

AN ORDINANCE TO AMEND THE CARRBORO TOWN CODE RELATING TO
WIRELESS FACILITIES

****DRAFT 5-11-2020****

BE IT ORDAINED BY THE CARRBORO TOWN COUNCIL THE FOLLOWING:

Section 1. Article II of Chapter 7 of the Town Code, Streets and Sidewalks is renamed as follows:

Article II – ENCROACHMENTS, DRIVEWAYS and EXCAVATIONS¹

Section 2. Article II of Chapter 7 of the Town Code, is amended by adding a new Section 7-9, “Encroachment Permit Required,” to read as follows:

Section 7-9 Encroachment Permit Required

Prior to performing work or placing facilities in a public right-of-way in the Town, a user must obtain an Encroachment Permit (also called “work permit”) issued by the administrator. An encroachment permit is required for the following activities:

- (a) Excavation or restoration within the public way, including but not limited to construction of new portions of a driveway, sidewalk or public way;
- (b) Cutting, mobbing, or alteration of pavement, paver (for example, brick or stone), pipe, conduit, pole, meter, fire hydrant, facility, or other equipment or structure owned by the Town, or attachment to such objects;
- (c) Installation or repair of facilities within the public way, including, but not limited to, placing facilities on other facilities already located in the public way;
- (d) Construction of private streets (including, but not limited to, paving and gutters), sidewalks, or alleys;
- (e) Installation or repair of facilities for the conveyance of water, sewer, or stormwater;
- (f) Installation or repair of facilities for electrical, gas, video, internet, telephone, cable, telecommunications, television, or other information or data transfer service to customers within the Town;

¹ The authority for these amendments comes from GS §160A-296 Establishment and control of streets; center and edge lines as modified by GS §§ 160A-400.53 through 160A-400.56. The latter 4 sections require that the Town allow small wireless facilities in Town rights-of-way. There is a separate statute allowing small wireless facilities in N.C. DOT rights-of-way.

(g) Work in the rights-of-way that affects traffic patterns, either permanently or temporarily;

(h) The installation of any permanent structures or property in the public right-of-way including utilities and communication networks;

(i) Make Ready Work. The Town shall provide estimates for any make-ready work necessary to enable a 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 agreement on the cost of the work;

(j) Attachments to or replacements of Town utility poles;

(k) Attachments to Town property (other than Town utility poles) in DOT or other rights-of-way;

(l) The Town Council may approve agreements for the use of Town property that substitute for encroachment or work permits, such as the lease of antenna space on a water tower.

Section 3. Article II of Chapter 7 of the Town Code, is amended by adding a new Section 7-10, “General Conditions for Use of Rights-of-Way,” to read as follows:

Section 7-10 General Conditions for Use of Rights-of-Way

(a) Rights-of-way in the Town may be controlled by N.C. Department of Transportation (DOT), private parties, and/or the Town. The Town issues and/or monitors work and/or encroachments in the Town’s right-of-way. The Town may also issue permits for work on Town property in DOT’s rights-of-way. Encroachment permits, or agreements are required to attach or use any Town property. Wireless telecommunication facility encroachments in the public rights-of-way require review by the Planning Department. (See Chapter 15 of this Code, (Land Use Ordinance) Section 15-176). All public right-of-way encroachments must be reviewed by the Town Manager or designee, including attachments to Town utility poles, replacement of Town utility poles, and “make ready” requests.

(b) The right to perform work in the public right-of-way and the ability to maintain facilities in the public right-of-way are allowed subject to the conditions in §§ 7-9 and 7-11 and below, as supplemented by those set forth in other sections of this ordinance, standards adopted by the Public Works Department, and requirements contained in permits and/or other authorizations.

(1) An encroachment permit does not convey any legal right, title, or 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 property.

- (2) A permit or authorization does not limit the Town's exercise of its regulatory, police, government, legislative, or contracting authority. The Town retains all rights to use all portions of public rights-of-way for its purposes not prohibited by law. If a permit or authorization conflicts with the terms of another permit or authorization, or with the Town Code, the stricter of the applicable provisions shall control. The stricter provision shall not control, however, if a later-issued permit, authorization, or ordinance explicitly and specifically states that particular terms are to override prior, less strict terms in an authorization.
- (3) 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, use, or repair of public improvements that have received Town funding or that are installed pursuant to a contract with the Town.
- (4) 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 right-of-way, and for the installation, repair, maintenance, and operation of their facilities in the public right-of-way.
- (5) An encroachment permit creates no third-party rights against the Town and is intended only for the benefit of the person receiving the permit or authorization.
- (6) Persons doing work in the public right-of-way shall not interfere with existing utilities, such as infrastructure for electricity, water, natural gas and sewer, the natural and constructed stormwater system, and traffic signals and associated lines, or the repair or replacement of such systems. Persons doing work in the public right-of-way that does not involve creating a new structure shall apply for an encroachment permit at least ten (10) working days prior to initiating work, to allow time to locate and mark any existing Town utility lines. Persons building structures and/or utility poles, including wireless facilities shall apply for an encroachment permit at least thirty (30) calendar days prior to beginning work. (See section 7-13 below.) The application shall accurately describe the portion of the street to be affected. Damage to Town utilities or other infrastructure shall be paid for by the person or user contracting for the work that resulted in such damage. If an encroachment permit is not required, persons doing work in the public right-of-way shall also give the Town Public Works Department ten (10) working days' notice to locate and mark any existing Town utility lines prior to initiating work. In addition, persons will give the department a second notice 24-hours before beginning any work in the public right-of-way as required by Section 7-10(15) below.

- (7) Persons and users performing work in the public way shall ensure worker, traffic, and pedestrian safety and shall ensure that all work is performed in accordance with industry standards. Compliance with all federal, State, and local regulations, and all federal, State, local, and industry codes and standards are required. These include, but are not limited to, compliance with the Occupation Safety and Health Act; compliance with the Manual of Uniform Traffic Control Devices, National Electrical Code, and National Electrical Safety Code; compliance with fiber optic installation standards and telecommunication industry standards; compliance with plumbing and pipe installation codes and standards; and compliance with standards and codes for traffic safety and lane closures. Persons and users shall provide all equipment and personnel necessary to meet applicable regulations, codes, and standards, and shall furnish additional equipment or personnel if requested by the Town.
- (8) The administrator shall have the discretion, for reasons of public health or safety, to approve, deny, alter, and condition all proposed locations of facilities in the public way, and to determine whether placement, if allowed, shall be above ground or below ground.
- (9) Wires, fiber, and other similar conduit shall generally be located underground. A user that wishes to place such facilities above ground shall demonstrate to the Town's satisfaction why above-ground placement is necessary.
- (10) The Town recommends that facilities be located in existing ducts if such ducts are available and practicable to use.
- (11) A user shall demonstrate to the administrator's satisfaction that sufficient space exists in the public way for its proposed facilities without interfering with existing or planned public projects, and that placement of the facilities will not unduly disrupt use of the public way or negatively impact the condition of the public way.
- (12) The administrator may require a user to post written notice of proposed work or activities along the public way impacted and/or distribute notices to individual properties located along the impacted public way.
- (13) Users shall give the Town all information it requests regarding the installation of facilities upon completion. Such information may include, but is not limited to, as-built or other maps, which shall be furnished in the form required by the Public Works Department, and changes to planned locations that were necessary to avoid pre-existing infrastructure.
- (14) A person or user that conducts excavation or other activities that disturb the public rights-of-way or plantings within the public rights-of-way or

facilities within the public way shall restore the area to a functional condition equivalent to that it was in prior to the disturbance. The restoration shall include, but is not limited to, installation of pavement, resurfacing nearby areas, grading other surface areas, restoring below-ground areas, planting and landscaping, replacing curb ramps to current standards, and repairing improvements and facilities.²

- (15) Users shall contact the Public Works Department at least 24-hours prior to actual work performed in the right-of-way, except in the case of an emergency.
- (16) To the extent permitted by North Carolina law, the Town may require a performance bond for work to be done in the public right-of-way.
- (17) A user shall, at its own cost, relocate its facilities within a time determined at the discretion of the Town if the Town determines that the facilities were placed in the public right-of-way without first obtaining permission from the Town, and the facilities:
 - a. Interfere with the use of the public way, or the provision of services to Town residents; or
 - b. Interfere with the repair or maintenance of any Town-maintained utility; or
 - c. Will impede the construction of a project funded in part with public funds, or a project to be dedicated to the public upon completion.

Section 4. Article II of Chapter 7 of the Town Code, Encroachments, Driveways and Excavations is amended by adding a new Section 7-11, “Application Requirements.” The existing Section 7-11, “Driveways,” and Section 7-12, “Excavations,” are renumbered as 7-12 and 7-13 respectively.

Section 7-11 Application Requirements

An application must be filed with the administrator before the commencement of any work described in Section 7-9, including modification, change, or replacement of equipment that would be different in size, weight, or appearance than the existing equipment that is not otherwise exempt under this ordinance. The following information shall be submitted in an application for an encroachment permit:

- (a) Contact information for the user of the public right-of-way and contractors performing the work. Include all contractor’s/trade’s/professional licenses held and license numbers.

² 160A-400.55 (h)

(b) Description of the work to be performed, including the specific location or the requested make ready work.

(c) Construction drawings demonstrating compliance with the Town's Engineering Specifications and Standard Details, the NCDOT Subdivision Road Manual, the latest edition of the Manual on Uniform Traffic Control Devices (MUTCD), and all relevant portions of Chapter 15 of this Code (Land Use Ordinance).

(d) Description of all existing infrastructure within the proposed work area and any proposed modification, improvement, or movement of infrastructure.

(e) Evidence that the owners of other utilities or encroachers near the new work have been notified.

(f) Proposed work schedule.

(g) Insurance. The Town may require persons that do work in the public right-of-way and users to provide insurance by a company authorized to do business in the state, including, but not limited to: (a) workers' compensation coverage for all employees; (b) employers' liability insurance; (c) commercial general liability; and (d) business auto policy. The Town may require that the Town, its officials, employees, and consultants be named as additional insureds on such insurance policies. In such cases, the applicant shall provide a certificate of insurance. If an applicant has previously damaged Town property or has not adequately repaired damaged Town property during the past three (3) years, the amount of insurance shall be as determined by the Town, in part based on the scope of the work and the tenure or term of occupancy.

(h) To facilitate the preparation and submittal of an application in compliance with this ordinance, and thereby expedite the review and permitting of an application, a pre-application meeting may be held.

(i) No Permitting of Unidentified Facilities: no permit or authorization shall be granted for new equipment or facilities that is not expressly and individually identified at the time of the application, including the specific location and design characteristics of each facility.

(j) Site Visit: a site visit of each facility or proposed location of a new facility may be conducted to determine the physical condition of the facility or proposed location and to identify any issues of concern, non-compliance with applicable laws, rules, and regulations, and any safety issues or concerns.

(k) Installations in the public right-of-way shall be located and constructed to create the least visual impact on the immediate surrounding area and the least physical intrusion and impact on the limited space in the public right-of-way. Such facilities/equipment shall not be constructed in a sight triangle or so close to the curb or edge of pavement that a safety hazard is created. (See Manual on Uniform Traffic Control Devices and Chapter 15 of this Code, (Land Use Ordinance), Appendix A on Sight Triangles).

(l) Riser Cable: all riser or other vertically run cable of any kind attached to a pole or other support structure shall be protected with non-conductive, non-degradable material matching the color of the pole or support structure as closely as is reasonably possible.

(m) New and Replacement wireless telecommunication facilities (poles or support structures that are not substantial modifications or routine maintenance): An application for a new or replacement pole or support structure must include detailed design criteria, including material composition, aesthetic appearance and structural adequacy analysis with calculations which must be able to be independently verified using the information submitted by the applicant.

- (1) New and replacement installations shall be consistent throughout Town limits;
- (2) When feasible and in lieu of installing new poles, new wireless telecommunication facilities, installations shall first replace existing distribution poles, then secondary poles, or thirdly streetlight with a pole that meets the standards set forth in this section. New poles shall not be installed unless no existing pole is suitable or can be modified or replaced by a new pole in the same location;
- (3) Installations shall be on non-conductive poles;
- (4) All wireless facilities and base stations (including radios, network equipment and batteries) shall be i) enclosed in a pedestal cabinet near the pole; ii) in a pole-mounted cabinet; or iii) under a pole-mounted shroud;
- (5) Equipment installations shall be on poles that meet or exceed current National Electrical Safety Code (NESC standards and wind and ice loading requirements of the latest edition of Telecommunications Industry Association (TIA) 222.
- (6) New utility poles in residential subdivisions shall comply with the Town's published decorative pole standards.
- (7) Signage. No signage other than manufacturer's labels and safety warnings are permitted.
- (8) All new poles shall be designed and constructed to accommodate as many different user's antenna arrays as technically feasible;
- (9) Lighting is not permitted unless required by the Federal Communications Commission (FCC) or the pole is also being used to support a street light.

Section 5. Article II of Chapter 7 of the Town Code, Encroachments, Driveways and Excavations is amended by renaming Section 7-12, "Driveways," to "Driveways Additional

Requirements.” The existing subsection (a) is deleted; the subsequent subsections (b) through (f) are renumbered (a) through (e) to read as follows:

Section 7-12 Driveways Additional Requirements

(a) 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.

(b) The administrator shall review the driveway construction and design plans and shall issue the permit unless he finds the driveway, if constructed as proposed, will substantially interfere with or pose a danger to: (1) persons using the street or sidewalk intersected by the driveway, or (2) public facilities (including utility poles, traffic signal standards, etc.), or will fail to comply with any of the provisions of this section.

(c) No driveway may be constructed closer than 3 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.

(d) 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 that the drainage capability of the drainage ditch is not materially impaired.

(e) 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 Chapter 15 of this Code.

Section 6. Chapter 7, Article II of the Town Code, Encroachments, Driveways and Excavations is amended by renaming Section 7-13, “Excavations,” to “Excavations Additional Requirements.” The existing Section 7-13, “Town Indemnified” is renumbered as Section 7-15.

Section 7-13 Excavations Additional Requirements

(a) Except in emergency situations or 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 as soon as weather permits for putting the street or sidewalk where any excavation is made in as good a 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 decided to comply with subsection (b), 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 excavation made in a state-maintained street to the extent that the state has given its permission for such an excavation to be made, except that the person making the excavation shall still be responsible for notifying the administrator of the intended excavation forty-eight (48) hours before the work begins. (Amend. 8/22/95)

Section 7. Chapter 7, Article II of the Town Code, Encroachments, Driveways and Excavations is amended by adding a new Section 7-14, “Additional Requirements for Wireless Support Structures, Wireless Facilities, and any other Wireless Communication Facility, Small Wireless Facility or Micro Wireless Facilities in the Rights of Way,” to read as follows:

Section 7-14 Additional Requirements for Wireless Support Structures, Wireless Facilities, and any other Wireless Communication Facility, Small Wireless Facility or Micro Wireless Facilities in the Rights-of-Way

An applicant shall demonstrate compliance with Sections 7-9, 7-10 and 7-11 of this section and provide the additional supplemental information specific to wireless facilities, structures, and ancillary equipment. The definitions adopted in Chapter 15 of this Code (Land Use Ordinance) Article II, shall be used in this section and are incorporated herein by reference.

(a) Persons adding or modifying wireless facilities in a public right-of-way shall apply for an encroachment permit at least thirty (30) calendar days prior to initiating work.

(b) To facilitate the application process and to mitigate application-related costs for applicants, applications for small/micro wireless facilities may be submitted in groups of up to twenty-five (25) facilities in a single application.

(c) No Taxpayer Subsidization. Taxpayers may not directly or indirectly subsidize an applicant’s costs.

(d) The height of wireless support structures, utility poles, and Town utility poles and small wireless facilities shall meet the standards in Section 176(d) of Chapter 15 of this code.

(e) On blocks where decorative light or utility poles are installed, collocations may only occur on decorative poles if feasible. New poles shall be of the same design and materials as the decorative poles. (See Section 7-10 for information on encroachment on Town utility poles).

(f) Absent a showing by clear and convincing evidence of the need for a greater lateral distance between poles or other support structures in the public right-of-way, the minimum lateral distance between poles or other support structures as measured in any direction shall be two (200) hundred feet. This minimum lateral distance shall not be applicable to poles or support structures that support lines or cables crossing a street.

(g) Compliance with National Electrical Safety Code NESC (NESC) and National Electrical Code (NEC): all electronic attachments to poles or other structures in the public right-of-way shall always follow the edition of the NESC and the NEC in effect the later of (a) the time the facility was constructed; or (b) the time of the last modification of equipment on the pole or other support structure; or (c) the edition in effect at the time of the current application.

(h) Service Date: Applicants shall attest that small wireless facilities be activated and placed in service no later than one year from the date the permit is issued.

(i) Abandonment. Wireless service providers are required to remove an abandoned wireless facility with 180 days of abandonment. Should the wireless services provider fail to timely remove the abandoned 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 service provider. For purposes of this subsection, a wireless facility shall be deemed abandoned at the earlier of the date that the wireless service 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 service provider give the Town reasonable evidence that it is diligently working to place such wireless facility back service.

(j) Materials. The composition of new poles shall comply with the standards meet the standards in Section 176(d) of Chapter 15 of this code.

(k) Sizes: Micro and Small Wireless Facilities shall meet the size limits found in Article II of Chapter 15 of this code, "Definitions."

Section 8. Chapter 7 of Article II, Section 7-15 of the Town Code, "Town Indemnified," is amended to read as follows:

Section 7-15 Town Indemnified

Any person obtaining a permit authorized by this Article agrees as a condition of the permit to indemnify the town of and hold the town harmless from any expense (including but not limited to attorney's fees, litigation costs and judgments) incurred as a result of claims made for damages arising out of operations conducted by the permit recipient pursuant to the permit.

Section 9. All provisions of any Town ordinance or resolution in conflict with this ordinance are repealed, and this ordinance is effective upon adoption.