

Barnesville Maryland

Ordinance to Regulate Small Wireless Telecommunications Facilities in the Rights-of-Way

Ordinance No.: 2019-01
Introduced: March 18, 2019
Adopted: April 13, 2019
Effective Date: April 13, 2019

AN ORDINANCE TO ADOPT REQUIREMENTS CONCERNING THE INSTALLATION AND OPERATION OF SMALL WIRELESS TELECOMMUNICATIONS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY.

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality;

WHEREAS, United States Code, Title 47, Section 332, provides that a local government may exercise control regarding the placement, construction, and modification of personal wireless service facilities, provided the local government does not unreasonably discriminate among providers of functionally equivalent services; and does not prohibit the provision of personal wireless services;

WHEREAS, United States Code, Title 47, Section 332, provides that a local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request; and any decision by a local government to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record;

WHEREAS, United States Code, Title 47, Section 1455, provides that a local government may deny a facility request for a modification of an existing wireless tower or base station if it substantially changes the physical dimensions of such tower or base station, including requests for the collocation, removal, or replacement of transmission equipment;

WHEREAS, Section 74.12 of the Charter of the Town of Barnesville authorizes the Town Commissioners to pass such ordinances as it may deem necessary for the preservation of the property, rights, and privileges of the Town and its residents;

WHEREAS, after proper notice to the public, the Town Commissioners introduced the following Ordinance in an open meeting conducted on the 18th day of March, 2019;

WHEREAS, upon consideration of the testimony and evidence presented at the public hearing, the Town Commissioners finds that the foregoing Ordinance would assure the good government of the municipality, protect and preserve the municipality's rights, property, and privileges, preserve peace and good order, secure persons and property from danger and destruction, and protect the health, comfort and convenience of the citizens of the Town of Barnesville, and is necessary for the preservation of the property, rights, and privileges of the Town and its residents.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED, this 13th day of April, 2019, by the Town Commissioners, acting under and by virtue of the authority given it by the Maryland Code and the Town Charter, the Town Commissioners does hereby adopt the foregoing Ordinance and amend the Town Code as follows:

* * *

SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

Sec. X-101. Definitions.

“Collocate” means to install or mount a Small Wireless Facility in the public right-of-way on an existing Support Structure, an existing Tower, or on an existing Pole to which a Small Wireless Facility is attached at the time of the application. “Collocation” has a corresponding meaning.

“Communications Facility” means, collectively, the equipment at a fixed location or locations within the public right-of-way that enables Communications Services, including: (i) radio transceivers, antennas, coaxial, fiber-optic or other cabling, power supply (including backup battery), and comparable equipment, regardless of technological configuration; and (ii) all other equipment associated with any of the foregoing. The term does not include the Pole, Tower, or Support Structure to which the equipment is attached.

“Pole” means a legally constructed pole, such as a utility, lighting, traffic, or similar pole made of wood, concrete, metal or other material, located or to be located within a public right-of-way. The term does not include a Tower or Support Structure.

“Small Wireless Facility” means a Wireless Facility that meets all of the following conditions:

- 1) The structure on which antenna facilities are mounted (i) is forty (40) feet or less in height, including existing antennas, or (ii) is no more than ten (10) percent taller than other adjacent structures, or (iii) is not extended to a height of more than forty (40) feet or by more than ten (10) percent above its preexisting height, whichever is greater; and
- 2) Each antenna associated with the deployment, excluding the associated equipment, is no more than three (3) cubic feet in volume; and
- 3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than fifteen (15) cubic feet in volume; and
- 4) The facility does not require antenna structure registration under Federal law; and
- 5) The facility does not result in human exposure to radiofrequency radiation in excess of applicable safety standards under Federal law.

“Support Structure” means a structure in a public right-of-way other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.

“Tower” means any structure in a public right-of-way, within or outside the boundaries of the Town, built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

“Wireless Facility” means the equipment at a fixed location or locations in the public right-of-way that enables wireless telecommunications services. A Small Wireless Facility is a type of a Wireless Facility. The term does not include the Pole, Tower, or Support Structure on, under, or within which the equipment is located or collocated, or the coaxial, fiber-optic, or other cabling between

Communications Facilities or Poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

“Wireless Services” means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

Sec. X-102. Permit and Access Agreement Required.

- (a) No person shall construct, install, maintain, or perform any work in the public right-of-way related to a Communications Facility or any Tower, without first receiving a Permit and paying any applicable fee, as required under this Title. No permit shall be issued until the applicant has entered into a Right-of-Way Access Agreement in a form approved by the Town, according to this Title. A permit shall not be required for ordinary maintenance and repair, as determined by the Town.
- (b) The Right-of-Way Access Agreement shall set forth, at a minimum, the following: (a) the maximum term of the agreement and the basis for termination; (b) the scope of the authority; (c) the operator’s maintenance obligations; (d) the operator’s indemnification and insurance requirements; (e) emergency contacts and required response to emergencies related to facilities; and (f) the Town’s right to access and inspect the operator’s books and records. And any other provision deemed necessary by the parties therein.
- (c) The Board of Commissioners is the officially designated agency or body of the municipality to whom applications for Right of Way Use for a facility must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Right of Way Uses applied for under this chapter.

Sec. X-103. Permit Application Requirements.

- (a) An application for a permit under this Title must contain or be submitted with the following:
 - 1) The applicant’s name, address, telephone number, and e-mail address, including emergency contact information for the Applicant.
 - 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 description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Title.
 - 4) If applicable, a copy of the authorization for use of the property from the Pole, Tower, or Support Structure owner on or in which the Communications Facility will be placed or attached.
 - 5) Detailed construction drawings regarding the proposed facility.
 - 6) A structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure can adequately support the Collocation (or that the Pole, Tower, or Support Structure will be modified to meet structural requirements) in accordance with applicable codes.
 - 7) A certification by a radiofrequency engineer that the Communications Facility will comply with the radiofrequency radiation emission standards adopted by the Federal Communications Commission.
 - 8) The applicable application fee, bond, Right-of-Way Access Agreement, and right-of-way access fee, as may be adopted and amended by resolution of the Town Commission.

- 9) An affidavit attesting that notice of the application, including a description of the proposed work, has been sent by the applicant to all owners of property within three hundred (300) feet of the proposed Communications Facility and the date of the public information meeting on the application.
 - 10) A copy of the FCC license
- (b) The Town may require the posting of a bond to guarantee the prompt and proper restoration of the public right-of-way. The bond may be in such amount as the President of Commissioners deems necessary, in the President of Commissioners' discretion.
 - (c) In exchange for the privilege of non-exclusive use of the public right-of-way, the applicant shall pay the Town such access fee as may be established and amended by the Town by resolution from time to time.
 - (d) Any permit issued under this Title shall be valid for a period of twelve (12) months after issuance, and may be extended by the President of Commissioners for up to an additional twelve (12) months upon written request of the applicant, prior to permit expiration, if the failure to complete construction is as a result of circumstances beyond the reasonable control of the applicant.
 - (e) No work may be performed except in strict accordance with applicable law and the Town permit and all approved plans and specifications.
 - (f) No permit shall be issued except to a wireless service provider with immediate plans for use of the subject Communications Facility. A permit issued under this Title may not be assigned or transferred.
 - (g) Prior to the submission of an application there shall be a pre-application meeting for all intended applications. The pre-application meeting may be held at the Town Hall if deemed appropriate by the Town. The purpose of the pre-application meeting will be to address:
 - 1) issues that will help to expedite the review and permitting process; and
 - 2) specific issues or concerns the Town or the applicant may have.
 - 3) Proposed dates for a public information meeting.
 - (h) 1. Before making its decision on any Application, the Town will hold a public information meeting on the Application to present the plan and Application; 2. The Applicant shall be responsible for providing notice of said meeting pursuant to the provisions of Section 103(a)9.
 - (i) Costs of the Town's consultants to address any application, including to prepare for and attend any meetings will be borne by the applicant and paid for out of the escrow account created prior to the commencement of any work related to the application preceding.
 - (j) Fees and Charges. Every Applicant shall pay a Permit application fee as set in the Town's fee schedule. This fee shall be paid upon submission of the Application.

Sec. X-104. Standards for Deployment in the Public Right-of-Way.

- (a) No Interference with Right-of-Way. No person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower, so as to interfere with the use of the public right-of-way by the Town, the general public, or other persons authorized to use or be present in or upon the public right-of-way, or otherwise hinder the ability of the Town to improve, modify, relocate, abandon or vacate a public right-of-way or any portion thereof. Unless otherwise approved by the Town, any Communications Facility must be located no closer than: (i) two (2) feet from any curb, sidewalk, or other improvement within the right-of-way; and (ii) five (5) feet from any driveway apron, and be

otherwise located to avoid interference with pedestrian and motorist sightlines and use.

- (b) Unless such is proven to be technologically impossible, the Town requires the co-location of new antenna arrays on existing structures and the use of underground utilities whenever possible as opposed to the construction of new structures and utilities or increasing the height, footprint or profile of a facility beyond the conditions of the approved Right-of-Way use permit for an existing facility as determined by the Town in its sole discretion.
- (c) Compliance with Design Standards; Unsightly or Out-of-Character Deployments. Unless otherwise approved by the Town in order to prevent an effective prohibition of service, in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, or any Tower except in accordance with the following design standards:
 - 1) All Communications Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from public rights-of-way.
 - 2) All radio transceivers, antennas, power supply (including backup battery), and comparable equipment installed on a Tower, Pole, or other Support Structure shall be installed at a height of at least fifteen (15) feet above ground level.
 - 3) No Tower may be located closer than one thousand (1,000) feet of another Tower.
 - 4) No more than five (5) antennas may be located on any single Tower, Pole, or Support Structure.
 - 5) All coaxial, fiber-optic, or other cabling and wires shall be contained inside the Tower, Pole, or other Support Structure or shall be flush-mounted and covered with a metal, plastic or similar material matching the color of the Tower, Pole, or other Support Structure on which it is installed.
 - 6) All Communications Facilities shall comply with such additional design standards as may be set forth in administrative regulations issued by the Town.
- (d) Protection of Trees. Unless otherwise approved by the Town in order to prevent an effective prohibition of service, in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower, so as to interfere with the health of a tree.
- (e) Location Underground. Unless it is not technically possible, all equipment associated with a Small Wireless Facility shall be placed underground in a buried vault, rather than being ground or pole mounted. If underground placement is not technically possible, ground or pole mounted equipment shall be contained in a shroud or cabinet, the design and placement of which shall be approved by the Town. (Amended June 17, 2019)
- (f) Modification of Wireless Facilities. The Town shall approve any request for a modification of an eligible existing Tower or base station that does not substantially change the physical dimensions of such Tower or base station, in accordance with Federal law.
- (g) Restoration of Public Right-of-Way. The applicant shall restore, repair, and/or replace any portion of the public right-of-way that is damaged or disturbed by the applicant's work, to the satisfaction of the Town. Such restoration work shall be completed no later than thirty (30) days following completion of the project, or termination of the Right-of-Way Access Agreement, and shall be warranted by the applicant for a period of one (1) year to be free from defects in materials and workmanship.

- (h) Removal, Relocation, and Abandonment. Within thirty (30) days following written notice from the Town, or such other time as the Town may require, the Town may terminate a Right-of-Way Access Agreement or require other action in connection therewith, and the owner shall, at its own cost and expense, protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of any of its Communications Facilities, Poles, Support Structures or Towers within the public right-of-way, and restore the right-of-way as required by the Town, whenever either: (i) the terms of the Right-of-Way Access Agreement have been violated; (ii) the Communications Facility has not been used for a period of ninety (90) days, or has otherwise been abandoned or not maintained, or (iii) the Town has determined in its sole discretion that such action is necessary for the construction, installation, repair, or maintenance of any public improvement or otherwise necessary for the public health, safety, or welfare. If the owner fails to take action as required by this section, the Town or its contractor may do so and the owner shall be responsible for all costs and expenses incurred by the Town related to such work.
- (i) No signage, banner or advertising located upon facility except for Town signs and/or banners.
- (j) Identifying information from parent owner on pole in plaque not to exceed 4”X6 “in size .

AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Commission, acting under and by virtue of the authority granted to it by the Maryland Code, and the Charter of the Town of Barnesville, that:

- (1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the Ordinance as a whole or any remaining part thereof; and
- (2) This Ordinance shall take effect on the 2nd day of May, 2019 (20 days after adoption).

ATTEST:

THE TOWN OF BARNESVILLE

Town Clerk

Mildred Callear,

President of Commissioners of Barnesville