

## Chapter 19

### SMALL CELL DEPLOYMENT IN THE PUBLIC RIGHTS OF WAY

#### Sec. 19.1 Definitions.

- A. **"Antenna"** means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of Wireless Services. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes for residential or household purposes.
- B. **"Applicable Codes"** means uniform building, fire, safety, electrical, plumbing, or mechanical codes adopted by a recognized national code organization to the extent such codes have been adopted by the Town of Poolesville, including any amendments adopted by the Town of Poolesville, or otherwise are applicable in the jurisdiction.
- C. **"Applicant"** means any Person who submits an Application under this Chapter.
- D. **"Application"** means a written request, on a form provided by the Town of Poolesville, for a Permit.
- E. **"Co-locate"** means to install or mount a Small Wireless Facility in the Public ROW on an existing Support Structure, an existing Tower, or an existing Pole while a Small Wireless Facility is also attached. "Co-location" has a corresponding meaning.
- F. **"Communications Facility"** means, collectively, the equipment at a fixed location or locations within the Public ROW that enables Communication 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. A Communication Facility does not include the Pole, Tower or Support Structure to which the equipment is attached.
- G. **"Communications Service"** means cable service, as defined in 47 U.S.C. § 522(6); broadband services, as defined in 47 U.S.C. § 153(24); or telecommunications service, as defined in 47 U.S.C. § 153(53).
- H. **"Communications Service Provider"** means a provider of Communications Services and includes a cable operator, as defined in 47 U.S.C. § 522(5).
- I. **"Completed application"** means application that contains all necessary and required information and/or data set forth in this chapter, that is necessary to enable an informed decision to be made with respect to an application and action on the application.
- J. **"DAS" or "distributive access system"** means technology, using antenna-combining technology allowing for multiple carriers or wireless service providers to use the same set of antennas, cabling or fiber optics.
- K. **"Decorative Pole"** means a Pole that is specially designed and placed for aesthetic purposes.
- L. **"Eligible Facilities Request"** means an eligible facility request as set forth in 47 C.F.R. Section 1.40001(b)(3), as that section may be amended from time to time.
- M. **"Facility"** means wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
- N. **"FCC"** means the Federal Communications Commission of the United States.

- O. **"Height"** means, the distance measured from the pre-existing grade level to the highest point on the tower or support structure, even if said highest point is an antenna or lightening protection device. As regards increasing the height of an existing structure, height means the height above the top of the structure prior to any work related to a wireless facility.
- P. **"Laws"** means, collectively, any and all Federal, State, or local law, statute, common law, code, rule, regulation, order, or ordinance.
- Q. **"Modification" or "modify"** means, the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility with identical components, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to an existing support structure or tower as a co-location is a modification, unless the height, profile or size of the compound is increased, in which case it is not a modification.
- R. **"Ordinary Maintenance and Repair"** means inspections, testing and/or repair that maintain functional capacity, aesthetic and structural integrity of a Communications Facility and/or the associated Support Structure, Pole or Tower, that does not require blocking, damaging or disturbing any portion of the Public ROW.
- S. **"Permit"** means a written authorization (in electronic or hard copy format) to install, at a specified location(s) in the Public ROW, a Communications Facility, Tower or Pole to support a Communications Facility.
- T. **"Permittee"** means an Applicant that has received a Permit under this Chapter.
- U. **"Person"** means an individual, corporation, limited liability company, partnership, association, trust, or other entity or organization, including a governmental entity.
- V. **"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 the Public Right of Way.
- W. **"Provider"** means a Communications Service Provider or a Wireless Service Provider and includes any Person that owns and/or operates within the Public ROW any Communications Facilities, Wireless Facilities, or Poles built for the sole or primary purpose of supporting Communications Facilities or Towers.
- X. **"Public Right of Way" or "Public ROW"** means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this Chapter shall include Public Utility Easements.
- Y. **"Public Utility Easement"** means, unless otherwise specified or restricted by the terms of the easement, the area on, below, or above a property in which the property owner has dedicated an easement for use by utilities.
- Z. **"Repairs and maintenance"** means the replacement or repair of any components of a wireless facility or complex where the replacement is in its effect, size and operation identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless facility or complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless facility or complex that will impose new visible burdens of the facility or complex as originally permitted. Any work that changes the services provided to or from the facility, or the equipment, is not repairs or maintenance.

- AA. **“Replace” or “Replacement”** means, in connection with an existing Pole, Support Structure or Tower, to replace (or the replacement of) same with a new structure substantially similar in design, size and scale to the existing structure, and in conformance with this Chapter and any other applicable Town of Poolesville code regulations, in order to address limitations of the existing structure to support co-location of a Communications Facility.
- BB. **“Small Wireless Facility”** means a Wireless Facility that meets of the following criteria: (1) The structure on which antenna facilities are mounted (i) is 25 feet or less in height, including antennas for new structures, or (ii) does not extend more than 10 feet or ten (10) percent above the pre-existing height when co-located on a utility pole, whichever is greater
- CC. **“State”** means the State of Maryland.
- DD. **“Stealth”** or “stealth siting technique” means a design or treatment that minimizes adverse aesthetic and visual impact on the land, property, buildings, and other facilities adjacent to, surrounding, and generally in the same area as the requested location of such wireless telecommunication facilities, which shall mean the least visually and physically intrusive facility and complex not technologically or commercially impracticable under the circumstances. Stealth technique includes such techniques as i) DAS or its functional equivalent; or ii) camouflage where the tower is disguised to make it less visually obtrusive and not recognizable to the average person as a wireless facility or complex.
- EE. **“Substantial modification”** means a change or modification that:
1. Increases the existing vertical height of the structure; or
  2. Adds an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure or more than the width of the wireless support structure; or
  3. Increases the square footage of the existing equipment.
- FF. **“Support Structure”** means a structure in the Public ROW other than a Pole or a Tower to which a Wireless Facility is attached at the time of the Application.
- GG. **“Tower”** means any structure in the Public ROW built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.
- HH. **“Town”** means the Town of Poolesville, Maryland
- II. **“Wireless Facility”** means the equipment at a fixed location or locations in the Public ROW that enables Wireless Service. The term does not include coaxial, fiber-optic or other cabling that is between Communications Facilities or Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna. A Small Wireless Facility is one type of a Wireless Facility.
- JJ. **“Wireless Services”** means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.
- KK. **“Wireless Services Provider”** means a Person who provides Wireless Services.

## **Sec. 19.2 Access to Public ROW**

- A. Prior to any construction, installation, or any other work performed, other than Ordinary Maintenance and Repairs, in the Public ROW, any Communications Facility, or any Pole built for the sole or primary purpose of supporting a Communications Facility Person shall first receive a Right of Way Use Permit and pay any applicable fees, as required by this Chapter. No Right of Way Use

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.

1. The Right of Way Access Agreement shall set forth, at a minimum, the following:
    - a. the maximum term of the agreement and the bases of termination;
    - b. the scope of the subject matter of the Agreement;
    - c. the operator's maintenance obligations;
    - d. the operator's indemnification and insurance requirements;
    - e. emergency contacts and required to emergencies related to the facilities;
    - f. the Town's right of access and inspection of the facilities; and
    - g. any other provision deemed necessary by the parties thereto.
- B. In order to ensure that the location, placement, construction and modification of a facility does not endanger or jeopardize the public's health, safety, public welfare, environmental features, the nature and character of the community or neighborhood and other aspects of the quality of life specifically listed elsewhere in this Chapter, the Town hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or administrative approval granted authority for wireless facilities for the express purpose of achieving the following outcomes:
1. Requiring that permits will not be issued unless the Provider has a Right of Way Access Agreement, if required, and has paid all applicable fees.
  2. Requiring a Right of Way Use Permit for any new facility or any modification of a facility or for a co-located facility.
  3. Requiring administrative approval and a properly issued Right of Way Use Permit for any co-location or modification of a facility that is not a substantial modification or co-location.
  4. Implementing an application process and requirements.
  5. Establishing procedures for examining an application and issuing a Right of Way use permit or administrative approval that are fair and consistent.
  6. Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers.
  7. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of attachments to a facility in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth siting techniques.
  8. The Commissioners of Poolesville are the official 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.
  9. The Town hereby designates the Town Manager or designee as the authority for requests for all administrative approvals, (i.e. for anything other than a substantial modification or a new facility).
  10. 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 either on site or telephonically as deemed appropriate by the Town Manager. The purpose of the pre-application meeting will be to address
    - a. issues that will help to expedite the review and permitting process; and

b. specific issues or concerns the Town or the applicant may have.

11. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a fee set forth in the Town's fee schedule, which shall have been paid to the Town prior to any site visit or pre-application meeting or any work related to an intended application preceding the site visit or pre-application meeting.
12. If there has not been a prior site visit for the requested facility within the previous six months a site visit shall be conducted.
13. An applicant shall submit to the Town the number of completed applications determined to be needed at the pre-application meeting. If Town action is required, applications will not be transmitted to the Town for consideration until the application is deemed complete by staff or the Town's consultants.
14. All applicants shall closely follow the instructions for preparing an application. Not following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the time allowed for action on an application until a complete application is received.
15. Within thirty (30) business days of the date of submission of an application the applicant shall be notified in writing of any deficiencies related to the completeness of the application. Remediation of deficiencies in an application shall be deemed an amendment of the application that was received.
16. The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the application complete has been afforded. Applications will be deemed abandoned if left incomplete for more than ninety (90) business days after the date of notice of incompleteness.
17. No work of any kind on or at a facility shall be started until the application is reviewed and approved and the Right of Way Use Permit or administrative approval, as applicable, has been approved in accordance with the Town's Code.
18. Any and all representations made by the applicant or that are made in support of the application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.
19. Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a facility shall be issued where the facility is not in full compliance with all applicable local, state and federal laws, rules, regulations and orders. A facility that is not in full compliance with this Chapter shall be denied any and all permits until deemed in compliance by the Town.
20. An application shall be signed on behalf of the applicant(s) by a person vested with the authority to bind and commit the applicant attesting to the truthfulness, completeness and accuracy of the information presented.
21. Applications shall include written commitment statements to the effect that:
  - a. The applicant's facility shall at all times and without exception be maintained in a safe manner, and in compliance with the conditions of all permits, as well as all applicable and permissible local codes, ordinances, and regulations and all

- applicable town, state and federal laws, rules, and regulations, unless specifically granted relief by the Town in writing; and
- b. The construction of the facility is legally permissible, including, but not limited to the fact that the applicant is licensed to do business in the state.
22. Where a certification is called for in this Chapter, such certification shall bear the signature and seal of a professional engineer licensed in the state.
  23. A Permittee of a Right of Way Use permit or administrative approval granted authority under this chapter shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
  24. An applicant intending to co-locate on or at an existing facility or complex shall be required to document the intent of the existing owner to permit its use by the applicant.
  25. Any technical information must be provided in such a manner, detail and form that the content and any conclusions are verifiable by a third party using the information used and provided by the applicant.
  26. All costs associated with the preparation and submission of an application and/or necessitated by the requirements for obtaining and maintaining any and all Town permits shall be borne by the applicant or permittee.
  27. Inventory of existing sites. Each applicant for approval of an antenna and/or a facility shall provide to the Town Manager an inventory of its existing antennas and facilities that are within the jurisdiction of the Town, including specific information about the location, height and design characteristics of each antenna. Applicants are encouraged to submit an inventory of potential future facility sites within the jurisdiction of the Town. The Town Manager may share such information with other applicants applying for administrative approval under this section or other organizations seeking to locate antennas within the jurisdiction of the Town, provided that the Town Manager is not, by sharing such information, representing or warranting that such sites are available or suitable.
  28. Applicants must submit information showing that the small cell complies with the Federal Communications Commission's regulations concerning radio frequency emissions referenced in Section 332(c)(7)(B)(iv) of Title 47 of the United States Code.
  29. Permit may be rescinded if construction is not substantially commenced within one year. Absent a showing of good cause, an applicant under this section may not renew the permit or resubmit an application to develop a small cell at the same location within six months of rescission.
  30. Construction shall be complete in accordance with submitted construction schedule as amended and approved.

### **Sec. 19.3**

#### **Application requirements for new facilities, support structure, or a substantial modification or co-location.**

- A. All applicants for a Right of Way Use Permit for a new wireless facility, that constitutes a substantial modification, shall comply with the requirements set forth in this section. In addition to the required information set forth in this section, all applications for the construction or

installation of a new wireless facility or substantial modification shall contain the information hereinafter set forth prior to the issuance of a Right of Way Use Permit. Any technical information must be provided in such a manner, form and with such content that is verifiable by a third party using the information used and provided by the applicant.

1. Ownership and Management

- a. The name, address, phone number and email address of the person preparing the application;
- b. The name, address, phone number and email address of the applicant, including the legal name of the applicant. If the owner of the structure is different than the applicant, the name, email address and all necessary contact information;
- c. The postal address and tax map parcel number of the proposed site;
- d. A copy of the FCC license(s) applicable for the intended use(s) of the wireless telecommunications facilities, including all FCC licensed frequency bands to be used;
- e. The applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the applicant to share any new telecommunication tower or support structure that it constructs or has constructed for it.

2. Zoning and Planning

- a. The zone in which the proposed site is located;
- b. The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all property lot lines;
- c. The location, size of the footprint and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the application;
- d. A site plan to scale, not a hand drawn sketch, showing the footprint of the facilities/support structures;
- e. Street view elevation drawings showing the profile or the vertical rendition of the facility or support structure and identifying all existing and proposed attachments, including the height above the existing grade of each attachment, the owner or operator of each, and all lighting;
- f. The type of tower or support structure, and size of antenna proposed;
- g. A certified statement of i) the total cost of construction for the work associated with the application; and ii) the total cost of all equipment used by applicant at the facility. To verify the accuracy of the information, the Town may require copies of all applicable invoices to support claimed costs. .

3. Additional Submission Requirements

- a. Applicant shall provide a written traffic control plan.
- b. Applicant shall provide a construction schedule.
- c. Applicant shall provide any additional utility construction information as required by Chapter 17 of the Poolesville Code.

B. Fees and Charges.

1. Permit Application Fee

- a. Every Applicant shall pay a Permit application fee as set forth in the Town's fee schedule. The fee shall be paid upon submission of the Application
  2. Right of Way Access Agreement Application Fee
    - a. Every Person requesting a Right of Way Access Agreement from the Town shall pay an application fee as set forth in the Town's fee schedule. The fee shall be paid upon submission of the Right of Way Access Agreement application.
  3. ROW Use Fee
    - a. In exchange for the privilege of non-exclusive occupancy of the Public ROW, the Provider shall pay the Town a fee as set forth in the Town's fee schedule. The ROW Use Fee shall be due and payable prior to the issuance of the Right of Way Access Agreement Permit(s) required under this Chapter, and as required thereafter
  4. Other Fees
    - a. The Applicant or Provider shall be subject to any other generally applicable fees of the Town or other government body, such as those required for electrical permits, building permits, or street opening permits, which the Applicant or Provider shall pay as required in the applicable Laws.
  5. No Refund
    - a. Except as otherwise provided in a the Right of Way Access Agreement, the Provider may remove its Communications Facilities or Poles from the Public ROW at any time, upon not less than thirty (30) business days prior written notice to the Town, and may cease paying to the Town any applicable recurring fees for such use, as of the date of actual removal of the facilities and complete restoration of the Public ROW. In no event shall a Provider be entitled to a refund of fees paid prior to removal of its Communications Facilities or Poles.
  6. Bonds
    - a. Unless otherwise provided in a Right of Way Use Agreement or agreed to in writing by the Town, a performance bond or other form of surety acceptable to the Town equal to at least one hundred twenty-five percent (125%) of the estimated cost of the work within the Public ROW shall be provided before the Applicant commences work.
- C. Effect of Permit
1. A Permit from the Town authorizes an Applicant to undertake only the activities in the Public ROW specified in the Application and Permit, and in accordance with this Chapter and any general conditions included in the Permit. A Permit does not authorize attachment to or use of existing Poles, Towers, Support Structures or other structures in the Public ROW not owned by the Town; a Permittee or Provider must obtain all necessary approvals from the owner of any Pole, Tower, Support Structure or other structure prior to any attachment or use. A Permit does not create a property right or grant authority to the Applicant to interfere with other existing uses of the Public ROW.
- D. Duration
1. Any Permit for construction issued under this Chapter shall be valid for one (1) year after issuance, which may be extended upon written request of the Applicant having reasonable cause;



2. No Permit shall be issued except to a Wireless Service Provider with immediate plans for use of the subject Communication Facility. A Permit issued under this Chapter may not be assigned or transferred.
- E. Batch Permit Provision
1. An Applicant may submit multiple Applications for Communications Facilities simultaneously, or may file a single, consolidated Application covering such Communications Facilities, provided that the proposed Communications Facilities are to be deployed on the same type of structure using similar equipment and within an adjacent, related geographic area of the corporate limits of the Town. If the Applicant files a consolidated application, the Applicant shall pay the application fee calculated as though each Communication Facility were a separate Application.
- F. Public Notification
1. Before making its decision on any Application, the Planning Commission will hold a public meeting on the Application to present its plan and Application;
  2. Applicant is responsible for providing at least fifteen (15) days written notice of the time and place of such meeting to the owners of all properties within a three hundred-foot (300') radius. The Applicant shall provide a list of these property addresses with the Application and an affidavit attesting that notice as provided herein has been sent by certified mail.

#### **Sec. 19.4**

##### **Requirements for Facilities.**

- A. The Provider shall not locate or maintain its Communications Facilities or Poles such that they unreasonably interfere with the use of the Public ROW by the Town, by the general public or by other persons authorized to use or be present in or upon the Public ROW.
- B. All work at a facility shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code, National Electric Safety Code, the National Electrical Code, the Occupational and Safety and Health Administration (OSHA) regulations, and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.
- C. Unless such is proven to be technologically impracticable, the Town requires the co-location of new antenna arrays on existing structures and the use of existing 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.
- D. A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of

stealth or camouflage or concealment technique as may be required by the Town.

- E. A DAS system that is owned or operated by a commercial carrier and is part of a commercial wireless system, or are used for commercial purposes, is expressly included in the context of this chapter, regardless of the location or whether the facility or any of its components is located inside or outside a structure or building.
- F. Any new wireless facility shall be designed and constructed to be the least visually intrusive, create the least visual impact possible, and bear in mind any negative impacts such wireless facility may have on nearby property values, provided that pursuant to 47 U.S.C. 332(c)(7)(B)(II), compliance does not prohibit or effectively serve to prohibit the provision of the intended service from one or more facilities.
- G. Whenever possible, it is preferred that equipment cabinets not fully enclosed within a support structure be located underground.
- H. Above-ground placement of facilities and equipment cabinets in the Public Right-of-Way shall be installed:
  - 1. In a manner that does not impede, obstruct, or hinder pedestrian or vehicular travel.
  - 2. In a manner that does not unreasonably obstruct property sight lines.
  - 3. At the intersection of property lines.
  - 4. In alignment with existing trees, utility poles, and streetlights.
  - 5. Equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
  - 6. With appropriate clearance from existing utilities.
  - 7. At least 10 feet away from the triangle extension of a driveway flare.
  - 8. No closer than 250 feet away, radially, from another freestanding small cell, and no closer than 300 feet from the terminus of a cul-de-sac
  - 9. At least 40 feet from any residential structure.
  - 10. Comply with Chapter 17, Specifications for Utility Construction Guidelines.
  - 11. In duct or conduit that is buried below ground when connecting to a new Freestanding pole, including power and transport facilities New overhead wiring to accommodate the antenna will not be permitted.
  - 12. May be required to accommodate Town banners.
- I. All proposed Freestanding Small Cell Infrastructure shall be designed:
  - 1. To camouflage and conceal all proposed equipment within proposed freestanding antenna pole(s) as applicable, and consolidate all equipment within approved singular enclosures, to the maximum extent feasible;
  - 2. To meet the following size limitations:
    - a. Any new freestanding antenna pole shall be twenty-five (25) feet or less in total height in any existing or planned (i.e. platted) residential neighborhood. Said height limit shall not be as-of-right but shall be the maximum permissible height subject to the verifiable proof-of-technical need information submitted.

3. So that no signage, banner or advertising is located upon facility except for Town signs and/or banners:
4. To include a permanently mounted metallic plaque not to exceed 4" x 6", at approximately 4 to 6 feet from ground level, and visible to the public, containing the parent owner, company pole code identifying information, and emergency telephone number imprinted/etched onto it. Additional plaques should be mounted onto any associated ground mounted equipment, in addition to any other signage required by law (e.g. RF ground notification signs). Any applicant must identify the proposed frequency or frequencies being used by the associated network node(s).

J. Any application to an existing pole:

1. All antenna and all of the antenna's exposed elements and/or shroud transitions shall be mounted at the top of the proposed pole with the following criteria:
  - a. All of the antenna equipment be enclosed within a single cylindrical antenna shroud, preferably matching the pole shaft diameter.
  - b. The antenna shroud shall match pole color, finish, and be as solid as feasible to visually conceal all contents and/or wiring.
  - c. Once transitioned from the pole shaft, the antenna shroud diameter shall remain consistent.
  - d. The antenna shroud may not exceed a height of five (5) feet.
2. If the applicant demonstrates that antenna equipment cannot be located as above, a shrouded, externally mounted antenna package may be proposed. This equipment may not:
  - a. Protrude from the outer circumference of the existing structure or pole by more than two (2) feet.
  - b. Exceed a height of five (5) feet, mounted longitudinally to the pole shaft.
  - c. All remaining equipment to be located at the pole including radios not mounted at top of pole, electric meters, grounding equipment, cut-off switches, etc. shall be fully enclosed within a base shroud that:
    1. Is structured to fully support the pole while maximizing equipment volume.
    2. Is cylindrical with a maximum consistent diameter of sixteen (16) inches not including small architectural banding features. This diameter may be increased on a case by case basis to twenty (20) inches if it combines multiple carriers or uses.
    3. Does not exceed a height of six (6) feet from mounting surface.
    4. Matches pole color, finish, and be as solid as feasible to visually conceal and lock all contents and/ or wiring.
    5. Any equipment/parts attached to node support poles must be mounted at least seven (7) feet or higher above adjacent surface grade.
3. While not preferred, any ground mounted enclosures separate from associated pole, will be reviewed and approved on a case by case basis and;

- a. Proposed elements of pole shall be aesthetically matching and consistent with character and height of adjacent poles and street lights or as otherwise approved and agreed to by the Town.
- b. May require landscaping or other aesthetic improvements depending upon location.
- c. For network nodes or equipment placed on existing poles, the color of the network nodes shall match the existing pole color, such that the network nodes blend with the existing pole.
- d. Such related equipment shall have a maximum square footage of ten (10) square feet with a maximum height of two (2) feet and must be located and installed in accordance with applicable setbacks and other requirements of the zone in which the property is classified.

K. Ordinary Maintenance and Repair

- 1. A Permit shall not be required for Ordinary Maintenance and Repair. The Provider or other Person performing the Ordinary Maintenance and Repair shall obtain any other permits required by applicable Laws and shall notify the Town in writing at least 7 calendar days before performing the Ordinary Maintenance and Repair.

L. Material Changes

- 1. The Town may require payment of an additional Permit application fee in the event the Town determines, in its sole discretion, that material changes to an Application after submission amount to a new Application and will materially increase the time and/or costs of the Permit review process. Unless otherwise agreed to in writing by the Town, any material changes to an Application, as determined by the Town in its sole discretion, shall be considered a new application for purposes of the time limits set forth.

**Sec. 19.5**

**Construction Standards.**

A. Safety

- 1. In performing any work in or affecting the Public ROW, the Provider, and any agent or contractor of the Provider, shall comply with the provisions of Section 2.3 of this Chapter and all other applicable Laws, including Chapter 17 of the Poolsville Code, Specifications for Utility Construction.

B. Traffic control.

- 1. Unless otherwise specified in the Permit, the Permittee shall erect a barrier around the perimeter of any excavation and provide appropriate traffic control devices, signs and lights to protect, warn and guide the public (vehicular and pedestrian) through the work zone. The manner and use of these devices shall be described within a traffic control plan in accordance with the Uniform Manual of Traffic Control Devices. The Permittee shall maintain all barriers and other traffic control and safety devices related to an open excavation until the excavation is restored to a safe condition or as otherwise directed

by the Town.

C. Utility Location

1. Before beginning any excavation in the Public ROW, the Permittee shall comply with Maryland's Miss Utility Law.

D. Compliance with Permit

1. All construction practices and activities shall be in accordance with the Permit and approved final plans and specifications. The Town and its representatives shall be provided access to the work site and such further information as they may require ensuring compliance with such requirements. All work that does not comply with the Permit, the approved plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the Permittee. The Town may stop work in order to assure compliance with the provision of this Chapter.
2. In addition to obtaining a Permit for installation of a Communications Facility, Poles built for the sole or primary purpose of supporting Communications Facilities, and in the Public ROW, an Applicant must obtain all other required permits, including but not limited to, Town, Montgomery County and the State of Maryland.

E. Restoration Requirements.

1. The Provider, or its agent or contractor, shall restore, repair and/or replace any portion of the Public ROW that is damaged or disturbed by the Provider's Communications Facilities, Poles or work in or adjacent to the Public ROW.
2. If the Provider fails to timely restore, repair or replace the Public ROW as required in this subsection, the Town or its contractor may do so and the Provider shall pay the Town's costs and expenses in completing the restoration, repair or replacement.

F. Removal, Relocation and Abandonment.

1. Within thirty (30) calendar days following written notice from the Town, the Provider shall, at its own 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 ROW, including relocation of above-ground and underground Communications Facilities (consistent with the provisions of this Chapter), whenever the Town has determined, in its sole discretion, that such removal, relocation, change or alteration is necessary for the construction, repair, maintenance, or installation of any Town improvement, the operations of the Town in, under or upon the Public ROW, or when otherwise in the public interest. The Provider shall be responsible to the Town for any damages or penalties it may incur as a result of the Provider's failure to remove or relocate Communications Facilities, Poles, Support Structures or Towers as required in this subsection.
2. The Town retains the right and privilege to cut or move any Communications Facility, Pole, or Support Structure located within the Public ROW of the Town, as the Town may determine, in its sole discretion, to be necessary, appropriate or useful in response to any public emergency. If circumstances permit, the Town shall notify the Provider and

give the Provider an opportunity to move its own facilities prior to cutting or removing the Communications Facility, Pole, Support Structure or Tower. In all cases the Town shall promptly notify the Provider after cutting or removing the Communications Facility, Pole, Support Structure or Tower.

3. A Provider shall notify the Town of abandonment of any Communications Facility, Pole, or Support Structure at the time the decision to abandon is made, and not later than 30 calendar days prior to abandonment. Following receipt of such notice, the Provider shall remove its Communications Facility, Pole, or Support Structure at the Provider's own expense, unless the Town determines, in its sole discretion, that the Communications Facility, Pole, or Support Structure may be abandoned in place. The Provider shall remain solely responsible and liable for all of its Communications Facilities, Poles or, Support Structures until they are removed from the Public ROW unless the Town agrees in writing to take ownership of the abandoned Communications Facilities, Poles, or Support Structures.
4. If the Provider fails to timely protect, support, temporarily or permanently disconnect, remove, relocate, change or alter any of its Communications Facilities, Poles, or Support Structures or remove any of its abandoned Communications Facilities, Poles, or Support Structures as required in this subsection, the Town or its contractor may do so and the Provider shall pay all costs and expenses related to such work, including any delay damages or other damages the Town incurs arising from the delay.

G. As-builts and Maps.

1. Provider, at no cost to the Town, shall provide maps showing location of equipment in ROW and as-builts after construction;

**Sec. 19.6 Violation of this Chapter.**

Violation of any of the provisions of this Chapter shall be a Municipal Infraction punishable with a civil penalty of \$150.00 for each violation. Each day that a violation occurs or is permitted to exist by the Applicant or Provider constitutes a separate offense. In addition, thereto, the Town may also seek any and all legal or equitable remedies available to enforce the provisions of this Chapter.

**Sec. 19.7 Effective Date.**

*This Chapter shall take effect immediately after its passage, approval and publication.*