PLANNING AND ZONING BOARD
JANUARY 4, 2018
COUNCIL CONFERENCE ROOM
395 MAGNOLIA ROAD
PINEHURST, NORTH CAROLINA
4:00 PM

I. Call to Order

II. Approval of Minutes

A. Minutes from December 7, 2017

III. New Business

A. Public Hearing No. 1

The purpose of the public hearing is to consider Official Text Amendments to the Pinehurst Development Ordinance. Specifically, Section 10.2 to define Small/Micro Wireless Facility, Table 8.5.1a to permit Small/Micro Wireless Facilities by right with Special Requirements in all zoning districts and adding Section 8.6 SR-30 to specify the Special Requirements associated with Small/Micro Wireless Facilities. The applicant is the Village of Pinehurst

IV. General Business

B. P&Z Subcommitee Updates

1. Village Center Ground Floor Uses
2. Sign Ordinance Modifications/Rewrite

V. Next Meeting Date

C. February 1, 2018

VI. Comments from Attendees

VII. Motion to Adjourn

Vision: The Village of Pinehurst is a charming, vibrant community which reflects our rich history and traditions.
Mission: Promote, enhance, and sustain the quality of life for residents, businesses, and visitors.
Values: Service, Initiative,Teamwork, and Improvement.

MINUTES FROM DECEMBER 7, 2017
ADDITIONAL AGENDA DETAILS:

ATTACHMENTS:

Description

- Minutes from December 7, 2017

Planning and Zoning Board
December 7, 2017
Council Conference Room
4:00 p.m.

MINUTES

Board Members in Attendance:

Leo Santowasso, Board Member
Mike Marsh, Board Member
Cyndie Burnett, Board Member
Myles Larsen, Board Member
Julia Latham, ETJ Board Member
Kevin Drum, Board Member

Board Members Absent:

Fred Engelfried, Board Member
Jeff Haarlow, Board Member
David Kelley, Vice-Chair

Staff in Attendance:

Bruce Gould, Principal Planner
Alex Cameron, Planner
Gwendy Hutchinson, Planning and Administrative Assistant

I. Call to Order

Chairman Santowasso asked staff to poll the Board and stated that there was a quorum present and called the meeting to order.

II. Approval of Minutes: November 2, 2017
Cyndie Burnett made a motion to approve the November 2, 2017 Minutes as amended; Mike Marsh seconded the motion, which was unanimously approved.

III. Presentation and Discussion on the Fiscal Landuse Analysis and Tool, John Frye, VOP Finance Director

John Frye, Financial Director; discussed with the Board that the 2017 Village of Pinehurst Land Use Fiscal Analysis was prepared by Village staff to determine the approximate net revenues or net expenditures of various land uses within the Village of Pinehurst corporate limits. Properties included in the Village's extra-territorial jurisdiction (ETJ) were not included in this analysis.

This land use fiscal analysis was prepared using FY 2017 data and represents an estimate of current revenues and expenditures by land use for that period of time.

This analysis provides revenue and expenditure allocation principals that can be applied to any proposed future development to estimate the financial impact. This analysis can help Village officials understand the types of land uses that are more fiscally advantageous to the Village especially as it plans for future land uses.

The FY 2017 Land Use Fiscal Analysis is based on a variety of sources, including US Census Data, Moore County Geographical Information Systems (GIS) data, Moore County Tax Department Data, 2017 audited revenues and expenditures, and FY 2017 Police and Fire calls for service data to name a few sources.

This land use fiscal analysis was completed entirely in-house by Village staff. Those that were involved in preparing this included:

Natalie Hawkins, Assistant Village Manager
Daniel Frye, IT Business Analyst
Bruce Gould, Principal Planner
John Frye, Financial Services Director

After the presentation, the Board thanked John Frye for his presentation and discussion of the 2017 Land Use Fiscal Analysis.

IV. Planning and Zoning Subcommittee Updates

1. Village Center Ground Floor Uses

   Sub-Committee members to include Myles Larsen, Cyndie Burnett, Kevin Drum and Fred Engelfried are coordinating meeting dates to resume their discussions and findings. The sub-committee would like to meet with staff at their next meeting.

2. Small Cell Wireless Regulations

   Sub-committee members to include; Julia Latham, David Kelley, and Jeff Haarlow are planning to meet again for more discussions and findings. They will also be looking into encroachment agreements.

3. Sign Ordinance Modifications Rewrite

   Sub-committee members to include; Fred Engelfried, Mike Marsh, Leo Santowasso and Julia Latham will be meeting again before the holidays. Fred Engelfried will be putting together additional information for review and discussion.

V. Next Meeting Date: January 4, 2018

VI. Motion to Adjourn

With no further discussion, Kevin Drum made a motion to adjourn; Cyndie Burnett seconded the motion, which was unanimously approved.

PUBLIC HEARING NO. 1

ADDITIONAL AGENDA DETAILS:

The purpose of the public hearing is to consider Official Text Amendments to the Pinehurst Development Ordinance. Specifically, Section 10.2 to define Small/Micro Wireless Facility, Table 8.5.1a to permit Small/Micro Wireless Facilities by right with Special Requirements in all zoning districts and adding Section 8.6 SR-30 to specify the Special Requirements associated with Small/Micro Wireless Facilities. The applicant is the Village of Pinehurst

ATTACHMENTS:

Description

- Staff Report
- Proposed PDO Amendment
- State Statute/Legislation
- Village Right of Way Encroachment Agreement
- Proposed Historic District Guidelines

THE VILLAGE OF PINEHURST
PLANNING & INSPECTIONS DEPARTMENT
395 MAGNOLIA ROAD
PINEHURST, NC 28374

MEMORANDUM

To: Planning and Zoning Board

From: Bruce Gould, Principal Planner

Date: December 29, 2017

Subject: **Statement of text amendment consistency with the 2010 Comprehensive Long-Range Village Plan. Small/Micro Wireless Facilities Regulations**

TABLE 8.5.1a, SECTION 8.6 SR-30 and SECTION 10.2

The Village of Pinehurst is proposing this text amendment to the Pinehurst Development Ordinance (PDO). This amendment will define Small/Micro Wireless Facilities and permit them in all zoning districts with Special Requirements to be added as SR-30.

The NC General Assembly recently passed legislation mandating that cities allow small/micro wireless facilities within their public rights of way. In this legislation there are some, although limited, provisions to allow for the regulation of these facilities. These proposed amendments are intended to regulate, to the extent possible, these facilities within the Village's Right of Way and in the State of North Carolina (NCDOT) owned rights of ways within the historic district. The purpose of these regulations are to mitigate to the best of our ability any adverse impacts these facilities will have on the appearance of the community and neighborhoods.

This adopted state legislation is contained in House Bill 310 (attached).

In addition to this PDO amendment we are also proposing adding language to the Historic District Guidelines to further regulate these facilities in the Historic District and have revised the Village Encroachment Agreement for the facilities that are to be located within Village Rights of Way. Both of which are attached.

Page 33 of the 2010 Village of Pinehurst Comprehensive Plan indicates that a goal of the village is to preserve and enhance the unique character and ambience of the entire community, especially the historic Village Center.

One of the major strategies on page 18 of the Comprehensive Plan is to maintain strong design controls within the different areas of the community.

Page 59 of the Comprehensive plan states Pinehurst's residential neighborhoods are the backbone of the community. Encouraging the preservation and enhancement of these areas is a continuing strategy for the Village and we must continue efforts (development review, code enforcement, etc.) to protect the integrity of residential neighborhoods and enhance the quality of life.

This amendment **is** consistent with the above mentioned goals detailed in the Comprehensive Plan. However, the existing regulations are in conflict with state law and therefore this amendment is considered reasonable and in the best interest of the public.

8.5.1a Table of Permitted and Special Uses and Special Requirements

Use Types																			
	PC	RD	R-210	R-30	R-20	R-15	R-10	R-8	R-5	R-MF	NC	H	HD	OP	VCP	VR	VMU	VC	SR
Small/Micro Wireless Facilities	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	X, SR	30

Section 8.6

Principle Uses

SR-30 Small/Micro Wireless Facility

(1) Small/Micro Wireless Facilities shall not be located on residential properties.

(2) The maximum height for small/micro wireless facilities shall be fifty (50) feet in non-residential areas and forty (40) feet in residential areas or 10 foot taller than existing poles as of July 1, 2017, whichever is greater.

(3) Where feasible small/micro wireless facilities shall be located on existing utility poles. Where not feasible to locate on an existing pole decorative poles shall be installed to match new lighting and stop light installations made by the Village of Pinehurst in the historic district.

(4) All supporting utilities and ground mounted infrastructure shall be located underground in a vault.

(5) When located within Village of Pinehurst Right of Way pedestrian facilities, vehicular facilities (including driveways and sight triangles) and stormwater facilities shall not be negatively impacted.

(6) When a facility is abandoned or no longer in use the antenna and equipment shall be removed.

(7) When located within Village of Pinehurst Right of Way a Right of Way Encroachment Agreement is required.

(8) When located outside of NCDOT right of way a development permit is needed.

(9) A survey and elevation and equipment rendering shall be provided to ensure compliance.

(10) When located in the Historic Preservation Overlay District a Certificate of Appropriateness (COA) is required and shall be constructed in accordance with the Historic District Standards and Guidelines.

Section 10.2 Definitions

Small/Micro Wireless Facility: These facilities shall be defined by North Carolina General Statute 160A-400.51.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-159
HOUSE BILL 310

AN ACT TO REFORM COLLOCATION OF SMALL WIRELESS COMMUNICATIONS INFRASTRUCTURE TO AID IN DEPLOYMENT OF NEW TECHNOLOGIES.

The General Assembly of North Carolina enacts:

SECTION 1. The General Assembly finds the following:

(1) The design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are instrumental to the provision of emergency services and to increasing access to advanced technology and information for the citizens of North Carolina.

(2) Cities and counties play a key role in facilitating the use of the public rights-of-way.

(3) Wireless services providers and wireless infrastructure providers must have access to the public rights-of-way and the ability to attach to poles and structures in the public rights-of-way to densify their networks and provide next generation services.

(4) Small wireless facilities, including facilities commonly referred to as small cells and distributed antenna systems, often may be deployed most effectively in the public rights-of-way.

(5) Expeditious processes and reasonable and nondiscriminatory rates, fees, and terms related to such deployments are essential to the construction and maintenance of wireless facilities.

(6) Wireless facilities help ensure the State remain competitive in the global economy.

(7) The timely design, engineering, permitting, construction, modification, maintenance, and operation of wireless facilities are matters of statewide concern and interest.

SECTION 2.(a) G.S. 160A-400.51(4a) is recodified as G.S. 160A-400.51(4d).

SECTION 2.(b) G.S. 160A-400.51(7a) is recodified as G.S. 160A-400.51(7b).

SECTION 2.(c) Part 3E of Article 19 of Chapter 160A of the General Statutes, as amended by subsections (a) and (b) of this section, reads as rewritten:

"Part 3E. Wireless Telecommunications Facilities.

"**§ 160A-400.50. Purpose and compliance with federal law.**

…

(c) This Part shall not be construed to authorize a city to require the construction or installation of wireless facilities or to regulate wireless services other than as set forth herein.

"**§ 160A-400.51. Definitions.**

The following definitions apply in this Part.

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

(1a) Applicable codes. – The North Carolina State Building Code and any other uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization together with State or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons.

(2) Application. – ~~A formal request submitted to the city to construct or modify a wireless support structure or a wireless facility.~~A request that is submitted by an applicant to a city for a permit to collocate wireless facilities or to approve the installation, modification, or replacement of a utility pole, city utility pole, or wireless support structure.

(2a) 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.

(3) Building permit. – An official administrative authorization issued by the city prior to beginning construction consistent with the provisions of G.S. 160A-417.

(3a) City right-of-way. – A right-of-way owned, leased, or operated by a city, including any public street or alley that is not a part of the State highway system.

(3b) City utility pole. – A pole owned by a city in the city right-of-way that provides lighting, traffic control, or a similar function.

(4) Collocation. – The ~~placement or installation~~ placement, installation, maintenance, modification, operation, or replacement of wireless facilities ~~on~~ on, under, within, or on the surface of the earth adjacent to existing structures, including ~~electrical transmission towers,~~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.

(4a) Communications facility. – The set of equipment and network components, including wires and cables and associated facilities used by a communications service provider to provide communications service.

(4b) Communications service. – Cable service as defined in 47 U.S.C. § 522(6), information service as defined in 47 U.S.C. § 153(24), telecommunications service as defined in 47 U.S.C. § 153(53), or wireless services.

(4c) Communications service provider. – A cable operator as defined in 47 U.S.C. § 522(5); a provider of information service, as defined in 47 U.S.C. § 153(24); a telecommunications carrier, as defined in 47 U.S.C. § 153(51); or a wireless provider.

(4d) Eligible facilities request. – A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.

(5) Equipment compound. – An area surrounding or near the base of a wireless support structure within which a wireless facility is located.

(5a) 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.

(6) Land development regulation. – Any ordinance enacted pursuant to this Part.

(6a) 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.

(7) Search ring. – The area within which a wireless support facility or wireless facility must be located in order to meet service objectives of the wireless service provider using the wireless facility or wireless support structure.

(7a) Small wireless facility. – A wireless facility that meets both of the following qualifications:

a. 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.

b. 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.

(7b) Substantial modification. – The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the local government to demonstrate that a mounting that does not meet the listed criteria constitutes a substantial change to the physical dimensions of the wireless support structure.

a. Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet.

b. Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.

c. Increasing the square footage of the existing equipment compound by more than 2,500 square feet.

(8) Utility pole. – A structure that is designed for and used to carry lines, cables, ~~or wires~~ wires, lighting facilities, or small wireless facilities for telephone, cable television, ~~or~~ electricity, ~~or to provide lighting.~~lighting, or wireless services.

(8a) Water tower. – A water storage tank, a standpipe, or an elevated tank situated on a support structure originally constructed for use as a reservoir or facility to store or deliver water.

(9) Wireless facility. – ~~The set of equipment and network components, exclusive of the underlying wireless support structure or tower, including antennas, transmitters, receivers, base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographic area.~~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 any of the following:

a. The structure or improvements on, under, within, or adjacent to which the equipment is collocated.

b. Wireline backhaul facilities.

c. Coaxial or fiber-optic cable that is between wireless structures or utility poles or city utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

(9a) 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.

(9b) Wireless provider. – A wireless infrastructure provider or a wireless services provider.

(9c) Wireless services. – Any services, using licensed or unlicensed wireless spectrum, including the use of Wi-Fi, whether at a fixed location or mobile, provided to the public using wireless facilities.

(9d) Wireless services provider. – A person who provides wireless services.

(10) 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 or a city utility pole is not a wireless support structure.

…

"**§ 160A-400.54. Collocation of small wireless facilities.**

(a) Except as expressly provided in this Part, a city shall not prohibit, regulate, or charge for the collocation of small wireless facilities.

(b) A city may not establish a moratorium on (i) filing, receiving, or processing applications or (ii) issuing permits or any other approvals for the collocation of small wireless facilities.

(c) Small wireless facilities that meet the height requirements of G.S. 160A-400.55(b)(2) shall only be subject to administrative review and approval under subsection (d) of this section if they are collocated (i) in a city right-of-way within any zoning district or (ii) outside of city rights-of-way on property other than single-family residential property.

(d) A city may require an applicant to obtain a permit to collocate a small wireless facility. A city shall receive applications for, process, and issue such permits subject to the following requirements:

(1) A city 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 city such as the reservation of fiber, conduit, or pole space for the city.

(2) The wireless provider completes an application as specified in form and content by the city. A wireless provider shall not be required to provide more information to obtain a permit than communications service providers that are not wireless providers.

(3) A permit application shall be deemed complete unless the city 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.

(4) The permit application shall be processed on a nondiscriminatory basis and shall be deemed approved if the city fails to approve or deny the application within 45 days from the time the application is deemed complete or a mutually agreed upon time frame between the city and the applicant.

(5) A city may deny an application only on the basis that it does not meet any of the following: (i) the city'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) the historic preservation requirements in subsection 160A-400.55(h). The city 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 city denies an application. The applicant may cure the deficiencies identified by the city and resubmit the application within 30 days of the denial without paying an additional application fee. The city 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.

(6) An application must include an attestation that the small wireless facilities shall be collocated on the utility pole, city utility pole, or wireless support structure and that the small wireless facilities shall be activated for use by a wireless services provider to provide service no later than one year from the permit issuance date, unless the city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(7) An applicant seeking to collocate small wireless facilities at multiple locations within the jurisdiction of a city shall be allowed at the applicant's 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. A city 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 city may issue a separate permit for each collocation that is approved.

(8) The permit may 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 city and the wireless provider agree to extend this period or a delay is caused by a lack of commercial power at the site.

(e) A city 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 city 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 city has the burden of proving that the fee meets the requirements of this subsection.

(f) A city 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. A city may engage an outside consultant for technical consultation and the review of an application. The fee imposed by a city for the review of the application shall not be used for either of the following:

(1) Travel expenses incurred in the review of a collocation application by an outside consultant or other third party.

(2) 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 city has the burden of proving that the fee meets the requirements of this subsection.

(g) A city may 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 city 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 city reasonable evidence that it is diligently working to place such wireless facility back in service.

(h) A city 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 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).

(i) Nothing in this section shall prevent a city from requiring a work permit for work that involves excavation, affects traffic patterns, or obstructs vehicular traffic in the city right-of-way.

"**§ 160A-400.55. Use of public right-of-way.**

(a) A city shall not enter into an exclusive arrangement with any person for use of city rights-of-way for the construction, operation, marketing, or maintenance of wireless facilities or wireless support structures or the collocation of small wireless facilities.

(b) Subject to the requirements of G.S. 160A-400.54, a wireless provider may collocate small wireless facilities along, across, upon, or under any city right-of-way. Subject to the requirements of this section, a wireless provider may place, maintain, modify, operate, or replace associated utility poles, city utility poles, conduit, cable, or related appurtenances and facilities along, across, upon, and under any city right-of-way. The placement, maintenance, modification, operation, or replacement of utility poles and city utility poles associated with the collocation of small wireless facilities, along, across, upon, or under any city right-of-way shall be subject only to review or approval under subsection (d) of G.S. 160A-400.54 if the wireless provider meets all the following requirements:

(1) Each new utility pole and each modified or replacement utility pole or city utility pole installed in the right-of-way shall not exceed 50 feet above ground level.

(2) Each new small wireless facility in the right-of-way shall not extend more than 10 feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.

(c) Nothing in this section shall be construed to prohibit a city from allowing utility poles, city utility poles, or wireless facilities that exceed the limits set forth in subdivision (1) of subsection (b) of this section.

(d) Applicants for use of a city right-of-way shall comply with a city's undergrounding requirements prohibiting the installation of above-ground structures in the city rights-of-way without prior zoning approval, if those requirements (i) are nondiscriminatory with respect to type of utility, (ii) do not prohibit the replacement of structures existing at the time of adoption of the requirements, and (iii) have a waiver process.

(d1) Notwithstanding subsection (d) of this section, in no instance in an area zoned single-family residential where the existing utilities are installed underground may a utility pole, city utility pole, or wireless support structure exceed forty (40) feet above ground level, unless the city grants a waiver or variance approving a taller utility pole, city utility pole, or wireless support structure.

(e) Except as provided in this part, a city may assess a right-of-way charge under this section for use or occupation of the right-of-way by a wireless provider, subject to the restrictions set forth under G.S. 160A-296(a)(6). In addition, charges authorized by this section shall meet all of the following requirements:

(1) The right-of-way charge shall not exceed the direct and actual cost of managing the city rights-of-way and shall not be based on the wireless provider's revenue or customer counts.

(2) The right-of-way charge shall not exceed that imposed on other users of the right-of-way, including publicly, cooperatively, or municipally owned utilities.

(3) The right-of-way charge shall be reasonable and nondiscriminatory.

Nothing in this subsection is intended to establish or otherwise affect rates charged for attachments to utility poles, city utility poles, or wireless support structures. At its discretion, a city may provide free access to city rights-of-way on a nondiscriminatory basis in order to facilitate the public benefits of the deployment of wireless services.

(f) 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.

(g) A city may require a wireless provider to repair all damage to a city right-of-way directly caused by the activities of the wireless provider, while occupying, installing, repairing, or maintaining wireless facilities, wireless support structures, city 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 city within a reasonable time after written notice, the city may undertake those repairs and charge the applicable party the reasonable and documented cost of the repairs. The city may maintain an action to recover the costs of the repairs.

(h) This section shall not be construed to limit local government authority to enforce historic preservation zoning regulations consistent with Part 3C of Article 19 of this Chapter, the preservation of local zoning authority under 47 U.S.C. § 332(c)(7), the requirements for facility modifications under 47 U.S.C. § 1455(a), or the National Historic Preservation Act of 1966, 54 U.S.C. § 300101, et seq., as amended, and the regulations, local acts, and city charter provisions adopted to implement those laws.

(i) A wireless provider may apply to a city to place utility poles in the city rights-of-way, or to replace or modify utility poles or city utility poles in the public rights-of

way, to support the collocation of small wireless facilities. A city shall accept and process the application in accordance with the provisions of G.S. 160A-400.54(d), applicable codes, and other local codes governing the placement of utility poles or city utility poles in the city rights-of-way, including provisions or regulations that concern public safety, objective design standards for decorative utility poles or city 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.

"**§ 160A-400.56. Access to city utility poles to install small wireless facilities.**

(a) A city may not enter into an exclusive arrangement with any person for the right to collocate small wireless facilities on city utility poles. A city shall allow any wireless provider to collocate small wireless facilities on its city 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. The North Carolina Utilities Commission shall not consider this subsection as evidence in a proceeding initiated pursuant to G.S. 62-350(c).

(b) 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 city to be reimbursed by the wireless provider. In granting a request under this section, a city 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.

(c) If a city that operates a public enterprise as permitted by Article 16 of this Chapter has an existing city utility pole attachment rate, fee, or other term with an entity, then, subject to termination provisions, that attachment rate, fee, or other term shall apply to collocations by that entity or its related entities on city utility poles.

(d) Following receipt of the first request from a wireless provider to collocate on a city utility pole, a city shall, within 60 days, establish the rates, terms, and conditions for the use of or attachment to the city 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.

(e) In any controversy concerning the appropriateness of a rate for a collocation attachment to a city utility pole, the city 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.

(f) The city shall provide a good-faith estimate for any make-ready work necessary to enable the city 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 city utility pole necessary for the city 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.

(g) The city 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.

(h) 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 G.S. 62-350.

(i) 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, city utility poles, or wireless support structures by a wireless provider. This section shall not be construed to alter or affect the provisions of G.S. 62-350, and the rates, terms, or conditions for the use of poles, ducts, or conduits by communications service providers, as defined in G.S. 62-350, are governed solely by G.S. 62-350. For purposes of this section, "excluded entity" means (i) a city 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.

"**§ 160A-400.57. Applicability.**

(a) A city 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 city. This subsection does not prohibit the enforcement of applicable codes.

(b) Nothing contained in this Part 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.

(c) Except as provided in this Part or otherwise specifically authorized by the General Statutes, a city 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 city rights-of-way by a provider authorized by State law to operate in the rights-of-way of State-maintained highways or city rights-of-way and may not regulate any communications services.

(d) Except as provided in this Part or specifically authorized by the General Statutes, a city may not impose or collect any tax, fee, or charge to provide a communications service over a communications facility in the right-of-way.

(e) The approval of the installation, placement, maintenance, or operation of a small wireless facility pursuant to this Part 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."

SECTION 3.(a) G.S. 136-18 reads as rewritten:

"**§ 136-18. Powers of Department of Transportation.**

The said Department of Transportation is vested with the following powers:

…

(10) To make proper and reasonable rules, regulations and ordinances for the placing or erection of telephone, telegraph, electric and other lines, above or below ground, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, and other similar obstructions that may, in the opinion of the Department of Transportation, contribute to the hazard upon any of the said highways or in any way interfere with the same, and to make reasonable rules and regulations for the proper control thereof. And whenever the order of the said Department of Transportation shall require the removal of, or changes in, the location of telephone, telegraph, electric or

other lines, wireless facilities, signboards, fences, gas, water, sewerage, oil, or other pipelines, or other similar obstructions, the owners thereof shall at their own expense, except as provided in G.S. 136-19.5(c), move or change the same to conform to the order of said Department of Transportation. Any violation of such rules and regulations or noncompliance with such orders shall constitute a Class 1 misdemeanor. For purposes of this subdivision, "wireless facilities" shall have the definition set forth in G.S. 160A-400.51.

…."

SECTION 3.(b) Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"**§ 136-18.3A. Wireless communications infrastructure.**

(a) The definitions set forth in G.S. 160A-400.51 shall apply to this section.

(b) The Department of Transportation is authorized to issue permits to wireless providers for the collocation of wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of wireless services along, across, upon, or under the rights-of-way of State-maintained highways. The permits and included requirements shall be issued and administered in a reasonable and nondiscriminatory manner.

(c) The Department of Transportation shall take action to approve or deny a permit application for collocation of a small wireless facility under this section within a reasonable period of time of receiving the application from a wireless provider.

(d) The collocation of small wireless facilities and the construction, operation, modification, or maintenance of utility poles, wireless support structures, conduit, cable, and related appurtenances and facilities for the provision of small wireless facilities along, across, upon, or under the rights-of-way of State-maintained highways shall be subject to all of the following requirements:

(1) The structures and facilities shall not obstruct or hinder the usual travel or public safety on any rights-of-way of State-maintained highways or obstruct the legal use of such rights-of-way of State-maintained highways by other utilities.

(2) Each new or modified utility pole and wireless support structure installed in the right-of-way of State-maintained highways shall not exceed the greater of (i) 10 feet in height above the height of the tallest existing utility pole, other than a utility pole supporting only wireless facilities, in place as of July 1, 2017, located within 500 feet of the new pole in the same rights-of-way or (ii) 50 feet above ground level.

(3) Each new small wireless facility in the right-of-way shall not extend (i) more than 10 feet above an existing utility pole, other than a utility pole supporting only wireless facilities, or wireless support structure in place as of July 1, 2017, or (ii) above the height permitted for a new utility pole or wireless support structure under subdivision (2) of this section."

SECTION 4. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:39 a.m. this 21st day of July, 2017

RIGHT-OF-WAY Encroachment Agreement

VILLAGE OF PINEHURST *and* _____

Company Name

THIS AGREEMENT, made and entered into this day ____of _____, 20____, by and between the Village Pinehurst, herein after referred to as "VILLAGE" and, herein after referred to as "COMPANY",

WITNESSETH:

THAT WHEREAS, the COMPANY desires to encroach on the right-of-way of the public road designated as _____located_____ with the construction and/or erection of_____and;

WHEREAS, it is to the material advantage of the COMPANY to effect this encroachment, and the VILLAGE, in the exercise of authority conferred to it by N.C.G.S. 160A-296, is willing to permit the encroachment within the limits of the right-of-way as indicated, subject to the conditions of this agreement.

NOW, THEREFORE, IT IS AGREED that the VILLAGE hereby grants to the COMPANY the right and privilege to make this encroachment as shown on the attached plan sheet(s), specifications, and special provisions that are made a part hereof upon the following conditions,

That, the installation, operation, and maintenance of the above described facility will be accomplished in accordance with the VILLAGE of Pinehurst Engineering Design and Construction Standards and other VILLAGE ordinances and policies as applicable.

That, the said COMPANY binds and obligates itself to install and maintain the encroaching facility in such safe and proper condition that it will not interfere with or endanger travel upon said street, nor obstruct nor interfere with the proper maintenance thereof. The COMPANY agrees to reimburse the VILLAGE for the cost incurred for any repairs or maintenance to its roadways and structures necessary due to the installation and existence of the facilities of the COMPANY and the COMPANY agrees to remove any above ground structures that are abandoned or not in use for twelve (12) consecutive months.

That, if any time the VILLAGE shall require the removal of, or changes in, the location of the said facilities, then the COMPANY binds itself, its successors and assigns, to promptly remove, relocate or alter the said facilities, in order to conform to the said requirement, without any cost to the VILLAGE

That, the COMPANY agrees to provide, during construction and any subsequent maintenance, proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with VILLAGE standards and the latest Manual on Uniform Traffic Control Devices for Streets and Highways and Amendments or Supplements thereto.

That, the COMPANY agrees to restore all areas disturbed during installation and maintenance to the satisfaction of the VILLAGE. COMPANY agrees to give a minimum of 48 hours' notice to the VILLAGE both before work is initiated and once all work contained herein has been completed.

That, it is agreed by both parties that this agreement shall become void if actual construction of the work contemplated herein is not begun within twelve (12) months from the date of authorization by the VILLAGE unless written waiver is secured by the COMPANY from the VILLAGE.

That, it is agreed by COMPANY that it shall be solely liable for all any and all structure failures of its facilities within the VILLAGE right-of-way, any and all actions conducted by the COMPANY or any and all actions conducted on behalf of the COMPANY by others. The COMPANY further agrees to defend and hold harmless the VILLAGE for any and all actions by COMPANY or COMPANY representatives operating on VILLAGE right-of-way, and that COMPANY shall maintain general liability insurance of not less than $1M per occurrence for COMPANY or COMPANY representative's actions while on the VILLAGE right-of-way.

IN WITNESS WHEREOF, each of the parties to this agreement has caused the same to be executed as of the date first above written.

Applicant to check all that apply.

New Construction/Installation
- _____ Bore(s) of roadway
- _____ Overhead
- _____Trenching/Digging

Repair/Replacement
- _____ Bore(s) of roadway
- _____ Overhead
- _____ Trench/Digging

_____
Name of Company

_____
Signature

_____
Print name and title

_____
Address

_____
Telephone

_____
On-Site contact name & phone #

VILLAGE OF PINEHURST

_____
Village Representative Signature

1. Call North Carolina One-Call Center, Inc. at 811. It shall be the responsibility of the Company to field verify/spot-locate depths of utilities.
2. Attach 8 ½" x 11" Plans to this Document.
3. The installation of utilities in Village of Pinehurst' right-of-way may be performed only during regular business hours (7:00 a.m. to 4:00 p.m.) Monday through Friday. No work shall be performed in the Village's right-of-way after hours, weekends or holidays unless expressly permitted by the Village.
4. All bores must be minimum 24 inches in depth. The Village reserves the right to require additional bore/burial depth for any and all installations.

Administration Department
395 Magnolia Rd - Pinehurst, North Carolina 28374
(910) 295-1900(O) - (910) 295 - 4434 (F) - www.vopnc.org

1.6.4 Major Work

13. Installation of Small/Micro Wireless Facilities.

2.23. Small/Micro Wireless Facilities:

The introduction of new telecommunication facilities are needed to accommodate the growing need and demand for wireless telecommunication services. Although there is a need for these facilities, they should have minimal visual and aesthetic impacts as well as preserve the special character of the district. These guidelines apply to the installation of such facilities within the local historic district including right-of-ways. All installations must comply with the requirements of the PDO in order to be considered for a Certificate of Appropriateness in the Historic District.

2.23.1 Small/Micro Wireless Facilities Guidelines:

None.

2.23.2 Small/Micro Wireless Facilities Standards:

1. **All new facilities, whether added to existing structures or installed on new poles or structures, shall be congruent with the special character of the Historic District.**
2. **All new poles or structures shall be compatible in design, materials, height and scale as existing street lighting and traffic light installations in the district.**
3. **Any such facilities shall not be located on any flagpoles.**
4. **Wherever possible, these facilities shall be located on existing structures.**

P&Z SUBCOMMITEE UPDATES

ADDITIONAL AGENDA DETAILS:

1. Village Center Ground Floor Uses
2. Sign Ordinance Modifications/Rewrite