

# **TELECOMMUNICATIONS TOWER ORDINANCE TRANSYLVANIA COUNTY, NORTH CAROLINA**

## **Section 1. Title**

This Ordinance shall be known as “The Telecommunications Tower Ordinance” of Transylvania 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 Transylvania 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 as stated in the County’s *Comprehensive Plan* and to minimize the negative economic impact on tourism and scientific research.

## **Section 3. Authority and Enactment**

This Ordinance is adopted under the authority and provision of the General Statutes of the State of North Carolina Article 6, Chapter 153A-121.

## **Section 4. Jurisdiction**

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

## **Section 5. Definitions**

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

*Co-location.* Use of a common wireless communication facility or common site by more than one wireless communication provider or by one wireless provider for more than one type of communication technology (i.e. antenna) and/or placement of a wireless communication facility on a structure owned or operated by others.

*Construction.* Any new construction, reconstruction, alteration or expansion requiring a building permit in accordance to NC Building Code, or modifications to an existing tower that increases its height.

*Existing Vegetative Canopy.* The existing vegetative plants, trees and shrubs located within the proposed telecommunications tower's fall area that will provide natural camouflage and concealment of the tower and its support structures after construction.

*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 Ridge.* All mountain ridges whose elevation is at least five hundred (500) or more feet above the elevation of an adjacent valley floor and including Dunn's Rock.

*Radio Astronomy Facility.* A facility that detects electromagnetic energy from space for scientific and education research.

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

*Search Area.* The geographical area within which the applicant or designated wireless provider has a bona fide need to place antennas or equipment to provide its service.

*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) and antennas or other devices affixed thereto.

*Tower Height.* The vertical distance measured from ground to the upper most point of the telecommunications tower.

## **Section 6. Permits Required**

No tower over fifty (50) feet shall be constructed, reconstructed or expanded until a Transylvania County tower permit is obtained as provided in this Article. No tower permit shall be issued that is not in compliance with this Ordinance. No building permit shall be issued for any tower subject to this ordinance that has not received a tower permit.

## **Section 7. Enforcement Officer**

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

## **Section 8. Permit Application**

Telecommunications Tower Permit Applications are available from the Planning Department.

## **Section 9. Application Fee**

A fee for reviewing tower permit applications shall be established by the Board of Commissioners and posted in the Planning Department.

## **Section 10. Application Submission and Review Process**

- 10.1 A completed tower permit application and five (5) copies of all supporting documentation as given 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 Sections 11 and 13. Any application not containing all information required in Section 11 shall be rejected and returned to the applicant together with the reasons for rejection. If the Enforcement Officer deems it necessary, he may retain, at the permit applicant's expense, one or more professional engineers to assist him in reviewing any technical requirements.
- 10.3 The Enforcement Officer shall be responsible for submitting a notice to the local paper(s) and to all known property owners abutting the property where the proposed tower is to be located. The notice shall state that the Planning Board will review and consider the tower permit application at their next meeting and that the application is available for public review in the Planning Department.
- 10.4 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.
- 10.5 The Planning Board shall consider the tower permit application and public comments regarding the application's technical compliance with the ordinance after receiving the Enforcement Officer's recommendation.
- 10.6 The Planning Board shall take formal action to approve, approve with conditions or disapprove the tower permit application within thirty (30) working 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.
- 10.7 The owner or his agent shall record the Site Development Plan in the Register of Deed's office before obtaining a building permit for the subject tower.

## **Section 11. Application Requirements**

All of the following information shall be submitted with the application and shall be part of the tower permit application.

- 11.1 A site development plan prepared by a N.C. Registered Land Surveyor containing 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 bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1929.
- 11.2 A preliminary tower design plan prepared by a N.C. Registered Professional Engineer containing 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 proposed lighting, if any, and all proposed antennas or antenna arrays.
- (5) The proposed tower design loads.
- 11.3 A map at a scale of not less than 1:24,000 showing the general search area(s) for the proposed tower's antenna(s).
- 11.4 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 A report that identifies all other possible alternatives considered within the search area for the proposed tower's antenna(s), the reasons for their rejection and the reasons 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 A listing of all variance(s) to the ordinance requested by the applicant, the reason(s) for seeking the variance(s) and any measures that are proposed to mitigate possible adverse affects of the proposed variance(s), or a statement that no variance is requested.

## **Section 12. Issuance of Permit**

- 12.1 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.
- 12.2 Any tower not in use shall be removed within 180 days after the tower owner and the current property owner have received written notice by the Enforcement Officer or the County Attorney. The written notice, mailed return receipt requested, shall be delivered to both the tower owner of record and the current property owner.
- 12.3 Upon the Enforcement Officer's request, the applicant shall be required to provide a certificate of insurance demonstrating it has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the wireless telecommunication facility.

## **Section 13. Tower Approval Standards**

- 13.1 Any proposed tower shall provide a needed service or benefit to the residents of Transylvania County that cannot otherwise be met.

- 13.2 Towers shall be sited to contain all ice-fall or debris from tower failure on-site. The minimum distance from the tower's base to the property line shall be equal to the tower's height.
- 13.3 Tower lighting shall not exceed the minimum standards of the Federal Aviation Administration (FAA).
- 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. A vegetative screen shall also surround the tower's base and associated structures.
- 13.5 The tower shall be engineered and constructed to accommodate a minimum of three providers.
- 13.6 Tower permit approval is conditional subject to the owner(s) agreeing to allow future co-location of other antenna(s).
- 13.7 No tower shall exceed two hundred (200) feet in height and shall not exceed the existing natural vegetative canopy's height by more than one hundred (100) feet on a protected mountain ridge.
- 13.8 Towers shall be light gray in color except when otherwise required by applicable Federal or State regulations.
- 13.9 Property located within the tower's fall area shall not be subdivided as long as the tower is standing.
- 13.10 No two telecommunications towers shall be constructed within 2,640 feet of each other unless documentation is provided showing that co-location on towers within 2,640 feet is not technically feasible.
- 13.11 Prior to the issuance of a Telecommunications Tower Permit the applicant shall be required to provide a certificate of insurance demonstrating it has a minimum of \$1,000,000 in general liability insurance covering any liability arising out of its construction or operation of the wireless telecommunication facility.
- 13.12 Any proposed tower and/or antennas located at or above three thousand (3,000) feet shall be sited to minimize potential interference to radio astronomy facilities. The tower owner agrees to require that all tower users or tenants identify how potential interference will be minimized e.g., distance and terrain blockage, antenna directivity or frequency choice not to exceed frequency (GHz) x frequency x 10E-17 w/m/m power density).

## **Section 14. Variances**

- 14.1 Following the final decision by the Planning Board to deny a permit, a tower permit applicant may request that the Board of Commissioners grant a variance from the Tower Approval Standards listed in Section 13.
- 14.2 Before determining whether to or not to grant a variance, the Board of Commissioners shall hold a public hearing. The Board of Commissioner shall grant a variance if and only if it concludes that:
- (1) adherence to the ordinance's development standards will cause extraordinary economic hardship to the applicant; and
  - (2) if the variance is granted, the proposed use of the site will not substantially diminish the public health or safety or be detrimental to the general welfare of the county; and
  - (3) if the variance is granted, the proposed use of the site will not substantially detract from the natural beauty of the mountains and the county's future economic growth and development.
- 14.3 Should the Board of Commissioners grant the requested variance, the Enforcement Officer shall issue a tower permit. The permit applicant shall acknowledge and agree to permit conditions approved by the Board of Commissioners. If a building permit is not obtained within twelve (12) months after the tower permit issued, the tower permit shall expire.

## **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. 153A-123 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, Planning Board or the Board of Commissioners may be made to Superior Court within thirty (30) working days of their action.

**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 shall take effect and be in force on October 26, 1996. Amended October 9, 2000.

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Bob Masengill, Chairman

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Sandra Jameson, Clerk to Board