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Chapter 70

Wireless Facilities

[HISTORY: Adopted by the Mayor and Council of the City of Seat Pleasant as indicated in article histories. Amendments noted where applicable.]

Article I

Small Wireless Facilities

[Adopted 1-7-2019 by Ord. No. O-19-03; amended in its entirety 4-1-2019 by Ord. No. O-19-09]

§ 70-1 Purpose and scope.

- A. Purpose. The purpose of this article is to establish policies and procedures for the placement of small wireless facilities in the right-of-way within the City's jurisdiction, which will provide public benefit consistent with the preservation of the integrity, safe usage, and visual qualities of the City rights-of-way and the City as a whole.
- B. Intent. In enacting this article, the City is establishing uniform standards to address the placement of small wireless facilities in the rights-of-way, including, without limitation, to:
- (1) Prevent interference with the use of streets, sidewalks, alleys, parkways and other public ways and places;
 - (2) Prevent the creation of visual and physical obstructions and other conditions that are hazardous to vehicular and pedestrian traffic;
 - (3) Prevent interference with the facilities and operations of facilities lawfully located in rights-of-way or on public property;
 - (4) Protect against environmental damage, including damage to trees;
 - (5) Preserve the character of the neighborhoods in which facilities are installed; and
 - (6) Facilitate rapid deployment of small cell facilities to provide the benefits of advanced wireless services.
- C. Conflicts with other chapters. This article supersedes all chapters or parts of chapters adopted prior hereto that are in conflict herewith, to the extent of such conflict.

§ 70-2 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ANTENNA

Communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless services.

APPLICABLE CODES

Uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address imminent threats of destruction of property or injury to persons to the extent not inconsistent with the terms of this article.

APPLICANT

Any person who submits an application and is a wireless provider.

APPLICATION

A request submitted by an applicant:

- A. For a permit to co-locate small wireless facilities; or
- B. To approve the installation or modification of a utility pole or wireless support structure.

CITY POLE

- A. A utility pole owned, managed or operated by the City or any subdivision thereof or any instrumentality of the same, including municipal electric utilities, in the rights-of-way, including a utility pole; and
- B. A pole or similar structure owned, managed or operated by the City in the ROW that supports only wireless facilities.

CO-LOCATE

To install, mount, maintain, modify, operate, or replace wireless facilities on or adjacent to a wireless support structure or utility pole. "Co-location" has a corresponding meaning.

DAY

Calendar day.

DECORATIVE POLE

A pole that is specially designed and placed for aesthetic purposes and on which no appurtenances or attachments, other than a small wireless facility or specially designed informational or directional signage or temporary holiday or special events attachments, have been placed or are permitted.

FEE

A one-time charge.

HISTORIC DISTRICT

A group of buildings, properties, or sites that are either listed in the National Register of Historic Places or formally determined eligible for listing by the keeper of the National Register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the National Register in accordance with Section VI.D.1a.i-v of the Nationwide Programmatic Agreement codified at 47 CFR Part 1, Appendix C.

MICRO WIRELESS FACILITY

A small wireless facility that meets the following qualifications:

- A. Is not larger in dimension than 24 inches in length, 15 inches in width, and 12 inches in height; and
- B. Any exterior antenna is no longer than 11 inches.

PERMIT

A written authorization required by the City to perform an action or initiate, continue, or complete a project.

PERSON

An individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including the City.

RATE

A recurring charge.

RIGHTS-OF-WAY or ROW

The area on, below, or above a public roadway, highway, street, sidewalk, alley, utility easement, or similar property, but not including a federal interstate highway.

SMALL WIRELESS FACILITY

A wireless facility that meets both of the following qualifications:

- A. Each wireless provider's antenna could fit within an enclosure of no more than six cubic feet in volume; and
- B. All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meter, concealment elements, telecommunications demarcation box, grounding equipment, power transfer switch, cut-off switch, and vertical cable runs for the connection of power and other services.

TECHNICALLY FEASIBLE

That, by virtue of engineering or spectrum usage, the proposed placement for a small wireless facility, or its design or site location, can be implemented without a reduction in the functionality of the small wireless facility.

UTILITY POLE

A pole or similar structure that is or may be used in whole or in part by or for wireline communications, electric distribution, lighting, traffic control, signage, or similar function, or for co-location of small wireless facilities, provided such term shall not include wireless support structures or electric transmission structures.

WIRELESS FACILITY or WIRELESS TELECOMMUNICATIONS FACILITY

- A. Equipment at a fixed location that enables wireless communications between user equipment and a communications network; including:

- (1) Equipment associated with wireless communications; and
 - (2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
- B. The term includes small wireless facilities.
- C. The term does not include:
- (1) The structure or improvements on, under, or within which the equipment is co-located; or
 - (2) Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

WIRELESS INFRASTRUCTURE PROVIDER

Any person, including a person authorized to provide telecommunications service in the state, that builds or installs wireless communication transmission equipment, wireless facilities or wireless support structures, but that is not a wireless services provider.

WIRELESS PROVIDER

A wireless infrastructure provider or a wireless services provider.

WIRELESS SERVICES

Any services, whether at a fixed location or mobile, provided using wireless facilities.

WIRELESS SERVICES PROVIDER

A person who provides wireless services.

WIRELESS SUPPORT STRUCTURE

A structure, such as a monopole; tower, either guyed or self-supporting; billboard; building; or other existing or proposed structure, designed to support or capable of supporting wireless facilities, other than a structure designed solely for the co-location of small wireless facilities. Such term shall not include a utility pole.

§ 70-3 Permitted use; permit application and fees.

- A. Permitted use. Co-location of a small wireless facility or a new or modified utility pole for the co-location of a small wireless facility shall be a permitted use subject to the restrictions in § 70-5.
- B. Permit required. No person shall place a small wireless facility in the rights-of-way without first filing a small wireless facility application and obtaining a permit therefor, except as otherwise provided in this article.
- C. Permit application. All small wireless facility applications for permits filed pursuant to this article shall be on a form, paper or electronic, provided by the City. The applicant may designate portions of its application materials that it reasonably believes contain proprietary or confidential information as "proprietary" or "confidential" by clearly marking each page of such materials accordingly.

D. Application requirements. The small wireless facility permit application shall be made by the wireless provider or its duly authorized representative and shall contain the following:

- (1) The applicant's name, address, telephone number, and e-mail address;
- (2) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the applicant with respect to the filing of the application.
- (3) A complete description of the proposed wireless 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 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 a description of the distance to the nearest residential dwelling unit and any contributing 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. It shall also include the purposes and intent of the small wireless facility.
- (4) An application for modification of an eligible support structure must contain information sufficient to show that the application qualifies under of 47 CFR 1.40001. The application must relate to an existing wireless telecommunications facility that has been approved by the City pursuant to this article. Before and after 360-degree photo simulations must be provided with detailed specifications demonstrating that the modification does not substantially change the physical dimensions of the existing approved structure.
- (5) An application for a permit shall be submitted in the format and manner specified by the designated department. Applications must contain all information required herein and in any wireless regulations to demonstrate that the applicant is entitled to the permit requested. The applicant must provide any information upon which it relies in support of a claim that denial of the application would prohibit or effectively prohibit the provision of service in violation of federal law or otherwise violate applicable law. Applicants are not permitted to supplement this showing if doing so would prevent the City from complying with any deadline for action on an application.
- (6) Proof that notice has been mailed to owners of all property, and the resident manager for any multifamily dwelling unit that includes 10 or more units, within 300 feet of the proposed wireless telecommunications facility.
- (7) A copy of any pole or structure attachment agreement must be provided, as well as sufficient information to determine that the installation can be supported by and does not exceed the tolerances of the pole or structure.
- (8) Payment of any required fees.
- (9) Before a permit is issued, concurrent agreement to any required franchise or license agreement must be provided.

E. Routine maintenance and replacement.

Commented [1]: Editor's Note: 47 CFR 1.40001 was redesignated as 47 CFR 1.6100 by 83 FR 51886.

- (1) An application may not be required, in the sole discretion of the City on a case-by-case basis, for:
 - (a) Routine maintenance;
 - (b) The replacement of a small wireless facility with another small wireless facility that is substantially similar or the same size or smaller in size and weight, and height; and
 - (c) The installation, placement, maintenance, operation, or replacement of micro wireless facilities that are strung on cables between existing utility poles, in compliance with the National Electrical Safety Code.
 - (2) The City may, however, require a permit to work within the ROW for such activities, if applicable. Any such permits shall be subject to the requirements provided in Subsections **C** and **D**. In any event, the City reserves the right to require an application for any work described in this section if it determines it is in the best interest of the health, safety and welfare of the public.
- F. Information updates. Any amendment to information contained in a permit application shall be submitted in writing to the City within 30 days after the change necessitating the amendment.
- G. Application fees. Application fees shall be subject to the following requirements:
- (1) Unless otherwise provided by law, all applications for permits pursuant to this article shall be accompanied by a fee for actual, direct, and reasonable costs incurred by the City related to processing the application, including costs incurred in retaining outside consultants. The applicant shall also pay an access fee. Fees shall be reviewed periodically and raised or lowered based on costs the City expects to incur.
 - (2) The application fee for the installation, modification or replacement of a utility pole that is a permitted use in accordance with the specifications in § **70-5** shall be established by the City.
 - (3) An application fee for the installation of a new utility pole associated with a small wireless facility that is not a permitted use in accordance with the specifications in § **70-3** shall be established by the City.
 - (4) In addition to the permit required herein, the placement of a utility pole or wireless facility in the public rights-of-way requires the persons who will control those facilities to obtain the franchises, license agreements and permits required by applicable law, and to comply with applicable law, including, but not limited to, applicable law governing radio frequency (RF) emissions.

§ 70-4 Permit applications.

A. Review of small cell facility applications.

- (1) The City shall review the application for a small wireless facility permit in light of its conformity with applicable regulations of this article and shall issue a permit on nondiscriminatory terms and conditions, subject to the following requirements:
 - (a) Applications will be processed in conformity with state, local and federal law, as amended. Currently, the FCC has required that such applications be processed within 60 days of receipt of a completed application for facilities that will be co-located on preexisting structures and 90 days for new construction. If an application is incomplete, it may be rejected for incompleteness. Notices of

incompleteness shall be provided in conformity with state, local and federal law. If such an application is incomplete, it 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. The time imposed by federal, state or local law for the processing of an application does not begin to run until an application is complete.

- (2) The City may deny a proposed co-location of a small wireless facility or installation, modification or replacement of a utility pole for the co-location of a small wireless facility that meets the requirements in § 70-5 if the proposed small wireless facility:
 - (a) Interferes with the safe operation of traffic control equipment as determined by the City;
 - (b) Interferes with sight lines or clear zones for transportation or pedestrians as determined by the City;
 - (c) Materially interferes with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement;
 - (d) Fails to comply with applicable codes;
 - (e) Does not comply with the provisions in this article;
 - (f) Will not be in the best interests of the City as determined by the City; or
 - (g) Will alter the aesthetic character of the surrounding community as determined by the City.

§ 70-5 **Small wireless facilities in the ROW: standards and requirements.**

A. Standards. Wireless facilities shall be installed and modified in a manner that:

- (1) 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 residential areas when commercial areas are reasonably available, and otherwise maintains the integrity and character of the neighborhoods and corridors in which the facilities are located.
- (2) Ensures that installations are subject to periodic review to minimize the intrusion on the rights-of-way.
- (3) 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 public rights-of-way, or hinder the ability of the City or other government agencies to improve, modify, relocate, abandon or vacate the public rights-of-way or any portion thereof or to cause the improvement, modification, relocation, vacation or abandonment of facilities in the rights-of-way.
- (4) Ensures that location of facilities on existing poles or structures is within the tolerance of those poles or structures.
- (5) Does not interfere with the safe operation of traffic control equipment as determined by the City.
- (6) Does not Interfere with sight lines or clear zones for transportation or pedestrians as determined by the City.

- (7) Does not materially interfere with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
- (8) Fails to comply with applicable codes.
- (9) Does not comply with the provisions in this article.
- (10) Will not be in the best interests of the City as determined by the City.
- (11) Will alter the aesthetic character of the surrounding community as determined by the City.

B. Concealment.

- (1) Permits for wireless facilities shall incorporate specific concealment elements to minimize visual impacts, and 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:
 - (a) Antennas located at the top of support structures shall be incorporated into the structure or placed within shrouds of a size such that the antennas appear to be part of the support structure.
 - (b) Antennas placed elsewhere on a support structure shall be integrated into the structure or be designed and placed to minimize visual impacts.
 - (c) Radio units or equipment cabinets holding radio units and mounted on a utility pole shall be placed as high as possible on a support structure, located to avoid interfering with, 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.
 - (d) Wiring and cabling shall be neat and concealed within or flush to the support structure, ensuring concealment of these components to the greatest extent possible.
 - (e) Ground-mounted equipment associated with a wireless 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 underground, located in alleys or otherwise shielded. In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.
 - (f) No permit shall be issued or effective unless it is shown that the wireless facility will comply with Federal Communications Commission ("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 therewith shall be treated as a material violation of the terms of any permit or lease.
 - (g) No wireless support structure shall be permitted in the public rights-of-way, and no wireless telecommunications facilities shall be permitted aboveground 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.

- (h) No permit shall issue except to wireless providers with immediate plans for use of the proposed wireless facility or wireless infrastructure providers with contracts with wireless service providers which require the wireless provider immediately to use the proposed wireless facility.
- (i) Unless appropriately placed, and concealed, so that the size of the facility cannot be increased except with the discretionary approval of the City, no wireless facility is permitted in rights-of-way in alleys.
- (2) No wireless telecommunications facility is permitted in any local historic district without the approval of the Prince George's County Historic Preservation Commission.
- C. Maximum size of permitted use. Small wireless facilities, and new or modified utility poles for the co-location of small wireless facilities, may be placed in the rights-of-way as a permitted use, subject to the following requirements:
 - (1) Each new or modified utility pole installed in the rights-of-way shall not exceed the greater of:
 - (a) Ten feet in height above the tallest existing utility pole in the rights-of-way in place as of the effective date of this article located within 500 feet of the new pole in the same right-of-way; or
 - (b) Fifty feet above ground level.
 - (2) New small wireless facilities in the rights-of-way may not extend:
 - (a) More than 10 feet above an existing utility pole in the rights-of-way in place as of the effective date of this article; or
 - (b) Above the height for a new utility pole under § **70-5C(1)**.
- D. Zoning. Any wireless provider that seeks to install, modify, operate or replace a utility pole in the rights-of-way that exceeds the height or size limits contained in this section shall be subject to applicable zoning requirements.
- E. Underground district. In areas designated solely for underground or buried cable and utility facilities, the City may allow replacement of City poles in the designated area. The wireless provider is permitted to seek a waiver of the undergrounding requirements for the placement of a new utility pole to support small wireless facilities.
- F. Historic district. The City may require reasonable, technically feasible, nondiscriminatory and technologically neutral design or concealment measures in an historic district. Any such design or concealment measures may not have the effect of prohibiting any provider's technology, nor may any such measure be considered part of the small wireless facility for purpose of the size restrictions in the definition of "small wireless facility."

§ 70-6 Effect of permit.

- A. Authority granted; no property right or other interest created. A permit from the City authorizes an applicant to undertake only certain activities in accordance with this article and does not create a property right or grant authority to the applicant to impinge upon the rights of others who may already have an interest in the rights-of-way.
- B. Permit duration. A permit granted pursuant to this section shall be completed within one year of the permit issuance date, unless the City and applicant agree to extend this period due to delay caused by the lack of commercial power or communications facilities. Subject to applicable relocation requirements, the permit is valid for a period of five years and may be renewed by the City for an equivalent duration so long as the wireless provider is in compliance with the other requirements in this article and determined to be in the best interests of the City as determined by the City. A permit holder must either remove the wireless telecommunications facility upon expiration (provided that removal of support structures 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 90 days prior to expiration, must submit an application to renew the permit, which application must demonstrate that the impact of the wireless facility cannot be reduced. The wireless facility must remain in place until it is acted upon by the City and any appeals from the City's decision are exhausted.

§ 70-7 Removal, relocation, modification or revocation of small wireless facilities in the ROW.

- A. Notice. Within 90 days' following written notice from the City, a wireless provider shall, at its own expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any small wireless facilities within the rights-of-way whenever the City has determined that such removal, relocation, change or alteration is reasonably necessary for the construction, repair, maintenance, or installation of any City improvement in or upon, or the operations of the City in or upon, the rights-of-way. If the wireless provider fails to protect, support, temporarily or permanently remove, relocate, change or alter the position of any small wireless facilities, the City may take any and all actions necessary to perform the work and charge the wireless provider for the costs associated therewith, including legal fees, if any.
- B. Emergency removal or relocation of facilities. The City retains the right and privilege to cut or move any small wireless facility located within the rights-of-way of the City as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. If circumstances permit, the City shall notify the wireless provider and provide the wireless provider an opportunity to move its own facilities prior to cutting or removing a facility and shall notify the wireless provider after cutting or removing a small wireless facility.
- C. Abandonment of facilities. Upon abandonment of a small wireless facility within the rights-of-way of the City, the wireless provider shall notify the City within 90 days. Following receipt of such notice, the City may direct the wireless provider to remove all or any portion of the small wireless facility if the City, or any of its departments, determines that such removal will be in the best interest of the public health, safety and welfare.
- D. Damage and repair. The City may require a wireless provider to repair all damage to the rights-of-way caused by the activities of the wireless provider and return the rights-of-way to their functional equivalence before the damage. If the wireless provider fails to make the repairs within 45 days' after

written notice, the City may effect those repairs and charge the applicable party the reasonable, documented cost of such repairs.

E. Termination in event of breach.

- (1) A permit may be revoked for failure to comply with the conditions of the permit, franchise, license or applicable law. Upon revocation, the wireless telecommunications facility must be removed within 30 days' of written notice, provided that removal of a support structure owned by the 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 facility.
- (2) A wireless facility installed without a permit (except for those exempted by this article) must be removed within 30 days' of written notice, provided that removal of a support structure owned by the 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 wireless facilities.

§ 70-8 **ROW rates.**

- A. Annual rate. A wireless provider authorized to place small wireless facilities in the rights-of-way shall be required to pay to the City a rate or fee, as established by the City, for the use of the rights-of-way for small wireless facilities or associated utility poles on an annual basis.

§ 70-9 **Attachment to City poles in the ROW.**

- A. Co-location on City poles. Small wireless facilities may be co-located on City poles pursuant to this article. No person will be permitted an exclusive arrangement to attach to City poles.
- B. Annual rate. The annual rate for co-location of a small wireless facility on a City pole in the right-of-way shall be determined by the City. Such compensation, together with the application fee and the rights-of-way fee specified in this article, shall be the sole compensation that the wireless provider shall be required to pay the City.