the structures that support them cannot be placed underground. In order to use the Rights-of-Ways absent a showing of effective prohibition, a design consistent with the corridor in which the Facility will be placed should be utilized.
- D. Security. All equipment and facilities shall be installed in a manner to avoid being an attractive nuisance and to prevent unauthorized access, climbing, and graffiti.
- E. Safety. All Wireless Facilities in the Right-of-Way, including each piece of equipment, shall be located, and placed in a manner so as to not interfere with the use of the Right-of-Way; impede the flow of vehicular or pedestrian traffic; impair the primary use and purpose of poles/signs/traffic signals or other infrastructure; interfere with outdoor dining areas or emergency facilities; or otherwise obstruct the accessibility of the Right-of-Way. Further, all Wireless Facilities and associated equipment in the Right-of-Way shall comply with Americans with Disabilities Act (ADA) and the National Electric Safety Code (NESC), as applicable.
- F. Noise. Wireless Facilities and all accessory equipment and transmission equipment must comply with all noise regulations and shall not exceed, either individually or cumulatively, 65 dBA.
- G. Lighting. No Facility shall be illuminated unless specially required by the Federal Aviation Administration (FAA) or other government agency. Any required lighting shall be shielded to eliminate, to the maximum extent possible, impacts on the surrounding area property.
- H. Signs. No Facility may display any signage or advertisement unless it is expressly allowed by the Town in a written approval, recommended under FCC regulations, or required by law or permit condition. Every Facility shall at all times display signage that accurately identifies the Facility owner and provides the owner's unique site number and a local or toll-free telephone number to contact the Facility owner's operations center.

- I. Landscaping. In addition to any landscaping used for concealment or screening purposes, the Applicant shall propose and install additional landscaping to replace any existing landscaping displaced during construction or installation of the Applicant's Facility in the Right-of-Ways. The Applicant's landscaping plan shall be subject to the Town's review and approval but shall, at a minimum, match the existing landscaping and foliage surrounding the installation site.
- J. Modifications. Any modifications to existing Facilities or equipment or collocations shall not defeat the concealment elements of the existing Support Structure/Facility .

§ 493-43 Design and Development Standards for Pole-Mounted Facilities.

In addition to the generally applicable standards set forth in § 493-44 of this Article, the design and development standards for pole-mounted facilities in the ROW are as follows:

- A. Definition of Pole-Mounted Facility. For purposes of this Article, the term "pole-mounted facility" means a Wireless Facility that is, or is proposed to be, attached to, contained in or on, or otherwise mounted to, in, or on a pole.
- B. Definition of Stealth Facility. For the purposes of this Article, the term "stealth facility" (or "stealth facilities") shall mean a Small Cell Facility designed to look like some feature other than a Tower or Base Station.
- C. Poles, Generally. For facilities installed on any pole:
 - (1) Antennas. Antennas shall be top-mounted in a shroud. Antennas attached to the side of the pole are discouraged, but if they are required due to technical reasons, should use the smallest antenna volume possible and be stacked vertically and close together with minimal distance from the pole.
 - (2) Dimensions. Antennas shall be of the smallest feasible size, but in no case more than three cubic feet in volume. Pole-top wireless facilities, including shroud, shall be no more than 72 inches in height and 14.5 inches in diameter.
 - (3) Accessory Equipment. Undergrounding equipment that cannot be placed with the antenna in the shroud, is preferred where technically feasible. Vaults and pull boxes shall be installed flush to grade. Ground-mounted equipment is prohibited unless required for technical reasons. If required, ground-mounted equipment shall incorporate camouflaging and shrouding to match the colors, appearance, and materials of existing facilities and screen facilities from public view as much as is technically feasible. Further, if ground-mounted equipment is required, it must be enclosed in cabinets, sized only for the needed equipment, and camouflaged using paint that matches the surrounding environment.

- (4) Cables and Wiring. All cables and wiring must be within the structure, or if not feasible, within conduit on the exterior of the structure. The conduit must be a color that matches the pole and of the smallest size technically feasible.
 - (5) Pole Owner Authorization. Proof of authorization from the pole owner is required. If the Town owns the pole, then the Applicant must enter into an agreement with Town to install the pole-mounted facility.
- D. Utility Poles. In addition to complying with the standards above, installations on Utility Poles must be stealth facilities, as defined in § 493-43.B. of this Article. The Facility shall be designed, painted, coated, and otherwise made to look like the Utility Pole rather than a Wireless Facility, Tower, or Base Station.
- E. Replacement Poles. If an Applicant proposes a replacement pole to accommodate the Facility :
 - (1) Placement. The base of the replacement pole shall be a minimum of 18 inches away from the face of the curb. Further, a replacement pole must be in the same location as the pole that it is replacing or as close to the original location as possible, taking into account pole owner safety-related requirements and all applicable location and placement standards herein.
 - (2) Design. Replacement poles should match the design (e.g., color, dimensions, height, style, and materials) of the existing pole that is being replaced to the greatest extent feasible. The maximum pole height is 35 feet, excluding wireless equipment unless Applicant can demonstrate such a limitation prohibits or effectively prohibits service.
 - (3) Stealth. Replacement poles should fit within the context of the environment and their accompanying small cell facilities should be stealth, as defined above in § 493-43.B., unless technically infeasible.
- F. New Poles.
 - (1) Waiver Required. New poles are prohibited unless a waiver is approved by the Town to prevent a prohibition of service. The Town strongly discourages waivers but in order to avoid the cost and burden of litigation, the Town is required to permit the opportunity for waiver under federal law.
 - (2) Design. New poles shall have a maximum height of 35 feet and a maximum diameter of 14 inches unless Applicant can demonstrate such a limitation prohibits or effectively prohibits service. The poles should be designed so that cables and wiring can be contained inside the poles or concealed in coverings that mirror the pole in color. Wooden poles, while not prohibited, should not be a first option. If existing poles are present in the surrounding area, then the new pole shall be designed to resemble the existing poles in appearance, color, materials, and distribution pattern/spacing.

- (3) Installations on New Poles. Antennas shall be pole top- mounted in a shroud, and cables and wiring shall be contained within the new pole. Equipment that cannot fit in the shroud with the antenna shall be undergrounded, but if undergrounding is not technically feasible, then equipment shall be enclosed in cabinets, sized only for the needed equipment, and camouflaged using paint that matches the surrounding environment. The antennas and equipment on a new pole must be stealth, as defined above in § 493-43.B.

§ 493-44 Severability.

If any provision of this Article or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Article that can be given effect without the invalid provision or application, and to this extent, the provisions of this Article are severable. The Town Council declares that it would have adopted this ordinance irrespective of the invalidity of any portion thereof.

Effective Date. These amendments shall be effective on the date adopted by the Town Council.

Synopsis

This ordinance amends Chapter 493, by adding Sections 493-41, 493-42, 493-43, and 493-44 to develop and implement acceptable designs and development standards for wireless facilities in the public rights-of-ways.

This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Bethany Beach at a duly-noticed and convened meeting at which a quorum was present on _____ 2021.

Attest: _____
Town Clerk

Mayor

This shall certify that the title and synopsis of the foregoing ordinance was posted at the Town Hall on _____, 2021, and published in _____ on _____, 2021.

Date

So Certifies:

Town Clerk

This shall certify that the title, synopsis, date of adoption, and effective date of the foregoing ordinance was published in _____ on _____, 2021 and that a copy of the foregoing ordinance was posted at the Town Hall on _____, 2021.

Date

So Certifies:

Town Clerk