

**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 Telecommunications Act of 1996 affirmed Transylvania County’s authority concerning the placement, construction and modification of Telecommunications Towers. North Carolina General Statutes governing the regulation of Wireless Telecommunication Facilities, §153A, Article 18, Part 3B., provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services throughout the community and to help ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.

Transylvania County Board of Commissioners finds that Telecommunications Towers may pose concerns to the health, safety, public welfare, character and environment of the County and its inhabitants. The County also recognizes that facilitating the development of wireless service technology is essential for health and safety as well as being an asset to economic development. The purpose of this Ordinance is to regulate the construction of telecommunications towers in order to:

1. Provide a uniform framework for evaluating proposals for Telecommunications Towers,
2. Avoid potential damage to adjacent properties from tower failure and falling ice,
3. To maximize the use of existing and new towers in order to reduce the number of towers needed,
4. Minimize potential hazards to low flying aircraft,
5. 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,
6. To minimize the negative economic impact on tourism and scientific research, and
7. To minimize adverse effects towers may have on property values.

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

Administrative Review. Non-discretionary evaluation of an application by the Enforcement Officer or designee. This process is not subject to a public hearing. The procedures for Administrative Review are established in Section 14 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.

Antenna Array. One or more rods, panels, discs, or similar devices used for the transmission or reception of radio frequency signals, which may include directional antenna (rod), directional antenna (panel), and parabolic antenna (disc). This does not include the support structure.

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.

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.

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.

Dwelling Unit - A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

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

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. Ordinary Maintenance does not include Substantial Modifications.

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. For the purposes of this Ordinance, Protected Mountain Ridges are based on the coordinates and map developed by the North Carolina Department of Commerce, Division of Community Assistance and the NC Geodetic Survey, titled, "North Carolina Ridge Law Final 2006 – Ridge Lines," following the Mountain Ridge Protection Act of 1983 and 1985 amendment. The coordinates and map are available in the Planning and Economic Development Department.

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.

Ridge: The elongated crest or series of crests at the apex or uppermost point of intersection between two (2) opposite slopes or sides of a mountain, and includes all land within one hundred (100) feet below the elevation of any portion of such line or surface along the crest.

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.

Stealth Tower. Any new Wireless Support Structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the Wireless Support Structure is not readily apparent to a casual observer. For example, a monopine or a flagpole.

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.

Substantial Modification. 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.

1. Increases the existing vertical height of the structure by
 - 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.
2. 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 more than 20 feet or more than the width of the wireless support structure at the level of the appurtenance.
3. Increases the square footage of the existing equipment compound by more than 2,500 square feet.

Telecommunications Tower (hereinafter known as “tower” or “Wireless Support Structure”). 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, including any antennas or other equipment affixed thereto, including any lightning protection rods extending above the tower and attached equipment.

Utility Pole. A structure that is designed for and used to carry lines, cables, or wireless telephone, cable television, or electricity or to provide lighting.

Vegetative Canopy. Trees which create a roof-like layer of spreading branches.

Wireless Facility. The set of equipment and network components, exclusive of the underlying support structure or tower, including antennas, transmitters, receivers, base stations, power supplies cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographical area.

Wireless Support Structure. A new or existing structure, including a monopole, lattice tower, or guyed tower that is designed to support or is capable of supporting wireless facilities. Also, referred to as a “Telecommunications Tower.” A utility pole is not a wireless support structure.

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. Pre-application Meeting

Each applicant for a permit shall meet with the Enforcement Officer in a pre-application meeting prior to the submittal of a Telecommunications Tower application.

Section 9. Permit Application

All applications and supporting documentation must be submitted to the Enforcement Officer in a manner consistent with the provisions of this Ordinance. Telecommunications Tower Permit Applications are available in the Planning Department and are on the Transylvania County Planning and Economic Development website.

Section 10. Application Fee

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

Section 11. Preferred Locations for Wireless Communication Facilities

The Board of Commissioners asks applicants to locate, site, and erect Telecommunications Towers in the order of the following priorities:

1. Existing Telecommunications Towers, water towers, or other structures
2. Utility easements or public rights-of-way containing overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
3. Publicly owned (Federal, State, or Local) property
4. Property accessed by a state maintained road
5. Property accessed by a private road.

Section 12. Prohibited Tower Locations

The Board of Commissioners finds that mountain views and aesthetics are an integral part of Transylvania County's economy and thus prohibits Telecommunications Towers on Protected Mountain Ridges. The County may also disapprove an application if the placement and location of Towers would result in an unacceptable risk to County residents, the public, or employees.

Section 13. Exemptions

The following are exempt from this ordinance:

1. Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification.
2. Ordinary Maintenance of existing Wireless Facilities and Wireless Support Structures, as defined in this ordinance.
3. Wireless Facilities placed on Utility Poles.
4. COWs placed for a period of not more than one hundred twenty (120) calendar days at any location within Transylvania County or after a declaration of an emergency for a disaster by the Governor.
5. Wireless Facilities used exclusively for public non-commercial radio and television reception, and private citizen's bands, licensed amateur radio, and other similar non-commercial telecommunications less than fifty (50) feet in height.

Section 14. Application Submission and Review Process for Administrative Reviews

Administrative Reviews are the non-discretionary evaluation of an application by the Enforcement Officer or designee. This process is not subject to a public hearing and is considered an expedited review process. All other requests shall be reviewed under Section 15.

- 14.1 The following types of applications are subject to the administrative review process:

1. Monopoles or Replacement Poles located on public property or within utility easements or public rights-of-way containing overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
2. COWs, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred-twenty (120) calendar days.
3. Substantial Modifications as defined in this Ordinance.
4. Collocations.

14.2 All Administrative Review Applications must contain the following:

1. A completed and owner signed tower permit application and three (3) copies of all supporting documentation.
2. Copy of lease or letter of authorization from property owner(s) evidencing applicant's authority to pursue application.
3. Site plans, preliminary tower design plans, and other improvements which comply with Sections 16 and 18 of this Ordinance, signed and sealed by a NC registered engineer.
4. For Collocation and Substantial Modifications, written verification from a North Carolina licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas.
5. For Substantial Modifications, drawings shall depict the existing structures and compounds with all improvements along with the dimensions.
6. For any changes that involve an increase in the overall height of the existing structure, a written statement from the Federal Aviation Administration (FAA) showing that the proposed tower extension complies with all permit regulations administered by that agency or evidence that the proposed tower is exempt from those regulations. A preliminary report shall be submitted with the application and a final report shall be submitted prior to construction.
7. For Collocation and Substantial Modifications, written verification from a North Carolina licensed professional engineer, FCC, or private consultant, certifying that the new frequencies do not interfere with existing frequencies. This report is known as an interference analysis and/or intermodulation study.

14.3 Administrative Submission and Review Process:

1. The Enforcement Officer shall review the application for conformity with this Ordinance. The Enforcement Officer shall notify the applicant of any deficiencies in the application which, if cured within thirty (30) calendar days, or a reasonable time period agreed upon by both parties in writing, would make the application complete.
2. Applicant shall be advised by the Enforcement Officer in writing of a final decision within thirty (30) calendar days of receiving the complete application.
3. Applicants can appeal and/or apply for a variance according to the provisions of this Ordinance.

Section 15. Application Submission and Review Process for New Wireless Support Structures

15.1 A completed tower permit application and five (5) copies of all supporting documentation as identified in Section 16 shall be submitted to the Enforcement Officer for review at least thirty (30) calendar days prior to a regularly scheduled Planning Board meeting.

15.2 The Enforcement Officer shall review the completed tower permit application for compliance with Sections 16 and 18. Any application not containing all information required in Section 16 shall be rejected and returned to the applicant together with the reasons for rejection. The Enforcement Officer may allow the applicant thirty (30) calendar days, or a reasonable time period agreed upon by both parties in writing, to cure any deficiencies in the application which, if cured, would make the application complete.

15.3 The Enforcement Officer shall be responsible for submitting a notice to the local paper(s) and mailing a certified letter 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. The notice shall not appear less than ten (10) calendar days or more than twenty-five (25) calendar days prior to the date set for public hearing. The public notice shall also contain a map highlighting ¼ mile radius around the proposed tower site.

15.4 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 18.

15.5 The Planning Board shall consider the tower permit application and public comments regarding the application's technical compliance according to Section 18, with the ordinance after receiving the Enforcement Officer's recommendation.

15.6 The Planning Board shall take formal action to approve, approve with conditions or disapprove the tower permit application within forty-five (45) 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.

15.7 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 16. Application Requirements

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

16.1 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 zone.
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 zone encroaches onto the property.
7. The proposed tower's location, the proposed fall zone and the location of all support structures and guy line anchors.
8. The ground elevation of the proposed tower's base, ground elevation contour lines, all proposed support structures, property corners, and a permanent site bench mark. All elevations shall be determined using the mapping requirements set forth in G.S. 47-30 as amended, and as set forth in the Standards of Practice for Land Surveying in North Carolina.

16.2 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 antennas or antenna arrays.
5. Tower elevation showing cross section of tower on the proposed site with its contours relative to the tower and site. Cross section starts at a 100' elevation below the base of the proposed Tower and includes the entire profile of the tower.

16.3 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. A preliminary report shall be submitted with the application and a final report shall be submitted prior to construction, if applicable.

16.4 A report that identifies all other alternatives considered within the search area for the proposed tower's antenna(s), the reasons for their rejection and why existing towers and structures (e.g., Duke Power transmission towers) cannot accommodate the proposed antenna(s).

16.5 A visual impact assessment report including photographic depictions of the proposed tower taken from key view points, such as major roads, parks, public lands, historic districts, or other sites where the site is visible by a large number of visitors, travelers, or residents. Key views will be determined in the pre-application meeting with the Enforcement Officer.

16.6 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.

16.7 Copy of lease or letter of authorization from property owner evidencing applicant's authority to pursue application.

16.9 A statement in writing stating that the applicant's proposed Telecommunications Tower, including access roads, shall be maintained in a safe manner, and in compliance with all conditions of the Telecommunications Tower Permit, as well as all applicable County, State, and Federal Laws, rules, and regulations.

16.12 Environmental compliance report applicable to the proposed Telecommunications Tower application, such as the National Environmental Protection Act (NEPA) report. The Environmental report shall be submitted prior to receiving a building permit.

16.13 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 Telecommunication Tower.

16.14 The permit applicant for a new Telecommunications Tower shall be required to post a \$75,000 cash bond, or other security satisfactory to the County, to secure the costs of removing all above-ground portions of a Telecommunications Tower (not including any part of the foundation) in the event the applicant shall fail to do so within the provisions stated in Section 20. The applicant and successors shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single

Telecommunications Tower at their principal place of business and governmental users are exempt from the bond requirement.

Section 17. 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.

Section 18. Tower Approval Standards

18.1 Road and site construction shall comply with all applicable regulations, shall be planned to minimize land disturbance and vegetation cutting, reduce soil erosion, and reduce visual disturbance. As a condition of approval, the applicant shall be required to repair any road damage resulting from construction, maintenance, and/or demolition of the proposed Tower.

18.2 Towers shall be sited to contain all ice-fall or debris from tower failure on-site as determined by engineered design.

18.3 The minimum distance from the center of the tower's base to all property lines shall be equal to or greater than the tower's fall zone.

18.4 The minimum distance from the center of the tower's base to any existing occupied dwelling unit on an adjacent property shall be equal to or greater than the towers height plus 50% of the height.

18.5 Tower lighting shall not exceed the minimum standards of the Federal Aviation Administration (FAA).

18.6 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 on all sides facing public right-of-ways and/or public view sheds.

18.7 The tower shall be engineered and constructed to accommodate a minimum of three providers and/or antenna arrays. This provision shall not apply to local FM, AM, or non-commercial radio towers.

18.8 Tower permit approval is conditional subject to the owner(s) agreeing to allow future co-location of other antenna(s).

18.9 No tower shall exceed one hundred and eighty (180) feet in height.

18.10 Towers shall be light gray in color or an earth tone such as forest green, rust brown, or flat black, except when otherwise required by applicable Federal or State regulations. Stealth towers are encouraged.

18.11 The Tower's Fall Zone shall remain entirely on one parcel of land as long as the tower is standing. Easements granted from adjoining property owners to encompass Fall Zones are permitted granted evidence and proper documentation from adjoining land owners is provided.

18.12 No two Telecommunications Towers shall be constructed within 2,640 feet of each other, line-of-site, unless documentation is provided showing that co-location on towers within 2,640 feet is not technically feasible.

18.13 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).

18.14 If the proposed Tower, or the equipment on the site, is of a type that will emit continuous or frequent noise, the County may require the applicant to identify ways that noise to surrounding properties is mitigated as a condition of approval.

Section 19. Variances

19.1 Following the final decision by either the Enforcement Officer or 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 18.

19.2 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.

19.3 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 20. Abandonment

Any tower not in use for 180 consecutive days shall be considered abandoned by the owner and Transylvania County may require the Wireless Structure to be removed after first providing written notice to the owner by certified mail. The owner has ninety (90) calendar days to reclaim the Wireless Support Structure from the day of the receipt of the written notice and in the event that the owner of the Wireless Structure fails to reclaim the tower, the owner of the Wireless Support Structure shall be required to remove the tower within 180 calendar days thereafter. The County shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.

Section 21. Retention of Expert Assistance

The County may retain a consultant and/or expert necessary to assist the County review and evaluate the application for a proposed tower, collocation, or modification. The County may also request expert assistance for other issues, such as economic development impacts, residential values, noise mitigation, view-shed protection, etc, in order to ensure the general health, safety, and welfare of the public. The cost of the expert assistance shall be consistent with state law and will be paid by the applicant.

Section 22. 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 23. 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 24. Appeals

Appeals of the decision of the Enforcement Officer or Planning Board shall be made to the Board of Commissioners within thirty (30) calendar days of their action. Appeal of the decision of the Board of Commissioners shall be made to Superior Court within thirty (30) calendar days of their action.

Section 25. 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 26. 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 27. Effective Date

This Ordinance shall take effect and be in force on October 26, 1996. Amended October 9, 2000. Bob Masengill, Chairman Sandra Jameson, Clerk to Board

Section 28. Amendments

This Ordinance was amended on May 12, 2014. Mike Hawkins, Chairman, Trisha Hogan, Clerk to Board.