

Commissioners of Bel Air
Agenda
March 4, 2019

Ordinance 789-19

Enact Chapter 465 “Wireless Facilities and Utilities in the Public Ways”

RECOMMENDED MOTION:”...that Ordinance No. 789-19 enacting Chapter 465, Wireless Facilities and Utilities in the Public Ways regulating the installation of small cell facilities, wireless support structures and other utilities in the public right-of-way be received by the Bel Air Board of Town Commissioners.

I. BACKGROUND

During the past couple of years, wireless infrastructure companies have approached the Town to locate a new type of digital communication infrastructure commonly referred to as ‘Small Cell Technology’ in Bel Air. These facilities are designed to provide smaller but more numerous structures typically located in the right-of-way on existing utility poles. The goal of this technology is to provide 5G (or 5th Generation) digital data transfer to consumers at a much greater speed. The first locations to get access to 5G are urban and suburban areas such as Bel Air. In an effort to standardize the provision of service, the Federal Communications Commission (FCC) issued a declaratory ruling on September 26, 2018 which became effective January 14, 2019. This ruling removed the control from local government to regulate some portions of small cell facility installation. The FCC order includes recommendations for fees, provision of a time period for permit issuance and limitations on the prohibition of such technology.

II. PRIMARY ISSUES

The FCC order does not address the specific location, appearance or design of the wireless facilities and provides for additional time (April 12, 2019) for local or State government to enact such requirements to assist in the regulation of permit issuance. The enactment of Chapter 465 will address the administration of Small Cell Permit applications and create a protocol to enforce installation, replacement and maintenance of this technology within Town right-of-way. Resolution 1124 will adopt placement and design criteria to assist in the review of permit applications and Resolution 1125 and 1126 will establish fees and fines in accordance with FCC provisions.

III. DISCUSSION/EXPLANATION

The Town has worked with the Maryland Municipal League (MML) to create Ordinance 789 and reviewed other legislation to make sure Bel Air is consistent in the enforcement of small cell facilities. It is the intention of the Town to make our citizens receive this beneficial service quickly while protecting the character and appearance of the community.

IV. RECOMMENDATION

The staff recommends receipt of Ordinance No. 789-19 enacting Chapter 465, Wireless Facilities and Utilities in the Public Ways is received by the Board of Town Commissioners.

A public hearing will be held on Monday, March 18, 2019 at 7:30 p.m.
at Bel Air Town Hall.

Ordinance No. 789-19

An Ordinance to Enact Chapter 465
Wireless Facilities and Utilities in the Public Ways

WHEREAS, The Local Government Article of the Annotated Code of Maryland authorizes the Board of Town Commissioners to pass ordinances to assure the protection of the health, safety and welfare of its citizens, and

WHEREAS, Sections 253 and 332 of the Communications Act, local governments are authorized to control the placement, construction and modification of wireless facilities and manage the use of public ways; and

WHEREAS, Section 401, Provision 47 of the Charter for the Town of Bel Air states that the Board of Town Commissioners shall have control of all public ways in the Town; and

WHEREAS, the Town of Bel Air desires to regulate the safe, efficient and well-ordered deployment of Small Cell Facilities, Wireless Support Structures and other utilities within the Town public ways; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Town Commissioners that Chapter 465 of the Town Code is established to reflect the following:

Article I Wireless Facilities

§465-1 Definitions.

A. General use of terms.

- (1) The terms, phrases, words, and their derivations used in this chapter shall have the meanings given in this section.
- (2) Words not defined shall be given their common and ordinary meaning.

B. Defined terms.

- (1) Abandoned means any Small Cell Facility, Wireless Support Structure or other utility in the Town right-of-way that cease operation and are unused for a period of twelve (12) months without the operator otherwise notifying the Town and receiving approval.

- (2) Antenna means communications equipment that transmits or receives electromagnetic radio frequency signals used in the provision of wireless service.
- (3) Applicant means any Person applying for a permit under this chapter.
- (4) Building Permit means a permit issued in accordance with provisions of Chapter 145.
- (5) Collection or Collocate means to install, mount or modify a small cell facility on an existing wireless support structure to which an existing small cell facility is attached at the time of application.
- (6) Decorative Pole means a pole, arch, street light or structure in the right-of-way designed for aesthetic purposes and on which no attachments have been placed except for the following: (a) electric lighting; (b) specifically designed informational or directional signage; and (c) temporary holiday, special event or ornamental attachments.
- (7) Design Guidelines means detailed specifications entitled ‘Wireless Facilities and Utilities Design Guidelines’ adopted by the Town for the location, design and installation of small cell facilities, wireless support structures and other utilities.
- (8) License Agreement means a written authorization or franchise agreement from the Town allowing the installation of wireless backhaul facilities within the Town right-of-way or municipal property.
- (9) Operator means a wireless service provider, cable operator, or a digital service provider that operates a wireless facility.
- (10) Permittee means the owner and/or operator that have been issued a small cell permit and/or other related permits pursuant to this chapter.
- (11) Right-of-Way means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public alley, public easement, and any other land dedicated or otherwise designated for public use, which is owned or controlled by the Town of Bel Air.
- (12) Small Cell Facility means equipment associated with a wireless facility that meets the following requirements:
 - (a) Antenna located inside an enclosure of not more than three (3) cubic feet in volume or an Antenna with exposed elements that could fit within an enclosure

of not more than three (3) cubic feet in volume and not exceeding six (6) feet in length.

- (b) All other wireless equipment associated with the facility that is less than twenty-eight (28) cubic feet in volume. The equipment shall include all 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.
- (13) Small Cell Permit means the non-exclusive grant of authority issued by the Town to enter Town right-of-way and install a small cell facility and/or a wireless support structure in accordance with the provisions of this chapter.
- (14) Town means the Town of Bel Air, Maryland.
- (15) Utility Pole means a structure that is designed or used for the purpose of carrying lines, cables, or wires for electric or telecommunications service. "Utility Pole" excludes traffic signal poles, street signs and decorative poles.
- (16) Utility Permit means a permit issued in accordance with provisions of Chapter 410.
- (17) Wireless Facility means all equipment within the public right-of-way that enables wireless communications between user equipment and a communications network including equipment such as radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration. Also included is the structure which the equipment is attached and the right-of-way area which improvements may be located.
- (18) Wireless Support Structure means a pole, such as a monopole, street light pole, traffic signal pole, or utility pole capable of supporting small cell facilities. Wireless Support Structure excludes: (a) any pole or structure located outside the public right-of-way; (b) any decorative pole as defined in this chapter; and (c) any freestanding sign.
- (19) Wireless Backhaul Facility means a facility used for the transport of communications service or any other electronic communications by coaxial, fiber-optic cable, or any other wire.

§465-2 General Requirements

- A. General Requirements. The following requirements shall apply to all small cell facilities, wireless support structures and other utilities proposed within the Town right-of-way.

- (1) No Person shall occupy or use the right-of-way without first obtaining requisite consent of the Town. Before placing small cell facilities, wireless support structures or other utilities in the right-of-way, an operator must apply for and receive a Small Cell Permit under this Chapter, a Building Permit under Chapter 145 and/or a Utility Permit under Chapter 410 as deemed applicable by the Town. This includes collocating small cell facilities, constructing, modifying, or replacing new wireless support structures and small cell facilities, and removing such facilities from the right-of-way.
- B. This Chapter establishes conditions of occupancy and construction for all users of Town right-of-way, including those seeking to perform work, excavation, provision of services, or to install, construct, maintain, or repair a wireless facility including poles, utility poles, wires, equipment or fixtures of any kind by any person including, but not limited to, public service companies, adjacent landowners, and entities that the Town may permit to place or maintain a permanent facility in the right-of-way including, but not limited to, providers of cable services.
- C. Except as otherwise provided, all permit applications governed by this Chapter for placement, attachment, construction, reconstruction, repairs or maintenance of any facility in the right of way are made to the Deputy Director of Public Works.
- D. Nothing in this Chapter precludes the Town from applying applicable health, safety, and welfare regulations when reviewing small cell permit applications.
- E. The provisions of this Chapter shall not be construed to supersede any applicable Federal or State law or applicable license agreement or easements including utilities governed under Maryland Annotated Code, Public Utilities Article.

§465-3 Application and Approval Process

- A. The Deputy Director of Public Works is authorized and charged with administering, interpreting, and enforcing the provisions of this Chapter. The Director of Public Works may grant waivers, adopt procedural rules, apply technical details as deemed necessary and will review all applicant appeals of the Deputy Director's code interpretation.
- B. To the extent required by law, this Chapter is intended to treat each applicant or right-of-way user in a competitively neutral and nondiscriminatory manner, with considerations that may be unique to the technologies, situation and legal status of each particular applicant or request for right-of-way use.
- C. A conference prior to application submittal to discuss the project is recommended by the Town to identify the correct application type and content requirements. This conference

may be waived by the Deputy Director of Public Works based on prior experience with the Applicant.

- D. Unless otherwise required by State or Federal law, the application shall be submitted to the Department of Public Works with the applicable fee(s) and all required materials and information in accordance with this Chapter in order for the application to be considered complete.
- E. **Application Fee.** The Town will assess a fee for review of each permit request associated with a small cell facility and/or wireless support structure as prescribed in the Town fee schedule as amended.
- F. **Right-of-way Access Fee.** The Town will assess an annual fee for small wireless facilities and wireless support structures located within the right-of-way as prescribed under the Town fee schedule as amended.

§465-4 Design Guidelines

- A. Guidelines with objective criteria applied in a non-discriminatory manner that match the aesthetics and character of the neighborhood are referenced in the “Wireless Facilities and Utilities Design Guidelines”. Each application for a small cell permit must address the standards set forth in these design guidelines.
- B. The provisions in this section shall not limit the discretion of the Deputy Director of Public Works to reference and make publicly available other information, materials, forms or requirements in addition to the design guidelines.
- C. The Director of Public Works may grant a limited waiver from strict compliance if the waiver request meets the spirit of the provisions of this Chapter and is necessary for provision of wireless service.
- D. Changes may be made to the design guidelines through Resolution by the Bel Air Board of Town Commissioners.

§465-5 Safety Requirements

- A. In general. An applicant must obtain all necessary licenses and permits from the Town before performance of any work in the right-of-way. This includes installation, modification, relocation or removal of a small cell facility, relocation or removal of an existing wireless support structure, installation of a new wireless support structure, or collocation on an existing wireless support structure in the right-of-way. Permittees and occupants must comply with applicable standards and any permit conditions with respect

to the facilities or work performed in connection with the facilities. Town permits are not transferable without Town authorization. It is the responsibility of all applicants and permittees to contact Miss Utility prior to any excavation.

- B. Prevention of failures and accidents. An operator of a small cell facility and/or wireless support structure shall employ reasonable care to install and maintain industry standard technology for avoiding failures and accidents to prevent damage, injury, or nuisance to the public.
- C. Compliance with fire safety and FCC regulations. Wireless facilities shall be installed and maintained in compliance with applicable codes and in such manner that will not interfere with the use of the right-of-way or other property.
- D. Changes in State or Federal regulations. If State or Federal regulations are amended, the owners of the small cell facility or wireless support structures shall bring any facility or structure into compliance within six (6) months of the effective date of the new regulations unless a different compliance schedule is mandated by the regulating agency. Failure to bring wireless facilities into compliance with any revised standards and regulations shall constitute grounds for removal by the Town at the owner's expense.
- E. Indemnification. Any entity who owns or operates small cell facilities and/or wireless support structures in Town right-of-way shall indemnify, protect, defend, and hold the Town and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgements, 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 entity who owns or operates small cell facilities any agent, officer, director, representative, employee, affiliate, or subcontractor of the owner or operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining such facilities.

§465-6 Applications

- A. Permit. An owner or operator of a wireless facility shall obtain a Small Cell Permit before placement of any wireless facility in a Town right-of-way. A Building Permit is required for any proposed construction, repair or replacement of wireless facilities in accordance with Chapter 145 of the Town of Bel Air Code. In addition, a Utility Permit is required for any disturbance or excavation within the right-of-way in accordance with Chapter 410 of the Town of Bel Air code.
- B. Application requirements. Each application for a small cell permit shall include the

following information:

- (1) Detailed construction plans describing proposed installation of the small cell facility and/or wireless support structure to be deployed including any details, images, manufacturer information and/or material specifications required by the Town.
- (2) A written description of the proposed design and installation including applicant intent with respect to location or collocation.
- (3) In the case of a proposed attachment to an existing utility pole owned by others and located in the Town right-of-way, an executed agreement or authorization from the owner of the utility pole.
- (4) In the case of a proposed attachment to a Town-owned facility located in the right-of-way, an executed agreement with the Town of Bel Air authorizing the attachment.
- (5) If an applicant is requesting the installation of a new pole or placement outside of the preferred areas of the Town, a statement justifying the request must be provided for approval by the Town.

§465-7 Installation and Inspection

- A. Collocation or new wireless support structure installation for which a small cell permit is granted shall be completed within ninety (90) days after issuance of the permit unless the Director of Public Works and the applicant agree to an extension of this period. The total time to complete installation may not exceed one hundred and eighty (180) days after the issuance of the small cell permit.

§465-8 Fees.

- A. For wireless facilities, applicants must provide fees associated with all permits in accordance with the Town Fee Schedule as amended. Full payment of all fees shall be a prerequisite to any application being deemed complete. An applicant must agree, as part of its application, to pay any reasonable additional costs incurred by the Town in reviewing the application including costs incurred in retaining outside consultants. The applicant will be separately billed to cover such costs. Annual rates for use of Town right-of-way and/or municipal infrastructure in the right-of-way are set by Resolution of the Board of Town Commissioners as part of the Fee Schedule.

§465-9 General Provisions

A. As-Built Maps and Records.

- (1) Each operator shall maintain accurate as-built maps and other appropriate records, including an inventory of its small cell facilities and wireless support structures. The inventory shall be provided to the Town in approved format and include GIS coordinates, date of installation, type of wireless support structure, owner of wireless support structure and description, type, and owner for each small cell facility.
- (2) Upon Town written notification, each operator shall provide a cumulative inventory of all facilities within thirty (30) days of request. The inventory shall include the same information for inactive as well as active installations. In addition, the date of deactivation and/or removal for any small cell facility or any wireless support structure is required.

§465-10 Liability and Signal Interference

- A. Liability. The Town shall not be liable to the operator by reason of inconvenience or injury to the wireless facilities arising from the necessity of repair, alteration or improvement of structures or equipment within any portion of the right-of-way by the Town.
- B. Signal Interference. In the event that a small cell facility interferes with the public safety radio system or the Town, County or State traffic signal system, then the operator shall cooperate with the Town to investigate the source or eliminate the interference. Cooperation may include, but shall not be limited to, temporarily switching the transmission equipment on and off for testing.

§465-11 Requirements for Removal, Replacement, Maintenance and Repair

- A. Replacement of Municipal-Owned Wireless Support Structure.
 - (1) If an applicant applies to install a small cell facility on a Town-owned wireless support structure, the Town may require replacement or modification of the wireless support structure at operator cost if the Town determines that replacement or modification is necessary for compliance with building and safety codes. Such replacement or modification shall conform to the Wireless Facilities and Utilities Design Guidelines. The Town shall retain ownership of the replacement or modified wireless support structure.
- B. Removal or Relocation Required for Town Project.

- (1) An operator shall remove or relocate a permitted small cell facility and/or wireless support structure at the operator's sole expense to accommodate construction of a public improvement project by the Town, County or State.
- (2) If an operator fails to remove or relocate the small cell facility or wireless support structure or portion thereof as requested by the Town within one hundred and eighty (180) days of written notice, then the Town may remove the small cell facility or wireless support structure, or portion thereof and bill the operator for the required work.

C. Removal Required by Town for Safety and Imminent Danger

- (1) An operator shall, at its sole expense, promptly remove or relocate a small cell facility and/or wireless support structure within the time frame and in the manner required by the Town if it is determined that the removal or relocation of any part of a small cell facility or wireless support structure: a) is necessary to protect the public health, safety and welfare of Town residents or property; or b) if the operator fails to obtain all applicable licenses, permits and certifications as required by law for a small cell facility or wireless support structure.

D. Removal/Abandonment of Facilities.

- (1) An operator shall remove a small cell facility or wireless support structure within sixty (60) days of terminating operation or within sixty (60) days of receipt of written notice from the Town. When wireless facilities and other utilities in the right-of-way become inactive, the operator shall notify the Town in writing and shall file with the Town the location and description of each inactive small cell facility and/or wireless support structure. Any facility which ceases operation for twelve (12) consecutive months shall be determined abandoned and the Town will remove the facility at the operator's sole expense.

E. Restoration.

- (1) An 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 maintenance, removal or relocation activity within three (3) calendar days following the date of damage at the operator's sole expense. The right-of-way or property must be returned to the same condition as it existed immediately before the date operator was granted permit for construction. This includes restoration or replacement of any damaged paving, curb, sidewalk, signage, trees, shrubs, or other vegetation. Such repair, restoration and replacement shall be subject to prior approval of the Town.

§465-12 Appeals

- (1) Any person adversely affected by the decision of the Deputy Director of Public Works pursuant to this Chapter may appeal that decision to the Director of Public Works, who may issue a de novo decision and whose written decision shall be the final decision of the Town. An appeal by an applicant must be taken jointly with the operator or provider who intends to use the wireless facility. All appeals must be filed within thirty (30) days of the written decision by the Deputy Director. An extension may not be granted where extension would result in approval of the application by operation of law. Any appeal shall be conducted so that a timely written decision may be issued in accordance with applicable law. Costs incurred by the Town associated with conducting the appeal shall be borne by the applicant.

§465-13 Penalties, Fines and Billing

- A. For failure to comply with any provision of this chapter, the penalty shall be a municipal infraction payable to the Town in an amount determined through Resolution by the Bel Air Board of Town Commissioners.
- B. An operator shall reimburse the Town within thirty (30) days following issuance of invoice for the remove or repair of any small cell facilities or wireless support structure or portion thereof as necessitated by the provisions of this chapter. The Town will assess interest of 1.5 percent per month beyond the thirty (30) day period.

BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect _____, 2019.

INTRODUCTION:
PUBLIC HEARING:
ENACTMENT:
EFFECTIVE:

AYES:
NAYS:
ABSENT:

Susan Burdett, Chairperson
Board of Town Commissioners

Michael Krantz, Town Clerk