



# **POLK COUNTY WIRELESS TELECOMMUNICATIONS ORDINANCE**

Adopted: June 2, 2014; Amended: January 24, 2017<sup>1</sup>, July 16, 2018<sup>2</sup>, March 18, 2019<sup>3</sup>,  
March 16, 2020<sup>4</sup>, May 3, 2021<sup>5</sup>

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## **ARTICLE I**

### **Section 101. Title.**

This Ordinance shall be known as “The Wireless Telecommunications Ordinance” of Polk County, North Carolina.

### **Section 102. Authority and Enactment.**

This Ordinance is adopted under the authority and provisions of the Wireless Telecommunication Facilities, North Carolina General Statutes 160 D, Article 9, Part 3. Wireless Telecommunication Facilities.<sup>4</sup>

### **Section 103. 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 Polk County have reliable access to telecommunications networks and state of the art mobile broadband communications services. However, the construction of towers may cause unusual problems and hazards to the residents and visitors of Polk County. The ordinance is to regulate the construction of towers to avoid potential damage to adjacent properties from tower failure, and falling ice or other such debris, to maximize the use of existing and new towers in order to reduce the number of towers needed, to minimize potential hazards to low flying law enforcement and medical helicopters, to restrict towers that adversely detract from the natural beauty of the county by discouraging visual eyesores and to minimize the negative economic impact on tourism. By enacting this Ordinance it is Polk County’s intent to minimize impacts on surrounding areas, encourage coordination among suppliers of telecommunications, encourage the use of existing buildings and structures as locations for telecommunications facilities, ensure structural integrity and safety, ensure Polk County has sufficient wireless infrastructure to support its public safety communications throughout the County, and to ensure access to reliable wireless communications services throughout all areas of Polk County.

### **Section 104. Jurisdiction.**

This Ordinance, the regulations and the procedures contained herein shall apply to and govern each and every lot, parcel or tract of land within the County of Polk, outside of the jurisdiction and ETJ of any incorporated municipality.

## **ARTICLE II**

### **Section 201. Definitions.**

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 Planning Director or designee is authorized to grant after administrative review.

*Administrative Review* - Non-discretionary evaluation of an application by the Planning Director or designee.<sup>2</sup> The procedures for administrative review are established in Section 303 of this Ordinance.

*Antenna* - Communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

*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 (COWs are exempt from zoning regulations). For the purposes of this ordinance, temporary shall be defined as limited to 60 days within a 365-day period.<sup>3</sup>

*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.

*Eligible Facilities Request* - A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

*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 an eligible facilities request, collocation or substantial modification under this ordinance that is capable of supporting the attachment of wireless facilities. The term includes but is not limited to, electrical transmission towers, buildings and water towers.<sup>2,3</sup>

*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.

*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.

*Public Safety Facilities* - For the purpose of transmitting and relaying critical voice and data communications for public safety including but not limited to emergency services, law enforcement and fire protection services.<sup>4</sup>

*Replacement Pole (Tower)* - Pole (tower)<sup>4</sup> of equal proportions and of equal height<sup>4</sup> 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.

*Small Wireless Facilities* - Facilities that meet the following conditions:<sup>2, 3</sup>

- (1) The facilities—
  - (a) are mounted on structures 50 feet or less in height including their antenna facility, or
  - (b) are mounted on structures no more than 10 percent taller than other adjacent structures, or
  - (c) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater;
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume;
- (4) The facilities do not require antenna structure registration under the FCC and FAA; and
- (5) The facilities do not result in human exposure to radiofrequency radiation in excess of the applicable safety standards.

*Substantial Modification* - The mounting of a proposed wireless facility or wireless facilities 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 following criteria:

- (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;
- (ii) adds 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);
- (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.

*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 new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities.<sup>2</sup>

## **ARTICLE III**

### **Section 301. Permits Required for Wireless Facilities and Wireless Support Structures.**

No wireless facility or wireless support structure shall be constructed, altered, reconstructed or expanded in Polk County without a valid Wireless Facility and Wireless Support Structure Permit as provided in this Ordinance.

Provided, however, no permit shall be required for the following:<sup>4</sup>

- (1) *Public Safety Facilities.* A wireless facility or wireless support structure associated with a public safety facility so long as it complies with the following:
  - (a) The wireless facility or support structure shall not exceed 200' in height.
  - (b) A fall zone as defined in the Ordinance shall be provided and shall only encroach on property owned by the State of North Carolina or a local government.
  - (c) Additional antennas may be collocated on public safety facilities provided they meet the requirements of Section 302.
  - (d) Replacement poles located on property owned by the State of North Carolina or a local government.
- (2) *Amateur Radio Antennas and Antenna Support Structures.* Amateur radio antennas or antenna support structures of amateur radio operators to heights of 90 feet or lower.

### **Section 302. Administrative Review and Approval.**

The following types of permit applications are subject to the review process as provided in Section 303:

- (1) New wireless support structures that are less than sixty (60) feet in height as measured from the ground;
- (2) Replacement poles located on public property or within utility easements or rights-of-way;
- (3) COWs;
- (4) Collocations;
- (5) Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification as defined in this ordinance;
- (6) Ordinary maintenance of existing wireless facilities and wireless support structures, as defined in this Ordinance; and
- (7) Small Wireless Facilities including facilities placed on utility poles.<sup>2,3</sup>

### **Section 303. Administrative Review.**

- (1) *Content of Application Package-For New Sites.* All administrative review application packages must contain the following (if applicable):
  - (a) Administrative review application form signed by applicant;

- (b) Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue application. Such submissions need not disclose financial lease terms;
  - (c) Drawings which must depict improvements related to the applicable requirements including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements; and
  - (d) Documentation from a licensed professional engineer of calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this ordinance.
- (2) *Content of Application Package-For Other Sites/Facilities.* All administrative review application packages must contain the following:
- (a) Administrative review application form signed by applicant; and
  - (b) For collocations, written verification from a licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas, or a fall zone that measures at a minimum within the parcels lot lines, a circle whose center is the base of a telecommunications tower and whose radius is equal to one and one-half the tower's height documented by a N.C. licensed engineer and shall be marked by signage indicating the perimeters of the fall zone.<sup>1</sup>
  - (c) For Carrier on Wheels or Cell on Wheels (COW) drawings must depict improvements related to the applicable requirements including boundaries, setbacks, topography, elevation sketch and dimensions of COW. Height of which shall not exceed 120', and must be located 150' from any structure and 150' from any property line.<sup>3</sup>
- (3) *Procedure and Timing.*
- (a) Applications for Administrative Approval. Within ten (10) days of the receipt of an application for a small wireless facility and thirty (30) days of the receipt of an application otherwise subject to administrative approval, the Planning Director will <sup>2,3</sup>:
    - (i) Review the application for conformity with this Ordinance. An application under this Section 303 is deemed to be complete unless the Planning Director notifies the applicant in writing, within ten (10) 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 ten (10) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within ten (10) calendar days, the application shall be reviewed and processed within thirty (30) calendar days from the initial date the application was received. If the applicant requires a period of time beyond ten (10) calendar days to cure the specific deficiencies, the thirty (30) calendar days deadline for review shall be extended by the same period of time;
    - (ii) Make a final decision to approve or disapprove the application; and
    - (iii) Advise the applicant in writing of its final decision. If the Planning Director denies an application, it must provide written justification of the denial, which must be based on substantial evidence of inconsistencies between the application and this Ordinance.
    - (iv) Failure to issue a written decision within thirty (30) calendar days shall constitute an approval of the application.

- (4) *Wireless Facility & Wireless support Structure Permit.* A Wireless Facility & Wireless Support Structure Permit shall be issued following approval of the application under administrative review in accordance with the process and standards in this Ordinance.
- (5) *Appeals of Administrative Decisions.* Appeals of administrative decisions shall be filed with the Planning Director within 30 days of the date of the written decision. Appeals of administrative decisions shall be heard by the Board of Adjustment.

**Section 304. Board of Adjustment – Non-Administrative.**

- 1) Any wireless facility or wireless support structures not meeting the requirements of Section 303 above, may be permitted upon the granting of a Wireless Facility and Wireless Support Permit by the Board of Adjustment, subject to:
  - (a) The submission requirements of Section 303 (1), and 304;
  - (b) The applicable standards of Section 304 below;
  - (c) A completed application and five (5) copies of all supporting documentation identified in Section 304 shall be submitted to the Planning Director for review at least thirty (30) days prior to a regularly scheduled Board of Adjustment meeting or special called meeting by the Board of Adjustment;
  - (d) The Planning Director shall review the completed application for compliance with Section 304. Any application not containing all information required by Section 304 shall be returned to the applicant for correction and resubmission. If the Planning Director deems it necessary, they may retain, at the permit applicant's expense, one or more professional engineers to assist them in reviewing any technical requirements;
  - (e) The Planning Director shall be responsible for submitting a notice to the local newspapers and to all known property owners abutting the property where the proposed tower is to be located. The notice shall state that the Board of Adjustment will review and consider the application at their next meeting;
  - (f) The Board of Adjustment shall consider the application at their next regularly scheduled or special called meeting.
  - (g) The Board of Adjustment shall conduct a quasi-judicial hearing on the application and shall allow any interested party to appear, either in person or by agent or attorney.
  - (h) After the quasi-judicial hearing, the Board of Adjustment shall within forty-five (45) days take action on the permit application based on consideration of substantial evidence contained in the record. The Board shall either (1) deny it, (2) approve it, or (3) approve it subject to one or more conditions. A majority of the members shall be required to render a decision. Upon rendering a decision on the permit application, the Board shall issue a notice of decision with written findings of fact as to whether the proposed use meets each of the criteria listed in Section 304. If the Board of Adjustment fails to act within the specified time period, the application shall be considered approved;
  - (i) The permittee or its agent shall record the Site Development Plan in the Register of Deed's office before obtaining a building permit for the subject tower. If a building permit is not obtained within twenty-four (24) months after the wireless facility and wireless support structure permit is issued, the permit shall expire.
- (2) Content of Permit Application Package. All permit application packages must contain the following:



- (a) *Site Development Plan.* A site development plan prepared by a NC Registered Land Surveyor containing the following:
- (i) The tower applicant's name and property owner's name and their addresses, scale, north arrow, vicinity map, tax parcel identification number, and the tower's latitude and longitude coordinates.
  - (ii) The name, address, signature and seal of the surveyor preparing the site development plan.
  - (iii) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall zone.
  - (iv) The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
  - (v) All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
  - (vi) All existing towers on the property or any towers whose fall zone encroaches onto the property.
  - (vii) The proposed tower's location, the proposed fall zone and the location of all support structures and guy line anchors.
  - (viii) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the most recent available datum.
  - (ix) All proposed access roads, easements or right-of-ways on or to the site, and any other improvements to the site.
- (b) *Preliminary Design Plan.* A preliminary tower design plan prepared by a NC Registered Professional Engineer which shall contain the following:
- (i) The applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.
  - (ii) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.
  - (iii) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings and any other proposed improvements including access roads and utility connections within and to the proposed site.
  - (iv) A tower elevation showing the proposed lighting, all proposed antennas and other appendages.
  - (v) An elevation of each proposed set of guy line anchors.
  - (vi) The proposed tower design loads.
  - (vii) A map and description showing the service area(s) for the proposed tower's antenna(s) and/or other devices.
- (c) Wireless support structures shall be subject to the following:
- (i) Shall be engineered and constructed to accommodate a minimum number of collocations based upon their height:

1. Support structures sixty (60) to one hundred (100) feet shall support at least two (2) telecommunications providers;
  2. Support structures greater than one hundred (100) feet but less than one hundred-fifty feet (150) shall support at least three (3) telecommunications providers;
  3. Support structures greater than one hundred-fifty (150) feet in height shall support at least four (4) telecommunications carriers.
- (ii) 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 304(9).
- (3) *FAA and FCC Compliance Statements.* The applicant shall provide written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations.
  - (4) *Fees.* The total fees for reviewing a non-administrative permit application shall be in accordance with the fee schedule as set by Polk County. Applications for new wireless support structures with proposed wireless facilities shall be considered together as one application requiring only a single application fee.
  - (5) 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.
  - (6) *Setbacks.* Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone. Property located within the tower's fall zone shall not be subdivided as long as the tower is standing.
  - (7) *Height.* Wireless support structures shall not exceed a height equal to two hundred (200) feet from the base of the structure to the top of the highest point, including appurtenances.
  - (8) *Aesthetics.*
    - (a) *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).
    - (b) *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).
    - (c) *Structure.* Tower colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable Federal or State regulations. The tower and equipment shall be located, designed, and/or screened to blend with the existing natural, or built surroundings to reduce the visual impacts, and to be compatible with neighboring land uses and the character of the community.<sup>2, 3</sup>
  - (9) *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.

- (10) *Fencing.* Ground mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than eight (8) feet in height.

## **ARTICLE IV**

### **Section 401. Miscellaneous Provisions.**

- (1) **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 County 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 County shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.
- (2) **Variance.** When unnecessary hardships would result from carrying out the strict letter of this ordinance, an applicant may submit a completed application for a variance in accordance with Article X, of the Polk County Zoning Ordinance. The Board of Adjustment shall hear and decide all variance requests in accordance with Article X, of the Polk County Zoning Ordinance.
- (3) **Appeals.** The Board of Adjustment shall hear and decide appeals of administrative decisions arising out of this ordinance in accordance with Article X, of the Polk County Zoning Ordinance.
- (4) **Decisions of the Board of Adjustment shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402.<sup>5</sup>** A petition for review shall be filed with the Clerk of Superior Court by the later of thirty (30) days after the decision is effective or after a written copy thereof is given in accordance with Section 10.8.1 of this subsection. When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

## **ARTICLE V**

### **Section 501. Wireless Facilities and Wireless Support Structures in Existence on the Date of Adoption of this Ordinance.**

- (1) 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.
- (2) **Activities at Non-Conforming Wireless Support Structures.** Notwithstanding any provision of this Ordinance:
  - (a) Ordinary maintenance may be performed on a non-conforming wireless support structure or wireless facility.
  - (b) 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 303; 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.

- (c) Substantial modifications may be made to non-conforming wireless support structures utilizing the non-administrative permit process defined in Section 304 of this Ordinance.

## **ARTICLE VI**

### **Section 601. Severability**

Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

### **Section 602. Conflict with Other Laws**

Whenever the regulations of this Ordinance conflict with the requirements of another North Carolina or federal statute or Polk County Ordinance, the more restrictive standard shall govern.

### **Section 603. Effective Date**

This Ordinance shall take effect and be in force on the 3<sup>rd</sup> day of May, 2021, adopted on the 3<sup>rd</sup> day of May, 2021.

\_\_\_\_\_  
Commission Chair

Attest:

\_\_\_\_\_  
Clerk to the Board

Approved as to content & form:

\_\_\_\_\_  
County Attorney