

**TOWN COUNCIL OF CENTREVILLE
ORDINANCE NO 02-2019**

**AN ORDINANCE OF THE TOWN COUNCIL OF CENTREVILLE
REQUIRING A PERMIT FOR PLACEMENT OF FACILITIES OR
UTILITIES IN THE TOWN RIGHT OF WAY AND ADOPTING SPECIFIC
REGULATIONS APPLICABLE TO ABOVE GROUND FACILITIES
INLCUDING COMMUNICATIONS FACILITIES, SMALL CELL
FACILITIES AND WIRELESS SUPPORT STRUCTURES IN THE RIGHT
OF WAY**

WHEREAS, the purpose of this Ordinance is to establish general procedures and standards, consistent with all applicable federal, state, and local laws, for the issuance of permits in the Town Right of Way and to establish additional criteria applicable to above ground facilities including communications facilities, small cell facilities and wireless support structures in the Town's right of way and to ensure that above ground facilities are carefully designed, constructed, modified, maintained, and removed when no longer in use in conformance with all applicable health and safety regulations; and

WHEREAS, the Town seeks to enhance the ability of utility providers to install facilities in the Town quickly, effectively and efficiently so that residents, businesses and visitors benefit from ubiquitous and robust wireless service availability while still preserving the character of the Town's neighborhoods and corridors; and

WHEREAS, the reasonably regulated and orderly deployment of facilities in the public right-of-way is desirable, but unregulated or disorderly deployment represents a threat to the health, welfare, safety, environment, and property values of the community.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Centreville:

Section 1. The recitals set forth above are incorporated herein by reference and made a part of this Ordinance.

Section 2. Chapter 134 Streets and Sidewalks of the Code of the Town of Centreville is hereby amended to add a new Article III entitled Permits for Placement of Facilities or Utilities, whether public or private, within public roads, public rights-of-way, and public utility easements as is set forth on the Attached Exhibit A.

Section 3. The Town Manager is authorized to adopt a Design Manual provided the Design Manual shall be consistent with the Code and other applicable state and federal law.

Section 4. If any section, clause, paragraph, sentence or phrase of the Ordinance or the application thereof to any person, property, or circumstance is held invalid or unconstitutional by a court of

competent jurisdiction, the invalidity or unconstitutionality shall in no way affect other provisions or any other application of this Ordinance which can be given effect without the invalid or unconstitutional provision or application, and for this purpose the provisions of this Ordinance are declared severable.

Section 5. This Ordinance shall become effective twenty days after its enactment.

ATTEST:

THE TOWN COUNCIL OF CENTREVILLE

Carolyn M. Brinkley
Town Clerk

Jim A. Beauchamp, President

First Reading: _____

Jeffrey C. Morgan, Vice President

Second Reading: _____

Enacted: _____

Effective: _____

(21st calendar day after enactment)

Timothy E. McCluskey, Member

DRAFT

EXHIBIT A TO ORDINANCE 02-2019

Article III. Permits for Placement of Facilities or Utilities, whether public or private, within public roads, public rights-of-way, and public utility easements

§134-10. Definitions.

The terms, phrases, words, and their derivations used in this Chapter shall have the meanings given in this Section.

Abandoned means any facilities or structures (including by way of example but not limited to poles, wires, conduit, manholes, handholes, cuts, network nodes and node support poles, or portion thereof) that are unused or in a non-functioning condition for a period of one hundred eighty (180) days without the Operator otherwise notifying the Town and receiving the Town's approval.

Antenna means communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

Applicant means any Person applying for a permit under this Chapter including the applicant's officials, employees, agents, and contractors.

Collocation or Collocate means to install, mount, maintain, modify, operate, or replace wireless facilities on a Wireless Support Structure.

Decorative Pole means a pole, arch, or structure other than a street light pole placed in the Right of Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following (a) electric lighting; (b) specially designed informational or directional signage; (c) temporary holiday or special event attachments.

Design Manual means those detailed application requirements, design guidelines, specifications and examples for the design and installation of structure, facilities, or utilities in the Right of Way adopted by the Town Manager.

Operator means a wireless service provider, cable operator, or a video service provider that operates a Small Cell Facility and provides wireless service. Operator includes a wireless service provider, cable operator, or a video service provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(2), and services that are fixed in nature or use unlicensed spectrum.

Permit means the non-exclusive grant of authority issued by the Town of Centreville to place facilities or utilities in public roads, public right of way or utility easements in accordance with these the Code of the Town of Centreville and corresponding regulations and standards.

Permittee means the owner and/or Operator issued a permit to work in or install facilities, equipment or structures in the road, right of way or utility easement under this chapter and the

person that owns facilities, equipment or structures permitted to be installed under this chapter, including the permittee's officials, employees, agents, and contractors.

Right of Way means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the Town.

Small Cell Facility A facility designed to provide wireless voice, data and/or image transmission in concentrated areas that meets both of the following qualifications:

- A. Each antenna could fit within an enclosure of no more than three (3) cubic feet in volume; and
- B. All other wireless equipment associated with the facility is cumulatively no more than twenty-eight (28) cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

Town means the Town Council of Centreville.

Utility Pole means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. "Utility pole" excludes street signs and Decorative poles.

Wireless Support Structure means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting Small Cell Facilities.

§134-11. Permit required for placement of facilities or utilities, whether private or public, in the Right of Way required.

- A. It shall be unlawful for any person to obstruct, grade, dig, excavate or construct within, over, or under any Right of Way, without first obtaining a permit from the Town.
- B. It shall be unlawful for any person to install, repair or maintain, within or under any Right of Way, any privately-owned facility, structure, fixture, equipment, conduit, cable, or pipe without first obtaining a permit from the Town.
- C. General findings required for issuance of all permits pursuant to this Section. A permit shall not be issued pursuant to this Section until the following criteria are satisfied as determined by the Town Manager in the Town Manager's reasonable discretion and judgment:

- (1) The structure, facility or utility shall comply with all requirements set forth in a Design

Manual adopted by the Town Manager provided such Design Manual is in accordance with and by the authority granted by the Town Council, the Code of the Town of Centreville, and state and federal law.

- (2) A permit shall not be issued for a proposed installation when the location selected in the application is in an area where there is an overconcentration of structures or facilities in, on or over the Right of Way.
- (3) The structure or facility shall not obstruct pedestrian or vehicular traffic flow or sight lines, and not obstruct parking or the entering or exiting of persons from vehicles parked in the Right of Way.
- (4) The proposed installation shall comply with the Americans with Disabilities Act.
- (5) A proposed pole shall have a diameter and height not greater than the maximums established by the Town Manager, but be tall enough to ensure that all attached equipment is at least fifteen (15) feet above ground.
- (6) A replacement pole shall be located within two (2) feet of the base of the previously existing pole and at the same distance from the edge of the travel lane, unless the Town Manager determines that a different location is preferable to facilitate pedestrian use of the Right of Way, vehicle and pedestrian sight lines, or the Town's use of the Right of Way.
- (7) An equipment cabinet shall comply with size limits and placement requirements established by the Town Manager, including maximum volume limits for all equipment cabinets associated with a pole.
- (8) An antenna shall be the least visible antenna possible to accomplish the coverage objectives.
- (9) Antennas, antenna mounts and cabinets shall be situated, screened, shrouded, concealed or treated to minimize visual and acoustic impact (including having antennas flush mounted to the extent reasonably feasible), as determined by the Town Manager. All antenna mounts shall be designed so as not to preclude future collocation by the same or other operators or carriers.
- (10) Antennas, antenna mounts, cabinets and poles shall have a color and finish to minimize the visual impact to the neighborhood, taking into consideration historic area designation and color and design schemes for Town facilities, commercial districts, and other areas with aesthetic guidelines.
- (11) All equipment shall be designed to be resistant to unauthorized access, climbing, vandalism, and other activities that result in hazardous situations, interception of communications, or attractive nuisances.

- (12) For all excavations, the Permittee shall, within the time specified in the permit or, if no time is specified therein, within ten (10) days after completion of the work authorized by the permit, adequately refill with the same type of material as had been removed or with other materials approved by the Town Manager, without disturbing or damaging existing Town infrastructure, and restore the surface of the place so excavated to as good condition as existed prior to excavation.
- (13) The applicant shall post any required bonds or other financial security to insure the completion, safety, workmanship and restoration of the work and/or work area so permitted.
- (14) The Town Manager may impose such conditions as are necessary to protect the public health, safety and welfare.
- (15) All facilities shall be subject to relocation at the expense of the Permittee in the event that the privately-owned facility is found to conflict with future public facilities or with access to repair, replace or maintain existing or future public facilities.
- (16) Prior to the issuance of a permit, the permittee shall execute a written agreement which may be a franchise, right-of-way use agreement, or license agreement as required by the Town depending on the particular use being made. All agreements shall include provisions for insurance and indemnification as is reasonably necessary to protect the interests of the Town.
- (17) The permittee shall obtain and maintain all required consents, licenses or franchises from the Town with respect to the facilities that are the subject of the permit.
- (18) The application shall comply with all other applicable sections of this Article III.
- (19) Nothing in this Article precludes or limits the Town from applying its generally applicable power to protect the health, safety, and welfare when granting a permit for activities within the public roads, public rights-of-way, and public utility easements.

§134-12. Additional Provisions pertaining to above ground facilities including communications facilities, communications support structures, Small Cell Facilities and Wireless Support Structures.

All above ground facilities including communications facilities, communications support structures, Small Cell Facilities and Wireless Support Structures shall meet the following requirements:

- A. Comply with all of the provisions for a permit as required in this Chapter.
- B. Communications facilities may only be installed on existing utility poles, and only entities certified by the Maryland Public Service Commission pursuant to the Annotated Code of Maryland, Public Services and Utilities, Division I, Title 7 or Title 8, as amended, may erect

or contract to erect replacement poles in the Right of Way. To allow the installation of an additional or replacement pole, the Town Manager must find that:

- (1) Additional communications facilities are necessary in the location of the proposed pole to provide adequate telecommunications coverage; and
 - (2) Existing poles do not have the capacity for the necessary communications facilities.
- C. If proposed to be attached to a privately-owned utility pole, be authorized by an executed attached agreement with the utility pole owner, setting forth, at a minimum, the title, date and term of the agreement.
 - D. Be necessary in the location of the proposed facility to provide adequate telecommunications coverage.
 - E. Allow up to but not more than three antennas per pole;
 - F. Have no exterior wiring if the pole on which it is mounted can accommodate internal wiring or, if necessary, have exterior wiring enclosed in a shielded conduit; and
 - G. Upon installation of the antenna, the radio frequency or electromagnetic waves emissions for the antenna of, if applicable, the cumulative emissions from the new antenna and any collocated antennas, shall be tested for compliance with federal limits. If an antenna exceeds federal emission limits or causes the antennas collocated on a support structure to exceed federal emission limits, the newly installed antenna must be removed by the applicant within five (5) days at its own expense.
 - H. Any new light pole erected for purposes of mounting a facility shall be designed consistent with other existing light poles within the surrounding area; other types of new poles shall not be permitted to be installed for purposes of mounting a facility.
 - I. Facilities shall not interfere with public safety telecommunications. Any application for building and/or use and occupancy permit for a facility shall be accompanied by an intermodulation study which provides a technical evaluation of all proposed transmissions and indicates all potential interference problems. Prior to the introduction of any new service, the owner/operator shall provide the Town at least 10 calendar days' notice in advance of such service and allow the Town to monitor interference levels during the testing process.
 - J. Use of backup power sources. The use of diesel generator or other backup power sources shall be limited to actual power-outage events and any operation necessary for testing and maintenance. Permanent or continuous use of backup power sources is prohibited.
 - K. In residential areas, no installation may be located within 300 feet radius of another similar type installation including any such installation located on private property, except in the case of a cluster installation that does not result in a substantial increase in size. In no case may more than four antennas be clustered on a single pole in a residential area.

L. An applicant for a permit for a including a Small Cell Facility or a Wireless Support Structure, shall, in addition to any other requirements contained herein and in the Design Manual, include the following:

- (1) A report from a qualified and licensed professional Manager that describes the design, including cross sections and elevations; documents the height above grade for the facility and potential mounting positions for collocated antenna (if any) and the minimum separation distances between antenna; describes the location of the facility, including the number of additional antenna that can be accommodated (if any); documents what steps the applicant will take to avoid interference with established public safety telecommunications; includes an engineer's stamp and registration number; includes architectural renderings of the facility illustrating what it will look like at the proposed location and from various vantage points, as may be required by the Town Manager.
- (2) The applicant shall specify whether the application is subject to any Federal Communications Commission applications requirements or federal or state law, and if so, identify the law and the applicable requirements.
- (3) The applicant shall provide proof that it is a licensed provider and will comply with all federal, state, and Town laws and regulations, including those relative to wireless service.
- (4) A master report plan of applicant's current proposed communication network including an illustrative wireless communications map detailing existing and proposed wireless coverage, antenna sites and collocation sites.
- (5) The application shall include the number of potential collocation sites on the proposed facility.
- (6) The applicant shall provide a safety report demonstrating that the structure can safely accept installation of the antennas and additional communication facilities.

§134-13. Application and Approval Process.

The Town Manager may establish more specific details of the application requirements and process in the Design Manual. At a minimum, the following provisions shall be applicable for all requests for a permit under this Article.

A. Pre-Application Conference. The Town requires pre-submittal conferences to meet with potential Applicants and discuss projects on a conceptual level. The conference is intended to identify the correct application type and content requirements for any given project, and also to create an informal forum in which Applicants and the Town can discuss any concerns that should be addressed as soon as possible to avoid any unnecessary delays in the processing of an application and issuance of a permit. The requirement for a pre-submittal conference may

be waived by the Town Manager based on necessity and prior experience with the Applicant.

- B. Required Application Materials. Unless otherwise required by state or federal law, the application shall be submitted to the Town Manager with the applicable fees and all required materials and information in accordance with the requirements of this Article and the Design Manual in order for the application to be considered complete. As part of the Application, the applicant shall specify whether the application is subject to any Federal Communications Commission applications requirements or federal or state law, and if so, identify the law and the applicable requirements.
- C. Fees. The fees associated with the permit request shall be those fees as may be adopted by resolution of the Town Council as part of the Schedule of Fees. The permit fee shall be in addition to, and not in lieu of, any fee, rent, license or franchise fee required to occupy or place facilities on or attached to the Town property, facilities or Right of Way.

§134-14. Safety Requirements.

- A. Prevention of failures and accidents. Any Person who places facilities or utilities in the Right of Way shall at all times employ ordinary and reasonable care and install and maintain in use industry standard technology for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public.
- B. Compliance with fire safety and FCC regulations. All facilities, wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, all FCC, state, and local regulations, and in such manner that will not interfere with the use of other property.
- C. Changes in state or federal standards and regulations. If state or federal standards and regulations are amended, the owners of the facilities or utilities governed by this chapter shall bring any facilities and/or utilities into compliance with the revised standards and regulations within six (6) months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring the facilities or utilities into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.
- D. Indemnification. Any Operator who owns or operates facilities or utilities in the public road, public right-of-way or public utility easement shall indemnify, protect, defend, and hold the Town and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the Operator who owns or operates facilities or utilities in the public road, public right-of-way or public utility easement, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective

officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities or utilities in the public road, public right-of-way or public utility easement.

- E. Surety bond or equivalent financial tool for cost of removal. All owners must procure and provide to the Town a bond, or must provide proof of an equivalent financial mechanism, to ensure compliance with all provisions of this Chapter in an amount as set by the Town Manager. The bond must be maintained for as long as the owner has facilities or utilities in the public road, public right-of-way or public utility easement. The bond or equivalent financial method must specifically cover the cost of removal of unused or Abandoned facilities or utilities or damage to Town property caused by an Operator or its agent of each facility or utility in case the Town has to remove or pay for its removal. Two acceptable alternatives to a bond include a cash deposit and a letter of credit.
- F. Generally Applicable Health and Safety Regulations. All facilities or utilities in the public road, public right-of-way or public utility easement shall be designed, constructed, operated and maintained in compliance with all generally applicable federal, state, and local health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions & engineering.

§134-15. Liability and Signal Interference.

- A. No Liability. The Town shall not be liable to the Operator by reason of inconvenience, annoyance or injury to the facilities or utilities whether ground or pole-mounted equipment or activities conducted by the Operator therefrom, arising from the necessity of repairing any portion of the Right of Way, or from the making of any necessary alteration or improvements, in or to, any portion of the Right of Way, or in, or to, the Town's fixtures, appurtenances or equipment.
- B. Signal Interference Prohibited. In the event that an Operator's facility or utility interferes with the public safety radio system, or the Town or State of Maryland's traffic signal system, then the Operator shall, at its cost, immediately cooperate with the Town to either rule out Operator as the interference source or eliminate the interference. Cooperation with the Town may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.

§134-16. Requirements for Removal, Replacement, Maintenance and Repair.

- A. Replacement of Municipal-Owned Wireless Support Structure.
 - (1) When necessary to accommodate a facility or utility, the Town may require, in response to an application, to Collocate a facility or utility on a Town-owned Wireless Support Structure, the replacement or modification of the Wireless Support Structure at the Operator's cost if the Town determines that replacement or modification is necessary for

compliance with construction and safety standards. Such replacement or modification shall conform to these Design Manual. The Town may retain ownership of the replacement or modified Wireless Support Structure.

- (2) Accommodation of reservation of space for future public safety or transportation uses. If the Town has reserved space for future public safety or transportation uses on the Town-owned Wireless Support Structure, the replacement or modification must accommodate the future use.

B. Removal or Relocation Required for Town Project.

- (1) Operator shall remove and relocate the permitted facility, utility and/or Wireless Support Structure at the Operator's sole expense to accommodate construction of a public improvement project by the Town.
- (2) If Operator fails to remove or relocate the facility, utility, and/or Wireless Support Structure or portion thereof as requested by the Town within 120 days of the Town's notice, then the Town shall be entitled to remove the facility, utility and/or Wireless Support Structure, or portion thereof at Operator's sole cost and expense, without further notice to Operator.
- (3) Operator shall, within 30 days following issuance of invoice for the same, reimburse the Town for its reasonable expenses incurred in the removal (including, without limitation, overhead and storage expenses) of the facility, utility and/or Wireless Support Structure, or portion thereof.

C. Removal Required by Town for Safety and Imminent Danger Reasons.

- (1) Operator shall, at its sole cost and expense, promptly disconnect, remove, or relocate the applicable facility, utility and/or Wireless Support Structure within the time frame and in the manner required by the Town if the Town reasonably determines that the disconnection, removal, or relocation of any part of a facility, utility and/or Wireless Support Structure (a) is necessary to protect the public health, safety, welfare, or Town property, or (b) Operator fails to obtain all applicable licenses, permits, and certifications required by law for its facility, utility and/or Wireless Support Structure.
- (2) If the Town Manager reasonably determines that there is imminent danger to the public, then the Town may immediately disconnect, remove, or relocate the applicable facility, utility and/or Wireless Support Structure at the Operator's sole cost and expense.

D. Removal/Abandonment of Facilities.

- (1) Operator shall remove facilities, utilities and/or Wireless Support Structures when such facilities are Abandoned regardless of whether or not it receives notice from the Town.

Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 60 days of the facility, utility and/or Wireless Support Structure being Abandoned, or within 60 days of receipt of written notice from the Town. When Operator abandons permanent structures in the Right of Way, the Operator shall notify the Town in writing of such abandonment and shall file with the Town the location and description of each facility, utility and/or Wireless Support Structure Abandoned. Prior to removal, Operator must make application to the Town and receive approval for such removal. Operator must obtain a right of way work permit for the removal. The Town may require the Operator to complete additional remedial measures necessary for public safety and the integrity of the public road, public right-of-way or public utility easement.

- (2) The Town may, at its option, allow a Wireless Support Structure to remain in the Right of Way and coordinate with the owner to transfer ownership of such Wireless Support Structure to the Town, instead of requiring the owner and/or Operator to remove such Wireless Support Structure.
- (3) Restoration. Operator shall repair any damage to the Right of Way, any facilities located within the Right of Way, and/or the property of any third party resulting from Operator's removal or relocation activities (or any other of Operator's activities hereunder) within ten (10) calendar days following the date of such removal or relocation, at Operator's sole cost and expense. Restoration of the Right of Way and such property must be to substantially the same condition as it was immediately before the date Operator was granted a permit for the applicable location, or did the work at such location (even if Operator did not first obtain a permit). This includes restoration or replacement of any damaged trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be subject to the sole, reasonable approval of the Town.

§134-17. Penalty.

- A. For failure to comply with any provision of this Chapter or the Design Manual, the penalty shall be a municipal infraction punishable by fine specified in Section 304 of the Charter of the Town of Centreville. Each day such violation continues shall be considered a separate offense.
- B. In addition to the municipal infraction provided in (A), the Town may also pursue the remedies of revocation of the permit or specific performance of the violated provision.
- C. The Town Manager may excuse violations of this Chapter for reasons of Force Majeure.
- D. For purposes of this section, "Force Majeure" means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Maryland or any of their departments, agencies, or political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably

within the control of the Permittee, but only to the extent the disabled party notifies the other party as soon as practicable regarding such Force Majeure and then for only so long as and to the extent that, the Force Majeure prevents compliance or causes non-compliance with the provisions hereof.

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