

TELECOMMUNICATIONS TOWER ORDINANCE

OF

MCDOWELL COUNTY

Article I - General Requirements

Section 1. Title

This Ordinance shall be known as "The Telecommunications Tower Ordinance" of McDowell County, North Carolina.

Section 2. Purpose

The Board of Commissioners finds that the construction of telecommunications towers may cause unusual problems and hazards to the residents and visitors of McDowell County. The purpose of this Ordinance is to regulate the construction of telecommunications towers to avoid potential damage to adjacent properties from tower failure and falling ice, 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 mountains by discouraging visual eyesores and to minimize the negative economic impact on tourism.

Section 3. Authority and Enactment

This Ordinance is adopted under the authority and provision of the General Statutes of the State of North Carolina Chapter 160D.

Section 4. Jurisdiction

This Ordinance shall apply to all areas of McDowell County located outside the planning jurisdiction of any incorporated city or town. Municipalities within McDowell County may elect to allow this Ordinance to be effective within their corporate limits and planning jurisdiction.

Section 5. Definition of Terms

Adjacent Valley Floor. The adjacent valley floor is the valley (refer to the NC Ridge Law) nearest by air distance to the major mountain ridge or peak.

Antenna. A conductor by which electromagnetic waves are transmitted or received.

Construction. Any new construction, reconstruction, alteration or expansions requiring a building permit in accordance to NC Building Code.

Crest. The uppermost line of a mountain or chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

Existing Vegetative Canopy. The existing vegetative plants, trees or shrubs at the site specific location of the proposed communication tower site, that will provide natural camouflage, concealment, or otherwise “hide” the communication tower after it’s construction. This vegetative canopy will also be used to determine the allowable height of the proposed communication tower.

Fall Area. A circle whose center is the base of a telecommunications tower and whose radius is equal to the tower's height.

Person. Any individual, partnership, firm, association, joint venture, public or private institution, utility, cooperative, interstate body, the State of North Carolina, and its agencies and political subdivision, or other legal entity.

Protected Mountain Ridges. All mountain ridges in McDowell County whose elevation is 1,950 feet or more and whose elevation is 300 or more feet above the elevation of an adjacent valley floor. The mountain ridge identified as Grant Mountain on the USGS 7.5 minute East Marion, N.C. topographic map is exempt from this definition and shall not be considered a protected mountain ridge.

Resident. Any person residing, doing business or maintaining an office within McDowell County.

Ridge. The elongated crest or series of crests at the apex or uppermost point of intersection between two opposite slopes or sides of a mountain, and includes all land within 100 feet below the elevation of any portion of such line or surface along the crest.

Structure. Anything constructed or erected, including but not limited to buildings, that requires location on the land or attachment to something having permanent location on the land.

Telecommunications Tower (hereinafter known as "tower"). Any tower or structure erected for the purpose of supporting one or more antennas designed to transmit or receive signals (e.g., telephonic, radio, television or microwave).

Tower Height. The vertical distance measured from ground to the upper most point of the telecommunications tower and any antenna affixed thereto.

Viewshed. An unobstructed sight of, or the range of one’s sight while traveling, visiting, driving or otherwise using the natural or man-made resources of the Blue Ridge Parkway

(BRP). For the purposes of this ordinance, the viewshed distance is one (1) air mile from the outermost boundary of the BRP.

Section 6. Enforcement Officer

The County Manager shall appoint an Enforcement Officer. The Enforcement Officer or his appointee shall administer and enforce all provisions of this Ordinance.

Article II - Standards and Requirements

Section 7. Permits Required

It shall be unlawful for any person, corporation, partnership or other entity to erect any communication tower without first obtaining a permit from the Enforcement Officer. A permit shall be required for the erection of a replacement tower or the modification of an existing tower. Existing towers owned by governmental agencies and designed for non-commercial emergency communications may be replaced with a tower equal in height to the replaced tower. AM and FM radio towers and towers operated by a federally-licensed amateur radio station operator shall be excluded from this ordinance and shall not require a permit prior to construction.

Section 8. Permit Application

Telecommunications Tower Permit Applications are available from McDowell County Building Inspectors office or the office of the Planning Administrator.

Section 9. Application Fee

A fee for reviewing tower permit applications shall be established by the Board of Commissioners.

Section 10. Application Submission and Review Process

10.1 A completed tower permit application and one (1) copy for each Planning Board member plus one (1) copy for staff of all supporting documentation identified in Section 11 shall be submitted to the Enforcement Officer for review at least fifteen (15) working days prior to a regularly scheduled Planning Board meeting.

10.2 The Enforcement Officer shall review the completed tower permit application for compliance with Section 11. Any application not containing all information required in Section 11 shall be returned to the applicant for correction and resubmission. If the Enforcement Officer deems it necessary, he may retain, at a reasonable expense to the permit applicant, one or more professional engineers to assist him in reviewing any technical requirements.

10.3 The Enforcement Officer shall recommend to the Planning Board either approval, approval with conditions or disapproval. In making his recommendation, the Enforcement Officer may include any appropriate conditions he deems should be placed on issuing the permit as identified in Section 13.

10.4 The Planning Board will be presented with the tower permit application at their next regularly scheduled meeting after receiving the Enforcement Officer's recommendation.

10.5 The Planning Board shall take formal action to approve, approve with conditions or disapprove the tower permit application within sixty (60) calendar days. If the action is to disapprove the tower permit application, the reasons for such action shall be stated in the minutes and specific reference shall be made to the requirements not met. If the Planning Board fails to act within the specified time period, the application shall be considered approved or disapproved as recommended by the Enforcement Officer.

Section 11. Requirements for Site Development and Preliminary Tower Design Plans

The site development plan and preliminary design plan shall contain the following information and be part of the tower permit application.

11.1 The site development plan shall be prepared by a N.C. Registered Land Surveyor and contain the following:

- (1) 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.
- (2) The name, address, signature and seal of the surveyor preparing the site development plan.
- (3) The surveyed boundary lines of the parcel(s) that will contain the proposed tower and its fall area.
- (4) The name, addresses and tax parcel identification numbers of all owners of property abutting the subject property.
- (5) All identifiable structures located on the parcel, all private and public roads, highways, and underground and overhead utilities.
- (6) All existing towers on the property or any towers whose fall area encroaches onto the property.
- (7) The proposed tower's location, the proposed fall area and the location of all support structures and guy line anchors.

(8) The ground elevation of the proposed tower's base, all proposed support structures, property corners, and a permanent site benchmark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929.

(9) The height of the existing vegetative canopy surrounding the proposed tower.

11.2 The preliminary tower design plan shall be prepared by a N.C. Registered Professional Engineer and contain the following:

(1) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number.

(2) The name, address, signature and seal of the engineer preparing the preliminary tower design plan.

(3) 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.

(4) A tower elevation showing the proposed lighting, tower color and all proposed antennas.

(5) An elevation of each proposed set of guy line anchors.

(6) The proposed tower design loads.

11.3 A map or description showing the service area(s) for the proposed tower's antenna(s).

11.4 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.

11.5 The applicant shall identify all other possible alternatives considered within the service area for the proposed tower's antenna(s) and explain why the proposed tower is necessary and why existing towers and structures (e.g., Duke Power transmission towers) can not accommodate the proposed antenna(s).

11.6 The applicant shall identify any variance(s) to the ordinance, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse affects of the proposed variance(s).

Section 12. Issuance of Permit

Following the Planning Board's approval of any tower permit application not requesting a variance, the Enforcement Officer shall issue a tower permit. All tower permit conditions shall appear on the face of the Site Development Plan. The permit owner shall acknowledge and agree to permit conditions approved by the Planning Board. If a building permit is not obtained within twelve (12) months after the tower permit is issued, the tower permit shall expire. No permit under the state building code shall be issued until or unless any tower permit required by this ordinance is granted.

Section 13. Tower Approval Standards

13.1 Reserved.

13.2 Towers shall be sited to contain all ice-fall or debris from tower failure on-site. The applicant must present to the Planning Board proof of either fee simple ownership, a recorded leasehold interest, or an easement from the record property owner of all property within a radius of one time the height of the tower.

13.3 Lighting on towers shall not be permitted except as required by Federal and State regulations.

13.4 The base of the tower shall be surrounded by a fence or wall at least eight (8) feet in height unless the tower is constructed entirely on a building over eight (8) feet in height.

13.5 The tower shall be engineered and constructed to accommodate at least one additional antenna that are at least as large as the largest proposed antenna.

13.6 Tower permit approval is conditional subject to the owner(s) agreeing to allow future collocation of other antenna(s) on the tower to be permitted as well as any other tower in McDowell County in the possession of the owner(s).

13.7 No tower shall exceed one hundred ninety nine feet (199') in height.

13.8 An applicant must collocate unless there is substantial evidence that collocation is either infeasible or impossible. The following is a hierarchy of preferred locations for new towers or new antennae beginning with the most preferred locations.

- a) Existing tower sites.
- b) Public Buildings and Lands
- c) Existing buildings or structures

d) Co-location on sites other than Protected Mountain Ridges.

13.9 Colors of towers shall be determined by each site specific location. Any permitted tower shall be of a color which will best accomplish its concealment, usually light gray, except when otherwise required by applicable Federal or State regulations.

13.10 An applicant for a wireless communication facility that includes a new or additional communication tower, increases in tower height, or for increases in height of alternative structures, shall be required to post a performance bond, or other security satisfactory to the County, to secure costs of removing all above ground portions of a wireless communication facility (not including any part of the foundation) in the event the applicant shall fail to do so within 120 days of cessation of operation of the facility. The amount of the bond shall be equal to the documented cost of construction unless a higher amount is deemed necessary. The applicant shall be required to continue such bond or other security until such time as the facility has been removed. Private business users operating a single wireless communication facility at their principal place of business and governmental users are exempt from the bond requirement. The amount of the bond will be equal to the funds sufficient for removal, as deemed appropriate by the Board, plus \$5,000 to serve as a penalty fee for failure to notify the Enforcement Officer upon cessation of operations.

13.11 No communications tower site shall be located within the viewshed of the Blue Ridge Parkway (BRP) without first consulting the Superintendent for the BRP. After consulting with the BRP, written documentation referencing the consultations from the BRP about the location of the proposed communications tower site shall be presented to the Enforcement Officer. This is a requirement for a communications tower permit in McDowell County. If no response is obtained from the BRP within sixty (60) days then the permit applicant shall consult with the McDowell County Planning Administrator.

13.12 Any communication tower proposing to locate within the viewshed of the BRP or on any protected mountain ridge or protected mountain peak within McDowell County shall not have a height of twenty (20) feet over the existing vegetative canopy located on that site specific location. If no vegetation exists on the proposed location then the maximum communication tower height in that site specific location shall be thirty-five (35) feet. If possible, extraordinary measures shall be taken to ensure total and complete concealment of the communications tower.

13.13 Reasonable access to the permitted communications tower site location shall be required. The Enforcement Officer shall reserve the right to inspect the site to ensure compliance with this ordinance.

13.14 A sign identifying the owner(s) and operator(s) of the tower and an emergency telephone number shall be placed in a clearly visible location on the premises of the tower.

13.15 The telecommunications tower must be consistent with the public health and public safety and shall promote the general welfare of the county.

13.16 The applicant shall develop the tower in accordance with the permit and with the standards of the ordinance.

13.17 The applicant shall be required to provide an annual report to the McDowell County Tower Enforcement Officer disclosing the names of all wireless communications service providers who are currently operating on all towers owned by the applicant in McDowell County. This report should include the height of all carriers.

Article III - Enforcement

Section 15. Criminal Sanctions

Any person violating this Ordinance shall be guilty of a misdemeanor. Each day's violation of any provision of this Ordinance shall constitute a separate and distinct offense. A violation begins from the date of first written notification by the Enforcement Officer or the County Attorney. Further violations shall be subject, upon conviction, to fine and/or imprisonment as provided by North Carolina General Statute 14-4.

Section 16. Remedies

If a tower is constructed, reconstructed, altered or expanded in violation of this Ordinance, the Enforcement Officer or County Attorney, in addition to other remedies, may institute any appropriate action or proceedings pursuant to G.S. 160D to prevent the unlawful construction, reconstruction, alteration or expansion, and to restrain, correct or abate the violation. The Enforcement Officer or County Attorney may bring such action as to enjoin any such violations by action for injunction.

Section 17. Appeals

Appeals of the decision of the Enforcement Officer may be made to the Planning Board within thirty (30) working days of their action. Appeals of the decision of the Planning Board may be made to Superior Court within thirty (30) working days of their action.

Article IV- Administration

Section 18. 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 19. Conflict with Other Laws

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

Section 20. Effective Date

This Ordinance was revised and shall take effect and be in force on March 8, 2021.

ADOPTED this 8th day of March, 2021.

MCDOWELL COUNTY

Tony G. Brown, Chairman
Board of Commissioners

Attest:

Cheryl N. Mitchell, Clerk to the Board