

## **ARTICLE 23. TELECOMMUNICATION FACILITIES**

### **Section 23-1: Purpose**

The purpose of this Article is to set forth the requirements for planning and construction of telecommunications facilities including cellular antennas, wireless communication towers, and principal communication towers for other uses.

### **Section 23-2: Compliance with Federal Law**

- (A) The deployment of wireless infrastructure is critical to ensuring first responders can provide for the health and safety of all residents of North Carolina and that, consistent with section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 USC § 1455(a), creates a national wireless emergency communications network for use by first responders that in large measure will be dependent on facilities placed on existing wireless communications support structures. Therefore, it is the policy of the State and the Town of Pembroke to facilitate the placement of wireless communications support structures in all areas of the Town. *(Amended 8/2/2021)*
- (B) The placement, construction, or modification of wireless communications facilities shall be in conformity with the Federal Communications Act, 47 USC § 332 as amended, section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012, 47 USC § 1455(a), and in accordance with the rules promulgated by the Federal Communications Commission. *(Amended 8/2/2021)*
- (C) This Article shall not be construed to authorize the Town of Pembroke to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein. *(Amended 10/2/2017)*

### **Section 23-3: Facilities Permitted**

Telecommunications facilities, including cellular antennae and wireless communications towers and facilities, are permitted subject to the following conditions:

- (A) Location. The proposed tower, antenna, and accessory structure and equipment shall be placed in a location and in a manner that will minimize the visual impact on the surrounding area. Any tower, antenna, or accessory structure shall be approved by the Planning Board and Town Council for compliance with these requirements. Accessory structures and equipment must meet applicable Sections of Article 11, Note 7. To ensure the safety of the public and other existing buildings, the telecommunications site shall:
  - (1) Not endanger or adversely affect adjacent residential properties *(Amended 11/3/2014)*;

- (2) Be located such that all supporting cables and anchors are contained within the property of the applicant.
- (B) Collocation. Approval for a proposed tower within a radius of ten thousand five hundred (10,500) feet from an existing tower or other similar structure shall not be issued unless the applicant certifies that the existing tower or structure does not meet applicant's structural specifications or technical design requirements, or that a collocation agreement could not be obtained at a reasonable market rate and in a timely manner.
- (C) Height. The height of the tower shall not exceed one hundred sixty (160) feet as measured from existing grade at its base to the highest point of the tower or antennae. An additional one hundred twenty (120) feet of height may be approved if the tower is designed to accommodate twice the applicant's antennae requirements. Telecommunications antennae or equipment mounted on a building shall meet height requirements of Article 11.
- (D) Setback. Unless otherwise stated herein, each Wireless Support Structure shall be set back from all property lines a distance equal to its engineered fall zone.
- (E) Design.
- (1) Towers shall be designed to accommodate additional antennae equal in number to the applicant's present and future requirements for the life of the tower. The color of the tower and its antennae shall be one that will blend to the greatest extent possible with the natural surroundings and shall be approved by the Planning Board.
- (2) Concealed Wireless Facilities shall be designed to accommodate the Collocation of other Antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured, and otherwise not readily apparent to a casual observer.
- (3) A Monopole or Replacement Pole shall be permitted within utility easements or rights-of-way, in accordance with the following requirements:
- (a) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
- (b) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
- (c) The height of the Monopole or Replacement Pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
- (d) Monopoles and the Accessory Equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.

- (e) Single carrier Monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by subsection (c) above.
  - (f) Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to twenty (20) feet above the height of the utility tower.
- (F) Lighting and Marking. Wireless Facilities or Wireless Support Structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- (G) Signage. Signs located at the Wireless Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this Ordinance shall prohibit signage that is approved for other uses on property on which Wireless Facilities are located (i.e., approved signage at locations on which Concealed Facilities are located).
- (H) Accessory Equipment. Accessory equipment, including any buildings, cabinets, or shelters, shall be used only to house equipment and other supplies in support of the operation of the Wireless Facility or Wireless Support Structure. Any equipment not used in direct support of such operation shall not be stored on the site.
- (I) Fencing. Ground mounted Accessory Equipment and Wireless Support Structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the UDO Administrator. This requirement may be waived by the UDO Administrator if it is deemed that a fence is not appropriate or needed at the proposed location.
- (J) Maintenance or Service Structures. One unmanned maintenance or service structure of not more than twenty (20) feet in height and four hundred (400) square feet of floor space may accompany each tower. The tower and maintenance or service structure shall not be required to comply with development standards relating to lot size, setbacks, street frontage, and subdivision regulations, so long as the principal use complies with this Article.
- (K) Existing Towers. Existing towers may be replaced or modified providing that the existing height is not exceeded by more than twenty (20) feet and the new or modified tower meets all of the requirements of this Article except setback provisions.
- (L) Replacement of Towers. Those towers that are located prior to March 19, 2002, in the Light Industrial or Industrial Zone can be replaced to their current height if completely destroyed by natural causes and only if the applicant presents engineering data to the Planning Board and Town Council that the replacement poses no threat to the surrounding property owners.
- (M) Non-Conforming Towers. All non-conforming transmission towers existing as of the effective date of this Ordinance may be replaced if damaged by no more than fifty percent

(50%). Those towers that are located prior to March 19, 2002, in the Light Industrial or Heavy Industrial Zone can be replaced to their current height if completely destroyed by natural causes and only if the applicant presents engineering data to the Planning Board and Town Council that the replacement poses no threat to the surrounding property owners (refer to Article 8-3). *(Amended 8/2/2021)*

(N) Leases of Property by the Town of Pembroke for Communication Towers. *(Amended 1/4/2016)*

- (1) Any property owned by the town may be leased or rented for such terms and upon such conditions as the Town Council may determine, but not for longer than 10 years (except as otherwise provided in subsection (4) of this section) and only if the Town Council determines that the property will not be needed by the town for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.
- (2) Property may be rented or leased only pursuant to a resolution of the Town Council authorizing the execution of the lease or rental agreement adopted at a regular Town Council meeting upon 30 days public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the Board's intent to authorize the lease or rental at its next regular meeting.
- (3) No public notice as required by subsection (2) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the Town Council may delegate to the Town Manager or some other town administrative officer authority to lease or rent town property for terms of one year or less.
- (4) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.
- (5) Notwithstanding subsection (4) of this section, the Town Council may approve a lease without treating that lease as a sale of property for any of the following reasons:
  - (a) For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years.
  - (b) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years.

(O) Miscellaneous Provisions.

- (1) Abandonment and Removal. If a Wireless Support Structure is abandoned, and it remains abandoned for a period in excess of twelve (12) consecutive months, the Town of Pembroke may require that such Wireless Support Structure be removed

only after first providing written notice to the owner of the Wireless Support Structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim the Wireless Support Structure within sixty (60) days of receipt of said written notice. In the event the owner of the Wireless Support Structure fails to reclaim the Wireless Support Structure within the sixty (60) day period, the owner of the Wireless Support Structure shall be required to remove the same within six (6) months thereafter. The Town of Pembroke shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.

- (2) Multiple Uses on a Single Parcel or Lot. Wireless Facilities and Wireless Support Structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

#### **Section 23-4: Telecommunications Facility Plans**

(A) Approvals Required for Wireless Facilities and Wireless Support Structures.

- (1) Administrative Review and Approval. The following types of applications are subject to the review process as provided in Article 12. No other type of zoning or site plan review is necessary.
- (a) Monopoles or Replacement Poles located on public property or within utility easements or rights-of-way, in any zoning district.
  - (b) COWs, in any zoning district, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred twenty (120) days.
  - (c) Substantial modifications.
  - (d) Collocations.
- (2) Special Use Permit. Any application for Wireless Facilities and/or Wireless Support Structures not subject to Administrative Review and Approval pursuant to this Ordinance shall be permitted in any district upon the granting of a Special Use Permit in accordance with the standards for granting Special Use Permits set forth in Section 12-17. *(Amended 8/2/2021)*
- (3) Exempt from All Approval Processes. The following are exempt from all Town of Pembroke UDO approval processes and requirements:
- (a) Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification as defined in this Ordinance.

- (b) Ordinary Maintenance of existing Wireless Facilities and Wireless Support Structures, as defined in this Ordinance. Nothing in this section requires an application and approval for routine maintenance or limits the performance of routine maintenance on wireless support structures and facilities, including in-kind replacement of wireless facilities.
- (c) Wireless Facilities placed on Utility Poles.
- (d) COWs placed for a period of not more than one hundred twenty (120) days at any location within the Town of Pembroke or after a declaration of an emergency or a disaster by the Governor.

(B) Administrative Review and Approval Process.

- (1) Content of Application Package. All Administrative Review application packages must contain the following in addition to those requirements outlined in Article 12:
  - (a) A fee determined by the Town's Fee Schedule.
  - (b) A written narrative of the development plan.
  - (c) Documentation that collocation on existing towers or structures within a radius of ten thousand five hundred (10,500) feet was attempted by the applicant, but found unfeasible with reasons noted.
  - (d) A notarized affidavit that states the applicant's willingness to allow location on the proposed tower, at a fair market price and in a timely manner, of any other service provided licensed by the Federal Communications Commission (FCC) for the Cape Fear market area.
  - (e) For collocations and substantial modifications, written verification from a licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas.
  - (f) For substantial modifications, drawings depicting the improvements along with their dimensions.
- (2) Approval Schedule. Within forty-five (45) days of the receipt of a complete application for a Collocation, a Monopole or Replacement Pole, a Non-Exempt COW, or a Substantial Modification, the UDO Administrator will:
  - (a) Review the application for conformity with this Ordinance (see Section 13-4 (D)). An application under this section is deemed to be complete unless the UDO Administrator provides notice that the application is incomplete in

writing to the applicant within 45 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 UDO Administrator may deem an application incomplete if there is insufficient evidence provided to show that the proposed collocation or eligible facilities request will comply with federal, state, and local safety requirements. The UDO Administrator may not deem an application incomplete for any issue not directly related to the actual content of the application and subject matter of the collocation or eligible facilities request. An application is deemed complete on resubmission if the additional materials cure the deficiencies indicated.

- (b) Issue a written decision approval on an eligible facilities request application within forty-five (45) days of such application being deemed complete. For a collocation application that is not an eligible facilities request, the UDO Administrator shall issue its written decision to approve or deny the application within forty-five (45) days of the application being deemed complete.

(C) Special Use Permit Process. Any Wireless Facility or Wireless Support Structures not meeting the requirements of Section (A)(1) and (A)(3) above, may be permitted in all zoning districts upon the granting of a Special Use Permit, subject to the requirements of Section 12-17. *(Amended 8/2/2021)*

(1) Content of Special Use Permit Application Package. All special use permit application packages must contain the following in addition to those requirements contained in Sections 12-17 and 12-18. *(Amended 8/2/2021)*

- (a) A fee determined by the Town's Fee Schedule.
- (b) A written narrative of the development plan.
- (c) The impact on the environment (trees, run-off, waste disposal, emissions, historic property impact, and impact on other properties).
- (d) Documentation that collocation on existing towers or structures within a radius of ten thousand five hundred (10,500) feet was attempted by the applicant, but found unfeasible with reasons noted.
- (e) A site plan and landscaping plan at a scale of one-inch equals forty (40) feet by a North Carolina registered surveyor, showing location of all existing property lines and improvements within a five hundred (500) foot radius and any proposed tower, antenna, accessory structure, or equipment, and how the applicant proposes to screen any service structure, accessory structure, or equipment from view. Indigenous vegetation shall be used in all plantings.

A permanent maintenance plan shall be provided for the plantings. In addition, the site plan must include a list of adjacent property owners and their addresses, zoning district, and the names of developer(s) and owner(s).

- (f) Copies of all county, state, and federal permits with the application building permit where prior local approval is not required.
  - (g) Elevation drawings of all towers, antennas, and accessory structures and equipment, indicating height, design, and colors.
  - (h) Certification that all antenna and equipment comply with FCC regulations for radio frequency radiation and all towers, antennae, and equipment meet Federal Aviation Administration (FAA) aviation and navigation requirements.
  - (i) A copy of approved National Environmental Policy Act of 1969 (NEPA) compliance report for all towers, antennae, accessory structures, or equipment proposed for the proposed site.
  - (j) Documentation signed and sealed by a North Carolina registered engineer that indicates any proposed tower meets the structural requirements of the Standard Building Code and the collocation requirements of this Article.
  - (k) Proof of liability insurance or financial ability to respond to claims up to \$1,000,000 (escalated each year by the Consumer Price Index) in the aggregate which may arise from operation of the facility during its life, at no cost to the Town of Pembroke, in a form approved by the Town Attorney.
  - (l) Appropriate approvals, certifications, or recommendations required to allow review of approval criteria such as sight line analysis, aerial photographs, or other such tests as determined by the Administrator.
- (2) Approval Schedule. Within one hundred fifty (150) calendar days of the receipt of an application under this section, the Town Council upon recommendation of the Planning Board will:
- (a) Complete the process for reviewing the application for conformity with this Ordinance (see Section 13.4 (D)). An application under this section is deemed to be complete unless the UDO Administrator notifies the applicant in writing, within thirty (30) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take thirty (30) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within thirty (30) calendar days, the application shall be reviewed and processed within one hundred fifty (150) calendar days from



the initial date the application was received. If the applicant requires a period of time beyond thirty (30) calendar days to cure the specific deficiencies, the one hundred fifty (150) calendar days deadline for review shall be extended by the same period of time.

- (b) Make a final decision to approve or disapprove the application.
- (c) Advise the applicant in writing of its final decision. If the Town Council denies an application, it must provide written justification of the denial.
- (d) Failure to issue a written decision within one hundred fifty (150) calendar days shall constitute an approval of the application.

(D) Application Review.

- (1) The review of an application for the placement or construction of a new wireless support structure or substantial modification of a wireless support structure shall only address public safety, land development, or zoning issues. In reviewing an application, the Town may not require information on or evaluate an applicant's business decisions about its designed service, customer demand for its service, or quality of its service to or from a particular area or site. The Town may not require information that concerns the specific need for the wireless support structure, including if the service to be provided from the wireless support structure is to add additional wireless coverage or additional wireless capacity. The Town may not require proprietary, confidential, or other business information to justify the need for the new wireless support structure, including propagation maps and telecommunication traffic studies. In reviewing an application, the Town may review the following:
  - (a) Applicable public safety, land use, or zoning issues addressed in its adopted regulations, including aesthetics, landscaping, land-use based location priorities, structural design, setbacks, and fall zones.
  - (b) Information or materials directly related to an identified public safety, land development, or zoning issue including evidence that no existing or previously approved wireless support structure can reasonably be used for the wireless 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 facility placement or a proposed height increase of a substantially modified wireless support structure, or replacement wireless support structure is necessary to provide the applicant's designed service.

- (c) The Town may require applicants for new wireless facilities to evaluate the reasonable feasibility of collocating new antennas and equipment on an existing wireless support structure or structures within the applicant's search ring. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the existing wireless support structure is unwilling to enter into a contract for such use at fair market value. The Town may require information necessary to determine whether collocation on existing wireless support structures is reasonably feasible.
- (2) The Town may engage a third-party consultant for technical consultation and review of applications. The fee imposed by the Town for the review of an application may not be used for either of the following:
  - (a) Travel expenses incurred in a third-party's review of an application.
  - (b) Reimbursement for a consultant or other third party based on a contingent fee basis or results-based arrangement.

**Section 23-5: Small Wireless Facilities (Amended 10/2/2017)**

(A) Applicability.

- (1) The Town of Pembroke shall not adopt or enforce any ordinance, rule, regulation, or resolution that regulates the design, engineering, construction, installation, or operation of any small wireless facility located in an interior structure or upon the site of any stadium or athletic facility. This subsection does not apply to a stadium or athletic facility owned or otherwise controlled by the Town. This subsection does not prohibit the enforcement of applicable codes.
- (2) Nothing contained in this Article shall amend, modify, or otherwise affect any easement between private parties. Any and all rights for the use of a right-of-way are subject to the rights granted pursuant to an easement between private parties.
- (3) Except as provided in this Article or otherwise specifically authorized by the General Statutes, the Town of Pembroke may not adopt or enforce any regulation on the placement or operation of communications facilities in the rights-of-way of State-maintained highways or Town rights-of-way by a provider authorized by State law to operate in the rights-of-way of State-maintained highways or Town rights-of-way and may not regulate any communications services.
- (4) Except as provided in this Article or specifically authorized by the General Statutes, the Town may not impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

- (5) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this Article does not authorize the provision of any communications services or the installation, placement, maintenance, or operation of any communications facility, including a wireline backhaul facility, other than a small wireless facility, in the right-of-way.

(B) Permitting Process.

- (1) Small wireless facilities that meet the height requirements of Section 23-5(C)(1)(b) shall only be subject to administrative review and approval under subsection 23-5(B)(2) of this section if they are collocated (i) in a Town right-of-way within any zoning district or (ii) outside of Town rights-of-way on property other than single-family residential property.
- (2) The Town of Pembroke shall require an applicant to obtain a permit to collocate a small wireless facility. The Town shall receive applications for, process, and issue such permits subject to the following requirements:
  - (a) The Town may not, directly or indirectly, require an applicant to perform services unrelated to the collocation for which approval is sought. For purposes of this subdivision, “services unrelated to the collocation,” includes in-kind contributions to the Town such as the reservation of fiber, conduit, or pole space for the Town.
  - (b) The wireless provider completes an application as specified in form and content by the Town. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.
  - (c) A permit application shall be deemed complete unless the Town provides notice otherwise in writing to the applicant within thirty (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.
  - (d) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the Town fails to approve or deny the application within forty-five (45) days from the time the application is deemed complete or a mutually agreed upon time frame between the Town and the applicant.
  - (e) The Town may deny an application only on the basis that it does not meet any 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, Town utility poles, or reasonable and

nondiscriminatory stealth and concealment requirements, including screening or landscaping for ground-mounted equipment; or (iii) public safety and reasonable spacing requirements concerning the location of ground-mounted equipment in a right-of-way. The Town must (i) document the basis for a denial, including the specific code provisions on which the denial was based and (ii) send the documentation to the applicant on or before the day the Town denies an application. The applicant may 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.

- (f) An application must include an attestation that the small wireless facilities shall 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 wireless services provider to provide service no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
  - (g) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of the Town shall be allowed at the applicant discretion to file a consolidated application for no more than 25 separate facilities and receive a permit for the collocation of all the small wireless facilities meeting the requirements of this section. The Town may remove small wireless facility collocations from a consolidated application and treat separately small wireless facility collocations (i) for which incomplete information has been provided or (ii) that are denied. The Town may issue a separate permit for each collocation that is approved.
  - (h) The permit shall specify that collocation of the small wireless facility shall commence within six months of approval and shall be activated for use no later than one year from the permit issuance date, unless the Town and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.
- (3) The Town may charge an application fee that shall not exceed the lesser of (i) the actual, direct, and reasonable costs to process and review applications for collocated small wireless facilities; (ii) the amount charged by the Town for permitting of any similar activity, or (iii) one hundred dollars (\$100.00) per facility for the first five small wireless facilities addressed in an application, plus fifty dollars (\$50.00) for each additional small wireless facility addressed in the application. In any dispute concerning the appropriateness of a fee, the Town has the burden of proving that the fee meets the requirements of this subsection.

- (4) The Town may impose a technical consulting fee for each application, not to exceed five hundred dollars (\$500.00), to offset the cost of reviewing and processing applications required by this section. The fee must be based on the actual, direct, and reasonable administrative costs incurred for the review, processing, and approval of an application. The Town may engage an outside consultant for technical consultation and the review of an application. The fee imposed by the Town for the review of the application shall not be used for either of the following:
- (a) Travel expenses incurred in the review of a collocation application by an outside consultant or other third party.
  - (b) Direct payment or reimbursement for an outside consultant or other third party based on a contingent fee basis or results-based arrangement.

In any dispute concerning the appropriateness of a fee, the Town has the burden of proving that the fee meets the requirements of this subsection.

- (5) The Town shall require a wireless services provider to remove an abandoned wireless facility within 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned wireless facility, the Town shall 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.
- (6) The Town shall not require an application or permit or charge fees 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 Town utility poles in compliance with applicable codes by or for a communications service provider authorized to occupy the Town rights-of-way and who is remitting taxes under NCGS 105-164.4(a)(4c) or NCGS 105-164.4(a)(6).
- (7) Nothing in this section shall prevent a Town from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the Town right-of-way.

(C) Use of Town of Pembroke Public Right-of-Way.

- (1) The Town shall not enter into an exclusive arrangement with any person for use of Town rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.
- (2) Subject to the requirements of Section 23-5(B), a wireless provider may collocate small wireless facilities along, across, upon, or under any Town right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, Town utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any Town right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and Town utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any Town right-of-way shall be subject only to review or approval under Section 23-5(B)(2) if the wireless provider meets all the following requirements:
  - (a) Each new utility pole and each modified or replacement utility pole or Town utility pole installed in the right-of-way shall not exceed 50 feet above ground level.
  - (b) Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, Town utility pole, or wireless support structure on which it is collocated.
- (3) In no instance in an area zoned single-family residential where the existing utilities are installed underground may a utility pole, Town utility pole, or wireless support structure exceed forty (40) feet above ground level, unless the Town grants a waiver or variance approving a taller utility pole, Town utility pole, or wireless support structure.
- (4) The Town may assess a right-of-way charge under this section for use or occupation of the right-of-way by a wireless provider. The right-of-way charge shall not exceed \$50.00 per year.
- (5) Nothing in this section is intended to authorize a person to place, maintain, modify, operate, or replace a privately-owned utility pole or wireless support structure or to collocate small wireless facilities on a privately owned utility pole, a privately owned wireless support structure, or other private property without the consent of the property owner.
- (6) The Town shall require a wireless provider to repair all damage to a Town right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support

structures, Town utility poles, or utility poles and to return the right-of-way to its functional equivalence before the damage. If the wireless provider fails to make the repairs required by the Town within a reasonable time after written notice, the Town may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The Town shall maintain an action to recover the costs of the repairs.

- (7) A wireless provider may apply to the Town to place utility poles in the Town rights-of-way, or to replace or modify utility poles or Town utility poles in the public rights-of-way, to support the collocation of small wireless facilities. The Town shall accept and process the application in accordance with the provisions of Section 23-5(B)(2), applicable codes, and other local codes governing the placement of utility poles or Town utility poles in the Town rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or Town utility poles, or reasonable and nondiscriminatory stealth and concealment requirements, including those relating to screening or landscaping, or public safety and reasonable spacing requirements. The application may be submitted in conjunction with the associated small wireless facility application.

(D) Access to Town Utility Poles to Install Small Wireless Facilities.

- (1) The Town may not enter into an exclusive arrangement with any person for the right to collocate small wireless facilities on Town utility poles. The Town shall allow any wireless provider to collocate small wireless facilities on its Town utility poles at just, reasonable, and nondiscriminatory rates, terms, and conditions, but in no instance may the rate exceed fifty dollars (\$50.00) per city utility pole per year.
- (2) A request to collocate under this section may be denied only 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. In granting a request under this section, the Town shall require the requesting entity to comply with applicable safety requirements, including the National Electrical Safety Code and the applicable rules and regulations issued by the Occupational Safety and Health Administration.
- (3) Following receipt of the first request from a wireless provider to collocate on a Town utility pole, the Town shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the Town utility poles that it owns or controls. Upon request, a party shall state in writing its objections to any proposed rate, terms, and conditions of the other party.
- (4) In any controversy concerning the appropriateness of a rate for a collocation attachment to a Town utility pole, the Town has the burden of proving that the rates

are reasonably related to the actual, direct, and reasonable costs incurred for use of space on the pole for such period.

- (5) The Town shall provide a good-faith estimate for any make-ready work necessary to enable the Town utility pole to support the 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 acceptance of the good-faith estimate by the applicant. For purposes of this section, the term "make-ready work" means any modification or replacement of a Town utility pole necessary for the Town utility pole to support a small wireless facility in compliance with applicable safety requirements, including the National Electrical Safety Code, that is performed in preparation for a collocation installation.
- (6) The Town shall not require more make-ready work than that required to meet applicable codes or industry standards. Fees for make-ready work shall not include costs related to preexisting or prior damage or noncompliance. Fees for make-ready work, including any pole replacement, shall not exceed actual costs or the amount charged to other communications service providers for similar work and shall not include any consultant fees or expenses.
- (7) Nothing in this Part shall be construed to apply to an entity whose poles, ducts, and conduits are subject to regulation under Section 224 of the Communications Act of 1934, 47 U.S.C. § 151, et seq., as amended, or under NCGS 62-350.
- (8) This section shall not apply to an excluded entity. Nothing in this section shall be construed to affect the authority of an excluded entity to deny, limit, restrict, or determine the rates, fees, terms, and conditions for the use of or attachment to its utility poles, Town utility poles, or wireless support structures by a wireless provider. This section shall not be construed to alter or affect the provisions of NCGS 62-350, and the rates, terms, or conditions for the use of poles, ducts, or conduits by communications service providers, as defined in NCGS 62-350, are governed solely by NCGS 62-350. For purposes of this section, "excluded entity" means (i) a Town that owns or operates a public enterprise pursuant to Article 16 of this Chapter consisting of an electric power generation, transmission, or distribution system or (ii) an electric membership corporation organized under Chapter 117 of the General Statutes that owns or controls poles, ducts, or conduits, but which is exempt from regulation under Section 224 of the Communications Act of 1934, 47 U.S.C. § 151 et seq., as amended.