

TOWN OF SEVEN DEVILS WIRELESS TELECOMMUNICATIONS ORDINANCE

I. Purpose and Legislative Intent

The purpose of this Wireless Telecommunications Ordinance is to provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in the Town of Seven Devils have reliable access to wireless telecommunications networks and state of the art mobile broadband communications services while also ensuring that this objective is accomplished according to the Town of Seven Devils Unified Development Ordinance and Comprehensive Plan, meeting zoning, planning and design standards. To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable federal laws, including without limitation Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, which, among other things, creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures, the Town of Seven Devils adopts this single, comprehensive, wireless telecommunications ordinance. By enacting this Ordinance it is the Town of Seven Devils intent to ensure the Town has sufficient wireless infrastructure to support its public safety communications throughout the Town of Seven Devils and to ensure access to reliable wireless communications services throughout all areas of the Town of Seven Devils.

II. Definitions

For the purposes of this Ordinance, the following definitions apply:

Abandonment– Cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified under this ordinance.

Accessory Equipment - Any equipment serving or being used in conjunction with a Wireless Facility or Wireless Support Structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.

Administrative Approval - Approval that the Zoning Administrator or designee is authorized to grant after Administrative Review.

Administrative Review - Non-discretionary evaluation of an application by the Zoning Administrator or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section IV.D of this Ordinance.

Antenna - Communications equipment that transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services. Antenna types may include the various types normally installed on monopole structures, distributed antenna system (DAS) antennas, and Small Cell antenna systems.

Base Station - A station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.

Carrier on Wheels or Cell on Wheels (COW) - A portable self-contained Wireless Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the Antenna support structure.

Collocation - The placement or installation of Wireless Facilities on Existing Structures including Electrical Transmission Towers, Water Towers, buildings and other structures capable of structurally supporting the attachment of Wireless Facilities in compliance with applicable codes.

Concealed Wireless Facility - Any Wireless Facility that is integrated as an architectural feature of an Existing Structure or any new Wireless Support Structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the Facility or Wireless Support Structure is not readily apparent to a casual observer.

Electrical Transmission Tower - An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any Utility Pole.

Equipment Compound - An area surrounding or near the base of a Wireless Support Structure within which are located Wireless Facilities.

Existing Structure - A Wireless Support Structure, erected prior to the application for collocation or substantial modification under this ordinance, that is capable of supporting the attachment of Wireless Facilities, including, but not limited to, Electrical Transmission Towers, buildings and Water Towers. The term shall not include any Utility Pole.

Fall Zone - The area in which a wireless support structure may be expected to fall in the event of a structural failure, as measured by engineering standards.

Monopole - A single, freestanding pole-type structure supporting one or more Antennas. For the purposes of this Ordinance, a Monopole is not a Tower or a Utility Pole.

Ordinary Maintenance - Ensuring that Wireless Facilities and Wireless Support Structures are kept in good operating condition. Ordinary Maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a Wireless Support Structure's foundation or of the Wireless Support Structure itself. Ordinary Maintenance includes replacing Antennas of a similar size, weight, shape and color and Accessory Equipment within an existing Equipment Compound and relocating the Antennas to different height levels on an existing Monopole or Tower upon which they are currently located. Ordinary Maintenance does not include Substantial Modifications.

Replacement Pole – Pole of equal proportions and of equal height or such other height that would not constitute a Substantial Modification to an Existing Structure in order to support Wireless Facilities or to accommodate Collocation. Requires removal of the Wireless Support Structure it replaces.

Substantial Modification - The mounting of a proposed Wireless Facility or Wireless Facilities on a Wireless Support Structure which: (i) increases the existing vertical height of the Wireless Support Structure by (a) more than ten percent (10%), or (b) the height of one additional Antenna array with separation from the nearest existing Antenna not to exceed twenty (20) feet, whichever is greater; or (ii) involves adding an appurtenance to the body of a Wireless Support Structure that protrudes horizontally from the edge of the Wireless Support Structure more than twenty (20) feet, or more than the width of the Wireless Support Structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the Antenna from inclement weather or to connect the Antenna to the tower via cable); or (iii) increases the square footage of the existing Equipment Compound by more than 2,500 square feet.

Tower - A lattice-type structure, guyed or freestanding, that supports one or more Antennas. *Towers shall not be permitted in the Town of Seven Devils.*

Utility Pole - A structure owned and/or operated by a public utility, municipality, electric membership corporation or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.

Water Tower - A water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.

Wireless Facility or Wireless Facilities - The set of equipment and network components, exclusive of the underlying Wireless Support Structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling and associated equipment necessary to provide wireless telecommunications services.

Wireless Support Structure - A freestanding structure, such as a Monopole or Tower, designed to support Wireless Facilities. This definition does not include Utility Poles. *Towers shall not be allowed in the Town of Seven Devils.*

III. Approvals Required for Wireless Facilities and Wireless Support Structures

- A. Conditional Use Permit - Any application for Wireless Facilities and/or allowed Wireless Support Structures utilizing a monopole structure, pursuant to this Ordinance shall be permitted only in the General Business (GB) zoning district upon the granting of a Conditional Use Permit from the Board of Adjustment in accordance with the standards for granting Conditional Use Permits set forth in the

Town of Seven Devils Unified Development Ordinance, Article XIV. Examples of Wireless Support Structures requiring a Conditional Use Permit include:

- 1) Monopoles or Replacement Poles (of any height), to a maximum of one hundred fifty (150) feet in height, and only in the General Business District;
- 2) COWs, in any zoning district, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred-twenty (120) days; and

B. Exempt from All Approval Processes. The following are exempt from all Seven Devils zoning approval processes and requirements:

- 1) Removal or replacement of transmission equipment on an existing monopole or base station that does not result in a substantial modification as defined in this ordinance.
- 2) Ordinary Maintenance of existing Wireless Facilities and Wireless Support Structures, as defined in this Ordinance;
- 3) Wireless Facilities placed on Utility Poles (subject to a maximum antenna height of twenty (20) feet; and
- 4) COWs placed for a period of not more than one hundred twenty (120) days at any location within the Town of Seven Devils, or after a declaration of an emergency or a disaster by the Governor.

IV. Conditional Use (Special) Permit Process

A. A Wireless Facility or Monopole Wireless Support Structure permitted in the General Business (GB) zoning district upon the granting of a Conditional Use Permit, subject to:

- 1) The submission requirements of Section IV.B below; and
- 2) The applicable standards of Section V below; and
- 3) The requirements of the Conditional Use Permit general conditions at Article XIV of the Unified Development Ordinance.

B. Content of Special Permit Application Package. All Special Permit application packages must contain the following:

- 1) Conditional Use Permit application form signed by applicant;
- 2) Copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue zoning application. Such submissions need not disclose financial lease terms;
- 3) Written description and scaled drawings of the proposed Wireless Support Structure or Wireless Facility, including structure height, ground and structure design, and proposed materials;
- 4) Number of proposed Antennas and their height above ground level, including the proposed placement of Antennas on the Wireless Support Structure;

- 5) Line-of-sight diagram or photo simulation, showing the proposed Wireless Support Structure set against the skyline and viewed from at least four (4) directions within the surrounding areas;
 - 6) A statement that the proposed Wireless Support Structure will be made available for Collocation to other service providers at commercially reasonable rates, provided space is available and consistent with Section V(A)(1)(a) of this Ordinance; and
 - 7) Notification of surrounding property owners and posting as required by Seven Devils relevant existing Unified Development Ordinance provisions, Article XIV, regarding notice.
- C. Fees. The total fees for reviewing a Special Permit application shall be the lesser of the Town of Seven Devils actual, direct costs (including third-party costs such as consultants fees) incurred for the review, or \$3,000.00. Applications for new Wireless Support Structures with proposed Wireless Facilities shall be considered together as one application requiring only a single application fee. An applicant for Administrative Review shall submit an initial deposit of \$1,000.00 toward the fees to be paid under this section of the Ordinance.
- D. Procedure and Timing. Within one hundred fifty (150) calendar days of the receipt of an application under Section IV. of this Ordinance, the Zoning Administrator will:
- 1) Complete the process for reviewing the application for conformity with ordinances applicable to Special Permits, including conducting a hearing in accordance with the Town of Seven Devils hearing rules. An application under this Section IV. is deemed to be complete unless the Zoning Administrator notifies the applicant in writing, within thirty (30) calendar days of submission of the application of the specific deficiencies in the application, which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take thirty (30) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within thirty (30) calendar days, the application shall be reviewed and processed within one hundred fifty (150) calendar days from the initial date the application was received. If the applicant requires a period of time beyond thirty (30) calendar days to cure the specific deficiencies, the one hundred fifty (150) calendar days deadline for review shall be extended by the same period of time;
 - 2) Make a final decision to approve or disapprove the application; and
 - 3) Advise the applicant in writing of its final decision. If the Town of Seven Devils denies an application, it must provide written justification of the denial.
 - 4) Failure to issue a written decision within one hundred fifty (150) calendar days shall constitute an approval of the application.

V. General Standards and Design Requirements

A. Design

- 1) Permissible Wireless Support Structures (monopoles) shall be subject to the following:
 - a. Shall be engineered and constructed to accommodate a minimum number of Collocations based upon their height:
 - i. Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;
 - ii. Support structures greater than one hundred (100) feet but less than one hundred-fifty feet (150) shall support at least four (4) telecommunications providers;
 - b. The Equipment Compound area surrounding the Wireless Support Structure must be of sufficient size to accommodate Accessory Equipment for the appropriate number of telecommunications providers in accordance with Section V(A)(1)(a).
 - c. Monopole Wireless Support Structures shall be engineered to have a maximum fall zone of no more than fifty (50) feet.
 - d. Monopole Wireless Support Structures shall be designed in such a manner as to employ the latest concealment technology where possible.
- 2) Concealed Wireless Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- 3) All Wireless Support Structures shall be designed to meet the latest ANSI/EIA/TIA-222 standards as amended. The foundation shall be designed in compliance with the NC Building Code, Chapter 18 as amended. Electrical design, as applicable, shall comply with the National Electrical Code as amended.
- 4) Upon request of the Applicant, the Board of Adjustment or Zoning Administrator may waive the requirement that new Wireless Support Structures accommodate the Collocation of other service providers if it finds that Collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer Antennas will promote community compatibility.
- 5) A Monopole or Replacement Pole shall be permitted within utility easements or rights-of-way in the General Business (GB) zoning district, in accordance with the following requirements:
 - a. The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
 - b. The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
 - c. The height of the Monopole or Replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures, subject to the maximum height of one hundred fifty feet (150).
 - d. Monopoles and the Accessory Equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.

- e. Single carrier Monopoles may not be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (c) above.
- f. Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to twenty (20) feet above the height of the utility pole.

B. Setbacks

- 1) Unless otherwise stated herein, each Wireless Support Structure shall be set back from all property lines a distance equal to its engineered fall zone.

C. Height

- 1) Allowed in the General Business (GB) zoning district only, Monopole Wireless Support Structures shall not exceed a height equal to one hundred fifty (150) feet from the base of the structure to the top of the highest point, including appurtenances. Notwithstanding the foregoing, the Board of Adjustment shall have the authority to vary the foregoing height restriction upon the request of the applicant. With its waiver request the Applicant shall submit such technical information or other justifications as are necessary to document the need for the additional height to the satisfaction of the Board of Adjustment.

D. Aesthetics

- 1) Lighting and Marking. Wireless Facilities or Wireless Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- 2) Signage. Signs located at the Wireless Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this Ordinance shall prohibit signage that is approved for other uses on property on which Wireless Facilities are located (e.g., approved signage at locations on which Concealed Facilities are located).

E. Accessory Equipment. Accessory Equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the Wireless Facility or Wireless Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site. Any HVAC and electrical generation equipment shall be located and sufficiently shielded so as to provide as quiet an environment as possible in keeping with the most current technology.

F. Fencing

- 1) Ground mounted Accessory Equipment and Wireless Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height and constructed of wood, as deemed appropriate by the Board of Adjustment or Zoning Administrator.

- 2) The Board of Adjustment or Zoning Administrator may waive the requirement of Section V.F.1 if it is deemed that a fence is not appropriate or needed at the proposed location.

G. Buffer and Landscaping

- 1) When a Wireless Support Structure is proposed adjacent to a residential area, a buffer zone shall be landscaped as follows. Buffers shall consist of planting evergreen and or deciduous trees spaced no more than thirty feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one-half (1 ½) inch caliper (trunk measured six (6) inches above the grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, planting of low growing shrubs, and/or trees shall be placed at ten (10) feet intervals. The buffer zone cannot be within the road right-of-way.

VI. Miscellaneous Provisions

- A. Abandonment and Removal. If a Wireless Support Structure is Abandoned, and it remains Abandoned for a period in excess of twelve (12) consecutive months, the Town of Seven Devils may require that such Wireless Support Structure be removed only after first providing written notice to the owner of the Wireless Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Wireless Support Structure within sixty (60) days of receipt of said written notice. In the event the owner of the Wireless Support Structure fails to reclaim the Wireless Support Structure within the sixty (60) day period, the owner of the Wireless Support Structure shall be required to remove the same within six (6) months thereafter. The Town of Seven Devils shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.
- B. Multiple Uses on a Single Parcel or Lot. Wireless Facilities and Wireless Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

VII. Wireless Facilities and Wireless Support Structures in Existence on the Date of Adoption of this Ordinance

- A. Wireless Facilities and Wireless Support Structures that were legally permitted on or before the date this Ordinance was enacted shall be considered a permitted and lawful use.
- B. Activities at Non-Conforming Wireless Support Structures. Notwithstanding any provision of this Ordinance:
 - 1) Ordinary Maintenance may be performed on a Non-Conforming Wireless Support Structure or Wireless Facility.

- 2) Collocation of Wireless Facilities on an existing non-conforming Wireless Support Structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the Administrative Approval process defined in Section IV; provided that the collocation does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing non-conformity.
- 3) Substantial Modifications may be made to non-conforming Wireless Support Structures utilizing the Conditional Use Permit process defined in Section V of this Ordinance.

VIII. Applicability

All documents in the Town of Seven Devils referencing regulations of Communication Towers, including references in the Unified Development Ordinance, are superseded by this Wireless Telecommunications Ordinance.