



Takoma Park City Council Meeting – January 9, 2019

Agenda Item 1 – Revised Attachments

Voting Session

Ordinance 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

Vote on the ordinance at second reading.

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 and related structures and equipment on private property in the City, City legislation is necessary to regulate installations in our rights-of-way.

Federal law requires that local governments allow the installation of small antennas and related equipment in their rights-of-way and limits their authority to regulate the installations and the fees they may charge for installation permit applications and for use of the right-of-way.

Under the Telecommunications Act of 1996, Congress prohibits state or local regulations that “prohibit or have the effect of prohibiting the ability of an entity to provide . . . telecommunications service.” On September 26, 2018, the Federal Communications Commission (“FCC”) issued an order providing an expansive interpretation of the preemptive scope of the 1996 Act.

First, the FCC ruled that delays in approving antenna installation applications constitute a prohibition on the provision of service and imposed “shot clocks” of sixty days for the issuance of permits to attach antennas to existing structures and ninety days for the issuance of permits to install new antenna support structures.

Second, the FCC ruled that fees charged by local governments for permit application review and recurring fees for use of the right-of-way and use of government-owned structures in the right-of-way are limited to the cost the local government incurs to review the permit and to maintain its rights-of-way and support structures.

Third, the FCC ruled that aesthetic requirements imposed by local governments for the installation of antennas and support structures must be “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” The vagueness of these limitations, and the requirement that aesthetic standards, an inherently subjective issue, be “objective,” makes it difficult to anticipate permissible aesthetic requirements.

The proposed amendments to the Takoma Park Code are intended to comply with the limitations of federal law while maximizing the City's control over its rights-of-way. Because Takoma Park was developed before 1968 and has above-ground utilities, the amendments favor the installation of antennas on existing Pepco-owned utility poles, which are prevalent throughout the City. (The only potential support structures the City owns are decorative light poles.) New poles are permitted only when there is no existing pole in a location necessary to provide wireless coverage or when an

existing pole is inadequate to support necessary wireless equipment, as a replacement for the existing pole.

The proposed ordinance is intended to maximize the City's influence over aesthetic considerations. It authorizes the Public Works Director to develop regulations that limit the size of antennas and related equipment and requires that new installations be designed to minimize their visual impact and noise emissions.

To comply with the federal requirement that local regulations not discriminate against wireless communications facilities, the proposed amendments incorporate the aesthetic requirements into the requirements for other installations in the right of way.

Although federal law prohibits local radiofrequency emission regulations, the proposed Ordinance requires an initial certification that the emissions meet federal standards and annual testing.

Direct legal challenges to the recent FCC Order have already begun, and the City has joined a coalition of local governments filing a law suit in federal court.

Providing for the establishment of fees and additional aesthetic requirements via regulation gives the City flexibility to increase fees and further protect the public interest in the event that the legal challenges reduce the preemptive impact of the FCC Order.

The proposed amendments also include changes to the Code not specifically related to the installation of wireless facilities. The current fee for a right of way work permit, \$40.00, which was established many years ago, has been removed from the Code and is to be established by regulation, which will facilitate a change to reflect the current cost of application review now and in the future. The amendments also eliminate the charge per linear foot for right-of-way disturbances, as the current practice of the City is to charge only the permit application fee and require that the permittee restore the right-of-way.

Changes to Ordinance after First Reading

- Made public notice and comment and community meeting requirements for new pole and new antenna applications equivalent.
- Added prohibition on replacement poles exceeding the girth of existing poles.
- Consolidated redundant application review standards.
- Eliminated bias in favor of the collocation of antennas.
- Added requirement that telecommunications facilities and structures be marked with an identification number and the contact information for the responsible party to facilitate the reporting of problems.
- Added provision requiring initial testing to ensure that the cumulative radio frequency emissions from collocated antennas does not exceed federal limits.

Council Priority

A Livable Community for All; Fiscally Sustainable Government

Environmental Considerations

- The proposed Ordinance requires compliance with the City's tree protection and replacement 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 guidelines have not been updated since 1996.
- Wireless technologies generally use more power than wired technologies.

Fiscal Considerations

The Ordinance calls for regulations that establish fees that cover the costs associated with right-of-way permit application review and maintenance when installations occur in the right-of-way.

Racial Equity Considerations

The Ordinance 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. The ordinance allows for the provision of incentives for the installation of communications facilities in underserved areas and for providing new connections to multi-family rental facilities.

Attachments and Links

- Proposed Ordinance Clean Copy for Second Reading (1/8/2019)
- Proposed Ordinance Showing Changes to Existing Code (1/8/2019)
- Proposed Ordinance Showing Changes Since First Reading (1/8/2019)
- Proposed Ordinance Showing Changes since 1/3/2019 (1/8/2019)