

*The City of Lewes*



**City of Lewes**  
**Wireless Facilities Zoning Amendment**

**DRAFT**

July 9, 2020

Wireless Facilities Zoning Amendment Draft

1 Section 197-83 Other Utilities

2  
3 A. For subdivision and land development standards for other utilities see § 170-32 in  
4 Chapter 170, Subdivision and Land Development

5  
6 B. Wireless Facilities

7  
8 (1) Purposes

9 The City of Lewes is the first town in the first state. The city has a history and aesthetic  
10 that is important to retain. The installation of small cell technology will enhance  
11 wireless capabilities while harmoniously blending into the existing character and  
12 context of the city. Installation of the technology shall take into consideration the area  
13 in which it will be placed. The City wants to ensure its small town historic character  
14 is maintained when development occurs in any form.

15  
16 (2) Applicability - This article applies to all wireless communications facilities within the  
17 City of Lewes or permitted by the Lewes Board of Public Works including the  
18 expansion, co-location and/or modification of any existing small cell wireless  
19 communications facilities, subject to the following procedures.

- 20 a) Permit. No wireless facility shall be erected, constructed, installed or modified  
21 without first obtaining a permit (see Section 197-83 B (4) – Application Process).
- 22 b) City reviews for installations or maintenance of wireless facilities covered by  
23 federal or state legislation are confined to the procedures and limits on review and  
24 approval for siting, co-locating and modifying wireless facilities and equipment as  
25 defined by those regulations, as amended and all applicable codes regarding  
26 building standards. Applications that include changes to or new wireless facilities  
27 not specified by federal or state laws will be subject to additional City review  
28 procedures, guidelines, and fees. Further details on types of wireless applications  
29 and review procedures are outlined in the Small Cell Attachment Permit  
30 application form, the Small Cell Wireless Facilities and Telecommunications  
31 Towers Design Guidelines or the City Code located on the City website.
- 32 c) This Section is not intended to, nor shall it be interpreted or applied to: (1)  
33 prohibit or effectively prohibit any personal wireless service provider’s ability to  
34 provide personal wireless services; (2) prohibit or effectively prohibit any entity’s  
35 ability to provide any interstate or intrastate telecommunications service, subject  
36 to any competitively neutral and nondiscriminatory rules or regulation for rights-  
37 of-way management; (3) unreasonably discriminate among providers of  
38 functionally equivalent services; (4) deny any request for authorization to place,  
39 construct or modify personal wireless service facilities on the basis of  
40 environmental effects of radio frequency emissions to the extent that such  
41 facilities comply with the Federal Communication Commission’s regulations  
42 concerning such emissions; (5) prohibit any collocation or modification that the  
43 City may not deny under federal law; or (6) otherwise authorize the City to  
44 preempt any applicable federal or Delaware state law.
- 45 d) The following are exempt from the provisions of this Section:  
46 1) Amateur radio station operators

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- 47 2) Public safety agencies
- 48 3) Satellite dish antenna
- 49 4) Industrial scientific and medical equipment operations
- 50 5) Routine maintenance or repair of personal wireless service facility
- 51 6) Non-conforming structures as defined under Section 197-83 B (9).
- 52

53 (3) Wireless Facilities Review

54  
55 a) Administrative Review - The following types of Wireless Facilities shall be  
56 reviewed administratively:

- 57
- 58 1) Small Cell Facilities located on any existing wireless support structures in  
59 any zoning district that comply with defined design standards;
- 60
- 61 2) Small Cell Facilities located on a new wireless support structure in any  
62 designated State right of way or on City or State owned structures;
- 63
- 64 3) Small Cell Facilities located on a new wireless support structure in any  
65 designated City right of way that comply with defined design standards;
- 66
- 67 4) Building/Structure Mounted Facilities in the following zoning districts:  
68 Limited Commercial (LC), General Commercial (GC), Community  
69 Facilities Zone (CF), Community Facilities (Educational) Zone (CF-E),  
70 Community Facilities (Health Care) Zone (CF-HC), and Industrial (I) that  
71 comply with defined design standards
- 72
- 73 5) Modifications to a Wireless Facility Support structure which involves: Co-  
74 Location of new Transmission Equipment; removal of Transmission  
75 Equipment; or replacement of Transmission Equipment provided the  
76 modification does not result in Substantial Change in the physical  
77 dimensions of an Eligible Support Structure.

78 Any decision to administratively approve or deny a permit application is subject  
79 to review by the Board of Building Code Appeal

80  
81 b) Conditional Use Permit Review - The following types of applications require  
82 review through the conditional use permit procedures as identified in Article XIII,  
83 Conditional Uses of the City Code:

- 84
- 85 1) Building Mounted Facility in any zoning district, not listed in § (3) a 4  
86 under Administrative Review above;
- 87
- 88 2) A new Tower Facility over 50 feet in height in any zoning district;
- 89
- 90 3) Co-Locations and modifications resulting in a substantial change to existing  
91 Facility as defined in Section 197-83 B (10).

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- 92 c) Additional Review – Wireless facility proposals may also be subject to other  
93 applicable review procedures as defined in the Lewes Pole Attachment Agreement  
94 or by City code if located in a historic district, floodplain or other areas regulated  
95 by the Code unless specifically exempted under Section Section 197-83 B (2) –  
96 (Applicability Section).  
97
- 98 (4) Application Process – Applicants shall use one of the following application forms  
99 (from the City website) to initiate a review depending on the type of proposed wireless  
100 facility:  
101 a) For any project involving installation or collocation of a small cell wireless  
102 facility use the Small Cell Attachment Permit application, or  
103 b) For any other wireless facility application use the Site Plan application form.  
104
- 105 (5) Time frame for Approval. The City shall comply with all federal and state timing  
106 requirements in consideration of applications for New Tower Facilities and Co-location  
107 and Modification of Existing Wireless Facilities. Wireless facilities that do not fall  
108 under those requirements will follow the plan review scheduling requirements outlined  
109 for site plans and conditional uses as defined in the City Code.  
110
- 111 (6) Removal of abandoned antennas and towers. Any antenna or tower that is not operated  
112 for a continuous period of 12 months shall be considered abandoned, and the owner of  
113 such Antenna or Tower shall remove the same and any supporting equipment within  
114 90 days of receipt of notice from the City notifying the owner of such abandonment.  
115 Failure to remove an abandoned Antenna or Tower within said 90 days shall be grounds  
116 to remove the Tower or Antenna at the owner’s expense. If there are two or more users  
117 of a single Tower, then this provision shall not become effective until all users cease  
118 using the Tower.  
119
- 120 (7) Wireless Facilities Siting and Design Standards – Standards and specifics on review  
121 procedures for all wireless facility applications are included in the Small Cell Wireless  
122 Facilities and Telecommunications Towers Design Guidelines document that is  
123 available on the City website.  
124
- 125 (8) Bonding requirements. Whenever any Tower Facility is constructed, the operator of  
126 the Tower Facility shall obtain and keep in force:  
127
- 128 a) A performance bond payable to the City to cover the cost of removal of the  
129 Tower Facility. The performance bond shall remain in force throughout the time  
130 that the Tower is located on the Site. The amount of the bond shall equal [*detail*  
131 *required*].  
132 b) When landscaping installation is required, a maintenance bond, assignment of  
133 funds or other financial guarantee acceptable to the City shall be provided in  
134 the amount of [*detail required*] of the value of the labor and materials. The  
135 guarantee shall be in effect for two years from the date of planting.  
136

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- 137 (9) Nonconforming uses.  
138 a) Preexisting Towers. Preexisting Towers shall be allowed to continue their usage  
139 as they presently exist. Routine maintenance (including replacement with a new  
140 Tower of like construction and height) shall be permitted on such preexisting  
141 Towers. New construction other than routine maintenance on a preexisting  
142 Tower shall comply with the requirements of this chapter.  
143 b) Rebuilding Damaged or Destroyed Nonconforming Towers or Antennas.  
144 Notwithstanding §B (2) a, bona fide nonconforming Towers or Antennas that  
145 are damaged or destroyed may be rebuilt without first having to obtain  
146 administrative approval or a conditional use permit. The type, height, and  
147 location of the Tower on-site shall be of the same type and intensity as the  
148 original facility approval. Building permits to rebuild the facility shall comply  
149 with the then applicable building codes and shall be obtained within 180 days  
150 from the date the facility is damaged or destroyed. If no permit is obtained or if  
151 said permit expires, the Tower or antenna shall be deemed abandoned as  
152 specified in §B (6).
- 153  
154 (10) Substantial Change Criteria. A Proposed Wireless Facilities Modification will  
155 Substantially Change the physical dimensions of an Eligible Support Structure if it  
156 meets any of the following criteria:  
157 a) For a facility other than wireless support facilities in the State rights-of-way or  
158 on a State structure, it increases the size (height or width) of the facility by more  
159 than 10 percent. Changes in height should be measured from the original  
160 support structure in cases where deployments are or will be separated  
161 horizontally, such as on buildings' rooftops; in other circumstances, changes in  
162 height should be measured from the dimensions of the wireless support facility  
163 or Base Station.  
164 b) For any Support Structure, it involves installation of more than the standard  
165 number of new equipment cabinets for the technology involved, but not to  
166 exceed three cabinets; or, for Towers in the public Rights-Of-Way and Base  
167 Stations, it involves installation of any new equipment cabinets on the ground  
168 if there are no preexisting ground cabinets associated with the structure ; or  
169 c) It would defeat the Concealment Elements of the Eligible Support Structure .
- 170  
171 (11) Attachment Certificate and Pole Agreements. In the event that a request is made  
172 to the Lewes BPW to overlash or co-locate any Wireless Facilities including a Small  
173 Cell Facility on a Lewes BPW pole or other Non-Utility Municipal Structure located  
174 in any Right-of-Way (whether owned by the City, the State or other party), a request  
175 shall be made in writing to the City and Lewes BPW using the online permit  
176 application. Such reviews will be conducted in accordance with the BPW Pole  
177 Attachment License Agreement and the City Building Code as well as comply with the  
178 provisions on the City Zoning Ordinance and other applicable code requirements.  
179
- 180 (12) Reimbursement. In addition to permit fees as described in this section, every  
181 wireless facility in the ROW is subject to the City's right to recover its actual costs

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182 incurred as a result of construction in the ROW, including, but not limited to, the costs  
183 of the administration and performance of all reviewing, inspecting, permitting,  
184 supervising and other ROW management activities by the City. The owner of each  
185 wireless facility shall reimburse the City for the City's costs reasonably incurred in  
186 connection with the activities described above. All fees shall comply with applicable  
187 state and federal law and not exceed amounts presumed reasonable by the FCC.

188  
189 (13) Definitions – *(May be relocated to the Definitions Section of the Zoning Code in final*  
190 *version)* As used in this chapter, the following terms shall have the meanings set forth  
191 below:  
192

193 **“Antenna”** means any exterior transmitting or receiving device mounted on a  
194 Tower, building or structure and used in communications that radiate or capture  
195 electromagnetic waves, digital signals, analog signals, radio frequencies (excluding radar  
196 signals), wireless telecommunications signals or other communication signals.

197 **“Antenna height”** or “height” means the vertical distance measured from the base of the  
198 wireless support facility at grade to the highest point of the structure even if said highest point  
199 is an antenna. Measurement of height shall include antenna, base pad, and other appurtenances  
200 and shall be measured from the finished grade of the parcel.

201 **“Applicant”** means any provider or any person, partnership, or company who files an  
202 application for any permit necessary to install, maintain, modify, co-locate, replace or remove  
203 a personal wireless service facility within the City.

204 **“Approval authority”** is the City Manager and Lewes BPW, or designee, as provided by the  
205 City Code and BPW Pole Attachment License Agreement as amended .

206 **“Backhaul network”** means the lines that connect a provider’s Towers/cell sites to one or  
207 more cellular telephone switching office, and/or long distance provider, or the public switched  
208 telephone network.

209 **“Base station”** shall mean and refer to the structure or equipment at a fixed location that  
210 enables wireless communications licensed or authorized by the FCC, between user equipment  
211 and a communications network. The term does not encompass a Tower as defined in this  
212 chapter or any equipment associated with a Tower. A wireless support structure becomes a  
213 base station when wireless telecommunications equipment is attached.

214 **“Cell site”** or “site” means a tract or parcel of land that contains wireless service facilities  
215 including any antenna, support structure, accessory building, and parking, and may include  
216 other uses associated with an ancillary to personal wireless services.

217 **“City Standards”** means the City Standard’s for Wireless Attachments on Municipal Utility  
218 Poles and Non-Utility Municipal Structures as may be amended from time to time.

219 **“Co-location”** shall mean and refer to the mounting or installation of transmission equipment  
220 on a wireless support structure for the purpose of transmitting and/or receiving radio frequency  
221 signals for communications purposes. This definition includes the first placement of  
222 transmission equipment on a Tower or base station.

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223 “**Conceal**” or “**concealment**” shall mean and refer to wireless support structures and  
224 transmission facilities designed to look like some feature other than a Tower or base station.

225 “**Design**” means the appearance of a personal wireless service facility, including such features  
226 as its material, color, and shape.

227 “**Distributed Antenna System**” means a network or facility to which all of the following  
228 apply: (a) it distributes radio frequency signals to provide Wireless Service; (b) it meets the  
229 height and size characteristics of a Small Cell Facility, as defined herein; (c) it consists of the  
230 following: (i) remote antenna nodes deployed throughout a desired coverage area, (ii) a high-  
231 capacity signal transport medium connected to a central hub site, and (iii) equipment located  
232 at the hub site to process or control the radio frequency signals through the antennas; and (d)  
233 it conforms to the size limitations specified in City’s Standards or is otherwise consistent with  
234 any other applicable law.

235 “**Eligible Support System**” any Tower or Base Station that is existing at the time the Proposed  
236 Eligible Wireless Facilities Modification application is filed with the City.

237 “**FAA**” means the Federal Aviation Administration.

238 “**FCC**” means the Federal Communications Commission.

239 “**Lattice Tower**” means a type of mount that is self-supporting with multiple legs and cross-  
240 bracing of structural metal.

241

242 “**Lewes BPW**” shall mean the Lewes Board of Public Works.

243

244 “**Lewes BPW pole**” shall mean any Utility Pole that is owned by the Lewes Board of Public  
245 Works

246 “**Mount**” means the structure or surface upon which personal wireless service facilities are  
247 mounted. There are three types of mounts:

248 **Building Mount.** A wireless service facility mount fixed to the roof or side of  
249 a building.

250 **Ground Mount.** A wireless service facility mount fixed to the ground, such as a  
251 Tower.

252 **Structure Mount.** A wireless service facility fixed to a structure other than  
253 a building, such as light standards, utility poles, water Towers and bridges

254 “**Overlashing**” – means adding wireless facility attachments to a Lewes BPW pole or  
255 structure.

256 “**Panel antenna**” means a “directional antenna” as included in the definition of “antenna”  
257 above.

258 “**Preexisting Tower**” and “**preexisting antenna**” means any Tower or antenna for which  
259 a building permit or conditional use permit has been properly issued prior to the effective  
260 date of the ordinance codified in this chapter, including permitted Towers or antennas that  
261 have not yet been constructed so long as such approval is current and not expired.

262 **“Proposed wireless facilities modification”** shall mean and refer to a proposal submitted  
263 by an applicant to modify a support structure which the applicant asserts is subject to  
264 review under FCC and State regulations, and involving: (a) Co-location of new  
265 transmission equipment; (b) Removal of transmission equipment; or (c) Replacement of  
266 transmission equipment.

267 **“Small Cell Facility”** means a Wireless Facility that that meets the following  
268 qualifications: (a) each Antenna associated with the Facility is located inside an enclosure  
269 of not more than six (6) cubic feet in volume, or, in the case of an Antenna that has exposed  
270 elements, the Antenna and all of its exposed elements could fit within an enclosure of not  
271 more than six (6) cubic feet in volume; (b) all other Wireless Equipment associated with  
272 the Facility is cumulatively not more than twenty-eight (28) cubic feet in volume. The  
273 calculation of equipment volume shall not include electric meters, concealment elements,  
274 telecommunications demarcation boxes, grounding equipment, power transfer switches,  
275 cut-off switches, and vertical cable runs for power and other services; and (c) if the Facility  
276 were placed on a Wireless Support Structure, the increased height would not be more than  
277 ten (10) feet or the overall resulting height would be not more than fifty (50) feet.

278 **“Substantial change criteria”** shall mean and refer to the criteria set forth in Section 197-  
279 83 B (10).

280 **“Transmission equipment”** shall mean and refer to equipment that facilitates  
281 transmission for any wireless communication service licensed or authorized by the FCC,  
282 including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and  
283 regular and backup power supply. The term includes equipment associated with wireless  
284 communications services including, but not limited to, private, broadcast, and public safety  
285 services, as well as unlicensed wireless services and fixed wireless services such as  
286 microwave backhaul.

287 **“Utility Pole”** shall mean a structure that is designed for, or used for the purpose of,  
288 carrying lines, cables, or wires for electric or telecommunications service, but not including  
289 structures owned by a Municipal Electric Utility.

290 **“Wireless Facility”** or **“Facility”** shall mean all Antenna, Transmission Equipment or  
291 other wireless device or equipment used to provide Wireless Service.

292 **“Wireless facilities modification”** shall mean and refer to any proposed facilities  
293 modification that has been determined pursuant to the provisions of this chapter to be  
294 subject to this chapter and which does not result in a Substantial Change in the physical  
295 dimensions of a wireless support structure.

296 **“Wireless Service”** shall be defined in the same manner as in Title 47, United States Code,  
297 Section 332(c)(7)(C), as they may be amended now or in the future, and includes facilities  
298 for the transmission and reception of radio or microwave signals used for communication,  
299 cellular phone, personal communications, services, enhanced specialized mobile radio, and  
300 any other wireless services licensed by the FCC and unlicensed wireless service facilities.

301 **“Wireless Support Structure”** means any pole, monopole (either guyed or self-  
302 supporting), light pole, traffic signal, sign pole, telescoping mast, Tower, tripod, Utility  
303 Pole or other structure which supports or is capable of supporting a device used in the  
304 transmitting or receiving of radio frequency signals. For purposes of requesting consent for



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305 a Microcell Facility, the term Wireless Support Structure excludes a Municipal Electric  
306 Utility Pole, or other structure owned or operated by a Municipal Electric Utility.

307 **“Tower”** means and refers to any structure built for the sole or primary purpose of  
308 supporting any antennas and their associated facilities, licensed or authorized by the FCC,  
309 including structures that are constructed for wireless communications services including,  
310 but not limited to, private, broadcast, and public safety services, as well as unlicensed  
311 wireless services and fixed wireless services such as microwave backhaul, and the  
312 associated site.

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