

Introduced: Ms. Davis
1st Reading: December 10, 2018
Passed: December 10, 2018
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ORDINANCE NUMBER 1367

AN ORDINANCE TO AMEND CHAPTER 5 OF THE CITY CODE TO ADD A NEW CHAPTER 5A TITLED “FRANCHISES AND PERMITS FOR WIRELESS COMMUNICATIONS FACILITIES” AND AMEND CHAPTER 18 OF THE CITY CODE BY ADDING A NEW DIVISION 6 TITLED “MINIMUM REQUIREMENTS FOR OCCUPATION OF RIGHTS-OF-WAY”

WHEREAS, 5-202 of the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of Greenbelt have the authority to pass such ordinances as it deems necessary to preserve peace and good order, and to protect the health, comfort and convenience of the residents of the municipality; and

WHEREAS, 2(a)(13) of the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of Greenbelt have the authority to pass such ordinances to provide for the City to generally grant public utility franchises; and

WHEREAS, the City Code, Chapter 5, “Cable Television”, the City’s Cable Communications Regulatory Code and lends itself to outline the Regulatory Code for other Communications Systems; including wireless facilities; and

WHEREAS, § 3(5) of the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of Greenbelt to regulate the use of sidewalks and all structures in, under, or above them; and

WHEREAS, the City deems it to be necessary and appropriate to provide for certain standards and regulations relating to the location, placement, design, construction and maintenance of telecommunications towers, antennas and other structures within the City’s public rights-of-way, and providing for the enforcement of said standards and regulations, consistent with federal and state law limitations on that authority. NOW, THEREFORE,

BE IT ORDAINED by the Council of the City of Greenbelt, Maryland, that the City Code be amended to read as follows:

Chapter 5A

Franchises and Permits for Wireless Telecommunications Facilities

Section 5A-1. General provisions.

- (a) *Title.* This chapter shall be known and may be cited as the "Wireless Telecommunications Code."
- (b) *Effective date and repealer.* This chapter shall take effect and be in force from and after passage. All prior ordinances or parts of ordinances in conflict with the provisions of this chapter are hereby repealed.
- (c) *Findings and purpose.*
 - (1) The City of Greenbelt, Maryland (the "City") finds that the further development of wireless communications may result in great benefits for the people of the City. However, it is projected that development of wireless telecommunications networks may require placement of more and different facilities in the rights-of-way than have been placed in the rights-of-way previously, and those facilities can vary dramatically in size and form, and may have significant impacts on the community.
 - (2) The City finds that minimization of clutter and vertical structures in the rights-of-way is important to the welfare of the community, and that placement near residential structures, in underground areas, or areas that will be underground, and in historical areas should be restricted where not critical to the provision of services.
 - (3) The City already regulates the placement and design of other facilities that are placed in the rights-of-way, to the extent permissible under law, through franchising and permitting processes and local regulations and practices. The City intends to apply similar principles to the regulation of wireless telecommunications facilities.
 - (4) However, because Federal Communications Commission regulations and federal law require that special procedures be applied to consideration of applications for certain wireless telecommunications facilities, the City finds that it is appropriate to specify certain requirements in the code to provide clearer guidance with respect to the placement of wireless telecommunications facilities in the rights-of-way.
- (d) *Intent.* The City intends that all provisions set forth in this chapter be construed to serve the public interest and the foregoing public purposes, and that any franchise issued

pursuant to this chapter be construed to include the foregoing findings and public purposes as integral parts thereof.

- (e) Delegation of powers. The City may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this chapter or any franchise agreement to any employee, officer, department or agency, except where prohibited by applicable law.
- (f) Implementing regulations. The provisions of this chapter, and the forms for submission of applications may be adopted by regulation approved as provided in this Code.
- (g) Public use. Except as otherwise provided by Maryland law, any use of the rights-of-way authorized pursuant to this Chapter will be subordinate to the City's use and use by the public.

Section 5A-2. Definitions and usage.

- (a) Definitions and usage, general. For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender, and vice versa. The words "shall" and "will" are mandatory, and "may" is permissive. References to state or federal laws or regulations refer to those laws or regulations as they may be amended. References to agencies refer to the agencies or their successors or designees.
- (b) Application: A formal request, including all required and requested documentation and information submitted by an Applicant to the City for a wireless placement permit.
- (c) Applicant: A person filing an application for placement or modification of a wireless telecommunications facility in the right-of-way.
- (d) Base Station: The term "base station" shall have[s] the same meaning as in 47 C.F.R. Section 1.40001.
- (e) City Manager: The chief administrative officer for the City of Greenbelt, or its designee.
- (f) Construction, modification and repair: shall be broadly construed to include all activities conducted in the rights-of-way with respect to a facility, including but not limited to construction, removal, relocation, alteration, and replacement.
- (g) FCC: The Federal Communications Commission.
- (h) Micro wireless facility: A wireless facility having dimensions no larger than twenty four (24) inches in length, fifteen (15) inches in width and twelve (12) inches in height, and an exterior antenna, if any, no longer than eleven (11) inches, and which antenna may be enclosed in an imaginary cylinder no larger than one (1) inch in diameter.

- (i) Operation: Activities affecting detectable attributes of facilities in the rights-of-way that may physically affect persons or property, such as noise and radio frequency emissions. The term as used in this section does not include radio frequency interference with other licensed facilities.
- (j) Right-of-Way, or ROW: The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, bridge, park, parkway, easement, or similar property within the City, and in whole or part under the control of the City which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a wireless telecommunications facility.
- (k) Support Structure: Any structure capable of supporting a base station.
- (l) Tower: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless services, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. This definition does not include utility poles.
- (m) Underground areas: Those areas where there are no electrical facilities or facilities of the incumbent local exchange carrier in the right-of-way; or where the wires associated with the same are or are required to be located underground; or where the same are scheduled, whether now or at a future time, to be converted from overhead to underground. "Electrical facilities" are distribution facilities owned by an electric utility and do not include transmission facilities used or intended to be used to transmit electricity at nominal voltages in excess of 35,000 volts.
- (n) Utility Pole: A structure in the rights-of-way designed to support electric, telephone, and/or similar utility lines, and which cable operators or telecommunications service providers may use at regulated rates. A utility pole is not a tower.
- (o) Wireless Permit: A permit issued pursuant to this Chapter, authorizing the construction, modification, or repair of a wireless telecommunications facility of a design specified in the permit at a particular location within the right-of-way.
- (p) Wireless Service Provider. An entity that provides wireless services to end users.
- (q) Wireless services: Any FCC-licensed or authorized service, including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services, such as microwave backhaul and the associated site.
- (r) Wireless Infrastructure Provider: A person that owns, controls, operates, or manages a wireless telecommunications facility or portion thereof within the right-of-way.
- (s) Wireless Regulations: Regulations adopted implementing the provisions of this Chapter.

- (t) Wireless Telecommunications Facility: A facility at, or proposed for, a fixed location consisting of a base station, any accessory equipment, and the support structure, if any, associated that is, or that the application proposes will be, associated with the base station.

Section 5A-3. Franchise Required.

- (a) Franchise required. Any person (other than the City, the State, or a subdivision of the State) who will own or control a wireless telecommunications facility in the right-of-way used to provide wireless services must obtain a franchise therefore from the City, unless that person holds a franchise from the State which authorizes it to use the rights-of-way for that purpose, without further permission of the City. An additional franchise is not required for installation of a utility pole or equipment required to install communications lines, electricity or other services to a wireless telecommunications facility by an entity that occupies the rights-of-way and is permitted to perform such work pursuant to a franchise from the City or State.
- (b) Not in lieu of permit or agreements. The franchise is not in lieu of a wireless permit, or any other permit that may be required under this Code in connection with the construction, modification or repair or operation of a wireless telecommunications facility. The permit is not in lieu of agreements required for use of City-owned or controlled support structures, conduit, pipes or other infrastructure which may be used to deploy facilities.
- (c) Divisibility/Transferability. A franchise is not divisible, nor may it be transferred without the permission of City as specified in the franchise.
- (d) Exceptions.
- (1) Facilities used exclusively for public safety purposes are excepted from the requirements of this Section.
 - (2) Because a wireless infrastructure providers may not own or control all of the facilities within the wireless telecommunications facility that are used in the provision of wireless services, and may bear full responsibility for constructing, modifying and maintaining those facilities, the franchise for a wireless infrastructure provider may except any customer of the provider from this franchise requirement with respect to a wireless telecommunications facility, if a customer who owns or controls equipment within the wireless telecommunications facility acknowledges and agrees, in a form acceptable to the City Attorney, that the City has not granted it a franchise or consent to be in the rights-of-way for any purpose; that it is bound by franchisee's representations; that it shall have no rights or claims against the City of any sort related to the facilities; that its facilities may be subject to taxes, fees or assessments as provided in Section 5A-3(d)(3); that the City may treat any equipment owned by such entity as if it were owned by franchisee for all purposes (including, but not limited to, removal and relocation); and that the facilities may only be used for

services specified in the franchise. Such customer must further acknowledge and agree that, to the extent it operates a wireless facility, it is responsible for complying with applicable law governing radio frequency emissions, and the City may take appropriate action against it and the franchisee for a violation thereof; and that it agrees that it will be jointly and severally liable for any acts or omissions associated with the wireless telecommunications facility; and will jointly and severally indemnify the City in accordance with this Code and any applicable provision of the franchise. The acknowledgement and agreement may be provided for all wireless telecommunications facilities of a franchisee occupied by the customer within the City, and need not be provided separately, facility by facility.

- (3) Wireless telecommunications facilities installed by a franchised utility solely for internal communications purposes do not require an additional franchise or a permit under this chapter, but the placement and design of such facilities is subject to the review and approval of the City.
- (e) Franchise fees. As a condition of exercising the franchise, each franchisee shall pay a franchise fee, which fee may be set from time to time by the City so that entities making similar use of the rights-of-way, for similar purposes, pay similar fees.
- (f) Limitations. The City may issue a franchise for placement of wireless facilities in the rights-of-way used in the provision of personal wireless services, or in the provision of Internet services to the public, subject to such conditions as the City may reasonably establish. For any other wireless services, City shall only issue a franchise upon a showing that the services to be provided are in the interest of the City, and placement in the right-of-way is appropriate; or that a franchise must be issued as a matter of law.

Section 5A-4. Wireless Permit Required.*

*In conformance with Chapter 18 “Streets and Sidewalks” of the City Code

- (a) Permit. A wireless permit is required for the construction, modification or repair of any wireless telecommunications facility, except as provided herein.
- (b) Exemptions. A wireless permit is not required for:
 - (1) The placement or modification of wireless telecommunications facilities on support structures owned, or under the control of, the City, the use of which is subject to control by enforceable contract for use of the facility between the City and the entity or entities that own or control the wireless telecommunications facility.
 - (2) The placement or modification of wireless telecommunications facilities by the City or by any other agency of the state solely for public safety purposes.

- (3) Modifications to an existing wireless telecommunications facility that makes no material change to the footprint of a facility or to the surface or subsurface of a public street if the activity necessary to modify the facility does not disrupt or impede traffic in the traveled portion of a street or sidewalk, and if the work activity does not change the visual or audible characteristics of the wireless telecommunications facility.
- (4) Installation of a "cell on wheels," "cell on truck" or a similar structure for a temporary period in connection with an emergency or event, but no longer than required for the emergency or event, provided that installation does not involve excavation, movement or removal of existing facilities.
- (5) A micro wireless facility strung between two utility poles and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles, and complies with all applicable safety codes.
- (6) The City, by wireless regulation, may also exempt wireless telecommunications facilities that otherwise are subject to the provisions of this section from the obligation to obtain a permit to install or modify a wireless telecommunications facility where it is determined that because of the physical characteristics of the proposed facilities, and the work associated with them, such a permit is not required to protect the public health, welfare or safety, to maintain the character of a neighborhood or corridor, or to otherwise serve the purposes of this ordinance.

Section 5A-5. General Standards for Placement in the Rights-of-Way.

- (a) *Generally.* Wireless telecommunications facilities shall meet the minimum requirements set forth in this ordinance and the wireless regulations, in addition to the requirements of any other applicable law. Without limitation, the provisions of Chapter 18 apply to the construction, modification, repair and operation of wireless telecommunications facilities in the rights-of-way.
- (b) *Waiver of Requirements.* The wireless regulations and decisions on applications for placement of wireless telecommunications facilities in the rights-of-way shall, at a minimum, ensure that the requirements of this section are satisfied, unless it is determined that applicant has established that denial of an application would, within the meaning of federal law, prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized. If that determination is made, the requirements of this ordinance, including any regulations and forms to implement this ordinance, may be waived, but only to the minimum extent required to avoid conflict with federal law.
- (c) *Standards.* Wireless telecommunications facilities shall be installed and modified in a manner that minimizes risks to public safety, avoids placement of aboveground facilities

in underground areas, avoids installation of new support structures or equipment cabinets in the public rights-of-way, avoids placement in a residential area when commercial areas are reasonably available, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located; ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way and compliance with health and safety codes; and ensures that the City bears no risk or liability as a result of the installations, and that such use does not inconvenience the public, interfere with the primary uses of the rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the rights-of-way or any portion thereof, or the ability of the City or other government agencies to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.

Comment [1]: I see no legal issue with this addition – but note typo

- (d) Concealment. Wireless permits shall incorporate specific concealment elements to minimize visual impacts, and shall incorporate design requirements ensuring compliance with all standards for noise emissions. Unless it is determined that another design is less intrusive or placement is required under applicable law:
- (1) Antennas located at the top of support structures shall be incorporated into the structure, or placed within shrouds of a size such that the antenna appears to be part of the support structure;
 - (2) Antennas placed elsewhere on a support structure shall be integrated into the structure, or be designed and placed to minimize visual impacts.
 - (3) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on the utility pole, placed to avoid interfering or creating any hazard to any other use of the public rights-of-way, and located on one side of the utility pole. Unless the radio units or equipment cabinets can be concealed by appropriate traffic signage, radio units or equipment cabinets mounted below the communications space on utility poles shall be designed so that the largest dimension is vertical, and the width is such that the radio units or equipment cabinets are minimally visible from the opposite side of the support structure on which they are placed.
 - (4) Wiring and cabling shall be neat and concealed within, or within conduit, flush to the support structure, ensuring concealment of these components to the greatest extent possible.
 - (5) Ground-mounted equipment associated with a wireless telecommunications facility shall be permitted only where consistent with the portion of the corridor in which it is to be placed, and may be required to be undergrounded, located in alleys or otherwise shielded. Ground-mounted equipment shall not interfere with pedestrian or vehicular traffic.
 - (6) Wireless telecommunications facilities shall comply with FCC regulations governing radio frequency (“RF”) emissions. Every wireless facility shall at all

times comply with applicable FCC regulations governing RF emissions, and failure to comply shall be treated as a material violation of the terms of any permit or lease. No permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with those regulations; any areas where occupational or general public exposures will exceed FCC limits are identified, and there is a clear plan addressing safety for any areas where exposures may exceed those limits.

- (7) No towers shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted above-ground in underground areas; provided that the City may permit placements where all elements of the wireless telecommunications facility are concealed and the facility does not appear to a casual observer to be a wireless telecommunications facility. Any tower design must in any case be consistent with the corridor in which the facility is placed, and minimize the obtrusiveness of the facility considered individually and as part of a network of wireless telecommunications facilities.
- (e) No speculation. No permit shall be issued except to wireless service providers with immediate plans for use of the proposed wireless telecommunications facility; or wireless infrastructure providers with contracts with wireless service providers which require the service provider immediately to use the proposed wireless telecommunications facility.
- (f) Historic Districts. For placement of wireless telecommunications facilities in rights-of-way in historic districts:
 - (1) The application must describe the impacts of the proposed construction, modification or repair, if any on the historic district, which analysis must consider the impact of any construction work required as well as the impact of the wireless telecommunications facility on the district. If any impacts are identified, the report should describe the steps taken by the applicant to mitigate the effect on the district.
 - (2) Wireless telecommunications facilities in historic districts should be placed:
 - a. so that they are not readily visible to the public, and are designed consistent with their surroundings; or
 - b. on existing or replacement utility poles in the rights of way, with equipment and any replacement poles designed, sized and located consistently with existing facilities in the rights of way; and
 - c. subject to conditions that preclude changes in the design or size of facilities without the discretionary approval of the City to ensure consistency with the historic district.

- (3) Permits will not be granted for construction, modification or repair of the wireless telecommunications facility if the City determines that there would be a material adverse effect on the district.

Section 5A-6. Application Submission Requirements.

- (a) Submission. Unless the wireless regulations provide otherwise, applicant shall submit a paper copy and an electronic copy of any application, amendments or supplements to an application, or responses to requests for information regarding an application to the Department of Planning and Community Development, or such other Department as the City Manager may specify. If forms are prescribed by the City, applications for a permit for a wireless telecommunications facility, and any other permit required in connection with that facility, must be submitted on those forms. Each application may be for up to ten (10) wireless telecommunications facilities, provided that the facilities are of similar design and intended to be placed in a similar manner as part of a single project. To avoid duplication, applicant may cross-reference information from one application to another if the applications are submitted at the same time.
- (b) Content. An application must contain:
 - (1) Any information required pursuant to the wireless regulations;
 - (2) The name of the applicant, its telephone number and contact information, and if different, the name and contact information for the owner, operator, and/or wireless service provider that will be using the wireless telecommunications facility;
 - (3) A complete description of the proposed wireless telecommunications facility and the work that will be required to install or modify it, including, but not limited to, detail regarding proposed excavations, if any; detailed site plans showing the location of the wireless telecommunications facility and each piece of equipment, and specifications for each element of the wireless telecommunications facility, clearly describing the site and all structures and facilities at the site before and after installation or modification; and describing the distance to the nearest residential dwelling unit and any historical structure within 500 feet of the facility. Before and after 360 degree photo-simulations must be provided. The electronic version of an application must be in a standard format that can be easily uploaded on a web page for review by the public.
 - (4) If the application is an eligible facilities request, within the meaning of 47 C.F.R. Section 1.40001, the application must contain information sufficient to show that the application qualifies as an eligible facilities request, which information must include all the information required by Section 5A-6 (b)(1)-(3), and must:
 - a. include the permit that was granted for the existing facility;
 - b. show compliance with all conditions associated with that permit;

- c. identify all changes to the facility from the date of the issuance of the permit;
 - d. provide before and after 360-degree photo-simulations;
 - e. specify the excavation, if any, that will associated with the facility;
 - f. specify whether the supporting structure will be replaced, or a new supporting structure installed;
 - g. identify the number of ground cabinets and their sizes associated with the existing wireless telecommunications facility, and the number and sizes of all ground cabinets that will be associated with the wireless telecommunications facility after modification; and
 - h. identify changes to the height of the support structure; identify what, if any horizontal additions will be attached to the support structure; and identify the size and volume of all components of the wireless telecommunications facility before and after modification.
- (5) If applicant contends that denial of the application would prohibit or effectively prohibit the provision of personal wireless services, or otherwise violate applicable laws or regulations, under circumstances such that deployment of the facilities must be authorized, the application must provide all information on which the applicant relies in support of that claim. Applicants are not permitted to supplement this showing, if doing so would prevent City from complying with any deadline for action on an application and applicant does not agree to toll such deadline for the time necessary to accomplish review of the supplemental materials.
- (6) Applicant must submit any required fees as part of the application.
- (7) To the extent that filing of the wireless application establishes a deadline for action on any other permit that may be required in connection with the facility, the application shall include complete copies of applications for every required permit, including, without limitation, electrical permits, building permits, traffic control permits, and excavation permits, with all engineering completed, and with all fees associated with each permit included with the application. It is the applicant's sole responsibility to determine which, if any, additional permits are required in connection with the facility.
- (8) Requests for waivers from any requirement of this section shall be made in writing to the City Manager or his or her designee. The same may grant a request for waiver if it is demonstrated that, notwithstanding the issuance of a waiver, the City will be provided all information necessary to understand the nature of the construction or other activity to be conducted pursuant to the permit sought.

Section 5A-7.

- (a) Fees. For wireless telecommunications facilities, applicant must agree as part of its application to pay costs incurred by the City in reviewing the application.
- (1) The City Manager may set the fees for review, and shall review the fees periodically, and raise or lower those fees based on costs the City expects to incur.
 - (2) Until and unless the City Manager directs otherwise, the initial fee for review of each wireless telecommunication facility will be \$1,500 per facility, and an additional \$4,500 per wireless facility for each facility where applicant contends denial would result in an effective prohibition. If additional costs are incurred by the City in connection with the review, as may occur if the City is required to hire additional staff or third parties to review applications within time frames established by applicable law, City may require applicants to pay those additional costs.
 - (3) Prior to submitting an application, an applicant may seek a waiver of the fee requirement if it believes that because of the nature of the requests and number of requests submitted, the cost to the City of reviewing the application may be lower. City may grant that waiver subject to such conditions as may ensure that the City can recover the costs incurred by the City is reviewing the application.

Section 5A-8. Rejection for Incompleteness.

- (a) For personal wireless facilities, as that term is defined under federal law, and eligible facilities requests, as that term is defined under federal law, applications will be processed, and notices of incompleteness provided, in conformity with state, and local and federal law.
- (b) Incomplete applications may be rejected by a written order specifying the material omitted from the application, or the City may notify the applicant of the material omitted and provide an opportunity to submit the missing material. If the wireless application is incomplete, all permits that must be acted upon by the same date as that application will also be deemed incomplete, or denied. If any permit that must be acted upon by the same date as the wireless application is incomplete, both it the wireless application, and any other permit application associated therewith shall be declared incomplete or denied.

Section 5A-9. Termination of Permit/Breach.

- (a) For breach. A wireless telecommunications permit may be revoked for failure to comply with the conditions of the permit, franchise, or applicable law. Upon revocation, the wireless telecommunications facility must be removed; provided that, a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with

the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.

- (b) *For installation without a permit.* A wireless telecommunications facility installed without a wireless permit (unless for those exempted by this Chapter) must be removed; provided that, removal of support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City. All costs incurred by the City in connection with the revocation and removal shall be paid by entities who own or control any part of the wireless telecommunications facility.
- (c) *Term.* A wireless permit, other than a permit issued pursuant to an eligible facilities request, shall be valid for a period of five (5) years. A permit issued in response to an application constituting an eligible facilities request shall expire at the same time as the permit for the underlying existing wireless telecommunications facility, and shall only be valid so long as federal law requires the City to issue permits in response to eligible facilities requests. A person holding a wireless telecommunications permit must either remove the wireless telecommunications facility upon expiration (provided that removal of a support structure owned by City, a utility, or another entity authorized to maintain a support structure in the right-of-way need not be removed, but must be restored to its prior condition, except as specifically permitted by the City); or, at least ninety (90) days prior to expiration, must submit an application to renew the permit, which application must demonstrate that the visual impact of the wireless telecommunications facility cannot be reduced. The wireless telecommunications facility may remain in place until the application is acted upon by the City, and any appeals from the City's decision are exhausted.
- (d) *Municipal Infraction.* Any violation of this ordinance will be subject to the same penalties as a violation of outlined in Chapter 18 "Streets and Sidewalks" Article II, Construction, Improvements, Etc. Division I Sec.18-34. Violations and Penalties.

Section 5A-10. Vertical Infrastructure Controlled By City.

- (a) *Statement of Policy.* The City, as a matter of policy, will negotiate agreements for the use of City-owned or controlled light standards and traffic signals in the public rights-of-way.
- (b) *Subject to Agreement.* The placement of wireless telecommunications facilities on City-owned or controlled light standards and traffic signals in the public rights-of-way is contingent upon entry into, and shall be subject to the terms and conditions in the agreement. The agreement shall specify the compensation to the City for use of the structures. The person seeking the agreement shall additionally reimburse the City for all costs the City incurs in connection with its review of, and action upon the person's request for an agreement. It may, in its discretion, refuse attachment. Proposed placements will be expected to be consistent with the design of the light standards and/or traffic signals to which the wireless telecommunications facility is to be attached, and consistent with the design of other attachments to light standards and traffic signals in the area. Generally, the wireless telecommunications facility should be concealed, unless

placement without concealment will better preserve the design of the underlying facility. The placement may not adversely affect the operation of any light standard or traffic signal, or the financing for the same. Subject to the foregoing, in considering whether to permit a particular use, the City will consider standards that apply to other wireless telecommunications facilities in the same rights-of-way.

Section 5A-11. Administration.

- (a) City Manager. The City Manager is responsible for administering this Chapter. As part of the administration of this Chapter, the City Manager may:
- (1) Adopt administrative regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Chapter, including regulations governing collocation and resolution of conflicting applications for placement of wireless telecommunications facilities, and guidelines for placement of wireless telecommunications facilities on City-owned or controlled structures in the rights-of-way.
 - (2) Interpret the provisions of this Chapter;
 - (3) Develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way. If an applicant uses an approved design for a particular corridor it will be deemed to satisfy the aesthetic standards of this ordinance and the wireless regulations.
 - (4) Issue any notices of incompleteness, requests for information, or conduct or commission such studies as may be required to determine whether a permit should be issued.
 - (5) Develop forms and procedures for submission of applications for placement or modification of wireless telecommunications facilities, and proposed changes to any support structure consistent with this Chapter.
 - (6) Collect, as a condition of the completeness of any application, any required fees.
 - (7) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
 - (8) Subject to appeal as provided herein, determine whether to grant, grant subject to conditions, or deny an application; and
 - (9) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including, without limitation, issuing written decisions and entering into agreements to extend the time for action on an application.

(b) Decision; Reconsideration.

- (1) The City Manager may, in its discretion, conduct any investigation and take any steps necessary to determine, within the time limits specified by applicable law whether an application for a wireless telecommunications facility complies with the requirements of this Chapter, applicable provisions of the City Code, and any wireless regulations, and whether, based on that review, it should be granted, denied, or granted subject to conditions. Any person adversely affected by a decision of the City Manager may submit a request for reconsideration of that decision, and the City Manager may deny that request or grant it, and conduct such further investigations, or take such additional steps as may be required to reconsider the issues. Any decision on an application for a wireless telecommunications facility shall be in writing and based upon substantial evidence in a written record.
- (2) Reconsideration requests that involve eligible facilities requests, or small wireless facilities as defined in FCC regulations, or any successor provision, must be filed within five (5) business days of the written decision of the City Manager; all other reconsideration requests must be filed within ten (10) days of the written decision of the City Manager, unless the City Manager extends the time to do so; provided, however, that an extension may not be granted where an extension would result in approval of the application by operation of law. If no reconsideration request is filed, the decision of the City is final on the day after the last day reconsideration may be filed; if a request is filed, the decision of City is final on the date that the City Manager acts on the request.
- (3) Reconsideration is not permitted where reconsideration would result in a violation of applicable deadlines for action on an application.

Section 5A-12. Severability.

If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the City that the remainder of the Ordinance shall be and shall remain in full force and effect, valid and enforceable.

Chapter 18

STREETS AND SIDEWALKS

DIVISION 6. MINIMUM REQUIREMENTS FOR OCCUPATION OF RIGHTS-OF-WAY

Section 18-122. Application.

- (a) Occupant Defined. An “occupant” is a person who owns or controls permanent facilities in the rights-of-way, or (in the case of an application that will result in occupation of the rights-of-way), a person who will own or control permanent facilities in the rights-of-way.
- (b) Generally. Each occupant shall be subject to the requirements of this Section, except as may be provided in a valid franchise held by such occupant, or as may be prohibited by law; provided that, an occupant’s obligations may be limited to the duty to indemnify where:
- (1) the facilities of an occupant (such occupant being a “secondary occupant”); are wholly within the facilities of another occupant;
 - (2) the secondary occupant holds no franchise, and has no right to enter into the rights-of-way, or perform any work on its facilities;
 - (3) the secondary occupant’s property may be treated for all purposes (including notice) as the property of the occupant within whose facilities the secondary occupant is located;
 - (4) the occupant within whose property the secondary occupant’s property is located accepts full responsibility and liability for complying with all obligations hereunder with respect to the facilities of the secondary occupant and can grant such access to the secondary occupant’s facilities as necessary to permit the City, without liability to the secondary occupant, to perform any action contemplated hereunder;
 - (5) the secondary occupant accepts joint and several liability for the acts and omissions of the occupant;
 - (6) the City owes no duties to the secondary occupant; and
 - (7) the secondary occupant and the occupant responsible for the secondary occupant’s facilities submit a jointly-signed writing affirming the provisions hereof.
- (c) Code Compliance. An occupant shall at all times comply with all applicable provisions of the City Code and regulations. Any permit and any franchise authorizing occupancy of the rights-of-way may be terminated for violations of the Code and regulations, or the terms of any permit, as provided in this Chapter. Costs associated with compliance shall be borne solely by the occupant, and not by City, except as explicitly provided in a franchise or in the Code or regulations.

- (d) Inspections; Emergencies. The City may inspect an occupant's property, and may as a condition of the inspection require occupant to disconnect or remove any facilities that may present a hazard to the inspectors. City may direct occupant to correct any non-compliance found. The occupant shall cooperate with all inspections and may be present for any inspection of its facility by the City. Notwithstanding the foregoing, in an emergency or when the facility threatens imminent harm to persons or property, City may, without notice, inspect, support, repair, disable, or remove any elements of the occupant's facilities and charge occupant the costs therefore, which costs may be recoverable from the bond provided by occupant.
- (e) Contact. The occupant shall at all times maintain accurate contact information for all parties responsible for the facility, which shall include a phone number, street mailing address and email address for at least one natural person who may be contacted at all times in the event of an emergency.
- (f) Resources. An occupant shall maintain the persons and equipment necessary to allow it to respond immediately to any condition of or relating to the facility presenting a hazard to persons or property.
- (g) No guarantee or warranty by City. The City does not guarantee it has the authority necessary to permit an occupant to place or maintain a facility at any site. An occupant is responsible for ensuring it has all authorizations required in order to place a facility at a particular location. Permits improperly granted may be revoked. An occupant assumes all risks associated with placement of facilities in the rights-of-way.
- (h) Insurance. Occupant shall obtain and maintain insurance in the amounts and of types, and subject to such conditions, as may be specified by in any franchise, license or permit, or as may be specified by any other lawful means.
- (i) Indemnities. The occupant shall defend, indemnify and hold harmless the City, its agents, officers, officials, and employees (i) from any and all damages, liabilities, injuries, losses, costs, and expenses, and from any and all claims, demands, law suits, writs of mandamus, and other actions or proceedings brought against the City or its agents, officers, officials, or employees to challenge, attack, seek to modify, set aside, void or annul the City's approval of the permit, and (ii) from any and all damages, liabilities, injuries, losses, costs, and expenses, and any and all claims, demands, law suits, or causes of action and other actions or proceedings of any kind or form, whether for personal injury, death or property damage, arising out of or in connection with any action, or failure to act of occupant or those acting on its behalf, and arising out of the construction, modification, maintenance or operation of facilities in the rights-of-way, except where instances where indemnification is prohibited by Maryland law.
- (j) Performance and Removal Bond.
- (1) Prior to issuance of a permit, the occupant shall file with the City, and shall maintain in good standing for so long as the facility is in place, a performance bond or other surety or form of security for the removal of the facility in the event

that the use is abandoned or the occupant's rights to occupy expire, or are revoked, or are otherwise terminated, or which may be drawn upon to reimburse City for any costs it incurs as a result of the failure of an occupant to comply with its obligations.

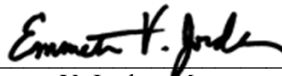
- (2) The amount of the performance bond will be specified by City and adjusted from time to time, following the valuation guidelines for determination of the amount of the bond required under Division 3. The City may increase or decrease the amount of the security based on the type and extent of the facilities of an occupant.
 - (3) Where an occupant is required to obtain a bond under Division 3, the City may permit it to satisfy this requirement by a single bond covering construction of the facility and the ongoing occupancy of the rights-of-way.
- (k) *Adverse Impacts on Adjacent Properties.* Occupant shall place and maintain its facilities to avoid undue adverse impacts to adjacent properties and/or uses that may arise from the construction, operation, maintenance, modification, and removal of the facility, and is responsible for restoring property damages to their condition prior to the facility's installation, except as state law otherwise provides.
- (l) *Visual burden minimized. Maintenance of facilities.* All facilities shall be neatly placed and maintained, with unused facilities removed, so that the burden and visual impact of the facilities in the rights-of-way is minimized. Without limitation, it is not permissible to leave wires hanging, or leaving disconnected cabling and conduits on the sides of supporting structures in the rights-of-way.
- (m) *Noninterference with pedestrian and vehicular traffic.* Use by any occupant is secondary to use of the rights-of-way by vehicular and pedestrian traffic, and no facility may be placed in a manner that interferes with such uses. Without limitation, facilities may not be placed or maintained at locations that present a hazard to pedestrians or vehicular traffic (whether physically, or by obstructing sight lines); that violate ADA requirements; or that overhang any street, sidewalk, ramp or driveway unless the City has specifically approved that placement.
- (n) *Noninterference with public projects.* An occupant must promptly move, alter, temporarily relocate, or remove its facilities as necessary for any public project, including, but not limited to, installation of any publicly-owned utility, structure or facility, street widening or re-grading, widening or installation of sidewalks, or as part of an undergrounding project. If an occupant fails to move, alter, temporarily relocate, or remove its facilities by a time specified by City, City may cause the facilities to be removed, and charge the occupant for the cost thereof, which cost shall be recoverable against the bond.
- (o) *Movement for others.* An occupant must promptly, and at no charge to the City, move, alter, or temporarily relocate its facilities as necessary to permit use of the rights-of-way by other franchised entities or entities holding special permits from City that require such

movement, alteration or relocation. An occupant may charge the entity that causes such work to be performed for the cost of the work, except as may otherwise be provided by applicable laws or contract.

- (p) No Right, Title, or Interest. Permissions granted by the City to occupy the rights-of-way shall not in any event constitute an easement on or an encumbrance against the public right-of-way. No right, title, or interest in the public right-of-way, or any part thereof, shall vest or accrue in an occupant by reason of issuance of such permissions.
- (q) General Maintenance. The site and the facility, including, but not limited to, all landscaping, fencing, and related equipment, must be maintained in a neat and clean manner and in accordance with all approved plans. All graffiti on facilities must be removed at the sole expense of the occupant permittee within forty eight (48) hours after notification from the City.
- (r) Abandonment and termination. If a facility is not operated for a continuous period of six (6) months, rights to occupy the rights-of-way it may be treated as abandoned and rights to occupy terminated. City will provide notice of abandonment, and unless an occupant contends in writing submitted within ten (10) days of the notice, that the facility has not been abandoned, the facility will be deemed abandoned and the rights to occupy terminated. If an occupant contends that the facility has not been abandoned, it must provide all facts on which it relies for that contention as part of the submission to City. The City may then determine whether or not the facility is abandoned. If the facility is deemed or determined to be abandoned, City may direct the facility to be removed, and if not removed City by a time specified by the City, City may remove the facility and charge the occupant the cost therefore, which cost may be charged against the bond.
- (s) Records. Any occupant must maintain complete and accurate copies of all applications filed, and all permits and other regulatory approvals issued in connection with the facility, and maintain full and complete records identifying and showing the location of the facilities of occupant in the rights-of-way. Copies of the record shall be promptly provided to City on request, unless production of the records is prohibited by law. Maps of facilities must be provided in a format that will permit the information to be incorporated in the City's GIS system.

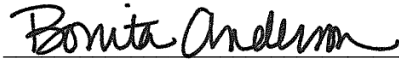
BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately upon the date of its passage.

PASSED by the Council of the City of Greenbelt, Maryland, at its regular meeting of December 10, 2018.



Emmett V. Jordan, Mayor

ATTEST:



Bonita Anderson, City Clerk

Key:

Underscoring indicates language added to existing law.

~~Overstriking~~ indicates language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.