



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, pursuant to N.C.G.S. § 160A-174 the Town may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

WHEREAS, pursuant to N.C.G.S. § 160A-400.51A the Town may plan for and regulate the siting or modification of wireless support structures and wireless facilities in accordance with land development regulations and as authorized specifically by the general statutes; and

WHEREAS, the Town may also review and approve applications to construct, modify, or maintain wireless support structures, or construct, modify, maintain, or collocate wireless facilities on a wireless support structure based on consideration of land use, public safety, and zoning considerations, including aesthetics, landscaping, structural design, setbacks, and fall zones, or State and local building code requirements, consistent with the provisions of federal law provided in G.S. 160A-400.50; and

WHEREAS, a text amendment was initiated by the Planning Board at the request of Planning Staff to address and regulate the placement of "Small Wireless Facilities" within the Town.

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Zoning Ordinance and Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Telecommunications Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Town Code Section 48-7, Definitions of Specific Words and Terms**, be amended by inserting or amending the following definitions:

Applicable Codes means The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

Application, Wireless Facilities means a request that is submitted by an applicant to the town for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, town utility pole, or wireless support structure.

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

Building Permit means an official administrative authorization issued by the town prior to beginning construction consistent with the provisions of G.S.160A-417.

Town rights-of-way means a rights-of-way owned, leased, or operated by the town, including any public street or alley that is not part of the State highway system.

Town utility pole means a pole owned by a town in the town rights-of-way that provides lighting, traffic control, or similar function.

Collocation or collocated means the installation of new antenna arrays on previously approved structures, including towers, buildings, utility poles, and water tanks; the placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, town utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, town utility poles, or wireless support structures.

Communication facility means the set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

Communications service means cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

Communications service provider means a cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

Communication tower, major, means any tower over 70 feet in height, measured from ground level to the highest point intended for transmitting or receiving radio, television or telephone or wireless communications.

Communication tower, minor, means any tower 70 feet or less in height, measured from ground level to the highest point intended for transmitting or receiving radio, television or telephone or wireless communications.

Concealed building mounted antenna means a building mounted antenna or antenna array which is concealed by but not limited to, being located beneath the roof line, being screened behind an opaque facade, or blended into the building structure with faux windows, dormers or other architectural features that appear as part of the existing or proposed structure so that the antenna or antenna array is not visible by ordinary observation from the ground at the perimeter of the property boundary in any direction (360 degrees).

Eligible facilities request means a request for modification of an existing wireless tower or a base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

Equipment compound means an area surrounding or near the base of wireless support structure within which a wireless facility is located.

Fall Zone means 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.

Land development regulation means any ordinance enacted pursuant to Part 3E of Article 19 of Chapter 160A of the North Carolina General Statutes.

Micro wireless facility means a small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Monopole means a slender self-supporting communications tower consisting of a single pole.

Search ring means the area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

Small wireless facility means a wireless facility that meets both of the following qualifications:

- a. Each antenna is located inside an enclosure of no more than six cubic in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements, if enclosed, could fit within an enclosure of no more than six cubic feet.
- b. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements,

communications demarcation boxes, ground based enclosures, grounding equipment, power transfer switches, cut off switches, vertical cable runs for the connection of power and other services, or other support structures.

Substantial modification means the mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

- a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.
- 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 a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
- c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

Utility pole means a structure that is designed for and used to carry lines, cables, wires, lighting facilities, or small wireless facilities for telephone, cable television, electricity, lighting or wireless services.

Water tower means a water storage tank, 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 means equipment at a fixed location that enables wireless communications between use 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 city utility poses or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider means any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider means a wireless infrastructure provider or a wireless services provider.

Wireless services means any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

Wireless services provider means a person who provides wireless services.

Wireless support structure means a new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole or a city utility pole is not a wireless support structure.

PART II. That **Town Code Section 48-380, Wireless Telecommunications Facilities**, be added as follows:

(A) *Intent.*

- (1) The purpose of this section is to establish general guidelines for the siting of wireless telecommunications facilities.
- (2) The goals of this section are to:
 - (a) Encourage the location of wireless telecommunications facilities 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) Encourage the location of telecommunications facilities and antennas, to the extent possible, in areas where the adverse impact on the community is minimal;
 - (d) Encourage the location of telecommunications facilities and antennas in configurations that minimize the adverse visual impacts of the facilities and antennas;
 - (e) 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) Requirements for wireless telecommunications sites, new wireless support structures or substantial modification of wireless support structures. All wireless telecommunications sites, new wireless support structures or substantial modification of wireless support structures located within the town must comply with the following requirements:
- (1) Safety standards. All proposed telecommunications towers, new wireless support structures or substantial modification of wireless support structures and wireless facilities shall comply with all applicable federal, state and local laws including specifically the following:
 - (a) Federal Communications Commission standards, rules and regulations;
 - (b) Federal Aviation Administration standards, rules and regulations;
 - (c) N.C.G.S. 160-400.50 et. seq.;
 - (d) The North Carolina Building Code
 - (e) Accepted industry standards for wind loading, base stabilization and other critical engineering characteristics as defined by American National Standards Institute (ANSI), Telecommunications Industry Association (TIA) and Electronic Industry Alliance (EIA) 222-G or its successors.
 - (2) Use guidelines and dimensional requirements.
 - (a) Permissible uses. Wireless telecommunications facilities shall only be permitted as follows:
 - (1) In accordance with the table of permitted uses contained in Town Code Section 48-401;
 - (2) As a collocation of wireless facilities upon an existing permitted wireless telecommunications site; or
 - (3) In accordance with the standards in this section pertaining to small wireless facilities.
 - (b) Collocation.
 - (1) Collocation of new antennas, wireless facilities and other equipment on an existing wireless support structure or structure within the applicant's search ring shall be required whenever reasonably feasible. Collocation is not reasonably feasible if an applicant can show it is technically or commercially impractical for the applicant to collocate or if the owners of all of the telecommunication towers within the applicant's search ring where collocation would be technically practical are unwilling to enter into a contract for such use at a fair market value.
 - (2) Minor telecommunication towers including the structure and fenced compound shall be designed to accommodate the wireless facilities of at least one provider plus space for emergency communication antennas used by the town's police and fire service provider.
 - (3) Major telecommunication towers including the structure and fenced compound shall be designed to accommodate collocation of the wireless facilities of at least three

providers plus space for emergency communication antennas used by the town's police and fire service provider.

- (4) There is no requirement for small wireless facilities to collocate antennas for other wireless service providers or to provide in kind services for emergency communication antennas used by the town's police and fire services.

(3) Small wireless facilities.

- (a) Standards. Small wireless facilities and utility poles installed to support small wireless facilities shall comply with the following requirements:

- (1) Small wireless facilities shall be a permitted use in all rights-of-way and on properties containing uses other than single-family dwellings. Small wireless facilities shall be a conditional use on properties developed as single-family dwellings.
- (2) 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. A new small wireless facility on private property may not exceed the applicable height limit for the district in which it is located.
- (3) 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 (R-1, R-2, R-3, SPD-20, SPD-C) 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.
- (4) Maximum Size. Poles, utility poles, and/or ground mounted equipment supporting and/or necessary for the operation of a small wireless facility must conform to the size and height limitations for a small wireless facility, poles or utility poles as contained in this section.
- (5) Spacing and setbacks. To minimize the adverse visual impacts associated with the proliferation of above-ground small wireless facilities, no utility pole located in the right-of-way supporting a small wireless facility shall be located within six hundred (600) feet of any other utility pole located in the right-of-way supporting a small wireless facility or utility pole supporting a small wireless facility that is NOT within a right-of-way. On private property, poles supporting small wireless facilities shall meet the applicable yard requirements for the district in which it is located.
- (6) 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.
- (7) 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.
- (8) 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 section.

(b) Other Requirements.

- (1) Small wireless facilities shall be located such that they do not interfere with a 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 or within an area that would impair the installation of planned sidewalk improvements.
 - (2) 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.
 - (3) Wireless providers shall repair all damage to a town rights-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city utility poles, or utility poles and to return the rights-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the town within a reasonable time after written notice, the town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The town may maintain an action to recover the costs of the repairs.
 - (4) Consent required for use of private property. No person may place, maintain, modify, operate, or replace a privately owned utility pole or wireless support structure or collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.
 - (5) Approval under this section relates only to small wireless facility. The approval of the installation, placement, maintenance, or operation of a small wireless facility does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the rights-of-way.
- (c) Application process for small wireless facilities located within public rights-of-way or on properties containing uses other than single-family dwellings.
- (1) 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.
 - (2) An application must include an attestation that the small wireless facilities shall be collocated on a utility pole, town 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.
 - (3) A permit application shall be deemed complete unless the town provides notice otherwise in writing to the applicant within 30 days of submission or within some

other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.

- (4) The permit application shall be processed on a nondiscriminatory basis and 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.
- (5) An application may only be denied on the basis that the proposed activity is inconsistent with any of the following:
 - Interferes with the safe operation of traffic control equipment;
 - Interferes with sight lines or clear zones for vehicles or pedestrians;
 - Interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - 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
 - Fails to comply with the requirements and design standards outlined in this Chapter and other applicable codes, including screening of ground-mounted equipment.
- (6) If an application is denied, the town must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the town denies an application. The applicant may cure the deficiencies identified by the town and resubmit the application within 30 days of the denial without paying an additional application fee. The town shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.
- (7) 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.
- (8) 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 Town Code Section 48-380 (B)(3)(c) 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.
- (9) The town may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the town for permitting of any similar activity; or (iii) \$100.00 per facility for the first five small wireless facilities addressed in an application, plus \$50.00 for each additional small

wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the town has the burden of proving that the fee meets the requirements of this subsection.

(d) Applications for small wireless facilities located on property developed with single-family dwellings.

- (1) Applicants shall submit all relevant information as required in Town Code Section 48-380 (B)(3)(c) above.
- (2) The application shall be reviewed in accordance with the requirements for conditional uses as prescribed in Town Code Section 48-525.

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

- (1) 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.
- (2) 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.
- (3) Removal of Abandoned Facilities. A wireless services provider shall remove an abandoned wireless facility within 180 days of abandonment. 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. For the purposes of this subsection, 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.

PART III. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 5th day of September 2018.

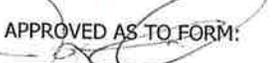


Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:


Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:


John Leidy, Town Attorney



Date adopted: September 5, 2018

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS