Town of Garrett Park
Emergency Ordinance to Regulate
Small Wireless Telecommunications Facilities in the Rights-of-Way

Resolution No.: 2019-3
Introduced: January 14, 2019
Adopted: January 14, 2019
Effective Date: January 14, 2019

AN ORDINANCE TO ADD A NEW CHAPTER 12 TO THE CODE OF ORDINANCES 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, the Town of Garrett Park holds and maintains the streets and highways within its municipal boundaries in trust for the benefit, use, and convenience of the general public;

WHEREAS, Section 78-17 of the Charter of the Town of Garrett Park authorizes the Town Council to pass ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as it may deem necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town and for such other police or health matters as it may deem necessary;

WHEREAS, Section 400 of the Ordinances of the Town of Garrett Park recognizes that the Town has been designated in the National Register of Historic Places since 1975 and that the Town desires to maintain its historic character consistent with this designation;

WHEREAS, Section 717 of the Ordinances of the Town of Garrett Park recognizes the Town's creation of the Garrett Park Arboretum, as specifically defined in Section 717(b)(2) to include "all trees, shrubs, woody plants, and other herbaceous material planted or maintained by the Town on any and all public land owned by the Town";

WHEREAS, Section 715(b) of the Ordinances of the Town of Garrett Park states that "The planting, maintenance and removal of trees in the unpaved street areas dedicated to public use shall be the responsibility of the Council and trees may be planted in or removed from such an area only with the explicit consent of the Council";

WHEREAS, Order 18-133 issued by the Federal Communications Commission, on September 26, 2018, effective January 14, 2019, requires a local government to provide in writing any aesthetic standards that govern the installation of small wireless telecommunications facilities in the public rights-of-way; and the Town seeks to accomplish the same by said effective date;

WHEREAS, after proper notice to the public, the Town Council introduced the following Ordinance in an open meeting conducted on the 14th day of January 2019; and

WHEREAS, upon consideration of the testimony and evidence presented at the public hearing, the Town Council finds that the ordinance as hereinafter set forth is necessary for the good government of the Town; for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents and visitors in the Town.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED, this 14th day of January 2019, by the Town Council, acting under and by virtue of the authority given it by the Maryland Code and the Town of Garrett Park Charter, the Town Council does hereby adopt the foregoing Ordinance and amend the Town Code as follows:

* * *

Sec. 718. Bell Atlantic Telephone Company

* * *

Cross Reference: See Chapter 12 (concerning the regulation of small wireless telecommunications facilities)

* * *

Sec. 719. Excavations by Public Utilities

* * *

Cross Reference: See Chapter 12 (concerning the regulation of small wireless telecommunications facilities)

CHAPTER 12

SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

Sec. 120. Intent and Purpose.

It is the intent of the Town Council to promote the Town's public health, safety, and general welfare by providing regulatory requirements for the installation and maintenance of small wireless telecommunications facilities in the public rights-of-way. The purpose of this Chapter is to regulate the same to enhance vehicular and pedestrian safety and avoid interference with motorist and pedestrian sightlines; to protect and minimize damage to trees and plants of the Garrett Park Arboretum; to reduce visual clutter and prevent unsightly or out-of-character deployments consistent with the goals of the Town's National Register of Historic Places designation; to preserve the value of property and the character of the neighborhood; and to otherwise protect the health, safety, and general welfare of the town and its residents, and the public at large.

Sec. 121. Definitions.

"*Base Station*" means a structure or equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term does not include a Tower or any equipment associated with a Tower.

"*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.

"*Right-of-Way*" means any unpaved street area dedicated to public use.

"*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 fifty (50) 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 fifty (50) 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 twenty-eight (28) 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 Service Provider*" or "*Provider*" means a person who provides wireless services.

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

Sec. 122. 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 Chapter. 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 Chapter. 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 bases 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.**

Sec. 123. Permit Application Requirements.

(a) **An application for a permit under this Chapter 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 Chapter;**
(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; and**
(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 Council.**

(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 Town Manager deems necessary, in the Town Manager's 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 and recertification fees as may be established and amended by the Town by resolution from time to time.**

(d) **Any permit issued under this Chapter shall be valid for a period of twelve (12) months after issuance.**

(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 Chapter may not be assigned or transferred.**

Sec. 124. 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 new Tower or Support Structure must not confront a driveway apron and must be located no closer than five (5) feet from any adjacent driveway apron and be otherwise located to avoid interference with pedestrian and motorist sightlines and use.**

(b) ***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, Support Structure, 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, and so as to not interfere with motorist and pedestrian sightlines, especially at intersections.**

(2) **Any new Tower or Support Structure shall be located on the same side of the street as nearest primary electrical distribution lines.**

(3) **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.**

(4) **No Tower may be located closer than one thousand (1,000) feet of another Tower.**

(5) **No more than five (5) antennas may be located on any single Tower, Pole, or Support Structure.**

(6) **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.**

(7) **The Provider shall, at its sole cost and expense, keep and maintain its Communications Facilities, Poles, Support Structures and Towers in the Public Right-of-Way in a safe condition, and in good order and repair.**

(8) **Any assignment/subleasing/sublicensing of a Communications Facility must comply with the terms of this Chapter.**

(9) **All Communications Facilities shall comply with such additional design standards as may be set forth in administrative regulations issued by the Town.**

(10) **All Communications Facilities shall be subject to an annual recertification and recertification fee to verify compliance with applicable legal standards regarding emissions, standards established by this Chapter, and design standards set forth in administrative regulations.**

(c) ***Protection of Trees.***

(1) **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 structure and health of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Manager, in consultation with the Town Arborist and Arboretum Committee as appropriate.**

(2) **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 require the removal of a tree or other plant material within the Garrett Park Arboretum without approval by the Town Council, in consultation with the Town Arborist and Arboretum Committee as appropriate.**

(d) ***Location Underground.*** **[Reserved].**

(e) ***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.**

(f) ***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.**

(g) ***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.**

Sec. 125. Enforcement.

(a) **Any violation of the provisions of this Chapter shall be a municipal infraction subject to the imposition of a fine of $100 for any single initial violation, and $200 for each day or a repeat or continuing violation.**

(b) **Each day that a violation continues shall be a separate offense.**

(c) **In any case where the Mayor has reason to believe that there may have been an unremedied violation of this Chapter, the Mayor may issue a Notice of Violation, setting forth the information required in Chapter 9 of this Code, and the Town may seek abatement as provided therein or as otherwise authorized by law.**

AND BE IT FURTHER ORDAINED AND ORDERED, by the Town Council, acting under and by virtue of the authority granted to it by the Maryland Code and the Town of Garrett Park Charter, 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 immediate effect on this 14th day of January 2019.

Attest:

I hereby attest that the above Ordinance was duly adopted by the Town Council on the 14th day of January 2019, by a vote of 5 in favor and 0 in opposition.

Andrea Fox

Andrea Fox, Town Manager
Town of Garrett Park

Kacky Chantry

Kacky Chantry, Mayor
Town of Garrett Park

Date: 1/14/19

Underline indicates new material
~~Strikethrough~~ indicates material deleted
* * * indicates material unchanged