



Takoma Park City Council Meeting – June 12, 2019 Agenda Items 1 and 2

Presentation and Public Hearing

1. Presentation of Proposed Administrative Regulations – Telecommunications Facilities and Equipment in City Rights-of-Way
2. Public Hearing on Proposed Administrative Regulations – Telecommunications Facilities and Equipment in City Rights-of-Way

Recommended Council Action

Hear presentation from attorney Mark Del Bianco; hear testimony from members of the public

Context with Key Issues

The City has the authority to regulate some aspects of cell tower installation, such as the location, placement, aesthetics, notification process, and fees. Montgomery County zoning codes govern where wireless telecommunication facilities can be sited generally and also dictate required setbacks from dwellings. The City can also 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.

After several public discussions about the various issues noted above, the Council voted to amend the City's Code regarding right-of-way work permits on January 9, 2019, just days before a related FCC ruling went into effect. The amendments are intended to comply with the limitations of federal law while maximizing the City's control over its rights-of-way.

Administrative Regulations are now being proposed for the implementation and enforcement of Takoma Park Code, Chapter 11.12 Streets – Permits and Improvements, to regulate the installation of certain telecommunications facilities and equipment in City rights-of-way. Pursuant to the requirements of the "Administrative Regulations Ordinance" (Authority: Chapter 2.12 "Administrative Regulations," of the Takoma Park Code), notice of the City's intent to adopt an administrative regulation has been publicly noted, providing the public with an opportunity to comment on the proposal.

The purpose of tonight's item is to hear from the attorney who worked with staff to draft the Administrative Regulations, and to provide an opportunity for public comment on the proposed draft. Comments can also be submitted online at <https://takomapark.seamlessdocs.com/f/RegulationComment>.

The Council is scheduled to hold a Work Session on the subject at next week's Council meeting, with final publication and notice scheduled for July.

Council Priority

- A Livable Community For All; Fiscally Sustainable Government; Environmentally Sustainable Community

Environmental Considerations

- The Ordinance passed by Council in January 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

The Ordinance and proposed Administrative Regulations call for 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 Administrative Regulations 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

- Link to Proposed Administrative Regulations:
<https://documents.takomaparkmd.gov/government/city-clerk/administrative-regulations/proposed-reg-small-cell-wireless-facilities-2019-04-23.pdf>
- Link to Comment on Proposed Administrative Regulations online:
<https://takomapark.seamlessdocs.com/f/RegulationComment>

DRAFT
4-23-2019
SMALL CELL WIRELESS REGULATIONS
for the City of Takoma Park

These regulations are promulgated by the Takoma Park Department of Public Works pursuant to City Ordinance 2018-50 (the "Ordinance"), which amended the Takoma Park Code, Title 11 Streets, Chapter 11.12 Permits and Improvements, to regulate the installation of certain telecommunications facilities and equipment in City rights-of-way.

1. Definitions.

The following terms have the meaning given to them in Section 11.12.000 of the City Code: "antenna", "applicant", "collocation", "communications facility", "communications support structure", "Director", "FCC", "permittee", "pole", and "RF".

2. Applications for a Permit.

- A. An application for a permit to construct or install a communications facility or communications support structure shall be filed with the Director and shall contain all of the information required by this Section 2 for a facility or structure of the type proposed in the application.
- B. An application shall not be accepted by the Director for consideration unless and until the required fee(s) are paid.
- C. An application shall include, at a minimum, the following:
 - 1. Documentation establishing that the construction and installation complies or will comply with Code Sections 11.12.010, 11.12.015 and 12.12, and all applicable requirements of the Montgomery County Zoning Ordinance, including, if the proposed facility or structure is a conditional use, a copy of the county conditional use permit or order (unless this requirement has been waived by the Director);
 - 2. A technical description of the proposed communications facility or communications support structure, including its purpose and intent, a written description identifying the geographic service area for the subject installation and why the installation is necessary to provide adequate telecommunications coverage, photographs of the communications equipment to be installed, a description of the noise to be emitted by the proposed facilities, an accurate visual impact analysis with photo simulations, a list of all existing equipment (including but not limited to communications facilities) mounted on the communications support structure, and a site plan drawing (i) indicating the proposed installation, right-of-way, name of street (if any) and width of right-of-way, utility pole identification number if the proposed installation involves attachment to or replacement of

an existing utility pole, abutting lots, North point, and scale; and (ii) providing the location for all features, structures and trees within 50 feet of the site, including Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and dimensions;

3. A certificate from an independent licensed professional engineer that the proposed construction or installation is structurally sound;
 4. A detailed deployment plan describing all communications facilities or communications support structures planned to be used or installed by the applicant for the 24-month period following the permit application anywhere in the City or within 500 feet of City limits, including on private property and Maryland state and county rights-of-way, and a description of the completed deployment;
 5. A completed RF exposure guidelines checklist and proof of all applicable licenses or other approvals required by the FCC;
 6. If a communications facility is proposed to be attached to a privately-owned utility pole, the title, date and term of the executed attachment agreement with the utility pole owner and a hard copy thereof or a URL for the online location where a copy of the agreement can be found;
 7. A statement committing the applicant to comply with applicable safety standards for the proposed activities in the City right-of-way;
 8. Identity and contact information for the entity performing the work in the right-of-way;
 9. A specific identification of any state or federal statute or regulation imposing a shot clock or similar timing constraint that applicant claims applies to the City's consideration of the application; and
 10. Such other information as the Director may require.
- D. If an applicant seeks an exception pertaining to any provision of Chapter 11.12 or 12.12 of the Code or these regulations, including, but not limited to, exceptions from findings that would otherwise justify denial, it must request such exception at the time of application. The request must identify the specific provision(s) from which the exception is sought and the basis of the request. The applicant shall have the burden of proving that application of the provision would violate, or would deprive applicant of its rights under, federal or state law, using the evidentiary standards required by the law at issue. The City shall have the right to hire an independent consultant, at the applicant's expense, to evaluate the issues raised by the exception request and shall have the right to submit rebuttal evidence to refute the applicant's claim. Any request for an exception after an application has been found complete under Section 3 shall be treated as a new application.
- E. A request for exception under subsection (D) may be granted by the Director if the Director finds that:
1. Denial of the facility as proposed would violate federal law or state law; or
 2. The cited provision(s), as applied to applicant, would deprive applicant of its rights under federal or state law; or
 3. Strict application of the cited provision(s) would be contrary to the public interest because the harm to the public of strict application would be greater than the harm caused by granting an exception.

3. Process for Review of Applications.

- A. The Director shall promptly review any application filed pursuant to Section 2 to determine whether it is complete.
- B. If the Director determines that an application is incomplete, he/she shall inform the applicant in writing of the missing information and shall cease consideration of the application until such time as all of the missing information is submitted by the applicant.
- C. In cases where the plans and specifications submitted to the Director do not meet the minimum construction standards as provided in the City Code, or if the Director concludes that unusual conditions require a special type of construction, the application plans and specifications, with necessary revisions noted appropriately thereon, shall be returned to the applicant for revision and resubmission.
- D. When an applicant resubmits an application with missing or revised information, the Director shall determine within 10 days whether the resubmitted application is complete.
- E. When the Director determines that an application is complete:
 - 1. The Director shall
 - a. notify the applicant and immediately post notice of the application and the application itself on the City's web site and make a hard copy of the application materials available for public inspection;
 - b. schedule a community meeting as soon as reasonable, but no more than 30 days after the determination that the application is complete, to provide the public with information about the proposed installation, answer questions, receive information, and respond to concerns;
 - c. receive and consider any written comments and documentary evidence submitted by the public; and
 - d. seek and consider input from Takoma Park boards, commissions and committees with applicable subject matter jurisdiction.
 - 2. The applicant shall:
 - a. inform the public about the proposed installation and the date, time, and location of the community meeting by posting a notice (weatherproofed, at least 8.5 inches by 11 inches, and attached to the pole at a height of 5 feet or less) at the proposed site, and providing written notice to property owners, residents and businesses with property lines located within 500 feet of the proposed installation; and
 - b. send a representative to attend the public meeting.
- F. The Director may schedule a single community meeting for the consideration of multiple applications.
- G. Applications shall be reviewed in the order in which they are received, except that an incomplete application shall be considered received on the date that it is determined to be

complete after resubmission. In addition, the Director shall treat the changed application as a new application for purposes of any time limits for permit decisions under applicable law.

- H. In the event that three or more substantially similar applications from one applicant are received or pending at the same time, the Director may reasonably modify the process set forth in subsections E-G in order to attempt to meet the requirements of subsection I.
- I. The Director shall endeavor to make a decision on each application for a communications facility within 60 days of the filing of the completed application and on each application for a communications support structure within 90 days of the filing of the completed application. These are aspirational goals and failure to meet the goal in the case of a specific application shall have no legal effect under the Code.

4. Requirements for Approval of Applications.

- A. In deciding whether to approve an application, the Director shall review and take into account the information in the application, and any public comments and other information gathered or submitted pursuant to Section 3.
- B. An application for a communications facility or communications support structure proposed to be located on City rights-of-way may only be permitted upon a finding by the Director that:
 - 1. The proposed structure or facility, if constructed or installed in conformance with the application, will comply with (i) the minimum construction standards in Chapter 11.08, (ii) all applicable requirements of Chapter 11.12, including Sections 11.12.010 and 11.12.015, (iii) all applicable requirements of the Montgomery County Zoning Ordinance, and (iv) Sections 4, 5 and 6 of these regulations.
 - 2. Under applicable safety standards, the communications support structure can support the proposed communications facility together with any other previously attached or permitted facilities and equipment.
 - 3. The applicant has submitted the required proof of insurance, documentation of compliance with federal RF emissions limitations, and any performance bond required by the Director.
 - 4. The Montgomery County Telecommunications Facility Coordinating Group Tower Coordinator has recommended the proposed installation if the installation is subject to review by the Montgomery County Transmission Facility Coordinating Group.
 - 5. The location is not in an area where there is an overconcentration of structures or facilities in, on or over the right-of-way, as determined by the Director in the Director's reasonable discretion and judgment.
- C. A replacement pole proposed to be located on City rights-of-way may only be permitted upon a finding by the Director that:
 - 1. All of the requirements of subsection B are met;
 - 2. Additional communications facilities are necessary in the location of the proposed pole to provide adequate telecommunications coverage; and
 - 3. Existing poles sufficiently close to the proposed location do not have the capacity for the necessary communications facilities.

- D. A new pole proposed to be located on City rights-of-way may only be permitted upon a finding by the Director that:
 - 1. All of the requirements of subsection C are met, and
 - 2. The applicant has provided proof of its (or its agent's) authority to erect the pole, including, if applicable, how the proposed pole meets the requirements of Md. Public Services and Utilities Code Ann. 8-103(a)(2), as amended.
- E. The Director may require modifications to a proposed construction or installation project before granting a permit and may impose conditions when granting a permit.
- F. The Director may waive minor variances from the requirements of the City Code or these regulations if the variance does not jeopardize the public health, safety, or welfare.
- G. The Director may require the permittee to pay for and provide a performance bond, which shall be in effect until the facilities are fully and completely removed and the site reasonably returned to its original condition, to cover permittee's obligations under these conditions of approval and the City Code. The bond coverage shall include, but not be limited to, removal of the facility, and maintenance obligations. The amount of the performance bond shall be set by the Director in an amount reasonably related to the obligations covered by the bond and shall be specified in the conditions of approval.

5. Aesthetic Requirements.

- A. All communications facilities and communications support facilities shall be situated, screened, shrouded, or concealed to maximize public safety and to minimize visual and acoustic impact. At a minimum, a facility shall meet each of the following requirements that apply to its facility type:
 - 1. Antennas, antenna mounts and equipment cabinets shall have a color and finish that minimize visual impact to the surrounding neighborhood, taking into consideration historic area designations and existing color and design schemes for City facilities, commercial districts, and other areas with aesthetic guidelines.
 - 2. Any equipment other than an antenna, antenna mount or wiring shall be placed inside an equipment cabinet.
 - 3. No equipment cabinet nor any equipment located outside of an equipment cabinet may have a metallic or silver finish.
 - 4. An applicant's equipment cabinet shall be no larger than 15 cubic feet and be installed a minimum of 10 feet above ground or at ground level. The total volume of all equipment cabinets associated with a structure shall be no larger than 30 cubic feet;
 - 5. Any ground level equipment cabinet shall be located at least 2 feet from the roadway curb and 4 feet from any driveway apron, shall not impinge on any sidewalk, and shall comply with any other placement requirements established by the Director.
 - 6. Each antenna shall be demonstrated to be the least visible antenna possible to accomplish the coverage objectives, be mounted parallel to the pole or other support

structure, and be flush mounted to the extent reasonably feasible.

7. Antenna mounts shall be designed so as not to preclude possible future collocation by the same or other applicants, and must be the same color or pattern as the pole or support structure.
8. Any wiring from the ground to a communications facility shall be concealed in the pole or other support facility, or, if the pole or other support facility cannot accommodate internal wiring, the exterior wiring must be enclosed in a shielded conduit.

- B. The Director may (i) promulgate additional aesthetic guidelines or regulations governing screening, shrouding, or concealing specific types of equipment or facilities, or (ii) grant pre-approval of specific models, designs, or paint schemes, in order to reduce the visual and auditory impacts of such facilities.

6. Fees.

- A. Every applicant shall pay a permit application fee upon submission of the application. Such fees shall not be refundable.
- B. The Director may require payment of a supplemental application fee if the Director determines that changes to an application after filing will materially increase the time or costs of the permit review.
- C. The Director shall establish standard fee schedules that allow the City to recover the actual costs of application processing, administration, review, inspection, and certification of compliance of each completed construction or installation project, and, if permitted by applicable law, the market value of the use of the City right-of-way. These standard fees may be increased annually and on a per application basis if reasonably required to cover additional costs incurred in individual cases, such as when an application is unusually complex or involves new technology so that the City needs to consult outside experts as part of the review process.
- D. Pending establishment of permanent fee schedules by the Director, the application fee for a permit shall be one thousand dollars (\$1,000.00). The Director may, but is not required to, establish a different fee on a case by case basis when an applicant submits multiple applications at the same time ("bundled applications"). If the bundled applications are essentially identical and the per application costs incurred by the City are likely in the judgement of the Director to be lower, the Director may set a lower total fee for the bundled applications. If the bundled applications are not identical and the per application costs incurred by the City are likely in the judgement of the Director to be higher because of a need for additional City or contractor resources, the Director may set a higher fee for the bundled applications.
- E. Each permittee shall pay an annual right-of-way maintenance and administration fee and a right-of-way usage fee for each approved application for a communications facility and communications support facility. Each fee shall be payable initially within 15 days of the

permit approval and annually thereafter on the anniversary date of the permit approval.

- F. The right-of-way maintenance fee shall be payment for the cost of administering and maintaining the public right-of-way occupied by the permittee's facility. Pending establishment of the fee schedules by the Director, the annual fee shall be \$500 per permit, and it shall be payable each January 1.
- G. The right-of-way usage fee shall be equal to the market value of use of the public right-of-way occupied by the facility or support structure. Unless and until the authority of the City to charge market-based usage fees is clarified under applicable federal and state law, communications facilities and communications support structures shall be allowed to occupy City rights-of-way upon payment of the annual right-of-way maintenance fee. However, permittees of such facilities and support structures shall be liable for a usage fee equal to the market rent for the occupancy of the City right-of-way retroactive to the date of installation plus interest accrued at the rate established for delinquent property taxes in section 11-107 of the Courts and Judicial Proceedings Article of the Maryland Code, as amended.
- H. The Director may charge an inspection fee if the City hires an employee or retains a consultant to perform testing to confirm that a permitted facility complies with the then-current FCC RF emission standards or any other applicable mandatory regulatory or operational standard. Tests may be conducted upon commencement of operations at a permitted facility and shall be conducted annually between May 1 and June 30 thereafter. The inspection fee shall be a pro rata percentage of the cost for testing of all permitted sites.
- I. The Director, in consultation with the City Manager, may waive or reduce any fees provided for in this Section and provide other benefits to the permittee (excluding any that would weaken health and safety protections) in exchange for public benefits to be provided by the permittee that may include, but are not limited to, the installation of communications facilities and support structures in underserved locations and the installation of connections to or discounted service for multi-family rental facilities.
- J. Fees paid by any permittee whose permit has expired or become invalid shall not be credited against the fees required for a new permit of the permittee. Fees for expired and invalid permits shall not be returnable.

7. Continuing Obligations of Permittees.

- A. Within 30 days of installation, the permittee shall test the RF emissions from any new antenna and the cumulative RF emissions from all antennas on the same structure, for compliance with FCC standards. If the antenna exceeds the FCC standards or causes the antennas collocated on its support structure to exceed the FCC standards, the newly installed antenna must be removed by the permittee within five days at its own expense. In addition, if the Director determines there is good cause to believe that an approved facility, individually or as mounted with any collocated facilities, may emit RF emissions that are likely to exceed FCC standards, the Director may require the permittee to test the facility

and submit within 10 days of the test a written report certified by a qualified independent RF emissions engineer, certifying that the facility is in compliance with such FCC standards.

- B. Within 15 days after construction or installation is completed, the permittee shall certify to the Director that the constructed or installed facilities conform in all material aspects to the specifications in the permit and meet all applicable conditions of the permit approval. In the event that the permittee fails to provide such certification or that the facility at any time fails to meet all applicable conditions of approval, the City may revoke the permit or take other action permitted under the Code or these regulations.
- C. Between June 1 and July 1 of each year, the permittee shall submit to the Director an affidavit certifying that the facility or support structure remains in use and covered by insurance and that the facility is the current industry standard facility of that type as required under the Code and these regulations.
- D. The permittee shall submit and maintain current at all times basic contact, emergency contact, and site information required by Code Section 11.12.185(B). The permittee shall notify the City of any changes to this information within seven days of any change and any change to the emergency contact information shall be made to the notice on the communications facility or support structure within one day of the effective date of the change.
- E. The permittee shall respond promptly, and in any event in within 2 hours, to emergencies relating to its communications facilities and communications support structures.
- F. The permittee shall, at its sole expense, keep its communications facilities and communications support structures in a safe condition and in good and neat order and repair.
- G. The permittee at all times shall fulfill all the requirements of Code Section 11.12.185.