

**SYNOPSIS OF AMENDING THE CODE OF SOUTH BETHANY BY ADDING A
NEW CHAPTER TO BE ENTITLED WIRELESS FACILITIES TO ESTABLISH
UNIFORM POLICIES AND PROCEDURES FOR THE DEPLOYMENT AND
INSTALLATION OF SMALL WIRELESS FACILITIES IN RIGHTS-OF-WAY
WITHIN THE TOWN OF SOUTH BETHANY'S JURISDICTION WHICH WILL
PROVIDE A PUBLIC HEALTH, SAFETY, AND WELFARE BENEFIT
CONSISTENT WITH THE PRESERVATION OF THE INTEGRITY, SAFE
USAGE, AND VISUAL QUALITIES OF THE TOWN OF SOUTH BETHANY.
ORDINANCE 193-18 (FIRST READING)
(Sponsored by Mayor Saxton)**

The purpose of this ordinance is to establish uniform policies and procedures for the deployment and installation of small wireless facilities in rights-of-way within the Town of South Bethany's jurisdiction which will provide a public health, safety, and welfare benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Town of South Bethany.

ORDINANCE NO. 193-18

AN ORDINANCE TO AMEND the Code of the Town of South Bethany by adding a new chapter to be entitled Wireless Facilities to establish uniform policies and procedures for the deployment and installation of small wireless facilities in rights-of-way within the Town of South Bethany’s jurisdiction which will provide a public health, safety, and welfare benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Town of South Bethany.

BE IT HEREBY ENACTED by the Council of the Town of South Bethany, Sussex County, a majority thereof concurring in Council duly met, that the following ordinance be and hereby is adopted, as follows:

**Chapter 143
"WIRELESS FACILITIES"**

**ARTICLE I
Small Wireless Facilities**

- §143-1. Authority.**
- §143-2. Purpose.**
- §143-3. Definitions.**
- §143-4. Permitted Use and Application.**
- §143-5. Action on Permit Applications.**
- §143-6. Small Wireless Facilities in the ROW; Height Requirements.**
- §143-7. Effect of Permit.**
- §143-8. Removal, Relocation, Expansion or Modification of facilities in the ROW.**
- §143-9. Rates and Fees.**
- §143-10. Miscellaneous.**

**ARTICLE I
Small Wireless Facilities**

§143-1. Authority. This chapter is authorized by § C-4B (29) of the Town Charter.

§143-2. Purpose.

- A. The purpose of this Chapter is to establish uniform policies and procedures for the deployment and installation of small wireless facilities in rights-of-way within the Town of South Bethany's jurisdiction and owned by the Town of South Bethany, or on property, buildings or facilities owned by the Town of South Bethany, which will provide a public health, safety, and welfare benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the Town of South Bethany.
- B. Limitation. Small wireless facilities shall not be permitted on private property within the corporate limits of the Town of South Bethany.
- C. Intent. In enacting this Chapter, the Town of South Bethany is establishing uniform standards to address issues presented by small wireless facilities, including without limitation, to:
- (1) prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - (2) prevent the creation of visual and physical obstructions and other conditions that maybe hazardous to vehicular and pedestrian traffic;
 - (3) prevent interference with existing facilities and operations of facilities presently lawfully located in rights-of-way or public property;
 - (4) ensure reasonable efforts are made to preserve the character of neighborhoods in which facilities are installed;
 - (5) protect against environmental damage, including damage to trees; and
 - (6) facilitate rapid deployment of small wireless facilities to provide the benefits of reliable access to wireless telecommunications technology, broadband and 9-1-1 services to homes, businesses, and schools within the Town of South Bethany.
- D. Conflicts with Other Chapters. This Chapter supersedes all Chapters or parts of Chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

§143-3. Definitions

- A. “Antenna” means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless telecommunications services.
- B. “Applicable Building and Safety Codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this Chapter.
- C. “Applicant” means any person who submits an application and is a wireless telecommunications provider.
- D. “Application” means a request submitted by an applicant (i) for a small cell building/work permit to collocate small wireless facilities in a ROW; or (ii) to approve the installation or modification of a utility pole or wireless telecommunications facility support structure in a ROW.
- E. “Town of South Bethany Owned Pole” means (i) a utility pole owned or operated by the Town of South Bethany in the rights-of-way, including a utility pole that provides lighting or traffic control functions, including light poles, traffic signals, and structures for signage, and (ii) a pole or similar structure owned or operated by the Town of South Bethany in the ROW that supports only Wireless Telecommunications Facilities.
- F. “Collocate” means to install, mount, maintain, modify, operate, or replace wireless telecommunications facilities on or adjacent to a wireless support structure or utility pole. “Colocation” has a corresponding meaning.
- G. “Day” means calendar day.
- H. “Fee” means a one-time charge.
- I. “Person” means an individual, corporation, limited liability company partnership, association, trust, or other entity or organization, including the Town of South Bethany.
- J. “Rate” means a recurring charge.

- K. "Rights-of-Way" or "ROW" means the area on, below, or above a roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway, in the Town of South Bethany and owned by the Town of South Bethany.
- L. "Small Cell Building/Work Permit" means a non-discretionary building or work permit authorizing the installation of a small wireless facility.
- M. "Small Wireless Facility" or "Small Cell" means a wireless telecommunications facility that meets both of the following qualifications: (i) each antenna is located inside an enclosure of no more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the Antenna and all of its exposed elements could fit within an imaginary enclosure of no more than six cubic feet; and (ii) all other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, ground-based enclosures, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.
- N. "Utility Pole" means a pole or similar structure that is used in whole or in part for the purpose of carrying electric distribution lines or cables or wires for telecommunications, cable or electric service, or for lighting, traffic control, signage, or a similar function regardless of ownership, including Town of South Bethany-owned poles. Such term shall not include structures supporting only Wireless Telecommunications Facilities.
- O. "Wireless Telecommunications Facility" means equipment at a fixed location that enables wireless telecommunications between user equipment and a communications network, including: (i) equipment associated with wireless telecommunications; and (ii) radio transceivers, Antennas, 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 does not include the structure or improvements on, under, or within which the equipment is collocated.

- P. “Wireless Telecommunications Infrastructure Provider” means any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless telecommunications facilities or wireless telecommunications support structures, but that is not a wireless telecommunications services provider.
- Q. “Wireless Telecommunications Provider” means a wireless telecommunications infrastructure provider or a wireless telecommunications services provider.
- R. “Wireless Telecommunications Services” means any services, whether at a fixed location or mobile, provided using wireless telecommunications facilities.
- S. “Wireless Telecommunications Services Provider” means a person who provides wireless telecommunications services and is authorized to provide such services pursuant to an FCC license.
- T. “Wireless Telecommunications Support Structure” means a freestanding structure, such as a monopole; tower, either guyed or self-supporting; billboard; or, other existing or proposed structure designed to support or capable of supporting wireless telecommunications facilities. Such term shall not include a utility pole.

§143-4. Permitted Use and Application

- A. Permitted Use: Collocation of a small wireless facility or a new or modified utility pole or wireless support structure for the collocation of a small wireless facility shall be a permitted use not requiring discretionary zoning approvals subject to the restrictions in §143-6.
- B. Permit Required. No person shall place a small wireless facility in the rights-of-way, without first filing a small wireless facility application and obtaining a small cell building/work permit therefore, except as otherwise provided in this Chapter.
- C. Permit Application. All small wireless facility applications for small cell building/work permits filed pursuant to this Chapter

shall be on a form, paper or electronic, provided by the Town of South Bethany.

- D. Application Requirements. The small cell building/work permit application shall be made by the wireless telecommunications provider or its duly authorized representative and shall contain the following:
- (1) The applicant's name, address, telephone number, and e-mail address;
 - (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
 - (3) A general description of the proposed work and the purpose of the work proposed.
 - (4) A small wireless facility shall comply with all applicable building and safety codes.
- E. Routine Maintenance and Replacement. An application shall not be required for: (i) routine maintenance; and (ii) the replacement or upgrade of a small wireless facility with another small wireless facility that is substantially similar or smaller in size, weight, and height at the same location.
- F. Information Updates. Any amendment to information contained in a small cell building/work permit application shall be submitted in writing to the Town of South Bethany within thirty (30) days after the change necessitating the amendment.

§143-5. Action on Permit Applications

- A. Review of Small Wireless Facility Applications.
- (1) The Code Enforcement Constable or his or her designee shall review the application for a small cell building/work permit in light of its conformity with applicable regulations of this Chapter and all applicable building and safety codes, and shall issue a small cell building/work permit on uniform terms and conditions subject to the following requirements:

- (a) Within 30 days of receiving an application, the Code Enforcement Constable or his or her designee must determine and notify the Applicant whether the application is complete; or, if an Application is incomplete, the Code Enforcement Constable or his or her designee must specifically identify the missing information.
 - (b) Determine whether the application meets the requirements in §143-5 (A)(1) above and issue an approval or denial within sixty (60) days for collocations and ninety (90) days for new poles. The applicable time periods will commence upon application submission except that, in the event the Code Enforcement Constable or his or her designee provides notice within 30 days of submission that an application is materially incomplete, the applicable time period will commence upon re-submission.
 - (c) Advise the applicant in writing of its final decision, and in the final decision document the basis for a denial, including specific code provisions on which the denial was based, and send the documentation to the applicant on or before the day the Code Enforcement Constable or his or her designee denies the application. The applicant may cure the deficiencies identified by the Code Enforcement Constable or his or her designee and resubmit the application within 30 days of the denial without paying an additional application fee. The Code Enforcement Constable or his or her designee shall approve or deny the revised application within 30 days of receipt of the amended application. The subsequent review by the Code Enforcement Constable or his or her designee shall be limited to the deficiencies cited in the original denial.
- (2) If the Code Enforcement Constable or his or her designee fails to act on an application within the applicable review period, the applicant may provide

notice that the time period for acting has lapsed and the application is then deemed approved.

- (3) An applicant seeking to construct, modify or replace a network of small wireless facilities may, at the applicant's discretion, file a consolidated application and receive a single small cell building/work permit for multiple small wireless facilities. Provided however, the Town of South Bethany's denial of any site or sites within a single application shall not affect other sites submitted in the same application. The Code Enforcement Constable or his or her designee shall grant a small cell building permit for any and all sites in a single application that it does not deny subject to the requirements of this Section.

§143-6. Small Wireless Facilities in the ROW; Height Requirements

- A. Maximum Height. No antenna or other part of the facility shall be more than fifty (50) feet above ground level.
- B. Minimum Height. Accessory Equipment shall, if reasonably possible, be placed at least ten (10) feet above the ground level.

§143-7. Effect of Permit

- A. Authority Granted. No Property Right or Other Interest are Created. A small cell building permit from the Code Enforcement Constable or his or her designee authorizes an applicant to undertake only certain activities in accordance with this Chapter, and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.
- B. Duration. Construction pursuant to a small cell building/work permit issued under this Chapter must commence within twelve (12) months and completed within twenty-four (24) months of issuance of the small cell building/work permit or such small cell building/work permit shall expire.

§143-8. Removal, Relocation, Expansion or Modification of Small wireless facility in the ROW

- A. Notice. Within ninety (90) days following written notice from the Town of South Bethany, wireless provider shall, at the provider's own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the Code Enforcement Constable or his or her designee has determined that such removal, relocation, change or alteration, is necessary for the construction, repair, maintenance, or installation of any Town of South Bethany improvement in or upon, or the operations of the Town of South Bethany in or upon, the rights-of-way.
- B. Emergency Removal or Relocation of Facilities. The Town of South Bethany retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the Town of South Bethany, as the Code Enforcement Constable or his or her designee may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the Code Enforcement Constable or his or her designee shall notify the wireless telecommunications provider and provide the wireless telecommunications provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless telecommunications provider after cutting or removing a small wireless facility.
- C. Abandonment of Facilities. Upon abandonment of a small wireless facility within the rights-of-way of the Town of South Bethany, the wireless provider shall notify the Town of South Bethany within ninety (90) days. Following receipt of such notice the Code Enforcement Constable or his or her designee may direct the wireless provider to remove all or any portion of the small wireless facility if the Town of South Bethany, or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare.

§143-9. Rates and Fees

- A. Application Fees. Unless otherwise provided by law, all applications for small cell building/work permits pursuant to this Chapter shall be accompanied by a fee. Application fees are listed in the Town of South Bethany schedule of fees.
- B. ROW Administration Rate. A wireless telecommunications provider authorized to place small wireless facilities (including new utility poles or other wireless telecommunications support structures) in the rights-of-way shall pay to the Town of South Bethany an annual fee for each small wireless facility. The fee is listed in the Town of South Bethany schedule of fees.
- C. Attachment Rate. The per year rate to place a small wireless facility on a Town of South Bethany-owned pole in the right-of-way shall be listed in the Town of South Bethany schedule of fees. Such compensation together with the application fee and the ROW Administration Rate specified in this Chapter shall be the sole compensation that the wireless provider shall be required to pay the Town of South Bethany.
- D. Cease Payment. A wireless provider is authorized to remove its facilities at any time from a Town of South Bethany-owned pole in the rights-of-way and cease paying the annual rate to the Town of South Bethany.
- E. Make-Ready. For Town of South Bethany-owned utility poles in the rights-of-way, the Town of South Bethany shall provide a good faith description of any make-ready work necessary to enable the pole to support the requested small wireless facility, including pole replacement if necessary, within 60 days after receipt of a completed application. Any make-ready work, including pole replacements, shall be performed by the provider or its qualified contractor.

§143-10. Miscellaneous

Notwithstanding anything to the contrary in this Chapter, in the event that this Chapter, in whole or in part, is declared or determined by a judicial, administrative, or legislative authority (whether State or Federal) exercising its jurisdiction to be excessive, unreasonable, unenforceable, void, unlawful, or

otherwise inapplicable, the judicial, administrative, or legislative order shall control the deployment of small wireless facilities in the Town of South Bethany until this Chapter is amended.

Effective date: This ordinance shall become effective upon the date of adoption.

ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF SOUTH BETHANY, SUSSEX COUNTY, DELAWARE, ON THE ____ OF _____ 2019.

SEAL:

Tim Saxton, Mayor

Carol Stevenson, Council Secretary

ATTEST:_____

1st Reading: 12/14/18
2nd Reading:
3rd Reading:

Sponsored by Mayor Saxton
TS:phs:Ordinance 193-18
First Reading

CERTIFICATION FOR REGULAR ORDINANCES

This is to certify that the notice and brief description of the foregoing ordinance was published in the COASTAL POINT Newspaper on 12/14/18 and posted on the Town’s website on 12/14/18, prior to the first reading.

This is to certify that the notice and brief description of the foregoing ordinance was published in the COASTAL POINT Newspaper on _____ and posted on the Town’s website on _____, after its adoption.