



Takoma Park City Council Meeting – November 28, 2018 Agenda Item 12

Work Session

Discussion of Proposed Amendments to Takoma Park Code, Chapter 11.12, Permits and Improvements, to Regulate the Installation of Telecommunications Equipment in City Rights-of-Way and Discussion of Resolution Identifying the Council's Goals for Adopting the Ordinance

Recommended Council Action

Continue discussion of proposed amendments to City Code; Discuss the draft Resolution

Context with Key Issues

As a result of increased demand for wireless broadband service and developments in wireless communications technology, cellular service providers have begun installing small short-range antennas as part of their network. While the Montgomery County Zoning Ordinance regulates the installation of antennas on private property in the City, City legislation is necessary to regulate installations in our rights-of-way.

Current Montgomery County zoning laws in residential areas requires that: a) new poles and replacement poles are considered telecommunication towers and must be set back 300 feet from a dwelling and b) antennas on existing structures must be setback 60 feet. The County was considering changes to this and other requirements for cell towers but the ZTA that was under consideration has been tabled and is not expected to be considered further by the current County Council.

The City can regulate some aspects of cell tower installation, such as the location, placement, aesthetics, notification process, and fees, and can establish a permitting process to ensure that any small cell towers or antennas, permitted by the County for placement in Takoma Park, meet certain safety and aesthetic requirements.

Over the past month, the City Council has been considering amending the Code to protect the City and our residents from the potential negative impacts of the installation of telecommunications equipment in the City rights-of-way. In addition to continuing that discussion, this evening the Council will also discuss the attached draft Resolution identifying its goals.

Council Priority

A Livable Community for All; Fiscally Sustainable Government

Environmental Considerations

N/A

Fiscal Considerations

One goal of the Resolution is for the City to be permitted to recover the costs associated with right-of-way permit application review and maintenance when installations occur in the right-of-way.

Racial Equity Considerations

The proposed Code amendments and Resolution would apply throughout the City. The City will endeavor to ensure that the installation of cell towers do not positively or adversely affect different parts of the City in an inequitable way. We will also monitor the availability of wireless broadband service throughout the City and encourage and advocate for deployment in underserved areas if disparities are discovered.

Attachments and Links

- Draft Resolution
- Cell Tower Discussion Guide (presentation slides)
- Small Cell Antenna Project Page: <https://takomaparkmd.gov/initiatives/project-directory/small-cell-antennas-in-the-citys-rights-of-way/>

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

- 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 of the facilities; 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 camouflaging 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 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, the regulation of wireless 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 wireless service in the community; and
- WHEREAS, the City of Takoma Park falls under Montgomery County zoning authority and therefore restrictions on setbacks and zoning regulations regarding wireless telecommunications facilities located on private property or commercial property are governed by County zoning regulations in the City; and
- WHEREAS, the City may regulate wireless telecommunications facilities in the public rights-of-way through a permit process, and City ordinances have not been updated to reflect current telecommunications technology or necessary legal requirements; and

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

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

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

- A presumed reasonable price that local governments can charge telecommunications companies for small cell installations on public poles and in city streets while still recognizing the right of local governments to charge higher fees if they represent a reasonable approximation of the locality's actual costs for reviewing and approving permits and other costs.
- A "shot clock" that presumes that a reasonable time for making a decision on applications for permits for small cell infrastructure is 60 to 90 days, depending on the type of installation. If the permit approval process takes longer, the city is vulnerable to potential litigation, but the burden is on the company to demonstrate that the longer approval time results in an effective prohibition of wireless service; and

WHEREAS, the City Council is aware of residents' concerns about the health effects of wireless telecommunications facilities; and

WHEREAS Section 704 of the Federal Telecommunications Act of 1996 only allows local governments to deny the siting of a small cell facility if radio frequency emissions from that facility exceed the federal emissions standards; and

WHEREAS, Radio Frequency (RF) guidelines have not been updated since 1996, and compliance with the Telecommunications Act of 1996 does not preclude the City from exploring and supporting efforts to require the FCC to examine the health impacts of wireless telecommunications facilities and to revise the Commission's twenty-plus year-old RF emission standards; and

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

NOW, THEREFORE, BE IT RESOLVED, the City Council finds it is in the best interest of the residents of Takoma Park for the Council to take proactive steps and put in place an ordinance outlining a permitting process for wireless telecommunication facilities in the City's rights-of-way to maintain the City's stewardship of its rights-of-way; and

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

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

- minimizes risks to public health and safety
- minimizes the number and intrusion of poles or equipment cabinets in City rights-of-way
- maintains the integrity and character of the neighborhoods and corridors in which the facilities are located
- ensures that installations are subject to periodic review
- ensures that the City bears minimal risk or liability as a result of the installations, and that such installations do not inconvenience the public or hinder the City's management of its rights-of-way
- provides access to wireless technology in the community
- ensures public and City government notification of new installations
- conforms with City requirements for tree protection and stormwater management;
- and otherwise minimizes risks to public health, safety and welfare of the City and its residents.

Wireless Telecom Facilities: Overview and Discussion Points

City Council Work Session
November 14, 2018



Background

- Montgomery County zoning codes govern where wireless facilities can be sited (setbacks)
- Takoma Park can establish a permitting process to set safety and aesthetic requirements
- County attorney has requested appointment of special counsel to pursue legal challenge re: health effects
- The City is covered by County zoning rules, but we can add an additional layer of protection
- In sum: Advisable to develop a permitting process.



FCC Rules

- Federal law states that a local jurisdiction cannot prohibit deployment of small cell antenna
- The FCC has established regulations on what jurisdictions can charge; based on costs to jurisdiction (e.g. for permit review)
- The FCC also established a “shot clock” that limits the time a jurisdiction can take to review a permit application (60-90 days)



Purpose of City Ordinance

The regulation of wireless 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 wireless in the community.



Purpose of City Ordinance



Wireless telecommunications facilities shall be installed, modified, and maintained in a manner that:

- minimizes risks to public health and safety
- minimizes the overuse and installation of poles or equipment cabinets in the public rights-of-way to reduce the intrusion of poles and equipment in right away
- maintains the integrity and character of the neighborhoods and corridors in which the facilities are located
- ensures that installations are subject to periodic review
- ensures that the city bears no risk or liability as a result of the installations, and that such use does not inconvenience the public or hinder government to manage right-of-way
- provides access to wireless technology in the Community
- ensures public and City government notification

Considerations for Council

- Fees
 - Initial
 - Annual
- Placement and aesthetics
 - Protecting views
 - Visual aesthetics
 - Appearance and size
 - Landscaping and screening
- Height limits
- Safety
- Tower profile requirements
- Repair and maintenance requirements
- Application, review process, public notice and input
- Community benefits?
- Tree ordinance

Note: Setbacks will be covered by County Code

