



Takoma Park City Council Meeting – December 5, 2018 Agenda Item 2

Voting Session

Resolution Identifying the Council's Goals in Amending Takoma Park Code, Chapter 11.12, Permits and Improvements to Regulate the Installation of Telecommunications Equipment in City Rights-of-Way

Recommended Council Action

Adopt the Resolution

Context with Key Issues

Over the past several weeks, the City Council has been considering potential Code amendments that would protect the City and our residents from the potential negative impacts of the installation of wireless communication equipment in the City's rights-of-way. To complement this effort, the Council has also discussed language for a Resolution that identifies its goals. The purpose of tonight's voting session is to continue the discussion as necessary and adopt a Resolution.

Council Priority

A Livable Community for All; Fiscally Sustainable Government

Environmental Considerations

- The proposed Resolution addresses compliance with City tree and stormwater requirements.
- The Federal Telecommunications Act of 1996 does not allow local governments to deny the siting of a small cell facility on the basis of radio frequency emissions effects, even though FCC Radio Frequency (RF) guidelines have not been updated since 1996.
- Wireless technologies generally use more power than wired technologies.

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 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

1 Introduced by:

2 **City of Takoma Park, Maryland**

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Resolution 2018-

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Regarding the Installation of Wireless Telecommunications Facilities

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

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

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

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

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

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

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

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

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

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

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

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

- 55
- 56 • A presumed reasonable price that local governments can charge
57 communications companies for small cell installations on public poles and in
58 city streets while still recognizing the right of local governments to charge
59 higher fees if they represent a reasonable approximation of the locality's
60 actual costs for reviewing and approving permits and other costs.
 - 61 • A "shot clock" that presumes that a reasonable time for making a decision on
62 applications for permits for small cell infrastructure is 60 to 90 days,
63 depending on the type of installation. If the permit approval process takes
64 longer, the city is vulnerable to potential litigation, but the burden is on the
65 company to demonstrate that the longer approval time results in an effective
66 prohibition of wireless service; and
- 67

68 WHEREAS, the City Council is aware of residents' concerns about the health effects of
69 wireless telecommunications facilities, the Federal Telecommunications Act of
70 1996 does not allow local governments to deny the siting of a small cell facility
71 on the basis of radio frequency emissions effects or if the emissions exceed
72 federal standards; and

73

74 WHEREAS, Radio Frequency (RF) guidelines have not been updated since 1996, and
75 compliance with the Telecommunications Act of 1996 does not preclude the City

76 from exploring and supporting efforts to require the FCC to examine the health
77 impacts of wireless communications facilities and to revise the Commission's
78 twenty-plus year-old RF emission standards; and

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

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

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

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

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