

**MINUTES – REGULAR MEETING
BOONE TOWN COUNCIL
February 19, 2019**

CALL TO ORDER

A regular meeting of the Boone Town Council was called to order at 6:00 p.m. at the Council Chambers located at 1500 Blowing Rock Road. Mayor Rennie Brantz presided. Council Members present were Mayor Pro-Tem Loretta Clawson, Lynne Mason, Sam Furguele, Connie Ulmer and Marshall Ashcraft. Staff present included Town Manager John Ward, Town Clerk Nicole Worley, Public Works Director Rick Miller, Public Works Deputy Director Todd Moody, Planning Director Jane Shook, Police Captain Andy LeBeau. Town Attorney Allison Meade was also in attendance.

ANNOUNCEMENTS

Mayor Rennie Brantz welcomed all in attendance, and asked anyone who wished to speak during the public comment period to please sign up. Mr. Ward noted that Public Works and Police Department employees would be monitoring road conditions during the meeting.

TENTATIVE AGENDA ADOPTION

Mr. Ward noted that the second requested appearance of the night, Ms. Nancy LaPlaca, should be removed from the agenda. Ms. LaPlaca was unable to attend the meeting due to inclement weather, and had communicated to staff that she would come before Council during their regular meeting in March.

Upon a motion by Ms. Mason, seconded by Mayor Pro-Tem Clawson, Council voted to approve the tentative agenda as amended.

VOTE: Yay: All
 Nay: None

PUBLIC COMMENT

No one wished to speak during the public comment period.

REQUESTED APPEARANCES

TYLER MOFFATT - MET HOLDINGS, LLC

Tyler Moffatt, representative of MET Holdings, LLC addressed Council to clarify two points which were discussed at the January 28 Public Hearing in regards to his client's case. Mr. Moffatt indicated that at the time of their application in 2015, his clients thought they would be able to fill space on the bottom floor with retail, but that his clients were receiving interest in the space for office use instead of retail. Mr. Moffatt stated that his clients attended a presentation made by the UNC School of Government Development Finance Initiative group in partnership with the Town which indicated that flex-office space was desirable in the area, and that this in part motivated them to change their request. Mr. Moffatt asked that Council use this assessment when considering his client's request, and noted that his clients had not had any inquiries for retail use due to the limited amount of parking.

COUNCIL MATTERS

CONSIDERATION OF CASES HEARD AT THE JANUARY 28, 2019 PUBLIC HEARING

Ms. Shook began by stating that five cases were heard at the January 28 Public Hearing, with the Planning Commission sending recommendations to Council on the four map amendments and that the text amendment was tabled due to the late hour of the meeting.

Case PL02128-112918 University Overlook Conditional District Zoning Map Amendment Modification

Ms. Shook informed Council that the Planning Commission recommended approval of this request, and noted that a condition of the approval was that the applicant would not have a laundry mat or dry cleaning service on

the property. Ms. Mason felt that the request was reasonable since business plans were subject to change. Mr. Furguele stated that he disagreed and that he was troubled by this case in that the applicants were requesting a change so soon after initial approval. He added that the case was initially approved in 2016 and that the developer never finished the first floor of the building, but was able to fill out all the apartments on the upper levels. Mr. Furguele did not believe there was ever discussion about subdividing the first floor, and to expect a commercial enterprise to move in and finish out such a small space was not realistic. He expressed that he believed the applicant made false representations to the previous Council and Planning Commission, and that he did not feel there had been an adequate attempt to market the space for retail use. Mr. Furguele continued by stating that he believed that dividing the first floor into small spaces was intentionally self-defeating, and added that parking on the property should be able to support the intended use of the space. He added that he believed that a strong attempt was made by the applicant to play the Planning Commission and Council to obtain student housing. Mr. Furguele stated he would be willing to consider the request if on the first floor, the front two spaces were used for retail and the back two spaces were used for offices. He added that he believed Council at the time was careless in not addressing the possibility of future subdividing by the applicant. Mr. Furguele felt that predictability in permitting as discussed in the Comprehensive Plan was not just for developers, but also to protect neighboring properties. Ms. Mason understood Mr. Furguele's comments, but stated she was confused in that retail and office space was allowed in the downtown area, and that differentiations were not made between uses. She asked what made retail more important in this case, to which Mr. Furguele stated that he wanted to see space in the business districts full. Mr. Ashcraft added that if this property were in the B-1 district, he would agree with Mr. Furguele, but added that he believed the purpose of the restrictions was not to ensure there was retail specifically, but to ensure that a building was not entirely residential. Mr. Ashcraft stated that he believed that this request was appropriate. Ms. Ulmer stated she was unsure if the office use would work due to the lack of parking spaces. Ms. Shook noted that parking was discussed at the Planning Commission meeting, and noted that the UDO did require that there be adequate parking for the intended use of a property. Ms. Mason asked whether the applicants were agreeable to Mr. Furguele's previously mentioned conditions. Mr. Moffatt asked whether this was the only option being given to the applicants. Ms. Meade informed Council that if the applicant's requested modification was denied, it would be a year before the applicant could request another modification, or in the alternative, the applicant could appeal Council's decision. The utilization of a straw poll was discussed before Mr. Furguele expressed concerns about public hearings being reopened after Council had exited the meeting. He also had concerns about the use of a straw poll and letting the applicant know where Council stood in that this could influence Council members' votes. Ms. Meade was concerned that negotiations would not be fair without the use of a straw poll, and confirmed that there were no provisions in the Town Code or UDO which addressed the use of a straw poll. Mr. Furguele asked whether individual members of the Planning Commission had prior discussions with the applicant regarding conditions on the property. Ms. Shook confirmed that she believed this to be true, with Mr. Furguele stating that this fact affected his vote. Mr. Moffatt requested that members take a straw poll so that the applicant could know individual members wishes. Ms. Meade stated that Mr. Moffatt's position of not wanting to negotiate unless it was the preference of the majority of Council made sense. Ms. Mason asked for clarification on the parking issue, with Ms. Shook confirming that additional spaces could be designated as commercial with the current requirement of .7 spaces per unit. Mr. Furguele stated that he was not enthusiastic about that option, with Ms. Mason adding she believed this allowed flexibility for parking space to flow along with demand. Mr. Ashcraft stated that he supported the applicants original request, and if others did not, he would be willing to support Mr. Furguele's amendment. Mayor Pro-Tem Clawson stated that she supported Mr. Furguele's amendment. Ms. Mason stated that she supported the applicant's original request, and if others did not, she would support Mr. Furguele's amendment. Ms. Ulmer stated that she needed clarity as to what she was voting for. Mr. Furguele stated that he would support the request if the modification in the conditions only applied to the back two areas and not the front two, and that the front two areas would be guided by the original specifications. Ms. Ulmer stated that as long as there was adequate parking to allow for retail, she was willing to support the applicant's initial request.

Motion #1

Ms. Mason made a motion, which was seconded by Mr. Ashcraft, to approve the proposed amendment to the Town's zoning map and that the proposed amendment was in alignment with:

Comprehensive Plan Policy 2.1.1 Economic Development:

B. New and expanding industries and businesses shall be encouraged which: 1) diversify the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.

D. Economic development efforts shall encourage the revitalization and reuse of currently unused or underutilized structures, sites and infrastructure in appropriately located areas.

E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources.

Comprehensive Plan Policy 2.1.2 Commercial Development:

B. Commercial and Office development shall be encouraged to locate in planned shopping centers, office parks and mixed use developments to stop the proliferation of strip development.

I. Office and institutional development may be encouraged as a transitional land use between residential areas and higher intensity commercial activities.

VOTE: Aye: Mason, Ashcraft, Ulmer
 Nay: Clawson, Furgiuele

Ms. Mason clarified her motion to state that the proposed amendment was consistent with the Town's Comprehensive Plan and any other adopted plan(s) of the Town that were applicable.

Motion #2

Ms. Mason made a second motion, which was seconded by Mr. Ashcraft to approve the proposed amendment to the Town's zoning ordinance and that approval was reasonable and in the public interest because of the Comprehensive Plan policies listed in the first motion and vote, and that a condition be placed on the permit that no laundry mat or dry cleaner or high intensity uses be allowed. Ms. Shook reminded members that high intensity uses were removed from the conditions recommended by the Planning Commission. Ms. Mason amended her motion to remove high intensity uses. Mr. Ashcraft accepted this amendment.

VOTE: Aye: Mason, Ashcraft, Ulmer
 Nay: Clawson, Furgiuele

Case PL02133-113018 AMB - General Use Zoning Map Amendment

Ms. Shook informed Council that the Planning Commission recommended approval of this request. Mr. Ashcraft questioned whether a planning study was done, with Ms. Shook confirming one had been done. He asked what the duration of the contract was for the current parking arrangements, to which Ms. Shook responded that she believed it to be a yearly contract and that the applicant was in compliance with parking requirements. Mr. Ashcraft expressed concern with the applicant being able to maintain parking arrangements in the future.

Motion #1

Mr. Furgiuele made a motion, which was seconded by Mayor Pro-Tem Clawson to approve the proposed amendment to the Town's zoning ordinance and that it was consistent with the Town's Comprehensive Plan and any other adopted plan(s) of the Town that were applicable because the proposed amendment is in alignment with:

Comprehensive Plan Policy 1.1 Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Comprehensive Plan Policy 2.1.1 Economic Development:

B. New and expanding industries and businesses shall be encouraged which: 1) diversity the local economy, 2) train and use a skilled labor force and 3) increase area residents' incomes.

E. The Town shall encourage a public service and regulatory environment conducive to business recruitment and expansion, while at the same time enhancing the area's physical and human resources. Mr. Furguele felt that this was pertinent due to there being a stricture on their ability to expand because of having to go through the procedure.

VOTE: Aye: All
Nay: None

Motion #2

Ms. Mason made a second motion, which was seconded by Mayor Pro-Tem Clawson, to approve the proposed amendment to the Town's zoning ordinance and that approval was reasonable and in the public interest because at the time, AMB wanted to have a brewery with a tap room, and since this use was not specified in the UDO, the applicant was directed to pursue conditional district zoning approval, which they did. The request was approved unanimously, with conditions, and since that time the UDO has been updated to include microbreweries in the B-3 district as a permitted use. As a matter of fairness, the microbrewery should be treated the same as other microbreweries in a B-3 zoning district, and not be bound by the original conditions. In addition, the UDO has standards for other permitted uses in the B-3, including flood hazard and floodway regulations.

VOTE: Aye: All
Nay: None

Case PL02156-121718 Perry, Charles - General Use Zoning Map Amendment

Ms. Shook pointed out that while approval was recommended by the Planning Commission, it was not a unanimous vote. Mr. Furguele expressed disappointment in the Planning Commission regarding the lack of attention they paid to the wishes of the Junaluska neighborhood.

Motion #1

Mr. Furguele made a motion, which was seconded by Mayor Pro-Tem Clawson to approve the proposed amendment to the Town's zoning ordinance designated as R-1 and in the view shed and that it is consistent with the Town's Comprehensive Plan and any other adopted plan(s) of the Town that are applicable because the proposed amendment was in alignment with:

Comprehensive Plan Policy 1.1 Community Appearance: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Trees - Conserve existing trees and plant new trees, especially hardwoods.

Comprehensive Plan Policy 2.1.1 Economic Development:

A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.

Comprehensive Plan Policy 2.3.3

A. The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.

Comprehensive Plan Policy 2.3.2 Community Character:

A. The identification, restoration and active use of structures, building, monuments, and neighborhoods of historic or architectural significance shall be encouraged as as means of enhancing their economic and cultural value to the planning area.

H. The overall housing unit density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas, which despite the area next to the property is R-A, it is in an area that is wholly compatible with an R-1 neighborhood. Mr. Furguele added that the R-1 designation was more compatible with the current uses of the closest housing area. He added that how this property gets developed would effect the Junaluska neighborhood, which was important to protect.

VOTE: Aye: All
Nay: None

Motion #2

Mr. Furguele made a motion, which was seconded by Ms. Mason, to approve the proposed amendment to the Town's zoning ordinance designated as R-1 and in the view shed and that approval was reasonable and in the public interest because of the Comprehensive Plan policies which were stated in the first motion and noted the importance of Council taking every step possible to protect the R-1 neighborhoods. He finished by saying that he believed the R-A designation allowed too many potentially noxious uses that would be incompatible with the houses nearby, and that it was important that Council try to maintain the integrity of the neighborhood.

VOTE: Aye: All
Nay: None

Case PL02177-010319 Plaag/Tait - General Use Zoning Map Amendment

Ms. Shook noted that the hearing for this case was reopened during the Planning Commission so that she could reiterate points which were made in the staff report. Mr. Furguele stated that his concern was when people made presentations after Council had recessed, they were not afforded the same opportunity as the Planning Commission to ask questions. He added that he supported this request as an R-1 view shed designation and that he was disturbed by the lack of consideration for the Junaluska neighborhood and felt that the Planning Commission was only concerned with the Eastview neighborhood. Mr. Furguele stated that he was disappointed to think that the Planning Commission may have been influenced by what an applicant wanted, and added that decisions should be made based on what was in the best interest of the Town as a whole.

Motion #1

Ms. Mason made a motion, which was seconded by Mayor Pro-Tem Clawson, to approve the proposed amendment to the Town's zoning ordinance with an R-1 view shed designation, and that it was consistent with the Town's Comprehensive Plan and any other adopted plan(s) of the Town that are applicable because the proposed amendment is in alignment with:

Comprehensive Plan Policy 2.3.3 Housing & Neighborhoods:

A. The protection and rehabilitation of viable neighborhoods shall be encouraged to insure their continued existence as a major housing source and as a reflection of the area's image as an attractive, highly livable community.

Comprehensive Plan 1.1 Community Appearance and Community Character: Blend the built environment with the natural, scenic, and historic character of a High Country small town. Especially discourage commercial strip development, cluttered signage, and "cheap" apartment buildings.

Comprehensive Plan Policy 1.1 Trees: Conserve existing trees and plant new trees, especially hardwoods.

Comprehensive Plan Policy 2.1.1 Economic Development:

A. The Town shall protect and enhance a high quality of life, image, cultural amenities, and natural beauty as the most effective, long term component of an economic development strategy.

Comprehensive Plan Policy 2.3.3 Housing & Neighborhoods:

H. The overall housing unity density for proposed infill residential development or redevelopment should be compatible with the average density of existing areas.

VOTE: Aye: All
 Nay: None

Motion #2

Ms. Mason made a motion, which was seconded by Mayor Pro-Tem Clawson, to approve the proposed amendment to the Town's zoning ordinance and that approval was reasonable and in the public interest because of the Comprehensive Plan policies listed in the first motion and vote, and because the R-1 designation was more compatible and offered greater protection to a longstanding neighborhood.

VOTE: Aye: All
 Nay: None

DISCUSSION ON POSSIBLE AMORTIZATION PROGRAM

Ms. Meade referred to her memorandum presented in the meeting packet and suggested that Council might consider it helpful to take a more narrow approach to amortization, at least initially, due to the challenges of addressing properties which were built as multi-units from the beginning. She suggested that Council initially focus on non-conforming multi-unit residences initially constructed as single-family homes in the Town's single family zoned districts. Mayor Brantz stated that the Grand Boulevard neighborhood had struggled for years with grandfathered uses and asked how legal grandfathering was. Ms. Meade stated that all UDO's had protections for legal non-conforming uses but that they were subject to some restrictions. She added that the law had been all over the map when it came to this topic and that it had essentially reversed to where a jurisdiction would have to justify *not* allowing grandfathering. Ms. Meade continued by saying that amortization programs had been examined by the courts and had been upheld in every case that she had read, but that she believed the courts were trending towards being more in favor of property owners' rights. Mr. Furguele agreed with Ms. Meade's analysis and believed that the Town's current policy was more in favor of developers. He added that there was a steady erosion of neighborhoods due in part to this problem. Mr. Furguele stated that there were parts of the Winston-Salem policy which was presented in the packet that he did not like, specifically the registration program. He felt that the registration program would be unworkable, would take up a huge amount of staff time and that he did not believe it would serve a useful purpose. Mr. Furguele felt that for staff to have to differentiate between legal creations that come into non-conformity and uses which were illegally created would be a big task and would not solve any problems. He added that he believed Ms. Meade was right in suggesting that Council could proceed by distinguishing different kinds of non-conformities. Mr. Furguele proposed that existing non-conforming uses should have the option to apply for condition zoning, with the fees waived, which would limit the expansion of any non-conformity, but would allow the use to continue until it was discontinued by the property-owner, and alternatively to apply for general rezoning, but with no guarantee in either case that the application would be approved. He suggested that Council adopt an amortization program on a three-year basis for all non-conforming uses, and that the program should be complaint driven. He further suggested that all conditional zoning would lapse at the end of that particular use and would then revert back to its original zoning. Mr. Furguele added that in instances where the Town created the non-conformity that he believed fees should be waived and that in general fees should only be waived for structures that could not be converted to a conforming use. Mr. Ashcraft stated that he was in agreement but inquired as to how amortization programs would interact with the statute of limitations element. Ms. Meade stated that the problem would go away initially, and added that in a complaint driven system, there could be problems with single family homes about which there were no complaints. Mr. Furguele clarified that he did not believe the system should only be complaint driven, but that he did not think that staff should have to do a study of every house in R-1 neighborhoods. Mayor Pro-Tem Clawson felt that a three-year amortization program was sufficient, with Mr. Ashcraft stating that he was inclined to focus on residential uses in residential areas, and was in favor of the shortest amortization period that could be legally justified. Mr. Furguele added that he believed two years to be more than enough time for property owners to come into conformity, since he did not believe there to be more

than ten properties in town that this would apply to. Ms. Shook stated that although this program would mean additional work for staff, they were in support of the program since they see concerns on a weekly basis. Ms. Meade stated that she agreed that there was no need for a registration program if the Council chose not to create any exemptions to the amortization program. Mr. Furgiuele suggested that there should not be exemptions to the program, with Mayor Pro-Tem Clawson agreeing that everyone should be treated equally. Mr. Furgiuele added that adopting an amortization process was one way members could follow through on their campaign promises to protect neighborhoods. Ms. Meade expressed concern that Council should not think the conditional district zoning process would get rid of difficult questions, and stated she believed there would be spot zoning issues that arise. Ms. Meade suggested Council instead consider a longer amortization period for structures that were originally built as multi-unit apartments or other non-single family structures, with Ms. Mason suggesting that Council look at narrowing the focus of the amortization program to converted single family homes that would be triggered by the permitting process. Mr. Furgiuele was concerned that this could be problematic since the history of the house could not be known. Discussion turned to how this would play into the affordable housing initiative, with Mr. Furgiuele suggesting there should be a public hearing on the subject of affordable housing in order to get input and have broader discussion. Ms. Meade stated that she believed there would be upset people who would argue that not being able to continue using their property in non-conforming ways would create a hardship for them. She suggested one alternative for Council to consider was addressing problem properties through police powers by focusing on and addressing only problematic houses. Ms. Meade added that ordinances could be re-written and programs adopted to make sure complaints got back to landlords so that they could address the problem. She continued by saying that landlords could be penalized for trash and noise violations. Mr. Ashcraft stated that he saw this suggestion as a supplement to amortization. Mr. Furgiuele felt that these measures would not solve the problem and that placing liability on an absentee person was not without legal pitfalls. Mr. Ward stated that he knew of an apartment complex in an R-1 district on Woodland Drive that with the amortization schedule would have to be completely torn down and rebuilt to come into compliance. Mr. Furgiuele suggested that the property owner could apply for a conditional use or could rezone. Mr. Ward expressed concern with the potential of additional legal fees that would come along with this program. Mr. Furgiuele suggested that Ms. Meade draft an ordinance to bring back to Council in March incorporating a three-year amortization program, starting out as broadly as possible, and that exceptions and revisions come through the process. He added that the program should address all low-density neighborhoods and allow the burden of proof to lie on the property owner to demonstrate whether the structure itself was or was not suitable for conversion to single-family. Discussion ensued regarding whether or not such cases should go before the Board of Adjustment or Town Council, with Ms. Meade noting that either could be employed. Mayor Pro-Tem Clawson stated she would rather these cases come before Council. Mr. Ward stated that if Council chose to send these cases to the Board of Adjustment, to keep in mind they may not always agree with the board's decisions. Mr. Furgiuele made a motion, which was seconded by Mayor Pro-Tem Clawson, to direct the Town Attorney to draft an ordinance to make amortization as broad as possible; that cases come before Council and that the burden of proof lay with the property owner to establish a home's original use with a high degree of certainty. Mr. Furgiuele then restated his motion to instruct the Town Attorney draft an amortization ordinance that would address non-conformities in low-density neighborhoods which are in the R-1, R1A and RR zoning districts, and that within three years of the effective date, that non-conforming uses be discontinued; that during that time there be a process available to property owners who believed they could not convert their property to single-family to come before Council in a quasi-judicial setting to establish that the property was not originally created as a single family residence; that these properties would be entitled to a longer amortization period of twenty years, and that property owners who were seeking conditional use zoning be entitled to a fee waiver; include a provision that at the end of a particular use, that the property would revert to the designation of the underlying zoning district. Ms. Meade stated she would also include a findings and purpose section in the draft ordinance.

Mayor Brantz declared a break at 8:23 pm. Council reconvened at 8:33 p.m.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Sam Furgiuele, Council Member
SECONDER:	Loretta Clawson, Mayor Pro-Tem
AYES:	Mason, Clawson, Furgiuele, Ulmer, Ashcraft

CONSIDERATION OF REVISIONS TO TOWN CODE CHAPTER 96 (STREETS AND SIDEWALKS)

Ms. Meade began by stating that new legislation required the Town to open its public rights-of-way so that small wireless facilities could be accommodated. She stated that this would include street lights and utility poles and added that legislation allowed for the replacement of current poles and the addition of new poles to house the facilities. Mr. Furgiuele stated that he had some concerns with the draft language and in an effort to save time, offered to meet with the Town Attorney to give her his revisions so that she could bring back revisions on Thursday. Ms. Meade advised Council that she was not able to oblige this request due to her schedule and added that this matter was not urgent until someone came in with applications. Mr. Miller stated that staff had already had inquiries and suggested that Council not go longer than one or two months without adopting regulations to address this issue. The following major changes were made to Town Code Chapter 96:

- adding a provision that exceptions to the ordinance be made in writing by Council, in addition to statute and current ordinance and removing the provision for authorization by encroachment agreement
- Removal of §96.09 Excavations
- Addition of Encroachments in the Public Way §96.11 - 27
- Removal of §96.99(b)
- Ordinance is effective upon the adoption date

**AN ORDINANCE TO REVISE CHAPTER 96 OF THE TOWN OF BOONE
CODE OF ORDINANCES TO REFLECT THE REQUIREMENTS OF H.B. 310
(SESSION LAW 2017-159), AS AMENDED, AND FCC ORDER 18-133 AND
TO ADOPT AN EXPRESS POLICY WITH RESPECT TO ACCEPTANCE OF
INFRASTRUCTURE FOR PUBLIC MAINTENANCE**

WHEREAS, the Boone Town Council recognizes and finds that there is significant public interest in careful and responsible management of public streets, sidewalks, and other public ways, in that (i) there is limited space in such public ways; (ii) protecting the public's safety while using public ways is of great concern; and (iii) the use, occupancy and maintenance of the public ways pose significant concerns regarding health, safety, public welfare, protection of the nature, character and environment of the Town and its neighborhoods, and the public fisc;

WHEREAS, the North Carolina General Assembly has adopted Session Law 2017-159 imposing upon municipalities certain mandates with respect to permitting of small wireless facilities and the use of the public rights-of-way for the same, and Federal Communications Commission Order FCC 18-133 imposes certain time limitations upon municipalities with respect to the review and approval of applications for the installation of small wireless facilities;

WHEREAS, the Boone Town Council is authorized to enact this Ordinance pursuant to, *inter alia*, Session Law 2017-159; its authority over the public ways per G.S. § 160A-296; and its authority and responsibility to manage and protect its public enterprises per G.S. § 160A-311;

NOW THEREFORE, BE IT ORDAINED BY THE BOONE TOWN COUNCIL THAT:

SECTION 1. Chapter 96 of Title IX of the Boone Code of Ordinances is hereby amended with the addition of the following new sections 96.12 through 96.23 and modifications of the prior sections 96.01-96.11 and 96.99, with additions being underlined and deletions struck through:

CHAPTER 96: STREETS AND SIDEWALKS

GENERAL

- 96.01 Obstructions prohibited
- 96.02 Overhanging or protruding trees, shrubs, fences, canopies, awnings, signs and the like
- 96.03 Drainage related interference with sidewalks and streets
- 96.04 Warnings required for obstructions
- 96.05 Depositing injurious materials on streets
- 96.06 Required sight distances at intersections
- 96.07 Fire hydrants
- 96.08 Driveways
- ~~96.09 Excavations~~
- 96.~~09~~10 Town indemnified
- 96.10~~11~~ Street closings and right-of-way vacations

ENCROACHMENTS IN THE PUBLIC WAY

- 96.11 Purpose and Intent
- 96.12 Definitions
- 96.13 Written permission to encroach is required
- 96.14 Application for permission to encroach
- 96.15. Procedure for consideration of and action on applications
- 96.16 Factors for review of applications.
- 96.17. Indemnity, insurance and bonding requirements.
- 96.18 Responsibilities of persons granted permission to encroach
- 96.19 Authority to encroach is nonexclusive
- 96.20 Remedies
- 96.21 Rights of Appeal
- 96.22 General conditions for use of public way
- 96.23 Exemptions
- 96.24. Collocation of small wireless facilities

ACCEPTANCE OF INFRASTRUCTURE FOR MAINTENANCE BY TOWN

- 96.25 Application for acceptance of infrastructure.
- 96.26 Final acceptance
- 96.27 Prerequisites to acceptance

- 96.99 Penalty

GENERAL PROVISIONS**§ 96.01 OBSTRUCTIONS PROHIBITED.**

(A) (1) Except as otherwise authorized by statute, ordinance (including ~~§§ 96.08 and 96.09 of this chapter~~) and/or ~~encroachment agreement adopted~~ in writing by the Town Council, and except to the extent required by the performance of some function authorized or mandated by a statute or ordinance, no person(s) may congregate, stand, sit or lie on a sidewalk in a manner that would intentionally obstruct or cause to be obstructed pedestrian traffic or prevent the free ingress and egress by members of the public to and from private or public buildings, parks or parking lots adjacent to or accessed by public sidewalks within the town. Also, no person may intentionally obstruct a public sidewalk or obstruct or impede travel in a public street within the town by placing or leaving any object within the traveled portion of the public street right-of-way or public sidewalk, except as authorized by this chapter.

(2) For purposes of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CAUSE TO BE OBSTRUCTED. An action(s) or omission(s) which, ~~though whether or~~ not intended to obstruct the pedestrian use of public sidewalks, nevertheless interferes with a person's pedestrian use of a public sidewalk to a degree that passage is prevented or delayed for an unreasonable period of time after it is brought to the attention of the person causing the obstruction that passage is being prevented or delayed for an unreasonable period of time.

INTENTIONALLY OBSTRUCT. Any action or omission that has as its purpose the interference with a person's pedestrian use of a public sidewalk to a degree that passage is prevented or delayed.

PUBLIC SIDEWALK. Any area open to public use as a pedestrian public way, whether paved or otherwise designated or recognized for use of pedestrian traffic and which is owned or maintained by the town.

RESPONSIBLE PERSON. The person who has intentionally or negligently caused or authorized

the action which violates the prohibitions of this chapter or the owner of the property from or upon which a violation extends, derives or originates.

UNREASONABLE PERIOD OF TIME. The time that a reasonable person prevented or delayed in his or her attempt to use a sidewalk for pedestrian use would consider as unreasonable.

(B) Except as provided in this ~~division~~subsection (B), ~~division~~subsection (A) above applies, but is not limited to, goods, wares or merchandise displayed for sale. Partial obstruction of a public sidewalk for a sidewalk sale is permissible in accordance with a permit issued by the Administrator upon finding that:

- (1) The sale will not extend for more than three consecutive days;
- (2) The obstruction will take place only during daylight hours;
- (3) The permit, together with any other permits issued to the same applicant or to other applicants for sale at the same location, will not authorize an obstruction for more than ten days during any 365-day period; and
- (4) The sidewalk will only be partially obstructed in a manner that does not seriously inconvenience the public or threaten the public safety.

(C) Division (A) above shall not apply to temporary obstructions caused by persons engaged in construction work on abutting property when proper warning devices are maintained in accordance with § 96.04.

(Prior Code, § 98.01) (Ord. passed 3-18-2004; Ord. passed 1-18-2011) Penalty, see § 96.99

§ 96.02 OVERHANGING OR PROTRUDING TREES, SHRUBS, FENCES, CANOPIES, AWNINGS, SIGNS AND THE LIKE.

(A) No person may cause or allow (from property under his or her control) any tree limb, bush, shrub or other growth or similar obstruction to overhang a public street at a distance of less than 12 feet above the traveled portion of the street or to overhang a public sidewalk at a distance of less than eight feet above the sidewalk.

(B) ~~Unless Except as~~ authorized ~~in writing under this chapter~~ and permitted by the Unified Development Ordinance and all other pertinent laws, regulations and ordinances ~~and specifically authorized by an encroachment agreement approved by the Town Council~~, no person may cause, authorize or allow (from property under his or her control) any canopy, awning, sign or similar obstruction to overhang a public street or public sidewalk.

(C) No person may cause or allow grass, vines, weeds or other vegetation to grow from property under his or her control over, onto or across any public street or sidewalk.

(D) No person may leave any animal unattended on any sidewalk or on any town property.

(E) Any violation of this section is declared to be a public nuisance and, if it is not corrected by any responsible person within three days after being notified of the violation by the Administrator, the town may summarily abate the nuisance.

(Prior Code, § 98.02) (Ord. passed 1-18-2011) Penalty, see § 96.99

§ 96.03 DRAINAGE RELATED INTERFERENCE WITH SIDEWALKS.

(A) No person may cause or permit gutters, ditches, ducts or drain pipes to be constructed or placed on property under his or her control in a manner that the water from the gutters, ditches, ducts or drain pipes empties onto or runs across a public sidewalk ~~or street~~.

(B) Subject to the next sentence, all owners of property abutting concrete, brick or other permanently improved public sidewalks shall grade the property or construct a retaining wall in a manner as to prevent the washing of dirt, grass, gravel or other material upon the town sidewalks. If the town constructs a sidewalk, it shall be responsible initially for taking the necessary steps to prevent the washing of the materials upon the sidewalk.

(Prior Code, § 98.03) Penalty, see § 96.99

§ 96.04 WARNINGS REQUIRED FOR OBSTRUCTIONS.

(A) All persons engaged in doing work that creates any dangerous condition or obstruction in the public right-of-way of any street or sidewalk shall take whatever action is necessary, including the placement of barricades and warning signs or devices, to warn the traveling public of the condition or obstruction.

(B) No person may remove, destroy, injure or tamper with any barricade, sign, lantern, torch or other device placed in any street or sidewalk to warn or give notice to the traveling public of any dangerous condition or obstruction.

(Prior Code, § 98.04) Penalty, see § 96.99

§ 96.05 DEPOSITING INJURIOUS MATERIALS ON STREETS.

(A) No person may throw or deposit upon any street or public right-of-way any glass bottle, nails, tacks, wire, paper containers, cans or any other substance likely to injure any person, animal or vehicle.

(B) Any person who deliberately or inadvertently causes or allows any of the materials specified in division (A) above to be deposited on any public street or right-of-way shall immediately remove the materials or cause them to be removed.

(Prior Code, § 98.05) Penalty, see § 96.99

§ 96.06 REQUIRED SIGHT DISTANCES AT INTERSECTIONS.

At the intersections described below, no person who owns or is in possession or control of any property may place, locate, maintain or allow any human-made obstruction or any growth of trees, shrubs, plants or foliage that substantially blocks the clear sight distance indicated below:

(A) Where a stop sign intersects with a through street on which the speed limit is less than 45 mph, the clear sight distance shall be from a point on the stop street right-of-way located ten feet back of the intersection of the right-of-way lines of the two streets to a point on the right-of-way lines of the through street located 70 feet back of the intersection of the right-of-way lines of the two streets.

(B) Where a stop street intersects with a through street on which the speed limit is 45 mph or greater, the clear sight distance shall be from a point on the stop street right-of-way located ten feet back from the intersection of the right-of-way lines of the two streets to a point on the through street right-of-way located 100 feet back from the intersection of the right-of-way lines of the two streets.

(C) Where a stop street intersects with another stop street, the clear sight distance shall be from a point on the right-of-way of one street located ten feet back of the intersection of the right-of-way lines of the two streets to a corresponding point of the right-of-way of the other street.

(Prior Code, § 98.06) Penalty, see § 96.99

§ 96.07 FIRE HYDRANTS.

No person or company shall plant shrubs or place any type of obstacle within ten feet either side of a fire hydrant parallel to the road and five feet perpendicular to the road.

(Prior Code, § 98.07) Penalty, see § 96.99

§ 96.08 DRIVEWAYS.

(A) Except as otherwise provided in this chapter, no person may open, construct, alter or relocate any driveway across any public sidewalk or into any street or cut any curb for the purpose without having obtained a written permit from the Administrator.

(B) Any person who receives a permit under this section shall be responsible for repairing any damage to the sidewalk or street (including curb and gutter) caused by the driveway construction.

(C) The Administrator shall review the driveway construction and design plans and shall issue the permit unless he or she finds the driveway, if constructed as proposed, will substantially interfere with or pose a danger to persons using the street or sidewalk intersected by the driveway or public facilities

(including utility poles, traffic signal standards and the like) or will fail to comply with any of the provisions of this chapter.

(D) No driveway may be constructed closer than three feet to a fire hydrant or catch basin or closer than 30 feet to the right-of-way line of a street that intersects with the street the driveway opens onto.

(E) If the driveway crosses a drainage ditch on a lot that abuts a street without curb or gutter, then piping of sufficient size and strength (as approved by the Administrator) shall be installed beneath the driveway surface so the drainage capability of the drainage ditch is not materially impaired.

(F) This section shall not apply to driveways that open into state-maintained streets to the extent that the state has approved the driveway. Nor shall a person be required to obtain a permit under this section to the extent that the driveway is being constructed in accordance with plans approved pursuant to a review process authorized by a zoning or subdivision ordinance.

(Prior Code, § 98.08) Penalty, see § 96.99

§ 96.09 EXCAVATIONS.

~~—(A) Except as otherwise provided in this section, no person may dig in or excavate any street or sidewalk within the town without having obtained a written permit from the Administrator.~~

~~—(B) Any person who receives a permit in accordance with this section shall be responsible for putting the street or sidewalk where any excavation is made in as good condition as it was prior to the excavation.~~

~~—(C) Before granting a permit pursuant to this section, the Administrator shall determine that the applicant has made arrangements to comply with division (B) above and if the town is to do the necessary repair work, the permit shall not be issued until the applicant makes a deposit equal to the estimated costs of repair.~~

~~—(D) This section shall not apply to any utility to the extent that the same subject matter is covered in a franchise ordinance applicable to that utility. Nor shall this section apply to any excavation made in a state-maintained street to the extent that the state has given its permission for an excavation to be made; except that, the person making the excavation shall still be responsible for notifying the Administrator of the intended excavation 48 hours before the work begins.~~

~~(Prior Code, § 98.09) Penalty, see § 96.99~~

§ 96.0910 TOWN INDEMNIFIED.

Any person obtaining a permit authorized by § 96.08 and § 96.09 under this Chapter to encroach upon or otherwise make use of the public right of way or other public property agrees as a condition of the permit or other written authorization to indemnify the town for and hold the town harmless from any expense (including, but not limited to, attorneys' fees, litigation costs and ~~judgements~~judgments) incurred as a result of claims made for damages arising out of operations conducted by ~~the permit recipient that person~~ pursuant to ~~the permit that written authorization~~. No encroachment agreement authorizing any encroachment into a public street, public sidewalk such permit or other public property, whether the encroachment is below the surface, on the surface or above the surface, written authorization shall be approved unless the person or other entity whose encroachment or encroaching facility is authorized by the encroachment agreement (encroaching party) executes an indemnification agreement which at a minimum provides that, to the extent permitted by law, the person shall be responsible for all liability associated with the encroachment or encroaching facility, agrees to indemnify and hold harmless the town from and against any claim by any third party based upon any action or omission occurring during construction and maintenance of the encroachment or encroaching facility, as well as from and against any and all claims, demands, suits, causes of action or other assertion of responsibility, however denominated, for personal injury, damage to property, losses and expenses, including court costs and attorney's fees, arising out of or in any way related to the encroachment or encroaching facility and where pertinent, agrees to name the town as an additional insured on its and/or its contractors' general liability insurance policies applicable to the encroachment or encroaching facility and unless the encroaching party

waives all claims of liability or responsibility against the town for any damage that may be caused to the encroachment or encroaching facility as the result of the town carrying out any construction and maintenance operations and unless the encroaching party agrees to be bound by other and additional conditions as the Town Council may impose.

(Prior Code, § 98.10) (Ord. passed 1-18-2011)

§ 96.10~~1~~ STREET CLOSINGS AND RIGHT-OF-WAY VACATIONS.

Any person requesting a permanent street closing or right-of-way vacation, as defined by G.S. § 160A-299, must pay a non-refundable fee of \$500~~7~~ before a resolution of intent ~~is~~may be adopted by Town Council~~7~~ pursuant to § 160A-299(a).

(Prior Code, § 98.11)

ENCROACHMENTS IN THE PUBLIC WAY

§ 96.11 Purpose and Intent

The purposes for, and intentions behind this division, are as follows:

- (A) The public streets, whose primary purpose is movement of vehicular and other traffic, are valuable public resources that have required, and will continue to require, substantial investment by the town; and
- (B) The town desires to structure and implement a fair and orderly process for the application for, and granting of, permission for private parties to occupy and use the public street or street rights-of-way, consistent with applicable law, and which appropriately accounts for the varied reasons that private parties seek such permission.
- (C) The town desires to minimize inconvenience and disruption to the public, provide for the orderly and efficient use of the public streets and street rights-of-way, now and in the future, and to preserve adequate capacity for existing and future uses of the public streets and street rights-of-way.
- (D) The town intends to exercise, to the fullest extent permitted by applicable law, its authority in regulating the occupation and use of public streets and street rights-of-way.
- (E) Consistent with the foregoing, the town desires to provide a simplified approval process for minor encroachments into streets, street rights-of-way by adjoining landowners and into utility and access easement interests of the town by the adjoining landowner where the landowner owns the property that is subject to the town's easement interest, as provided in Section 96.22.

96.12. - DEFINITIONS.

The following words and terms in this division shall have the meaning given below unless the context indicates otherwise. These meanings shall apply whether a word is capitalized or not or is singular or plural.

Abandoned, application, city (town) utility pole, collocation, make-ready work, micro wireless, small wireless facility, utility pole, wireless facility, wireless infrastructure provider, wireless provider, wireless services, and wireless services provider have the meanings provided at Section 160A-400.51 et seq. of the North Carolina General Statutes or in the Federal Communications Commission Order FCC 18-133, which ever is more inclusive or exacting.

Administrator means the Director of the Department of Public Works or his or her designee.

Authorization means permission from the town to do work in the public way or to maintain facilities in the public way and includes but is not limited to a franchise, an easement, an encroachment agreement, a permit, or other written approval. Multiple authorizations may be required for certain activities.

Contractor means and includes any of the following, licensed or unlicensed, performing work on an owner's behalf: contractor; subcontractor; or any employee or agent of a contractor, subcontractor, or owner.

Department means the Department of Public Works.

Emergency means a condition that poses a clear and immediate danger to life or health, or a significant loss of property, or requires immediate repair to restore service to a group of users of such service.

Encroach or encroachment means any excavation in the public way, or the placing therein, thereover or below any pipes, poles, wires, fixtures or other appliances of any kind, either on, above, or below the ground surface. It also includes such digging and placing of pipes, poles, wires, fixtures or other appliances of any kind on, above or below the ground surface in areas in which the town has a utility or access easement, unless such activity is permitted by the applicable easement.

Excavate or excavation means without limitation any cutting, digging, grading, tunneling, boring, or other alteration of the surface or subsurface material or earth in the public way.

Facilities means poles, pipes, culverts, conduits, ducts, cables, wires, fiber, amplifiers, pedestals, antennae, transmission or receiving equipment, other electronic equipment, electrical conductors, manholes, appliances, signs, poles, pavement structures, irrigation systems, landscaping, monument signs, monument mailboxes and any other similar equipment, for public or private use.

Minor Encroachment means an encroachment for irrigation systems, fencing and landscape plants and material provided all of the following requirements are met:

- (i) A Minor Encroachment is only available to an adjacent property owner for encroachments into (a) public streets and street rights-of-way or (b) town utility or access easement areas when the property owner owns the underlying fee.
- (ii) There is no disruption, even temporarily, of traffic flow.
- (iii) There is no impact to paved or concrete surface.
- (iv) There is no impact to the Town's ability to maintain or operate public streets, street rights- of-way or its easement interests.

Owner means any property owner, company owner, or any entity by which work within the right-of-way has been ordered, or any entity on behalf of which any work within the right-of-way is caused to be performed, or any agent thereof.

Person means an individual, association, firm, partnership, limited liability company, joint venture, corporation, government, utility, or other organized entity able to contract for the activities described in this ordinance, whether for profit or not for profit. The term does not include the town.

Public way means any area that is owned or maintained by the Town and used or reserved for use as a public street, highway, right-of-way, alley, trail, sidewalk, curb, gutter, bike lane, bridge, round-about, tunnel, causeway, or shoulder. Such area includes, without limitation, drainage areas and dedicated areas without surface improvements that are adjacent to improved areas, and areas where no roads or other improvements have been constructed but which are dedicated for one or more of the above uses. The public way encompasses the surface of the ground, and the area above and below the ground.

User means a person that proposes to place facilities in the public way, places such facilities, or owns or maintains such facilities. The term includes but is not limited to encroachment permittees and franchisees.

96.13 WRITTEN PERMISSION TO ENCROACH REQUIRED EXCEPT FOR MINOR ENCROACHMENTS.

- (A) Except for minor encroachments, which do not require written permission, it shall be a violation of this article for any person to encroach upon any public way or town easement areas without first receiving written permission to do so from the town pursuant to this chapter.

(B) All persons that operate utilities that the town may franchise under the authority of G.S. 160A-319 shall apply for a franchise to be approved by the Town Council in accordance with the Town Charter. Permission to encroach upon a public way may be granted through the terms of an appropriate franchise agreement.

~~(A)~~(C) In situations not governed by a franchise agreement, permission to encroach shall be granted in appropriate cases through the terms of a non-exclusive, revocable encroachment permit or encroachment agreement, signed by the applicant and the Town Manager, using whatever form the town devises and is approved by the Town Attorney for that purpose. However, if the applicant must also receive a franchise for their intended business or activity from the town,

(D) The Department of Public Works shall develop standards and requirements for authorizations, including but not limited to franchises, licenses, permits, and other approvals, and may attach conditions to such authorizations. The Department may also develop standards and requirements for doing work in the public way when an authorization is not required.

(E) The Department shall charge such fees as are authorized by the Town Council for authorizations; applications for authorizations; review of information and plans; inspections and reinspections; maintenance of facilities in the public way; and for any other town review, oversight, or administration of proposed, ongoing, or completed activities described in (a). The department may allow persons to establish and fund escrow accounts or other accounts with the town to which fees may be charged.

96.14. APPLICATION FOR PERMISSION TO ENCROACH.

(A) Application for permission to encroach upon a public way shall be submitted to the Department of Public Works, and shall be submitted on any form the town devises for that purpose.

(B) All persons desiring authorization to encroach upon a public way must provide the town with the following information:

1. Identify the relevant public way;
2. A description of the items the person desires permission to install in the public way, and the purpose those items would serve. No authorization shall be granted for new equipment or facilities that are not expressly and individually identified at the time of the application, including the specific location and design characteristics of each facility.
3. A description of how the person intends to install the item in the public way, including whether any excavation in the public way will be required;
4. Whether installation of the relevant items will cause any temporary disruption in traffic flow in any public street, and if so, what precautions the applicant intends to take to minimize that disruption, and to protect human safety;
5. A site plan, with sufficient detail to show the proposed location of the items the applicant seeks permission to install in the public street or street right-of-way, including any manholes or overhead poles, the size, type and proposed depth of any conduit or other enclosures, and the proximity of the applicant's items, if installed, to all existing poles, utilities, sidewalks,

pavement, telecommunications or cable systems, and other improvements existing in the relevant public streets or street rights-of-way;

6. A proposed construction schedule and sequence;

7. Identify and describe any insurance the person has, or would obtain if granted permission to encroach on the relevant public street or street rights-of-way, that will cover his desired activities in the public street or street rights-of-way. (Homeowners seeking permission to encroach on a street right-of-way adjoining their residence should check their homeowners' policy in this regard);

8. The name, address and telephone number of the person the town may contact concerning the application; and

9. Such other information as the town may determine to be necessary or appropriate to evaluate the application or otherwise in furtherance of the public interest.

(C) Business and other commercial applicants, in addition, should submit the following information:

1. A general description of the person's business; and

2. A description of the services, if any, the person proposes to provide to others through the infrastructure he desires permission to install in the right-of-way, identifying also the geographic scope in which such services would be provided, and to whom they would be provided.

(D) Any person who must also receive a franchise from the town for their intended business or activity may provide the information set forth above in their franchise application.

(E) The town may reject any application to encroach upon a public way that is incomplete or otherwise fails to comply with the terms of this chapter or other applicable law.

96.15. PROCEDURE FOR CONSIDERATION OF AND ACTION ON APPLICATIONS.

(A) The authority to grant a private party permission to encroach upon a public way shall be exercised by the Town Manager or designee. In the Manager's discretion, however, the Town Manager may submit any application for permission to encroach for review and decision to the Town Council, with or without a recommendation from the Town Manager. In such cases, the grant of authority, if given, will be made by adoption of a resolution by the Town Council. In any case, the grant of such authority shall be conditioned upon such terms as shall be specified in the relevant encroachment or franchise agreement.

(B) The town may make such investigations and take or authorize the taking of such other steps as they deem necessary or appropriate to consider and act upon applications to encroach upon a public way and determine whether such applications should be granted.

(C) If a business or commercial applicant seeks permission to encroach upon a public way, the town may set a public hearing to give the public an opportunity to comment on the application.

96.16. FACTORS FOR REVIEW OF APPLICATION TO ENCROACH.

(A) In deciding whether to grant any application for permission to encroach upon any public way, the town may consider such factors as it deems appropriate and in the public interest, provided such factors are consistent with applicable law, including without limitation:

1. The willingness and ability of the applicant to meet construction and physical requirements and to abide by all lawful conditions, limitations, requirements and policies with respect to the encroachment;
2. The ability of the applicant to maintain the property of the town in good condition throughout the term of the relevant franchise or encroachment agreement;
3. Any services or uses of the public streets or street rights-of-way that may be precluded by the grant of the requested permission to encroach, and the adverse impact of the proposed encroachment on the efficient use of the public streets and street rights-of-way at present and in the future;
4. The adequacy of the terms and conditions of the proposed encroachment or franchise agreement to protect the public interest, consistent with applicable law; and
5. Any other public interest factors or considerations that the town has a lawful right to consider and that are deemed pertinent by the town for safeguarding the interests of the town and the public.

(B) Consistent with applicable law, the town may develop and implement policies and requirements to ensure that the public ways have sufficient capacity reasonably to accommodate existing and future uses in a rational and efficient manner. In evaluating an applicant for the right to encroach upon a public way, the town may consider an applicant's proposals for addressing capacity needs and compliance with town policies and requirements in that regard.

96.17. INDEMNITY, INSURANCE AND BONDING REQUIREMENTS, OTHER CONDITIONS.

(A) No permission to encroach on any public way shall be granted unless, as a condition to that grant, the applicant is willing to and agrees to indemnify, defend and hold harmless the town, its officers, boards, commissions and employees against any and all claims and liabilities arising from the person's activities or items in the public street or street right-of-way, including reasonable attorney's fees and court costs.

(B) Depending upon the extent of a person's desired excavation, construction or other activities in any public way, the town may exercise its authority to require an applicant to secure and provide documentation of an appropriate performance bond or letter of credit, and/or insurance, covering such activities, pursuant to terms acceptable to the town.

(C) The other terms and conditions by which the town grants a person authority to encroach upon a public way shall be set forth in the relevant permit, encroachment or franchise agreement.

96.18. RESPONSIBILITIES OF PERSONS GRANTED PERMISSION TO ENCROACH.

It shall be the responsibility of each person granted permission to encroach upon a public way to:

- (A) Ensure that any excavation, construction or other work done by them or on their behalf in the relevant public way is performed consistent with the town's standard specifications and details for construction activities, including the requirements therein regarding restoration of the affected area.
- (B) Restore land, utility lines, other improvements, ground cover, and landscaping disturbed by excavation and construction in the public way to the standards specified by the town.
 - (1) Where permanent restoration is impractical because of weather or other circumstances, temporary restoration may be required.
 - (2) Restoration shall be accomplished within the time approved by the town.
 - (3) If restoration work proves to be inadequate over time, as determined in the sole, reasonable discretion of the town, the encroacher shall perform additional restoration work as directed by the town.
 - (4) Inspection and approval by the town immediately after installation does not constitute a waiver of the town's rights to determine that the restoration work is not adequate over time and must be remedied.
- (C) If requested by the town due to a need for the town or its contractors to complete any work in a public way, temporarily remove or relocate their items located below or above the public street, or within the street right-of-way.
- (D) Otherwise comply with the terms of their encroachment permit or agreement or the encroachment provisions in their franchise agreement, and all applicable laws, ordinances, resolutions, rules, regulations and other directives of the town and any federal, state or local governmental authority having jurisdiction over the person's activities in or near such public way.

96.19. AUTHORITY TO ENCROACH IS NONEXCLUSIVE.

Any grant of permission to encroach upon a public way given by the town pursuant to this article shall be nonexclusive. The town specifically reserves the right to grant, at any time, such additional rights of access to the public way that it deems appropriate.

96.20. REMEDIES.

In the event that any person encroaches upon a public way without prior permission from the town, or violates the conditions by which authority to do so were granted by the town, or otherwise violates any provision of this article, the Administrator or designee may, in addition to any other remedies provided by any other applicable article or other law:

- (1) Issue an order to the person commanding them to immediately cease and desist their unpermitted or otherwise wrongful activities in the public way, and to restore the affected area;
- (2) Revoke any permission previously granted allowing the permission to encroach in a public street or street right-of-way;
- (3) Issue a civil penalty of \$500 to each responsible person or \$1,000 to each repeat violator; or
- (4) Any combination of the above-referenced remedies and any other remedy authorized under G.S. 160A-175.

Civil penalties authorized by this section shall be assessed against each responsible person, including the owner on whose behalf work is being performed and the contractor who is performing such work.

Emergency work exemption. Otherwise applicable civil penalties that are specified in this Code section shall not be issued where evidence is submitted to the Administrator's satisfaction that the work performed constitutes emergency work. The entity performing the emergency work will be required to pay the otherwise applicable permit fee however.

96.21. RIGHTS OF APPEAL.

- (A) In cases where the Town Manager or designee denies a person's application to encroach upon a public way, or is willing to grant that request but subject to conditions or terms the applicant deems to be unsatisfactory, resulting in an inability to finalize the requisite written authorization, the applicant may seek review of the Town Manager's (or designee's) decision before the Town Council. The applicant must request a hearing before the Town Council in writing to the Town Manager, within ten days of the applicant's notice of the Town Manager's (or designee's) decision at issue. In such submission, the applicant must identify the issues or disagreements he has with the Town Manager's (or designee's) relevant decision. In such cases, the Town Council shall make the final decision, through adoption of an appropriate resolution.
- (B) Any person subject to any enforcement action pursuant to section 96-20 above may appeal the enforcement action to the Town Manager.

96.22. GENERAL CONDITIONS FOR USE OF THE PUBLIC WAY

The right to perform work or maintain facilities in the public way is allowed subject to the conditions below, as supplemented by those set forth in other sections of this ordinance, standards adopted by the department, and requirements contained in an encroachment agreement or other written authorization.

- (A) The town does not warrant its legal interest in the public way. Persons doing work in the public way and users may need to obtain approvals from persons with property interests in the public way.
- (B) An authorization does not convey any legal right, title, or interest in the public way.
- (C) The town and its officials, officers, and employees are not liable for any direct, indirect, or consequential damages that result when facilities in the public way are damaged during the construction, installation, inspection, maintenance, or repair of public improvements that have received town funding or that are installed pursuant to a contract with the town.
- (D) Users and persons who cause work to be done in the public way shall pay for all damage that results, directly or indirectly, from work performed for their benefit in the public way, and for the installation, repair, maintenance, and operation of their facilities in the public way.
- (E) Nonenforcement of one or more provisions of an authorization does not waive the town's right to enforce the provisions of an authorization.
- (F) An authorization creates no third-party rights against the town and is intended only for the benefit of the person receiving the authorization.

- (G) An authorization does not limit the town's exercise of its regulatory, police, governmental, legislative, or contracting authority. A subsequent ordinance may regulate users more strictly than is provided in prior authorizations received by such users. If an authorization conflicts with the terms of another authorization or with the town code, the stricter of the applicable provisions shall control.

96.23 EXEMPTIONS

The Department of Public Works may exempt its contractors or the North Carolina Department of Transportation (NCDOT) from particular requirements of this chapter when substantial compliance has been assured through the town's contracting system, or, in the case of NC DOT, where the need for state infrastructure on town roads, or a joint undertaking by the town and NC DOT, or the use of state controlled areas of the public way makes the application of such requirements unreasonable.

96.24 COLLOCATION OF SMALL WIRELESS FACILITIES IN PUBLIC WAYS.

- (A) Collocation of small wireless facilities meeting the height requirements of G.S. 160A-400.55(b) require an encroachment agreement or other written authorization in a form approved by the town and are subject to all the foregoing provisions of this Chapter except where clarified or altered by the terms of this section 96.24. For other small wireless facilities, see subsection (B) below.

(1) General.

- a. Wireless providers may occupy and use the public way to collocate small wireless facilities to provide wireless services upon, along, over and under the public way in the town such that such collocations do not inhibit other utility installations within the public way.
- b. The town retains its right to impose fees and charges to the extent not prohibited by federal and state law.
- c. Wireless services providers shall pay taxes for telecommunications services that are subject to taxation.
- d. Small wireless providers shall obtain approvals legally necessary to use the public way from owners, other than the town, of property interests in the public way or adjacent to the roadway system located within the town.
- e. Nothing in this section shall be deemed or construed to stop or limit the town from exercising any regulatory, police, governmental, or legislative function pursuant to applicable law, which powers include, but are not limited to, the authority to enact regulations, ordinances, rules, and orders not prohibited by state or federal law that affect the public way or a wireless provider's use of the public way.
- f. The terms of this section do not permit the wireless services provider to operate a cable system or to provide cable service, as those terms are defined by Section 602 of the Cable Communications Policy Act of 1984, as amended (47 U.S.C. Section 522), and the wireless services provider agrees that it will not operate a cable system or provide cable service in the town unless it obtains authorization from the town.
- g. This section only permits the wireless provider, upon obtaining required approvals and permits, to place small wireless facilities in those portions of the public way specifically approved by the town.

h. Collocation of small wireless facilities shall commence within six months of permit issuance and shall be activated for use no later than one year from the permit issuance date. Failure to commence collocation within six months of permit issuance shall void said permit. A small wireless facility not activated within one year of permit issuance shall be considered abandoned and shall be removed from the public way at the wireless provider's sole expense.

i. No more than 25 small wireless facilities may be included in a single permit application.

j. For general public safety and design purposes, documentation of compliance with the structural, operational, and insurance requirements for wireless communication facilities as found in the Unified Development Ordinance shall be required for all small wireless facility installations, unless superseded by this section.

k. Historic preservation requirements of the Unified Development Ordinance shall apply to all permit applications, as applicable.

(2) Design standards for installations on existing poles.

a. Small wireless facilities installed on existing utility, street light, or traffic signal poles shall comply with the following design and concealment standards:

1. For areas zoned single family residential where existing utilities are installed underground, the maximum pole height shall be 40 feet. For all other areas, the maximum height shall be 50 feet.

2. Facilities shall be designed to match the design and color of the existing pole.

3. To the extent practicable, all accessory cables and equipment shall be installed underground.

a. If any equipment cannot be installed underground, then it shall be installed at the base of the pole and concealed with skirting compatible in design and color to the pole.

b. If any equipment cannot be installed at the base of the pole and concealed with skirting, then it shall be flush-mounted to the pole.

b. All installations shall comply with all Town Code and Unified Development Ordinance undergrounding requirements.

c. Antenna shall be installed within the pole and not visible. If any antenna cannot be installed within the pole and made not visible, then it shall extend vertically from the pole or be flush-mounted to the side of the pole, and shall be designed to be an architecturally compatible extension of the pole. The diameter of the antenna shall be consistent with the diameter of the pole, not including other appurtenances or extensions from the pole, or the base to which the pole is mounted. The antenna shall not extend more than ten feet above the top of the pole.

(3) Requirements for new poles.

a. Unless a new pole replaces an existing pole in substantially the same location, to the extent practicable, poles shall be installed at least 300 feet from any existing or proposed pole. Any wireless services providers desiring to install poles less than 300 feet apart or desiring to install a new pole within 300 feet of an existing pole shall demonstrate to the town's satisfaction why such placement is necessary.

b. If possible, poles shall be designed to accommodate small wireless facilities for multiple wireless services providers.

- c. Poles shall be located a minimum of 15 feet from any tree, measured to the tree-trunk center. Additionally, 80 percent of the root protection zone shall remain undisturbed. The root protection zone shall either be a six-foot radius around the tree or a one-foot radius for every inch of tree diameter at breast height, whichever is greater. This minimum separation shall not apply for a new pole that replaces an existing pole, where the new pole is installed in the same place as, or immediate vicinity of, the existing pole.
 - d. Poles shall be designed pursuant to town standards or the applicable utility's standard, and function as street light poles, utility poles, or traffic signal poles in consultation with the town or the applicable utility, and shall be incorporated into the applicable utility or signaling system.
 - e. Poles shall not exceed 40 feet in height from ground level in areas zoned single-family residential. In all other areas, the maximum height shall be 50 feet.
 - f. Antennae shall not extend beyond ten feet above the top of the pole.
 - g. Poles shall be designed and installed with materials and appearance consistent with existing poles in the adjacent public way, unless materials and appearance are prescribed by other ordinance, law, or town requirements.
 - h. To the extent practicable, all accessory cables and equipment shall be installed within the pole and/or placed underground per Town Code and Unified Development Ordinance undergrounding requirements. If any equipment cannot be installed underground, then it shall be installed on or at the base of the pole and concealed with skirting compatible with, and integrated into, the design of the pole.
- (4) Pedestrian and vehicular movement requirements.
- a. No small wireless facility, structure, or associated equipment shall impede or interfere with pedestrian or vehicular movement, circulation, or visibility. Specifically, no small wireless facility, structure, or associated equipment shall:
 - 1. Extend into an existing or proposed sidewalk or walkway, trail, bicycle parking area unless such extension provides at least 8.0 feet vertical clearance;
 - 2. Extend into an existing or proposed driveway, or vehicular parking area unless such extension provides at least 15 feet vertical clearance.
 - 3. Extend into any motor vehicle travel lane.
 - b. No new installation shall be installed within sight distance triangles pursuant to the requirements of this Chapter and the Unified Development Ordinance.
 - c. Installations that replace existing poles or collocate onto existing facilities already located within sight distance triangles shall not locate or install equipment that diminishes visibility relative to existing conditions. This requirement can be waived pursuant to Unified Development Ordinance standards for alternative dimensions.
- (5) Information required. Prior to applying for authorization to install any portion of its small wireless facilities, a wireless provider shall provide the following information to the town in addition to what is normally required for approval of an encroachment:
- a. The identity and corporate form of the wireless provider and affiliates who will perform work in the town's public way;
 - b. The name and contact information for the officer, agent, or employee of the wireless provider responsible for communications with the town;

- c. A statement as to whether the services provided are telecommunications services taxed under G.S. 105-164.4(a)(4c) or are video programming taxed under G.S. 105-164.4(a)(6); and
- d. Attestation that small wireless facilities will be collocated on the utility pole, town utility pole, or wireless support structure, and that the small wireless facilities shall be activated for use by a wireless provider to provide service no later than one year from the permit issuance date.

(6) Relocation of facilities.

- a. Wireless providers shall, at no cost to the town, relocate or remove portions of its small wireless facilities located in the public way in the event the public way is closed, or if the town, in its sole discretion, determines that the location of a small wireless facility interferes with the efficient provision of utility services to town residents, or interferes with public safety and welfare, or conflicts with any highway, sidewalk, trail, or utility project, or that the public way can be better or more efficiently utilized by the removal and relocation or consolidation of certain existing facilities. The town shall provide the wireless provider 180 days' written notice prior to the required relocation or removal of small wireless facilities.
- b. Except in the case of emergency repairs, before the wireless provider constructs, installs, upgrades, repairs or removes small wireless facilities along a portion of the public way, wireless providers shall provide notice to the Public Works Department per section 96.14.

(7) Construction, inspection, restoration, and removal.

- a. At the town's request, as built maps in such further detail as the town may require shall be provided no more than 60 days following the conclusion of construction, or at any other time as the town may require.
- b. Wireless providers will advise the town of any significant discrepancy between construction plans and actual construction.
- c. Wireless providers shall advise the town if, during construction of small wireless facilities, such construction is within six feet of any water or sewer facilities.
- d. Engineering, construction and as-built documents shall be provided in hard copy [paper] and/or electronic copy as requested by the town.
- e. In addition to design maps and as-built maps, wireless providers shall provide such other information regarding existing facilities in the public way as the town may require, in such detail as the town may require.
- f. The wireless provider shall comply with all applicable federal, state and local regulations, such as the National Electrical Code, National Electrical Safety Code, fiber optic cable installation specifications, 1987 telecommunication industry committee standards, traffic safety/lane closure rules and construction requirements promulgated by the town and the North Carolina Department of Transportation as amended.
- g. The town may inspect the small wireless facilities and restoration work performed by the wireless provider.
- h. The wireless provider shall notify the town when it has completed each permitted portion of its small wireless facilities; or at such other time the town requests. Following inspection, the wireless provider shall make any corrections necessary to bring the permitted installation into conformance with town requirements.

- i. The town may approve the performance of repair or emergency work without issuance of a permit. When it is impossible for wireless provider to give the town notice of repair work because of the unexpected, emergency nature of such work, wireless provider may perform such work provided notice is given to the town as promptly as possible after the commencement of such work and a permit request is submitted retroactively or within two working days.

(8) Processing of applications

- a. A small wireless permit application shall be deemed complete unless the town provides notice otherwise in writing to the applicant within 30 days of submission or within some other mutually agreed upon time frame. The notice shall identify the deficiencies in the application which, if cured, would make the application complete. The application shall be deemed complete on resubmission if the additional materials cure the deficiencies identified.
- b. The application shall be deemed approved if the town fails to approve or deny the application within 45 days from the time the application is deemed complete or within some other mutually agreed upon time frame between the town and the applicant.
- c. The town may deny an application only on the basis that it does not meet one or more of the following: (i) the town's applicable codes; (ii) local code provisions or regulations that concern public safety, objective design standards for decorative utility poles, city utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way; or (iv) historic preservation requirements. The town must document the basis for a denial and send the documentation to the applicant on or before the day the town denies an application. The applicant may seek to cure the deficiencies identified by the town and resubmit the application within 30 days of the denial without paying an additional application fee. The town shall approve or deny the revised application within 30 days of the date on which the application was resubmitted. Any subsequent review shall be limited to the deficiencies cited in the prior denial.
- d. In the event of a consolidated application for multiple facility collocations, the town may remove and treat separately any facility collocations (i) for which incomplete information has been provided or (ii) that are denied.

(9) Collocation of small wireless facilities on town utility poles.

- a. Request to collocate on town utility pole. The town shall grant non-exclusive authorizations for collocations of small wireless facilities on town utility poles consistent with such terms, fees and conditions as Town Council may adopt consistent with G.S. §160A-400.56. A request to collocate on a town utility pole may be denied if there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles, and those limitations cannot be remedied by rearranging, expanding, or otherwise reengineering the facilities at the reasonable and actual cost of the town to be reimbursed by the wireless provider. An applicant permitted to collocate on a town utility pole under this section must demonstrate compliance with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration
- b. Make-ready work. The town shall provide a good-faith estimate for any make-ready work necessary to enable a town utility pole to support a requested collocation, including pole

replacement if necessary, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, shall be completed within 60 days of written agreement on the cost of the work.

(10) Abandonment. Wireless providers shall remove all abandoned small wireless facilities within 180 days of abandonment. Should the wireless provider fail to timely remove the abandoned wireless facility, the town may cause such small wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless provider. A small wireless facility shall be deemed abandoned at the earlier of the date that the wireless provider indicates that it is abandoning such facility or the date that is 180 days after the date that such small wireless facility ceases to transmit a signal, unless the wireless provider gives the town reasonable evidence that it is diligently working to place such small wireless facility back in service.

(11) Exceptions to application and permitting requirements. No application or written authorization is required for (i) routine maintenance; (ii) the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or (iii) installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or city utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the city rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or G.S. 105-164.4(a)(6); provided, however, that written authorization is required for excavations or other work otherwise required to be permitted under this Chapter.

(B) All other small wireless facilities shall be subject to all applicable provisions of this Chapter and the Unified Development Ordinance.

ACCEPTANCE OF INFRASTRUCTURE FOR MAINTENANCE BY TOWN

96.25 - APPLICATION FOR ACCEPTANCE OF INFRASTRUCTURE.

Any person requesting acceptance by Town Council of street and/or sidewalk infrastructure shall submit a request to public works on a form prepared by the Public Works Department, accompanied by a fully executed one-year infrastructure warranty and repair security on a form acceptable to the town.

An infrastructure acceptance request includes a request to Town Council to accept any water, sanitary sewer, or storm drainage systems located within the area subject to the acceptance request, which likewise shall be accompanied by a fully executed one-year infrastructure warranty and repair security on a form acceptable to the town.

96.26. - FINAL ACCEPTANCE.

When an infrastructure acceptance request form has been submitted as required by the foregoing section, and when all applicable requirements of this division have been met, the infrastructure, or portions thereof, shall be recommended for acceptance by the Administrator through the Town Manager to the Town Council. Only Town Council has the authority to accept infrastructure for maintenance by the town.

96.27 - PREREQUISITES TO ACCEPTANCE.

Streets and the water, sanitary sewer, or storm drainage systems located within them shall be considered for acceptance for maintenance by the town when the proper width street is dedicated for public use and a map is recorded in the office of the register of deeds of the county, and the infrastructure is improved in accordance with all applicable town requirements.

§ 96.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99.

~~—(B) Any person who violates § 96.01 shall be guilty of an infraction, pursuant to G.S. § 14-4(b), punishable by a penalty of up to \$50.~~

SECTION 2: This Ordinance shall be effective upon the date it is adopted by Town Council.

Ms. Mason made a motion, which was seconded by Mr. Ashcraft to approve the ordinance as amended, with the understanding that additional amendments would be made and brought back to Council at a future date.

Due to deteriorating weather conditions, Mr. Ward suggested that Council address item number 6-Consideration of Planning Retreat Agenda, then recess the meeting until Thursday.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Lynne Mason, Council Member
SECONDER:	Marshall Ashcraft, Council Member
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft

CONSIDERATION OF UDO AMENDMENTS - WIRELESS COMMUNICATIONS FACILITIES

Upon a motion by Mr. Furguele, seconded by Mayor Pro-Tem Clawson, Council voted to send the proposed UDO amendments to public hearing, recognizing that there may be modifications.

WIRELESS COMMUNICATIONS FACILITIES

APPLICABLE DEFINITIONS

Accessory Equipment

Equipment serving a wireless facility. This includes but is not limited to, utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or other similar structures.

Antenna

Communications equipment that transmits, receives, or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.

Base Station

A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics. The term does not include a wireless support structure or any equipment associated with a tower.

Collocation

The placement, installation, maintenance, modification, operation, or replacement of wireless facilities on, under, within, or on the surface of the earth adjacent to existing structures, including utility poles, city utility poles, water towers, buildings, and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes. The term "collocation" does not include the installation of new utility poles, city utility poles, or wireless support structures.

Equipment compound

An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

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.

Micro wireless facility

A small wireless facility that is no larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height and that has an exterior antenna, if any, no longer than 11 inches.

Monopole

A single, self-supporting, freestanding pole-type structure built for the sole purpose of supporting one or more antennae. A utility pole is not a monopole.

Overall height (wireless communications facility)

Height from grade, inclusive of all antennas, lightning rods and any other associated equipment, but exclusive of lights required by the FAA that do not provide support for any antennas or other equipment.

Shroud

A box or other container that contains, and is designed to camouflage or conceal the presence of, a wireless facility, antenna, or accessory equipment.

Small wireless facility

A wireless 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, if enclosed, could fit within an enclosure of no more than six cubic feet.
- ii. All other wireless equipment associated with the facility has a cumulative volume of no more than 28 cubic feet. For purposes of this sub-subdivision, the following types of ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cut-off switches, vertical cable runs for the connection of power and other services, or other support structures.

Stealth (Concealed) Wireless Facility, Wireless Support Structure, or Antenna

Any wireless facility, wireless support structure or antenna that is integrated as an architectural feature of a structure or that is designed to camouflage or conceal the presence of the wireless facility, wireless support structure, or antenna so that the purpose of the wireless facility, wireless support structure, or antenna is not readily apparent to a casual observer.

Stealth (Concealment) Element

Any design feature, including but not limited to painting, shielding requirements, shrouds, and restrictions on location or height in relation to the surrounding area that are intended to make a wireless communications facility less visible to the casual observer. The design elements of a concealed (stealth) wireless communications facility are concealment elements.

Qualifying small wireless

A new small wireless facility that does not extend more than ten (10) feet above the utility pole, town utility pole, or wireless support structure on which it is collocated and is located either (i) in the Town right-of-way or (ii) outside of Town right-of-way on property that is neither used as single family residential property nor vacant but zoned for single family residential.

Qualifying town utility pole

A modified or replacement town utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such utility pole.

Qualifying utility pole

A new utility pole or a modified or replacement utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such utility pole.

Utility Pole

A structure that is designed for and used to carry lines, cables, or wires for power, lighting, telephone, or cable television.

Wireless communications

Any personal wireless service, including but not limited to: cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing Part 15 devices (i.e. wireless internet services) and paging.

Wireless Communications Facility

Any manned or unmanned location for the transmission and/or reception of wireless communications, usually consisting of one or more of the following components: a wireless facility, base station, equipment compound, and/or wireless support structure.

Wireless Facility

Equipment at a fixed location that enables wireless communications between user equipment and a communications network, including (i) equipment associated with wireless communications and (ii) radio transceivers, antennas, wires, 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 shall not include (i) the structure or improvements on, under, within, or adjacent to which the equipment is collocated; (ii) wireline backhaul facilities; or (iii) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless infrastructure provider

Any person with a certificate to provide telecommunications service in the State who builds or installs wireless communication transmission equipment, wireless facilities, or wireless support structures for small wireless facilities but that does not provide wireless services.

Wireless provider

A wireless infrastructure provider or a wireless services provider.

Wireless services provider

A person who provides wireless services.

Wireless Support Structure: A new or existing structure, such as a monopole, lattice tower, or guyed tower that is designed to support or capable of supporting wireless facilities. A utility pole is not a wireless support structure.

15.24 WIRELESS COMMUNICATION FACILITIES

15.24.01 This Section 15.24 applies to wireless communications facilities that are not “qualifying small wireless facilities” (which are governed by Section 15.25), that are not micro wireless facilities, and that are not exempted in Section 15.24.04. Any terms used herein that are not defined at Article 34 shall have the meaning set forth at Part 3E (“Wireless Telecommunications Facilities”) of Chapter 160A of the General Statutes.

15.24.02 The purpose of this section is to:

- A. Minimize the impacts of wireless communications facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- B. Encourage the location and co-location of wireless communications facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- C. Encourage coordination between suppliers of wireless communications facilities services in the Town and its planning jurisdiction;
- D. Accommodate the growing demand for wireless services and the resulting need for wireless communications facilities;
- E. Regulate in accordance with all applicable federal and state laws;
- F. Establish review procedures to ensure that applications for wireless communications facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- G. Protect the unique aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- H. Encourage the use of existing buildings and structures as locations for wireless communications facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.
- I. It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the Town must approve under state or federal law. The provisions of this Section are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

15.24.03 General Considerations and Limitations

- A. Wireless communications facilities are permitted in accordance with the Table of Uses, Section 15.07.
- B. New wireless support structures are prohibited in the public rights of way.
- C. The following are the Town's preferences for wireless communications facility locations, in descending

order of preference:

- Collocations on Existing Wireless Support Structures, Transmission Towers and Utility Poles
- Stealth (Concealed) Wireless Facility Attached to Existing Building/Structure
- New Stealth (Concealed) Wireless Support Structure
- New Non-Stealth Wireless Support Structure - monopole
- New Non-Stealth Wireless Support Structure - lattice-type

D. The co-location of facilities and/or use of stealth technology shall be considered a mitigating factor to a variance request and may be justification for the request.

15.24.04 Compliance with Law; Exemptions.

- A. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of wireless communications facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the property owner or any person who has an interest in the property.
- B. The following are exempt from the requirements in this Section 15.24:
1. Any wireless communications facilities below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
 2. Satellite dishes.
 3. Removal or replacement of an antenna or equipment on an existing wireless support structure or base station that does not change the physical dimensions of the wireless support structure or base station, or defeat any of the concealment elements of the wireless support structure or base station.
 4. Routine maintenance of existing facilities, including activities associated with regular and general upkeep of transmission equipment, and the replacement of existing wireless communications facilities with facilities of the same size (so long as any of the concealment elements of the facilities are not defeated).
 5. A temporary wireless communications facility, (1) upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency; or (2) if necessary to continue providing service while a wireless support structure or other structure upon which the existing wireless communications facility has been placed, such as a building or water tank, is undergoing maintenance, replacement, or reconstruction during which it will be impossible or unsafe to operate the existing wireless communications facility; except that (i) the temporary facility must be located on site and no taller than the existing wireless support structure or other structure; (ii) the temporary facility must meet the setback requirements of section

15.24.07(C); (iii) the temporary facility must comply with all federal and state requirements; and (iv) the temporary facility must be removed within sixty (60) days of the conclusion of the maintenance, replacement, or reconstruction, or within one (1) year, whichever is shorter, unless the time is extended by the Planning Director for good cause shown.

6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.

15.24.05 Eligible Facilities Requests and Collocations. Collocation and eligible facilities requests, as defined in G.S. 160A-400.51 or 47 U.S.C. 1455, shall be processed in accordance with G.S. 160A-400.52, 160A-400.53, and/or federal laws and regulations as appropriate. In approving any eligible facilities request, the Town solely intends to comply with a requirement of federal law or state law and not to grant any property rights or interests except as compelled by federal or state law. Without limitation, approval does not exempt applicant from, or prevent Town from, opposing a proposed modification that is subject to complaint under the National Historic Preservation Act or the National Environmental Policy Act. Collocations are only permitted as provided in Sections 15.24.06 and 15.24.07.

15.24.06 Collocations on Existing Wireless Support Structures

- A. The collocation of additional wireless facilities on existing, freestanding wireless support structures shall be consistent with the existing concealment method, if applicable, of the freestanding wireless support structure.
- B. **Height.** The top of the additional wireless facility may not exceed the highest point of the existing wireless facilities on the freestanding wireless support structure.

15.24.07 Stealth (Concealed) Wireless Facilities Attached to Existing Building or Structure.

- A. Stealth wireless facilities, including any feed lines, antennas, and accessory equipment, must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- B. A structure utilized to support a wireless facility must be allowed within the underlying zoning district. Structures may include, but are not limited to: flagpoles, bell towers, clock towers, dormers, crosses, monuments, parapets, and steeples.
- C. Attached stealth wireless facilities shall be allowed as a permitted accessory use in all non-residential zoning districts, and on residentially-zoned land used for non-residential purposes. Unless otherwise allowed above, stealth wireless facilities shall be prohibited in all other residential zoning districts.
- D. If located in the right-of-way of any public road or street, stealth antennae shall be located on an existing utility pole which does not exceed a height of thirty-five (35) feet above the immediate surrounding ground. Stealth antennae located on an existing utility pole, whether inside or outside of the right-of-way, shall not be higher than ten (10) feet above the highest point of the pole.
- E. The ground-mounted components of stealth antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted aboveground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.
- F. **Height.** The top of the stealth wireless facility may not be more than ten (10) feet above the top of

the building or structure to which it is attached.

15.24.08 Non-Stealth Wireless Facilities

- A. Non-stealth wireless facilities are prohibited in the public right-of-way.
- B. Except as provided at subsection 15.24.06 for collocations on existing wireless support structures, non-concealed wireless facilities shall only be allowed on transmission towers. The top of a stealth wireless facility may not be more than ten (10) feet above the tower to which it is attached.

15.24.09 Concealed (Stealth) Wireless Support Structures

- A. **Design Considerations and Visibility.** Concealed (stealth) wireless support structures shall be designed to complement the physical landscape in which they are to be located. Examples of stealth wireless support structures that may be compatible include but are not limited to faux pine trees, unipoles/slick sticks, bell towers, etc. New stealth wireless support structures shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape, horizon, and adjacent properties. New freestanding stealth wireless support structures shall be designed to be compatible with adjacent structures and landscapes with specific design considerations such as architectural designs, scale, color, and texture.
- B. **Setbacks.** The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.
 - 1. Setbacks shall be measured from the base of the wireless support structure.
 - 2. The minimum setback from each property line shall be 120% of the height of the tower, or 100 feet, whichever is greater.
 - 3. The minimum setback from the centerline of a natural gas line easement for gas lines measuring eight inches in diameter or greater shall be 120% of the height of the tower, or 85 feet, whichever is greater.
- C. **Height.** The maximum permitted overall height for stealth wireless support structures is ten (10) feet above the maximum height allowed in the zoning district.
- D. **Monopine/Faux Trees.** A monopine or faux tree wireless support structure shall be considered concealed if the following criteria are met. If the following criteria are not met, then the proposed structure will be considered non-concealed for regulatory purposes.
 - 1. The wireless support structure is incorporated within an existing cluster of trees that measures, after any necessary grading or clearing for the facility, at least 1,000 square feet with no individual dimension of less than 25 feet and the entire qualifying cluster located on the lot or parcel.
 - 2. The structure shall be designed to match a species located within the existing cluster of trees, with the support structure to be designed as a tree trunk and antenna arrays flush-mounted and completely concealed by limbs, branches, and leaves.
 - 3. Limbs, branches, and leaves shall cover at least the upper 50% of the support structure, and shall cover any of the support structure that extends above the average tree line of the cluster of trees.
 - 4. The overall height of the wireless support structure may not exceed the height of the tallest tree in

the existing cluster.

- E. A special use permit shall be required for any stealth wireless support structure that is greater than 50 feet in overall and located within 400 feet of the property line of any property used or zoned for single family residential purposes.

15.24.10 Freestanding Non-stealth Wireless Support Structures

- A. The following setback requirements are established to mitigate potential safety and aesthetic impacts upon surrounding properties.
 - 1. Setbacks shall be measured from the base of the wireless support structure.
 - 2. The minimum setback from each property line and road right-of-way shall be 200 feet or two times the overall height of the structure, whichever is greater.
 - 3. The minimum setback from the centerline of a natural gas line easement for gas lines measuring eight inches in diameter or greater shall be 120% of the overall height of the structure, or 85 feet, whichever is greater.
- B. **Height.** The maximum permitted overall height for non-stealth wireless support structures is twenty (20) feet higher than the maximum building height allowed in the district.
- C. A special use permit shall be required for any non-stealth wireless support structure that is (i) greater than 60 feet in overall height or (ii) within 400 feet of the property line of any property used or zoned for single family residential purposes.

15.24.11 Additional Requirements and Standards for All Wireless Support Structures

- A. **Existing Wireless Support Structures.** New antennae may be co-located upon wireless support structures that exist on the effective date of this Ordinance. A request for an increase in height for an existing wireless support structure shall require issuance of a special use permit, if a special use permit would be required to erect a new wireless support structure at the requested height.
- B. **Collocation Required.** All freestanding wireless support structures shall be engineered and constructed to accommodate no less than three (3) antenna arrays if the location is not a major mountain ridge.
- C. **General Development Standards**
 - 1. **Design and Neighborhood Compatibility**
 - a. The exterior appearance of all associated support structures and buildings shall be compatible with the other buildings in the surrounding area. Wireless communications facilities shall be blended with the natural surroundings as much as possible. Except when otherwise required by applicable federal or state regulations, colors and materials shall be used that are compatible with the surrounding area and usually shall be light gray. Wireless communications facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.
 - b. Lighting on wireless support structure shall not be permitted except as required by federal and

state regulations and shall not exceed required minimums. The permit issuing authority may require the applicant to apply to the Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than a red and white marking pattern, when the permit issuing authority determines such a marking pattern would cause aesthetic blight due to the visibility of the wireless support structure.

- c. Support buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
- d. No advertising sign or logo shall be permitted on any wireless communications facility.
- e. Equipment compounds shall not be used for as storage yards, including but not limited to for storage of any excess equipment or hazardous materials, nor be used as habitable space.

2. Buffering and Screening

- a. All fences and walls shall be screened in accordance with the requirements of Chapter 31 of this Ordinance.
- b. The base of the wireless support structure and each guy anchor shall be surrounded by an opaque fence or wall at least eight (8) feet in height.

D. **Neighborhood Meeting.** At the time of submitting an application for a proposed wireless support structure that requires approval as a special use, the applicant shall submit written documentation that they have conducted a neighborhood meeting, to which owners of property within four hundred (400) feet of the subject property have been invited, to explain the proposed facility and answer questions. Documentation should include the time, date, and location of the meeting; a list of meeting attendees; a brief summary of any presentations and/or information discussed; and questions/concerns expressed by neighboring property owners.

E. **Balloon Test.** A balloon test shall be required for all wireless support structures that require approval as a special use. The balloon test shall be required prior to the submittal of photo simulations in order to illustrate the proposed height of the wireless support structure. The applicant shall arrange to raise a colored balloon no less than three (3) feet in diameter at the maximum height of the proposed wireless support structure, and within twenty-five (25) horizontal feet of the center of the proposed wireless support structure.

The applicant shall meet the following for the required balloon test:

- 1. Applicant must inform the Planning Department and abutting property owners within four hundred (400) feet of the subject property in writing of the date and times, including alternative date and times, of the test at least fourteen (14) days in advance.
- 2. The date, time, and location, including alternative date, time and location, of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date.
- 3. The balloon shall be flown at the required height for at least four (4) consecutive hours during daylight hours on the date chosen. The applicant shall record the weather conditions during the balloon test.

- F. **Availability of Existing Structures.** No new freestanding wireless support structure shall be permitted unless the applicant demonstrates that no existing or previously approved wireless support structure can reasonably be used for the wireless communications facility placement instead of the construction of a new wireless support structure; that residential, historic, and designated scenic areas cannot be served from outside the area; or that the proposed height of a new wireless support structure or initial wireless communications facility placement or a proposed height increase of a substantially changed wireless support structure, or replacement wireless support structure, is necessary to provide the applicant's designed service. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the wireless support structure is unwilling to enter into a contract for such use at fair market value.
- G. **Blue Ridge Parkway view shed protection.** If a new or taller wireless support structure is proposed within one mile of the Blue Ridge Parkway centerline and in the parkway viewshed, the applicant shall inform the National Park Service of the proposed structure siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the Administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant's written intention to erect a wireless support structure.
- H. **Setback Reductions**
1. In considering an application for special use for wireless communications facilities, the Board of Adjustment may grant a reduction of the minimum required setbacks listed in this Section 15.24 upon consideration of circumstances or aspects which reduce the off-site effects of the facility on adjacent properties. Such circumstances or aspects may include, but are not limited to: topography; berms; the proximity of existing or potential uses; existing vegetation and improvements made or proposed to the site to obscure or reduce the visibility of the wireless support structure from adjacent properties; the concentration of existing and/or proposed wireless support structures in the area; and whether the height, design (including structural features), placement or other characteristics of the proposed wireless support structure could be modified to have a less intrusive impact.
 2. Requests under this sub-section may be approved provided that such action is not inconsistent with the general purposes and applicable approval criteria of this Ordinance. The Board of Adjustment, in considering any request(s) for reduction of the minimum required setbacks under this Section, shall consider any unique circumstances for such a request(s).
- I. **Conditions.** Notwithstanding any of the standards of this Section, the Board of Adjustment may require any other reasonable conditions to mitigate the impact of the wireless support structure on adjacent properties and uses including, but not limited to, conditions or modifications related to the style, height, and design of the facility.
- J. **Siting on Mountain Ridges**
1. Locating a wireless facility on a major mountain ridge shall be considered as a last resort and justifying documentation shall be provided.
 2. A wireless support structure located on any major mountain ridge shall be monopole and no taller than the vegetative canopies immediately surrounding the base of the tower.
- K. Wireless support structures shall be designed to meet the ANSI/EIA/TIA-222-G (as minimum one half inch (½") of solid radial ice. In no case shall the design wind speed be less than specified in Section

1609 of the North Carolina Building Code.

- L. Lighting on wireless support structure shall not be permitted except as required by federal and state regulations.

15.24.12 Outside Experts and Disputes

- A. Review by an outside consultant shall be required for all facilities requiring approval of a special use permit. The fee for review by the outside consultant shall be collected together with the application fee for the special use permit. Additional reasonable and cost based fees may be imposed for costs incurred should the applicant amend its application. Selection of the outside consultant shall be at the sole discretion of the Town.
- B. If an applicant for a wireless communications facility claims that one (1) or more standards of this Ordinance are inconsistent with federal law as applied to a particular property, or would prohibit the effective provision of wireless communications within the relevant market area, the decision-making body may require that the application be reviewed by a qualified engineer for a determination of the accuracy of such claims. Any costs shall be charged to the applicant.

15.24.13 Standard Conditions and Requirements Applicable to All Wireless communications Facilities

- A. Wireless communications facilities shall be permitted in accordance with the Table of Uses, Section 15.07.
- B. Grading shall be limited to only the area necessary for the wireless communications facilities and equipment compound, and access to the facility.
- C. Documentation, sealed by a registered professional engineer with wireless communications expertise, shall be provided indicating that the new facility, or the modification of an existing facility, complies with the following. Such compliance shall be maintained throughout the life of the facility.
 - 1. That the American National Standards Institute (ANSI) requirements for the proposed improvements are met; and
 - 2. All applicable building, structural, electrical, and safety codes and with all other laws codifying objective standards reasonably related to health and safety shall be met.
- D. Applicants must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of the proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section is not in lieu of any other permit required under the UDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the UDO, is not valid. No person may maintain a wireless communications facility in place unless required state or federal authorization remain in force.
- E. All wireless communications facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of

approval. The wireless communications facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. All the wireless communications facility equipment must be removed upon the expiration/termination/revocation of the approval and/or when no longer in operation, whichever occurs first.

In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification. If a wireless communications facility or portions of a wireless communications facility are taken out of service, the components must be removed within thirty (30) business days of being taken out of service, and affected facilities restored to their prior condition.

- F. The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- G. Any approval issued by the Town for a new wireless support structure or a collocation that is a substantial change shall be conditioned on the construction of the approved facilities within twenty-four (24) months.
- H. The applicant or owner shall maintain onsite at the wireless communications facility contact information for all parties responsible for maintenance of the facility.
- I. The owner of a freestanding wireless support structure shall maintain general liability insurance for the structure in the amount of at least \$1,000,000; and shall, as part of the original site plan application, site plan amendments, and any subsequent modifications, provide documentation demonstrating compliance with this requirement.
- J. Wireless communications facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission, nor shall they interfere with public safety communications or normal radio and television reception.
- K. After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense and according to the then-existing standards for wireless communications facilities, of any wireless communications facility located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.
- L. Collocation or modification of wireless communications facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitutes an eligible facilities request.
- M. Wireless communications facilities placed in the public right of way must comply with all applicable provisions of the Town's Code of Ordinances relating to encroachments.
- N. No portion of a wireless communications facility may be placed in the public right-of-way in a manner that:
 - 1. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant

may be required to place equipment in vaults to avoid obstructions or interference;

2. Results in ground-mounted, above-ground equipment cabinets in the public right-of-way associated with the support structure that are ten percent (10%) larger in height or overall volume than other equipment cabinets in the same area; or
 3. Involves placement of pole-mounted equipment whose lowest point is lower than eight (8) feet above ground level.
- O. The applicant shall be required to provide documentation certifying compliance with all applicable federal and state regulations.
- P. The applicant shall present to the Administrator proof of either fee simple ownership, an option to purchase or lease, a recorded leasehold interest, or an easement, from the record owner of all property involved and any necessary rights-of-way to the wireless facility site.
- Q. Signage shall be limited to a sign identifying the owner(s) and operator(s) of the tower, an emergency telephone number and any other signage as required by any government agency shall be placed in a clearly visible location on the premises of the tower.
- R. Any wireless communications facility shall be removed within one hundred eighty (180) days of the date on which it ceases to be operable or in active use. The owner of the facility shall remove the facility within 90 days of receipt of a notice of abandonment from the Administrator. After such time has elapsed, if the facility has not been removed, enforcement action shall commence.

15.24.14 Applications requiring special use permit approval. The following shall be required, as applicable, in addition to the findings normally required for approval of special use permits, in order for the Board of Adjustment to approve the special use permit.

- A. Evidence that it is not reasonably feasible to collocate new antennas and equipment on an existing wireless support structure or structures or utility poles within the applicant's geographic search ring. Collocation on an existing support structures or utility poles is not reasonably feasible if collocation is technically or commercially impractical, or the owner of the existing support structures or utility poles is unwilling to enter into a contract at fair market value.
- B. That the use of existing facilities would prevent the provision of personal wireless services in the area to be served by the proposed facility.
- C. In determining whether a wireless communications facility is in harmony with the area, and the effects on and general compatibility of a facility with adjacent properties, the approving authority shall consider the aesthetic effects of the facility as well as factors that mitigate the aesthetic effects.
1. Documentation of balloon tests and other methodologies used to simulate the height and appearance of the proposed wireless communications facility shall be provided by the applicant, along with descriptions of the locations, distances, and vantage points that formed the basis of the simulation(s).
 2. Factors that the approving authority may consider in determining the aesthetic effects of a proposed wireless communications facility include:
 - i. The protection of the view in sensitive or particularly scenic areas and areas specially designated

in adopted plans such as unique natural features, scenic roadways, and historic sites;

ii. The concentration of WCFs in the proposed area; and,

iii. Whether the height, design, placement, or other characteristics of the proposed WCF could be modified to have a less intrusive visual impact.

- D. The approving authority shall not make a determination on the electromagnetic field (EMF) effects of the wireless communications facility on the health of the public. Documentation that certifies that the facility meets or exceeds applicable American National Standards Institute (ANSI) standards as adopted by the FCC in order to protect the public from unnecessary exposure to electromagnetic radiation shall be sufficient. This shall not preclude other issues regarding the health, safety, and welfare of the public from being considered in order to satisfy the finding.

15.24.15 Variances

Technical dimensional requirements shall not prohibit or have the effect of prohibiting the provision of personal wireless services contrary to the mandates of federal law. Per Article 6 of this UDO, Applicants may seek variances to technical dimensional requirements that an applicant claims have the effect of prohibiting the provision of personal wireless services.

15.24.16 Submittal Requirements

- A. In addition to the submittal requirements of Appendix A of this Ordinance, as may be applicable, applications for proposed wireless communications facilities shall also include maps, reports, and documents as specified by the Planning Director. At a minimum, this information shall describe the facility with regard to its proposed location, design, and operation; and, if applicable, a clear statement that the request is being made as an eligible facilities request under state law and/or federal law.
- B. If, as part of review by an outside expert, additional submittal information is determined to be necessary in order to review the application for compliance with this Ordinance, such information shall be required regardless of the items initially submitted with the application.

15.24.16 Nonconforming Setbacks for Existing Wireless Support Structures. Wireless support structures that do not meet the minimum required setbacks from lots that were created after the construction of the wireless support structure shall be deemed conforming with regard to setbacks for the purposes of Section 15.24.

Note: Refer to Section 16.05 for requirements associated with creating residentially zoned lots from an existing lot or parcel that contains a wireless support structure (stealth or non-stealth).

New 16.05:

16.05 Distance From Existing Wireless Support Structure. When creating residentially zoned lots from an existing lot or parcel that contains a wireless support structure (stealth or non-stealth), the new lot(s) shall be located no closer to the existing structure than 120% the height of the structure.

15.25 QUALIFIED SMALL WIRELESS FACILITIES**15.25.01** The purpose of this section is to:

1. Minimize the impacts of small wireless facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
2. Encourage the location and collocation of small wireless facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
3. Encourage coordination between suppliers of small wireless facilities;
4. Accommodate the growing demand for wireless services and the resulting need for small wireless facilities;
5. Regulate in accordance with all applicable federal and state laws;
6. Establish review procedures to ensure that applications for small wireless facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
7. Protect the aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
8. Encourage the use of existing buildings and structures as locations for small wireless facilities infrastructure so as to minimize the aesthetic impacts of related infrastructure.
9. It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless communications services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the small wireless facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the town must approve under state or federal law. The provisions of this Section are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

15.25.02 Siting. To protect the aesthetics of the Town, to minimize new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures, the Town prefers that small wireless facilities be located outside the public right-of-way; collocated on existing utility poles or wireless support structures; concealed; and have their accessory equipment mounted on the utility pole or wireless support structure. These preferences are intended as guidance for development of an application for small wireless facilities.

15.25.03 Applicability; Compliance with Law; Exemptions

- A. The standards established herein shall apply only to qualifying small wireless facilities, qualifying utility poles, and qualifying town utility poles, as defined herein. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of, any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of small wireless facilities on privately-owned utility poles or wireless support structures, or

on private property, without the consent of the property owner or any person who has an interest in the property.

- B. The following categories of small wireless facilities are exempt from the requirements set forth in this Section 15.25:
1. Any wireless communications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
 2. Satellite dishes.
 3. Eligible facilities requests that satisfy the requirements set forth in Section 15.24.05.
 4. Routine maintenance of small wireless facilities; the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles or town utility poles in compliance with all applicable laws or regulations by or for a communications service provider authorized to occupy the Town rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or (a)(6).
 5. A temporary small wireless facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency.
- C. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.
- D. A small wireless facility located in an interior structure or upon the site of any stadium or athletic facility, provided that the small wireless facility complies with applicable codes.

15.25.04 Collocation of Small Wireless Facilities. Collocation of small wireless facilities on land used as single-family residential property or vacant land that is zoned for single-family development, and any small wireless facility that extends more than ten (10) feet above the utility pole, town utility pole, or wireless support structure on which it is collocated, are subject to Section 15.24.

Notwithstanding the foregoing, replacement of an existing streetlight for which the Town is financially responsible with a streetlight capable of including a collocated, concealed small wireless facility is permitted on land used as single-family residential property or vacant land that is zoned for single-family development, pursuant to the requirements of Section 15.25.05.

Collocations of qualifying small wireless facilities are subject to the following requirements:

- A. **Application.** Applicants must complete an application as specified in form and content by the Town.
- B. **Height.** Each new small wireless facility shall not extend more than ten (10) feet above the utility pole, town utility pole, or support structure on which it is collocated.
- C. **Public Safety.** In order to protect public safety:

1. Small wireless facilities shall cause no signal or frequency interference with public safety facilities or traffic control devices and shall not physically interfere with other attachments that may be located on the existing pole or structure.
2. A structural engineering report prepared by an engineer licensed by the State of North Carolina, certifying that the host structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennae and other equipment, extensions, and appurtenances associated with the installation.
3. A traffic and pedestrian management plan must be submitted for any installation that requires work in the public right-of-way.
4. No portion of a small wireless facility may be placed in the public right-of-way in a manner that:
 - a. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - b. Involves placement of pole-mounted equipment lowest point is lower than eight (8) feet above ground level.
5. An abandoned small wireless facility shall be removed within one hundred eighty (180) days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the town may cause such wireless facility to be removed and may recover the actual cost of such removal, including legal fees, if any, from the wireless services provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless services provider indicates that it is abandoning such facility or the date that is 180 days after the date that such wireless facility ceases to transmit a signal, unless the wireless services provider gives the town reasonable evidence that it is diligently working to place such wireless facility back in service

D. Objective Design Standards.

1. No advertising signs or logos are permitted on small wireless facilities.
 2. Small wireless facilities shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Small wireless facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.
- E. Stealth and Concealment.** All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed.
- F. Screening, Landscaping, and Spacing Requirements for Ground Equipment.** Ground equipment shall be screened, to the extent possible, with evergreen plantings or other acceptable alternatives approved by the Planning Director.
- G. Historic Preservation.** Small wireless facilities located in a designated historic district or on property designated as a landmark (pursuant to G.S. Chapter 160A, Article 19, Part 3C) shall be required to obtain

a Certificate of Appropriateness.

H. **Applicable Codes.** Small wireless facilities must meet applicable codes.

15.25.05 Existing Utility Poles and Town Utility Poles Associated with Small Wireless Facilities. The maintenance, modification, operation, or replacement of existing qualifying utility poles and qualifying town utility poles associated with small wireless facilities are subject to the following requirements:

- A. **Application.** Applicants must complete an application as specified in form and content by the Town.
- B. **Height.** Each modified or replacement utility pole or town utility pole shall not exceed (i) forty (40) feet above ground level on property zoned for or used as single- family residential property, or in the right-of-way adjacent to such property, where existing utilities are installed underground; or (ii) fifty (50) feet above ground level on all other property. Each new small wireless facility shall not extend more than ten (10) feet above the associated utility pole, town utility pole, or wireless support structure on which it is collocated.
- C. **Small Wireless Facilities.** All requirements of Section 15.25.05 apply to small wireless facilities located on a utility pole, town utility pole, or wireless support structure.
- D. **Public Safety.** In order to protect public safety:
 - 1. No replacement utility poles or town utility poles associated with a small wireless facility are permitted in the clear zone as defined in the Town's Standard Specifications & Details Manual unless such replacement pole is breakaway rated.
 - 2. No portion of a utility pole or town utility pole associated with a small wireless facility may be placed in the public right-of-way in a manner that:
 - a. Results in the obstruction of pedestrians or vehicular or bicycle access, or of sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - b. Involves placement of pole-mounted equipment whose lowest point is lower than eight (8) feet above ground level.
- E. **Objective Design Standards.** Utility poles or town utility poles associated with a small wireless facility shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Utility poles or town utility poles associated with a small wireless facility shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.
- F. **Stealth and Concealment.** All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed.
- G. **Historic Preservation.** Utility poles or town utility poles associated with a small wireless facility located in a designated historic district or on property designated as a landmark (pursuant to G.S. Chapter 160A, Article 19, Part 3C) shall be required to obtain a Certificate of Appropriateness.

- H. **Applicable Codes.** Utility poles and town utility poles associated with a small wireless facility must meet applicable codes.

15.25.06 New Utility Poles Associated with Small Wireless Facilities

- A. New poles are prohibited consistent with the Town's undergrounding requirements as set forth at Section 22.09 of this Ordinance.
- B. In the event a new pole is proposed for an area where undergrounding requirements do not apply, the following provisions apply:
1. Unless a new pole replaces an existing pole in substantially the same location, to the extent practicable, poles shall be installed at least 300 feet from any existing or proposed pole. Any wireless services providers desiring to install poles less than 300 feet apart or desiring to install a new pole within 300 feet of an existing pole shall demonstrate to the town's satisfaction why such placement is necessary.
 2. Poles shall be designed pursuant to town standards or the applicable utility's standard, and function as street light poles, utility poles, or traffic signal poles in consultation with the town or the applicable utility, and shall be incorporated into the applicable utility or signaling system.
 3. All requirements, standards and limitations of subsections 15.25.04 and 15.25.05 apply to new utility pole installations.

15.25.07 Standard Conditions

- A. Applicants must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of a proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section is not in lieu of any other permit required under the UDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the UDO is not valid. No person may maintain a small wireless facility in place unless required state or federal authorization remains in force.
- B. All small wireless facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The small wireless facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification.
- C. The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- D. The applicant or owner shall maintain onsite at the facility contact information for all parties

responsible for maintenance of the facility.

- E. Small wireless facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.
- F. After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense, of any small wireless facility, and the associated utility pole, town utility pole, or wireless support structure on which it is collocated, located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.
- G. Collocation or modification of small wireless facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitute an eligible facilities request.

NOTE: Uses 15.25 Child Daycare, 15.26 Kennel and Veterinary Offices, and 15.27 Retail Store 25,000 Square Foot are to be re-numbered to 15.26, 15.27 and 15.28 respectively, with corresponding changes to references wherever required in UDO.

Use #	Specific Use	Zoning Districts																	Reference
		Low Density Residential				Medium to High Density Residential				Commercial/Industrial					Education				
		RA	R1	R1A	RR	R2	R4	MH	R3	OI	B1	B2	B3	M1	U1	E1	E2	E3	
7.0 Wireless communications																			
7.01	Small Wireless Collocation	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.25
7.02	Wireless Facility Collocation on Existing Wireless Support Structure or Utility Pole	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
	Stealth Wireless Facility Attached to Existing Building or Structure	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
7.03	Non-stealth Wireless Facility Attached to Existing Building or Structure																		15.24
	Non-stealth Wireless Facility Collocation on Electrical Transmission Towers	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
7.04	Stealth Wireless Support Structure	S/L	S/L	S/L	S/L	L	L	L	L	L	L	L	L	L	L	L	L	L	15.24
	Non-stealth Wireless Support Structure								L	L			L	L	L				15.24
7.05	Reserved																		
7.06	Reserved																		
7.07	Emergency Response Communication Antenna	P	P	P	P	P	P	P	P	P	P	P	P	P					

RESULT: APPROVED [UNANIMOUS]
MOVER: Sam Furguele, Council Member
SECONDER: Loretta Clawson, Mayor Pro-Tem
AYES: Mason, Clawson, Furguele, Ulmer, Ashcraft

CONSIDERATION OF UDO AMENDMENT TO ESTABLISH MINIMUM AND MAXIMUM PARKING REQUIREMENTS

Ms. Mason suggested that Council discuss minimum and maximum parking requirements during the Planning Retreat.

CONSIDERATION OF MARCH 5TH AND 6TH PLANNING RETREAT AGENDA

Ms. Meade asked that discussion of temporary signs be removed from the Planning Retreat agenda, and stated she would come back to Council at a future time with proposals. Ms. Mason felt that the main topics of discussion should be zoning designations and the potential extension of the B-1 district downtown. Ms. Shook stated that fee schedules needed to be discussed, as well as a review of adopted plans. She noted that she did not believe that the finalized appearance standards would be ready to present to Council at the Planning Retreat, but that a draft should be ready. Mr. Furguele expressed concern that Council would get caught up in discussing R-3/R-4 properties and not have time to discuss other topics. Ms. Mason stated that she felt the Planning Retreat was the proper forum to discuss complex issues, since regular Council meetings did not always afford that time. Mr. Furguele stated that he would be satisfied with retaining walls being discussed at a regular meeting. Ms. Shook felt that cottage housing and the creation of a new R-5 district to be Council's first priority, and that the

update on R-3/R-4 properties, fee schedule and board direction have a place further down on the agenda. Ms. Mason was concerned that discussions regarding downtown appearance standards kept getting put off. Mr. Ashcraft felt that affordable housing, downtown appearance standards and retaining walls were the easiest topics for him to put off, and suggested that Council focus on the Planning and Inspections annual update and work plan, board/committee updates and direction, and an updated fee schedule. Mr. Furguele suggested that Council discuss R-3/R-4 properties on the second day of the retreat and that Council should wait to review appearance standards when they were complete, but to give guidance to staff on the first date of the retreat if needed. Ms. Shook suggested that Council discuss stormwater regulations and review adopted plans at the reserved date in April. Mr. Ward asked whether Council would like to have the Town's lobbyists attend the retreat. Mr. Furguele stated he would like Council to meet with the lobbyists to discuss ETJ options and the 194 sidewalk plan, but felt that the Planning Retreat should be reserved for planning. Mr. Ward stated he would see if the lobbyists could meet with Council on another date.

REVIEW AND CONSIDERATION OF SEEC RECOMMENDATIONS FOR PURCHASE OF HYBRID VEHICLES

RESULT:	TABLED [UNANIMOUS]	Next: 2/21/2019 6:00 PM
MOVER:	Lynne Mason, Council Member	
SECONDER:	Connie Ulmer, Council Member	
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft	

CONSIDERATION OF BUDGET AND PROGRAMMING FOR "EARTH FIRST" FRIDAY SUSTAINABILITY FORUM

RESULT:	TABLED [UNANIMOUS]	Next: 2/21/2019 4:00 PM
MOVER:	Lynne Mason, Council Member	
SECONDER:	Connie Ulmer, Council Member	
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft	

REQUEST FOR DIRECTION ON CHANGES TO OAF APPLICATION/PROCESS

RESULT:	TABLED [UNANIMOUS]	Next: 2/21/2019 4:00 PM
MOVER:	Lynne Mason, Council Member	
SECONDER:	Connie Ulmer, Council Member	
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft	

BOARD LIAISON REPORT BY TOWN COUNCIL

RESULT:	TABLED [UNANIMOUS]	Next: 2/21/2019 4:00 PM
MOVER:	Lynne Mason, Council Member	
SECONDER:	Connie Ulmer, Council Member	
AYES:	Mason, Clawson, Furguele, Ulmer, Ashcraft	

ADJOURNMENT

Upon a motion by Ms. Mason, seconded by Ms. Ulmer, Council voted to recess the meeting and to address the remaining discussion items at the beginning of the Council Matters during the February 21, 2019 regular meeting.

VOTE:	Aye:	All
	Nay:	None

Nicole Harmon, Town Clerk

Rennie Brantz, Mayor