

ORDINANCE NO. []

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF BETHANY BEACH TO AMEND THE CHAPTER 525; WIRELESS FACILITIES, ARTICLE I, “PERSONAL WIRELESS SERVICES FACILITIES” ESTABLISHING DESIGN AND DEVELOPMENT STANDARDS FOR WIRELESS FACILITIES IN THE TOWN, BUT OUTSIDE OF THE PUBLIC RIGHT-OF-WAY.

WHEREAS, pursuant to Delaware Code Title 22 Section 802, the Town has 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;

WHEREAS, Section 525-6 of the Town’s Code provides that the Town Council may develop and implement acceptable designs and development standards for wireless facilities outside of the public rights-of-way;

WHEREAS, the Town’s look and feel are closely linked with the Town’s character, making the regulation of wireless facilities necessary to protect and preserve the aesthetics in the community;

WHEREAS, being authorized to do so, the Town wishes to establish design and development standards applicable to wireless facilities outside of the public rights-of-way;

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 the Council duly met, that the Town Code be and hereby is amended as follows:

§ 525-14 Design and Development Standards for All Facilities.

The following design and development standards shall apply to all Wireless Facilities outside of the Public Right-of-Way:

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).
- (2) Materials.** The materials used shall be non-reflective and non-flammable.

- (3) Concealment. The Wireless Facility and any 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:
 - (a) Radio frequency (RF) transparent screening or shrouds;
 - (b) Matching the color of the existing support structure by painting, coating, or otherwise coloring the wireless facility, equipment, mounting brackets, and cabling;
 - (c) Placing cables and wires inside the pole or beneath conduit of the smallest size possible;
 - (d) Minimizing the size of the site;
 - (e) Installing new infrastructure that matches existing infrastructure in the area surrounding the proposed site; and
 - (f) Using paint of durable quality.

B. Location.

- (1) Preference for Use on Existing Infrastructure. To prevent visual clutter and to avoid creation of additional hazards existing structures (Towers and Base Stations) should be used unless it is shown that it is not technically feasible to use, modify or replace existing structures.
- (2) The Wireless Facility and any pole-mounted equipment erected or altered shall not exceed the height limit, minimum yard setbacks, or any other requirements in accordance with Section 425-4 of the municipal code.
- (3) Collocations are encouraged.

C. Equipment.

- (1) Limitations of Generators. Generators are limited in size to that required to provide emergency backup power for the Wireless Facility.
- (2) Stealth Preferences.
 - (a) The Town prefers stealth facilities (i.e. where all equipment is inside the existing Tower or Base Station or otherwise screened from view).
 - (b) Ground-mounted above-ground equipment should be similar in size, and should be placed and shielded in a manner consistent with how other equipment is placed and shielded. Any equipment not used in direct support of such operations shall not be stored on site.

- (c) In an area where other utility equipment is underground, a Wireless Service 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. 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, including each piece of equipment, shall be located and placed in a manner so as to not interfere with public safety and at all times be in compliance with the 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 Wireless 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 Wireless 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. 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 structure/Facility.

§ 525-15 Design and Development Standards for Pole-Mounted Facilities.

In addition to the generally applicable standards set forth in Section 525-14 of this Resolution, the design and development standards for pole-mounted facilities outside of the ROW are as follows:

- A.** Definition of Pole-Mounted Facility. For purposes of this Resolution, 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 these Design Standards, 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, shall be of 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.
- D.** Utility Poles. In addition to complying with the standards above, installations on Utility Poles that are located outside of the Rights-of-Way must be stealth facilities, as defined in Section 525-15.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.
- (3) Stealth. Replacement poles and their accompanying Small Cell Facilities should be stealth, as defined above in Section 525-15.B., unless technically infeasible.

§ 525-16 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 Article irrespective of the invalidity of any portion thereof.

Effective Date. These amendments shall be effective on the date of Council approval.

Synopsis

This ordinance amends Chapter 525, by adding Sections 525-14, 525-15, and 525-16 to develop and implement acceptable designs and development standards for wireless facilities outside 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.

So Certifies:

_____ _____
Date 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.

So Certifies:

_____ _____
Date Town Clerk