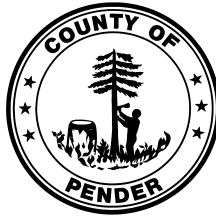


**TELECOMMUNICATIONS
TOWER
ORDINANCE**



**PENDER COUNTY,
NORTH CAROLINA**

**ADOPTED
SEPTEMBER 8, 1998**

**AMENDMENTS
April 17, 2000
September 18, 2000**

TABLE OF CONTENTS

SECTION	PAGE
Section 1: Title	3
Section 2: Purpose	3
Section 3: Authority and Enactment	3
Section 4: Jurisdiction	4
Section 5: Definitions	4
Section 6: Special Use Permits Required	4
Section 7: Enforcement	5
Section 8: Permit Application	5
Section 9: Application Fee	5
Section 10: Application Submission and Review Process	5
Section 11: Requirements for Site Development and Preliminary Tower Design Plans	5
Section 12: Issuance of Permit	6
Section 13: Tower Approval Standards	6
Section 14: Variances	8
Section 15: Compliance Requirements	8
Section 15: Private Mobile Communication Tower Sites	10
Section 16: Criminal Sanctions	10
Section 17: Remedies	10
Section 18: Appeals	10
Section 19: Severability	11
Section 20: Conflict with Other Laws	11
Section 21: Effective Date	11

TELECOMMUNICATIONS TOWER ORDINANCE
PENDER COUNTY, NORTH CAROLINA

WHEREAS, the demand for personal wireless communication services by Pender County residents continues to grow rapidly;

WHEREAS, a Countywide distribution of telecommunication towers is necessary to meet that demand;

WHEREAS, concerns have been raised that telecommunication towers might adversely affect neighboring residents' property values and quality of life due to their size, possible unsightliness, and other potential adverse impacts;

WHEREAS, there is a need to ensure that the County's development regulations appropriately balance the need to permit the towers necessary to providing Pender County residents telecommunication services against the need to ensure that such towers do not adversely impact neighboring residents;

WHEREAS, the Pender County Board of Commissioners held a duly-advertised public hearing on _____ to consider an Ordinance to meet this need;

NOW, THEREFORE, BE IT ORDAINED BY THE PENDER COUNTY BOARD OF COMMISSIONERS:

Section 1. Title

This Ordinance shall be known as "The Telecommunications Tower Ordinance" of Pender 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 Pender 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 County and to minimize any negative economic impact.

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 and 153A-340.

Section 4. Jurisdiction

This Ordinance shall apply to all areas of Pender County located outside the planning jurisdiction of any incorporated city or town. Municipalities within Pender 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: The placement of additional antennas or antenna arrays on an existing or approved telecommunications tower or alternative structure, the sharing of an antenna or antenna array, or otherwise sharing a common location by two or more FCC licensed providers of personal wireless services. Co-location includes antennas, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other support equipment or improvements located on the tower site.

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

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

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

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.

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

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 or constructed for the purpose of supporting one or more antennas designed to transmit or receive wireless signals (e.g., telephonic, radio, television or microwave).

Section 6. Special Use Permits Required

No Telecommunications Tower over Seventy-Five (75) feet shall be constructed, altered, reconstructed or expanded in any zoning district unless and until a Pender County Telecommunication Tower Special Use Permit is obtained as provided in this Article and Section 12 of the Pender County Zoning Ordinance. No tower permit or special use 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. For purposes of this

Ordinance, the height of the tower shall be measured from the ground and shall include the height of any structure or building on which the Tower is constructed. The requirements of Section 12 of the Pender County Zoning Ordinance shall be followed with regard to notice and as to procedure, and in addition, the findings required for the granting of a special use permit shall be required except as to the more specific matters addressed herein.

Section 7. Enforcement

The Board of Commissioners hereby designate the Planning Director as the Enforcement Officer for this Ordinance. The Enforcement Officer or her 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. The initial fee, based upon expected expenses in retaining engineering evaluations, surveys, confirmation of compliance with the terms of the permit, and other administrative costs shall be set at Five Hundred Dollars (\$500.00).

Section 10. Application Submission and Review Process

An application shall be submitted to the Planning Director or designee. Within ninety (90) days of receipt of the application, unless the applicant agrees otherwise, the Planning Director shall place the application on the agenda for consideration. The application shall be considered and each applicant and other interested persons heard. The Board of Commissioners shall conduct a public hearing to determine whether to grant or deny the permit. (Rev. 4-17-00)

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

The following information must be supplied with the site plan or building permit application for towers that are 75 feet in height or more prior to any approval:

1. Identification of the intended user(s) of the tower.
2. Documentation provided by a registered engineer that the tower has sufficient structural integrity to accommodate more than one user.
3. Documentation by the applicant that no suitable existing facilities within the coverage area are available to the applicant. Documentation may include maps, letters from adjacent tower owners, or calculations. Facilities shall include the following, by way of illustration and not limitation, other towers, utility poles or towers, water towers, or other buildings or structures.
4. A statement indicating the owner's intent to allow shared use of the tower and how many other users can be accommodated.

5. A bond or letter of credit sufficient to cover the cost of demolition and removal of the Tower should it cease being used. The applicant may submit an estimate from an engineer or licensed contractor regarding the amount necessary to cover removal.
6. Retention of Consultants: The County may elect to retain outside consultants or professional services to review the application and make determinations and recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of alternatives, and compliance with State and Federal rules and regulations at the applicant's sole expense (subject to a \$5,000 maximum). Any expense for consulting or professional services in excess of \$5,000 shall be borne equally by the applicant and the County. A \$5,000 cash bond, or other security satisfactory to the County, guaranteeing payment of such expenses shall be required. An application shall not be deemed complete until the application fee and bond or other security have been received by the County. The County shall require any consultants to disclose any potential conflicts of interest and to hold confidential any proprietary information supplied by the applicant. The Enforcement Officer shall arrange an informal consultation with the applicant to review the consultant's report prior to any public hearing on the application. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

Section 12. Issuance of Permit

Following the Board of Commissioner's approval for 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. If construction is not completed within the time specified by the Permit or within six (6) months after the tower permit is issued if no specific time is specified, the tower permit shall expire.

Section 13. Tower Approval Standards

- 13.1 Any proposed tower shall provide a needed service or benefit to the residents of Pender County and users of services that cannot otherwise be met by co-location on existing towers or structures.
- 13.2 Towers shall be sited to contain all ice-fall or debris from tower failure within the fall zone. The minimum distance from the tower's base to the property line shall be equal to the tower's height.
- 13.3 A tower shall be set-back from other on-site and off-site towers and supporting structures such that one tower will not strike another tower or its support structure if it falls.
- 13.4 Tower lighting shall not exceed the Federal Aviation Administration (FAA) minimum if lighting is required by the FAA. To the extent allowed by the FAA, strobes shall not be used for night time lighting. The lights shall be so oriented so as not to project directly

onto surrounding residential property, consistent with FAA requirements. Prior to issuance of a building permit, the applicant shall be required to submit documentation from the FAA that the lighting is the minimum lighting required by the FAA.

- 13.5 The base of the tower shall be surrounded by a fully opaque 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.
- 13.6 Towers shall be constructed and maintained in conformance with all applicable building code requirements.
- 13.7 Tower permit approval is conditional subject to the owner(s) agreeing to allow future collocation of other antenna(s). Failure to permit collocation on reasonable terms and conditions shall be ground for termination of the permit.
- 13.8 No tower shall exceed a height of One Hundred Ninety-Nine (199) feet. An applicant may request a variance from the height limit pursuant to Section 14.
- 13.9 Towers shall be light gray in color, unless another color is shown to better camouflage the tower, except when otherwise required by applicable Federal or State regulations.
- 13.10 Any tower not in use for twelve (12) continuous months shall be removed within 120 days after the last active use or within sixty days of the tower owner and the property owner receiving written notice from the Enforcement Officer or the County Attorney. The written notice, mailed return receipt requested, shall be directed to both the tower owner and identified on the tower permit application and to the current property owner, as reflected by the tax records. If the tower owner or current property owner cannot be served via return receipt mail, after reasonable efforts, the Enforcement Officer shall send written notice by first class mail to their last known address and post notice on the property. Any other person wishing to be advised of the removal order may request notification by sending such request in writing to the Enforcement Officer. Should the Tower not be removed, the bond or letter of credit shall be forfeited to the County, which shall then have the right to enter onto the Property to remove the Tower. By acceptance of the Permit, the Property owner gives consent for the County and its agents to enter onto the property for the purpose of removing the Tower. An annual fee of One Hundred Dollars (\$100.00) shall be required for each tower in order to cover staff time and expenses in enforcing the annual reporting requirements.
- 13.11 Property located within the tower's fall area shall not be subdivided as long as the tower is standing. No residential structure or school building shall be located or constructed within the fall zone. *The owner or lessor may construct a utility or storage building or other structure so long as the structure is not designed to be occupied on a regular basis. When a tower is to be constructed so that overhead utility structures will be located in the fall zone, the applicant shall provide a certification from an authorized official of the utility company owning the structures that the tower poses no threat to the overhead power structures. If conditions warrant, towers may be prohibited when existing overhead power lines would be in the fall zone. (Rev. 9-18-00)*

13.12 Towers shall not interfere with normal radio and television reception in the vicinity. Commercial messages shall not be displayed on any tower.

13.13 No outdoor storage yards shall be allowed on tower sites.

13.14 An applicant shall present written documentation, signed and certified by a Professional Engineer, licensed to practice in the State of North Carolina, certifying the steps taken and efforts made to ensure that the location requested will have the least impact on surrounding properties which will meet the minimum operating requirements. Documentation shall include, at a minimum, the following:

1. A map showing the applicant's or licensed service provider's facilities in adjacent counties which may provide coverage within Pender County;

2. A map showing the tower layout required for providing service within Pender County, including those towers within both Pender County and adjacent jurisdictions which provide service in Pender County, if a maximum tower height of One Hundred Ninety-Nine Feet (199') is utilized for future towers;

3. A certification that the tower heights comply with applicable FAA criteria;

4. A drawing or pictorial representation of the antenna configuration proposed;

5. An analysis of the tower and antenna characteristics implemented to facilitate co-location and the characteristics, which may impair co-location;

6. A map showing the existing towers and structures which are available for co-location within four (4) square miles of the proposed location; and

7. An analysis of how the tower location is designed to supplement co-location on existing towers or structures.

At the public hearings before the Planning Board and the Board of Commissioners, the licensed engineer shall be present to explain the documentation and respond to questions regarding the information presented. The purpose of this information is to permit the County to assess and plan for the present and future impact of towers which may be needed to meet future as well as present service requirements.

Section 14. Variances

14.1 *An applicant who cannot meet the standards set forth in Section 13, may request that the Board of Commissioners grant a variance from the Tower Approval Standards listed in Section 13. If an applicant first requests a variance the Board of Commissioners may remand the matter to the Planning Board for consideration of the variance request. The Planning Board may make recommendations for such additional items, as it deems necessary in making a recommendation to the Board of Commissioners as to whether a variance should be granted. (Rev. 4-17-00)*

- 14.2 Before determining whether to or not to grant a variance, the Board of Commissioners shall hold a public hearing. The Board of Commissioners shall grant a variance if and only if it concludes in its discretion that equity requires the variance and that all of the following conditions are met:
- (1) adherence to the ordinance's development standards will cause extraordinary economic hardship to the applicant;
 - (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 County 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 is issued, the tower permit will expire.

Section 15. Compliance Requirements

Any Person who owns or operates a Tower subject to this Ordinance or constructed a Tower pursuant to a special use permit issued prior to the enactment of this Ordinance or prior to the requirement that a special use permit be acquired shall be permitted to continue its operation, subject to the requirements set forth below. Any person who owns or operates a Tower subject to this Ordinance shall be permitted to continue such operation only so long as the following compliance requirements are met:

1. By January 20th of each calendar year after the date of enactment of this Ordinance, the owner or operator of a tower must submit a written report to the Planning Director confirming that the tower is still in operation, noting any change in either the ownership of the Tower or the property on which it is located, and identifying all persons using the tower. The Planning Director deems the lack of such a report a prima facie evidence that a Tower is no longer in operation.
2. Within three years from the effective date of this Ordinance every owner or operator of an existing Tower shall submit to the Planning Director a report from a licensed engineer verifying that the Tower remains in a structurally sound condition. Thereafter, a report from an engineer shall be required every three years from the date on which the most recent report was submitted for a particular tower.

In the event the operator or property owner shall fail to comply with any terms of the special use permit or this Ordinance, the permit shall be subject to revocation. The Enforcement Officer

shall investigate any reports or complaints of violations of a permit or this Ordinance and, if in the opinion of the Enforcement Officer, based solely upon her discretion, a violation has occurred she may seek the remedy she deems appropriate, from warning, penalties as provided by law or revocation of the permit. The Enforcement Officer may, but is not required to, provide a specified period of time, not to exceed thirty (30) days in which a violation may be corrected. An appeal from a determination by the Enforcement Officer may be had to the Board of Commissioners within thirty (30) days of her decision. The Enforcement Officer may also choose to present the evidence of a violation to the Planning Board for their review. If the property owner, tower operator or other interested person does not appeal, the Enforcement Officer's determination shall become final.

Section 15. Private Mobile Communication Tower Sites

Persons wishing to construct and operate a private Mobile Communication System for the use of a single business and its employees may apply for a Mobile Communication Tower Permit. The application shall include the name, address and a telephone number where a person responsible for the mobile site can be contacted 24 hours a day. The height of the mobile communication tower and antenna shall not exceed 125 feet. Such Private Mobile Communication Towers shall be subject to the normal zoning rules and regulations, but shall be exempt from the provisions of this Ordinance.

Section 16. 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 17. 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 violation by action or injunction.

Section 18. Appeals

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

Section 19. Severability

Should any section 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 20. 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 21. Effective Date

This Ordinance shall take effect and be in force on September 8, 1998, ADOPTED this 8th day of September, 1998.