

**City of Takoma Park Resolution Regarding the  
Installation of Wireless Telecommunications Facilities**

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WHEREAS, the City wants to ensure, to the extent of its authority, equitable access to telecommunications services throughout the community; and

WHEREAS, the reasonably regulated and orderly deployment of wireless telecommunications facilities in the public right-of-way is desirable, and unregulated or disorderly deployment represents a threat to the health, welfare and safety of the community; and

WHEREAS, installation of small cell and other wireless telecommunications facilities within the public right-of-way can pose a threat to the public health, safety and welfare, either directly through the facilities themselves or indirectly by causing changes to other facilities in the right-of-way; and

WHEREAS, these direct and indirect harms include disturbance to the right-of-way through the installation and maintenance of the facilities; traffic and pedestrian safety hazards due to the potential unsafe location and installation of the facilities; safety concerning stability of the poles; impacts to trees where proximity conflicts may require trimming of branches or require removal of roots due to related undergrounding of equipment or connection lines; land use conflicts and incompatibilities including excessive height of poles and towers; creation of visual and aesthetic blight and potential safety concerns arising from excessive size, heights, or lack of concealing of the facilities including the associated pedestals, meters, and equipment, which may negatively impact the unique quality and character of the City; and

WHEREAS, the regulation of wireless communications facility installation and maintenance in the public right-of-way is necessary to protect and preserve the aesthetics in the community, as well as the values of properties within the City, and to ensure that all wireless telecommunications facilities are installed using the least intrusive and safest means possible and that there is accessible high-speed wireless service in the community; and

WHEREAS, the City of Takoma Park remains under Montgomery County zoning authority and therefore restrictions on setbacks and zoning regulations regarding wireless communications facilities located on private property or commercial property are governed by County zoning regulations in the City; and

WHEREAS, the City is seeking to more formally coordinate with the County, including through direct involvement with the Montgomery County Transmission Facilities Coordination Group (often referred to as the Tower Commission); and

37 WHEREAS, the City has the authority to further regulate wireless communications facilities  
38 in the public rights-of-way through a permit process, and City ordinances have  
39 not been updated to reflect current communications technology or commercial  
40 infrastructure or necessary legal requirements; and

41 WHEREAS, current Federal law and regulations preempt local authority to regulate certain  
42 aspects of wireless communications facilities, and key among the limitations is  
43 that local regulations cannot have the effect of prohibiting the provision of  
44 wireless services; and

45 WHEREAS, the City has joined a coalition of other jurisdictions and organizations from  
46 across the country to address the challenge of the FCC order in the courts,  
47 including an effort to obtain a stay; and

48 WHEREAS, local authorities nonetheless retain the ability to regulate the placement,  
49 construction, and aesthetics of wireless communications facilities; and

50 WHEREAS, the Federal Communications Commission (FCC) in September 2018 established  
51 certain guidelines:

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- 53 • A presumed reasonable price that local governments can charge  
54 communications companies for small cell installations on public poles and in  
55 city streets while still recognizing the right of local governments to charge  
56 higher fees if they represent a reasonable approximation of the locality's  
57 actual costs for reviewing and approving permits and other costs.
  - 58 • A "shot clock" that presumes that a reasonable time for making a decision on  
59 applications for permits for small cell infrastructure is 60 to 90 days,  
60 depending on the type of installation. If the permit approval process takes  
61 longer, the city is vulnerable to potential litigation, but the burden is on the  
62 company to demonstrate that the longer approval time results in an effective  
63 prohibition of wireless service; and  
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65 WHEREAS, the City Council is aware of residents' concerns about the health effects of  
66 wireless telecommunications facilities, but the Federal Telecommunications Act  
67 of 1996 does not allow local governments to deny the siting of a small cell facility  
68 on the basis of radio frequency emissions effects; and  
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70 WHEREAS, Radio Frequency (RF) guidelines have not been updated since 1996, and  
71 compliance with the Telecommunications Act of 1996 does not preclude the City  
72 from exploring and supporting efforts to require the FCC to examine the health  
73 impacts of wireless communications facilities and to revise the Commission's  
74 twenty-plus year-old RF emission standards; and

75 WHEREAS, the City does not intend to prohibit or have the effect of prohibiting wireless  
76 communications service, but wishes to enact an ordinance that appropriately  
77 regulates the installation, augmentation, maintenance, and relocation of  
78 wireless communications facilities in the public rights-of-way, as allowed by the  
79 County zoning ordinance and done in a manner that protects to the full extent  
80 feasible against the safety and land use concerns described herein.

81 NOW, THEREFORE, BE IT RESOLVED, the City Council finds it is in the best interest of the  
82 residents of Takoma Park for the Council to take proactive steps and to work towards putting in  
83 place by the January 14, 2019 effective date of the recent FCC ruling an ordinance outlining a  
84 permitting process for wireless telecommunication facilities in the City's rights-of-way to  
85 maintain the City's stewardship of its rights-of-way; and

86 BE IT FURTHER RESOLVED, the City Council finds and declares that an ordinance outlining a  
87 permitting process is necessary to preserve and protect public health, safety and welfare; and

88 BE IT FURTHER RESOLVED, the ordinance will ensure that wireless telecommunications facilities  
89 shall be installed, modified, maintained, and removed in a manner that:

- 90 ● minimizes risks to public health and safety
- 91 ● minimizes the number and intrusion of poles or equipment cabinets in City rights-of-way
- 92 ● maintains the integrity and character of the neighborhoods and corridors in which the  
93 facilities are located and aligns with applicable mater plans, sector plans, and overlay  
94 plans
- 95 ● ensures that installations are subject to periodic review
- 96 ● ensures that the City bears minimal risk or liability as a result of the installations, and  
97 that such installations do not incommode the public or hinder the City's management of  
98 its rights-of-way
- 99 ● provides access to wireless technology in the community
- 100 ● ensures timely public and City government notification of new and modified  
101 installations
- 102 ● conforms with City requirements for tree protection and stormwater management
- 103 ● minimizes traffic and pedestrian safety hazards due to the location of the facilities; and
- 104 ● otherwise minimizes risks to public health, safety and welfare of the City and its  
105 residents.