

Introduced by: Councilmember Smith

CITY OF TAKOMA PARK, MARYLAND

RESOLUTION 2018-62

REGARDING THE INSTALLATION OF WIRELESS TELECOMMUNICATIONS FACILITIES

- 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, safety, environment, and property values 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, welfare, safety, environment, and property values 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), including membership of a City representative on the Commission; and

WHEREAS, the City is concerned about the current disparity in protection afforded to residents living in dwellings in commercial and mixed use zones and is urging the County Council to reexamine ZTA 18-02 which allows for the siting of cell towers 10 feet outside of apartment buildings in or near mixed use and commercial areas; and

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

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

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

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

- A presumed reasonable price that local governments can charge communications 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, but 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; and

WHEREAS, the City seeks to ensure to the extent possible public notice and timely public input in the permitting of wireless telecommunications facilities; 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 communications 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 communications service, but wishes to enact an ordinance that appropriately regulates the installation, augmentation, maintenance, and relocation of wireless communications 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 and other public interest 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 to work towards putting in place by the January 14, 2019 effective date of the recent FCC ruling 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, , welfare, safety, environment, and property values; 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 and aligns with applicable master plans, sector plans, and overlay plans;
- 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 burden the public or hinder the City's management of its rights-of-way;
- provides access to wireless technology in the community;
- ensures timely public and City government notification of new and modified installations, and adequate provision of time for public input and certification, including periodic recertification that such facilities meet federal standards for radio frequency emissions;
- conforms with City requirements for tree protection and stormwater management;
- minimizes traffic and pedestrian safety hazards due to the location of the facilities; and
- otherwise minimizes risks to public health, welfare, safety, environment, and property values of the City and its residents.

Adopted by the Council of the City of Takoma Park this 5th day of December, 2018.

Attest:

Jessie Carpenter, CMC
City Clerk