

ORDINANCE NO. 1933

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF LAUREL, MD TO AMEND THE CITY OF LAUREL UNIFIED LAND DEVELOPMENT CODE; CHAPTER 20, LAND DEVELOPMENT AND SUBDIVISION, ARTICLE VIA, “TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY”, TO PROVIDE FOR CERTAIN AMENDMENTS TO THE 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, CONSISTENT WITH THE RECENTLY ISSUED FINAL ORDER OF THE FEDERAL COMMUNICATIONS COMMISSION REGARDING THIS SUBJECT MATTER; AND PROVIDING AN EFFECTIVE DATE.

Sponsored by the President at the request of the Administration.

WHEREAS, ON September 24, 2018, meeting in regular session, the City Council of Laurel adopted City Ordinance No. 1932 approving Article VIA, “Telecommunications Facilities In Public Rights-Of-Way” within the City of Laurel Unified Land Development Code, Chapter 20, Land Development and Subdivision, to provide certain regulations for the location, placement, design, construction and maintenance of telecommunications towers, antennas, and other structures within the City’s public rights-of-way; and

WHEREAS, pursuant to the Annotated Code of Maryland, Local Government Article, Sections 5-202 and 5-204, the City of Laurel, Maryland (“City”) has the authority to adopt such ordinances as it deems necessary and appropriate to assure good government in the City, to protect and preserve the City’s rights, property and privileges, and to preserve peace, safety and good order; and

WHEREAS, the City Charter, Section 711, “Control of public ways,” allows the City to do “whatever it deems necessary to establish, operate, and maintain in good condition the public ways of the city;” and

WHEREAS, through Ordinance No. 1932, the City enacted legislation deemed 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; and

WHEREAS, the standards and regulations enacted through Ordinance No. 1932 were based on a draft Order by the Federal Communications Commission (“FCC”) regarding the location, placement, design, construction and maintenance of wireless telecommunications facilities in public rights-of-way, and the FCC has recently enacted a final order regarding the same subject matter that makes certain changes to the Ordinance appropriate, as set forth herein.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Mayor and City Council, that the Land Development Code for the City (“Code”), Article VI A, entitled “Wireless Telecommunications Facilities in Public Rights-Of-Way” be amended as follows:

ARTICLE VI A. TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY

Section 1. Authority.

The City derives the authority for this article from the City Charter, Article 700, and the Annotated Code of Maryland, Local Government Article, Sections 5-202 and 5-204. This article, and any rules, regulations, specifications and agreements adopted pursuant to this article, comply with all applicable federal and state law.

Section 2. Purpose.

The purpose of this article is to establish a process for managing, and uniform standards for acting upon requests for the placement of wireless telecommunications facilities within the rights-of-way of the City of Laurel consistent with the City's obligation to promote the public health, safety and welfare, to manage the public rights-of-way, and to ensure that the public is not incommoded by the use of the rights-of-way for the placement of wireless telecommunications facilities. The City recognizes the importance of wireless telecommunications facilities to provide high-quality communications service to the residents and businesses within the City, and the City also recognizes its obligation to comply with applicable Federal and State law regarding the placement of wireless telecommunications facilities in its rights-of-way, and this ordinance shall be interpreted consistent with those provisions.

Section 3. Scope.

- (a) **In general.** Unless exempted, every person who desires to place a wireless telecommunications facility in the rights-of-way, or modify an existing wireless telecommunications facility must obtain a wireless placement permit authorizing the placement or modification.
- (b) **Exemptions.** Except as to this Section 3 and Section 5, this Article does not apply to:
- (1) The placement or modification of wireless telecommunications facilities on supporting structures owned, or under the control of, the City, the use of which is subject to a contract for use of the facility between the City and the entity or entities that own or control the wireless telecommunications facility; and such conditions as the City may establish by negotiation or guidelines adopted by the City.
 - (2) The placement or modification of wireless 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 does not disrupt or impede traffic in the traveled portion of a street, and if the work activity does not change the visual or audible characteristics of the wireless telecommunications facility. 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.

- (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 as defined in Section 4 and provided further that the installation does not require replacement of the strand, or excavation, modification or replacement of the utility poles.

(c) Other applicable requirements. In addition to the wireless telecommunications permit required herein, the placement of a wireless telecommunications facility in the public rights-of-way requires the persons who will own or control those facilities to obtain the franchises and permits required by applicable law, and to comply with applicable law, including but not limited to Article VI of the Land Development Code, and including, but not limited to applicable law governing radio frequency (RF) emissions.

(d) 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 4. Definitions.

Terms used in this Article shall have the following meanings[:]. Except where indicated otherwise, references to statutes or to regulations refer to the statutes or regulations, as the same may be amended from time to time:

Application: A formal request, including all required and requested documentation and information submitted by an Applicant to the City for a wireless placement permit.

Applicant: A person filing an application for placement or modification of a wireless telecommunications facility in the rights-of-way.

Base Station: The term base station shall have[s] the same meaning as in 47 C.F.R. Section 1.40001.

Certificate of Completion: A document that is required from and issued by the City confirming that all work described in the Application, as approved: (i) was properly permitted, including, without limitation, all required permits for building, electrical work, street or curb cutting, and excavation; (ii) was done in compliance with and fulfillment of all conditions of all permits, including all stated deadlines; (iii) was fully constructed and/or placed as approved and permitted; and (iv) was finally inspected by the City, and was approved by the City after said final inspection.

City Administrator: The chief administrative officer for the City of Laurel, or designee.

Rights-of-Way: The term rights-of-way has the same meaning as in Art. VI, Sec. 20-42.2 of the City of Laurel City Code, but shall also include any portion of any road or public way which the City has the responsibility to maintain or manage.

Micro wireless facility: A small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width and 12 inches in height and an exterior antenna, if any, no longer than 11 inches [.] and which antenna may be enclosed in an imaginary cylinder no larger than one inch in diameter. The reference to height in this definition is not intended to permit any person to install a facility that violates, or causes the strand to which it is attached to violate, clearance or other requirements under the applicable safety codes.

Support Structure: Any structure capable of supporting a base station.

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 communications 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.

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 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.

Utility Pole: A structure in the rights-of-way designed to support electric, telephone and similar utility lines. A tower is not a utility pole.

Wireless Permit: A permit issued pursuant to this Chapter and authorizing the placement or modification of a wireless telecommunications facility of a design specified in the permit at a particular location within the rights-of-way; and the modification of any existing support structure to which the wireless telecommunications facility is proposed to be attached.

Wireless Service Provider. An entity that provides wireless services to end users.

Wireless Infrastructure Provider: A person that owns, controls, operates or manages a wireless telecommunication facility or portion thereof within the right-of-way.

Wireless Regulations: Those regulations, adopted pursuant to Section 5 and implementing the provisions of this Article.

Wireless Telecommunications Facility, or Facility: A facility at a fixed location consisting of a base station, any accessory equipment, and the tower, if any, associated with the base station.

Section 5. Administration.

(a) City Administrator. The City Administrator [or its designee] is responsible for administering this Article. As part of the administration of this Article, the City Administrator may:

- (1) Adopt regulations governing the placement and modification of wireless telecommunications facilities consistent with the requirements of this Article, 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 Article;
- (3) As part of the foregoing, develop acceptable designs for wireless telecommunications facilities in particular corridors, taking into account the zoning districts bounding the rights-of-way;
- (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 Article;
- (6) Collect, as a condition of the completeness of any application, any fee established by the Mayor;
- (7) Require, as part of, and as a condition of completeness of any application, notice to members of the public that may be affected by the placement or modification of the wireless telecommunications facility, and proposed changes to any support structure;
- (8) Establish deadlines for submission of information related to an application, and extend or shorten deadlines where appropriate and consistent with federal laws and regulations;
- (9) Subject to appeal as provided herein, determine whether to grant, grant subject to conditions, or deny an application; and
- (10) Take such other steps as may be required to timely act upon applications for placement of wireless telecommunications facilities, including issuing written decisions and entering into agreements to mutually extend the time for action on an application.

(b) Appeal.

- (1) Any person adversely affected by the decision of the City Administrator may appeal the City Administrator's decision to the City of Laurel Board of Appeals, which may decide the issues *de novo*, and whose written decision will be the final decision of the City. An appeal by a wireless infrastructure provider must be taken jointly with the wireless service provider that intends to use the wireless telecommunications facility.
- (2) Where the City Administrator grants an application based on a finding under Section 6 (b) that denial is not permissible under [would result in a prohibition or effective prohibition under] applicable federal law, the decision shall be automatically appealed to the City of Laurel Board of Appeals. Otherwise, appeals that involve eligible facilities requests, as defined in 47 C.F.R. Section 1.40001 must be filed within five (5) business days of the written decision of the City Administrator; all other appeals must be filed within ten (10) business days of the written decision of the City Administrator, unless the City Administrator extends the time therefor[e]. An extension may not be granted where extension would result in approval of the application by operation of law.
- (3) Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law.

Section 6. General Standards for Wireless Telecommunications Facilities 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.
- (b) **Regulations.** 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, [and the wireless regulations manual] may be waived, but only to the minimum extent required to avoid [the] conflict with federal law [prohibition].
- (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 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 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 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.
- (d) **Concealment.** Permits for wireless telecommunications 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:
- (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 a support structure, 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 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 underground, located in alleys or otherwise shielded.

- In no event may ground-mounted equipment interfere with pedestrian or vehicular traffic.
- (6) No permit shall be issued or effective unless it is shown that the wireless telecommunications facility will comply with Federal Communication 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 shall be treated as a material violation of the terms of any permit or lease.
 - (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.
 - (8) 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.
 - (9) Unless appropriately placed, and concealed, and designed so that the size of the facility cannot be increased except with the discretionary approval of the City, no wireless telecommunications facility is permitted in rights-of-way in Historical Districts, or alleys.

Section 7. Application Submission Requirements.

- (a) **Submission.** Unless the wireless regulations provide 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: City Administrator, Laurel Municipal Center, 8103 Sandy Spring Road, Laurel MD 20707. 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.
- (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 the applicant is a wireless infrastructure provider, the name and contact information for the 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 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 Sections 7(b)(1)-(3), and must include the permit that was granted for the existing facility; show compliance with all conditions associated with that permit; and identify all changes to the facility from the date of the issuance of the permit.[show that there is an existing wireless telecommunications facility that was approved by the City pursuant to this Article. Before and after 360-degree photo-simulations must be provided; which and detailed specification of the (a) An application for a permit shall be submitted in the format and manner specified by the department in Appendix B of the Underground Facilities Coordination Manual or the relevant section of the wireless facilities manual, as applicable. For permits for wireless telecommunications facilities, if no form or manner has been specified, applications must contain all information necessary to show that applicant is entitled to the permit requested.]

- (5) If applicant contends that denial of the application would prohibit or effectively prohibit the provision of personal wireless services, or otherwise [in violation of federal law, or otherwise violate applicable law], 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.
 - (6) Proof that notice has been mailed to owners of all property, and the resident manager for any multi-family dwelling unit that includes ten (10) or more units, within 300 feet of the proposed wireless telecommunications facility.
 - (7) Any required fees.
 - (8) 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 wireless 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.
- (c) **Fees.** For wireless telecommunications facilities, applicant must provide an initial deposit and agree as part of its application to pay all costs reasonably incurred by City in reviewing the application, including costs incurred in retaining outside consultants. Fees shall be reviewed periodically, and raised or lowered based on costs the City expects to incur, with a review commencing by the first anniversary of the effective date of this ordinance.
- (d) **Waivers.** Requests for waivers from any requirement of this section shall be made in writing to the City Administrator [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.
- (e) **Rejection for Incompleteness.** 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. 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. 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 and the wireless application shall be declared incomplete, or denied.

Section 8. 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 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.
- (b) **For installation without a permit.** A[n] wireless telecommunications facility installed without a wireless permit (except for those exempted by this Article) 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. An eligible facilities permit shall expire at the same time the permit for the underlying existing wireless telecommunications facility expires. A person holding a wireless telecommunications permit must either remove the wireless telecommunications facility upon expiration (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); or, at least 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 [must] remain in place until the application [it] is acted upon by the City, and any appeals from the City's decision exhausted.
- (d) **Municipal Infraction.** Any violation of this ordinance will be subject to the same penalties as a violation of the City of Laurel Code, Art. II, Roads and Sidewalks.

Section 9. Vertical Infrastructure Controlled By City.

The City, as a matter of policy, will negotiate agreements for use of City owned or controlled light standards and traffic signals in the public rights-of-way. The placement of wireless telecommunications facilities on those structures shall be subject to 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.

Section 10. Nondiscrimination.

In establishing the rights, obligations and conditions set forth in this article, it is the intent of the City to treat each applicant or public right-of-way user in a competitively neutral and nondiscriminatory manner, to the extent required by law, and with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for use of the public rights-of-way.

Section 11. 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.

BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect from the date of its passage.

PASSED this _____ day of _____, 2018

ATTEST:

KIMBERLEY A. RAU, MMC
Clerk to the Council

MICHAEL R. LESZCZ
Council President

APPROVED this _____ day of _____, 2018.

CRAIG A. MOE
Mayor