

SUBTITLE 5A. CABLE TELEVISION AND TELECOMMUNICATIONS.

DIVISION 2. TELECOMMUNICATIONS.

Sec. 5A-149. Short title; purposes.

(a) This Division shall be known and may be cited as the Telecommunications Regulatory Code.

(b) It is the intent of the County to preserve its rights in and control over public property and public rights-of-way by prescribing the manner in which access to public property and/or public rights-of-way shall be granted for the purpose of providing telecommunications service. Accordingly, the purposes of this Division are as follows:

(1) To promote the public health, safety, and general welfare by providing for the construction, replacement, reconstruction, operation, and maintenance of telecommunications systems;

(2) To manage the limited resources of the public rights-of-way and/or public property to the long-term benefit of the public;

(3) To recover the costs of maintaining the public rights-of-way and/or public property; compensate for the burden imposed on taxpayers by occupation of the public rights-of-way and/or public property by nongovernmental business; recover the fixed and variable costs of occupation of the public rights-of-way and/or public property by nongovernmental business; and recover fair compensation for the occupation of the public rights-of-way and/or public property by nongovernmental entities in their respective businesses; and

(4) To establish the position of Telecommunications Transmission Facility Coordinator and provide for the administration and coordination of telecommunications facility planning and construction;

(5) To recognize the public interest in continued provision of universal service on regulated prices and terms as provided for in 47 U.S.C. Section 214(e).
(CB-98-1998; CB-67-2008)

Sec. 5A-150. Definitions.

(a) In this Division, the following words and phrases have the meanings indicated:

(1) Administrative Recommendation means a Telecommunications Transmission Facility Coordinating Committee (TTFCC) recommendation that the TTFCC Chair or designee is authorized to grant after administrative review of an application for a Minor Modification or Cell on Wheels.

(2) Administrative Review means the examination of a TTFCC application for a Minor Modification or Cell on Wheels by the TTFCC Chair or designee to assure that the application is complete and accurate.

(3) Antenna means any structure or device used to collect or radiate electromagnetic waves for the provision of cellular, paging, personal communications services and microwave communications. Such structures and devices include, but are

not limited to, directional antennas, such as panels, microwave dishes, satellite dishes and omnidirectional antennas, such as whips.

(4) **Applicant** means a person who submits an application.

(5) **Application** means a request for the TTFCC to review and evaluate a new Telecommunications Transmission Facility within the County public rights-of-way, on public property or private property. An application includes all the requirements for submission of an application and any subsequent information to amend the application or in reply to requests for additional information.

(6) **Cell on Wheels (COW)** means a portable self-contained cell site that can be moved to a location and set up to provide wireless telecommunications services on a temporary or emergency basis, for a period up to one hundred twenty (120) days but not more than the period permitted by the Building Code Official. A COW is normally vehicle mounted and contains a telescoping boom as the antenna support structure.

(7) **Co-location** means the siting of Telecommunications Transmission Facilities on an existing support structure with other antenna(s).

(8) **Director** means the Director of the Office of Information Technology and Communications.

(9) **Minor Antenna** means a radio/antenna device no more than twenty-five (25) inches in length, fifteen (15) inches in width, and ten (10) inches in height (excluding mounting brackets, fasteners, cabling, and antenna), with five watts or less of transmitter output power, which is installed on streetlight arms or mast arms mounted on preexisting poles, or rooftops or other preexisting support structures.

(10) **Minor Modification** means changes to an existing Telecommunications Transmission Facility that does not result in a material change to the existing facility or support structure.

(11) **Monopole** means a single, self-supporting pole-type structure, tapering from base to top and supporting a fixture designed to support Telecommunications Transmission Facilities.

(12) **Person** means, including but not limited to, any individual, corporation, partnership, association, joint venture, or organization of any kind and the lawful trustee, successor, assignee, transferee, or personal representative thereof.

(13) **Private Property** means any real property owned or controlled by a single individual or by a group of individuals collectively. Private property is any property that is not public property.

(14) **Public Property** means any real property owned or controlled by the County or another public entity including buildings, and may include surplus property as defined in Section 2-111.01 of this Code. To the extent of any conflict with Section 2-111.01, this Division prevails.

(15) **Public Right-of-Way** means the surface and space above, on, beside, and below any public highway, avenue, street, lane, alley, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, building, public easement, right-of-way, or any other public ground or water within the unincorporated area of the County or belonging to the County.

(16) **Support Structure** means a structure, including, but not limited to, buildings, monopoles, towers and other free-standing self-supporting or guyed structures that may support telecommunications facilities.

(17) **Telecommunications** means the transmission, between or among points specified by the user, of information of the user's choosing without change in the form or content of the information as sent and received.

(18) **Telecommunications Services** means the offering of telecommunications for a fee, by a person, which the person is authorized to provide under applicable Federal, State, and local law, regardless of the facilities used. It includes, without limitation, transmission by optical fiber, coaxial cable, wireless methods, or any other means, and includes, without limitation, voice, video, data, telephone service, cellular service, and personal communications services.

(19) **Telecommunications System** means all or any part of a facility that occupies County property and/or public rights-of-way owned or controlled by the County and is used to provide one or more telecommunications services.

(20) **Telecommunications Transmission Facility** means any antenna and/or support structure which is used to transmit or retransmit wireless voice, data, or image information, but shall not mean or include a Minor Antenna.

(21) **Telecommunications Transmission Facility Coordinator** means the person designated by the County Executive for providing support services to the TTFCC.

(22) **Tower** means a lattice-type structure, guyed or freestanding, that supports one or more antennas.

(23) **Wireless Communication System** means all or any part of a facility that is licensed by the Federal Communications Commission under Title 47, Code of Federal Regulations, Parts 20, 22, 24, 90, or 101, and is located in whole or in part on public property and/or public rights-of-way and is used to provide one or more telecommunications services.

(CB-98-1998; CB-22-2001; CB-67-2008)

Sec. 5A-151. Applicability.

(a) The provisions of this Division shall apply to all telecommunications transmission systems either installed or under construction within the County as of the effective date of this Division or thereafter installed or constructed.

(b) Failure of a person to file an application within the time specified shall be a violation of this Division and may result in the immediate revocation of any existing permits or licenses issued by the County allowing such person to occupy any public property and/or right-of-way in relation to the use, operation, or maintenance of a telecommunications system. Upon revocation of such permits or licenses for failure to file an application within the time specified, the County may order prompt removal of such facilities at the person's expense and seek other redress, both legal and equitable.

(CB-98-1998; CB-67-2008; CB-67-2008)

Sec. 5A-152. Site leasing.

(a) The County may enter into leases for appropriate sites, antenna space on towers and other supporting structures, and accessory buildings on County property with telecommunications providers and radio users. Such leases shall contain reasonable provisions protecting the interests of the County. Such leases for telecommunications

transmission facilities shall comply with the provisions of Section 5A-165. To the extent that this Division conflicts with Section 2-111.01, this Division prevails.

(b) A lessee pursuant to the provisions of this Division shall be responsible for obtaining, in a timely manner at its own expense, any required approvals for any antenna or antenna structure from the Federal Aviation Administration or the Federal Communications Commission, or the successors of either; any required zoning from the County; and any building and electrical permits and inspection from the County. On any antenna structure which is not occupied by a County-owned antenna already subject to the tower registration, lighting, and aeronautical painting requirements of the FAA or FCC, or the successors of either, the lessee shall be financially responsible for the tower registration, lighting, and aeronautical painting requirements applicable to its antenna and/or supporting structure.

(c) Any lessee under a lease from the County for an antenna site that is in force on the effective date of this ordinance may continue to occupy such antenna site to the conclusion of the initial term of the lease but not any renewal or extension thereof, in accordance with the terms of such lease, provided, however, that such lessee may elect at any time to apply for a superseding lease under this ordinance.

(d) A lessee pursuant to this Division may enter into sublease agreements with other telecommunications providers to co-locate telecommunications facilities on the lessee's site, provided that each sublease includes provisions, in a form acceptable to the County regarding liability and the payment of compensation, determined in accordance with Section 5A-165, from such sublessees. Any sublease granted by the lessee shall be expressly conditioned upon the continued existence of such a separate agreement with the County.

(CB-98-1998; CB-67-2008)

Sec. 5A-153. Telecommunications Transmission Facility Coordinating Committee.

(a) The Telecommunications Transmission Facility Coordinating Committee shall consist of:

- (1) The Director of the Department of Environmental Resources or the Director's designee;
- (2) The Director of the Department of Public Works and Transportation or the Director's designee;
- (3) The Planning Director or the Director's designee;
- (4) The Superintendent of Schools or the Superintendent's designee;
- (5) The Director of the Office of Information Technology and Communications or the Director's designee; and
- (6) The County Council Administrator or the Administrator's designee.

(b) The County Executive and County Council shall designate a Telecommunications Transmission Facility Coordinator as an ex-officio, non voting member of the TTFCC.

(c) The TTFCC Chair and Vice-Chair shall be elected from among and by the TTFCC membership.

(d) The Director shall make available to the Telecommunications Transmission Facility Coordinating Committee such services and facilities as are necessary for the proper performance of its duties.

(e) The Telecommunications Transmission Facility Coordinating Committee shall;

(1) Serve as a central source of information and provide technical advice on the siting of telecommunications transmission facilities for the County, the Maryland National Capital Park and Planning Commission, the Board of Education and other public landowners, private landowners, licensed telecommunication carriers, and the general public;

(2) Promote the appropriate and efficient location and co-location of telecommunications transmission facilities to minimize adverse impacts on other land uses in the County;

(3) Evaluate the esthetic effects of locating multiple telecommunications transmission facilities in a single location or on a single structure;

(4) Recommend alternative sites and techniques where appropriate to mitigate the visual impact of the proposed and alternative site and provide a copy of the recommendation to the Council member in whose district the telecommunications transmission facility is to be located;

(5) Recommend provisions governing removal of the proposed telecommunications transmission facility at the end of its useful life, including the posting of a bond or other financial guarantee;

(6) Facilitate public participation in the telecommunications transmission facility siting process; and

(7) Report annually to the County Executive as requested on siting policy issues.

(f) The Telecommunications Transmission Facility Coordinator shall:

(1) Prepare a master plan of existing and planned Telecommunications Transmission Facilities in the County;

(2) Maintain a database of all applications reviewed by the TTFCC and those facilities proposed to be located in the County;

(3) Advise the County on telecommunications matters as requested;

(4) Review the siting of each proposed Telecommunications Transmission Facility;

(5) Evaluate the technical rationale of the proposed locations; and

(6) Evaluate alternative sites and techniques where appropriate to mitigate the visual impact of the proposed and alternative sites and report the findings to the TTFCC.

(CB-98-1998; CB-22-2001; CB-2-2006; CB-34-2007; CB-67-2008)

Sec. 5A-154. Telecommunications transmission facility application fees.

(a) The applicant shall submit the following filing fees with the submission of each application:

(1) Two Thousand Five Hundred Dollars (\$2,500.00) for an application to construct a new tower, monopole or support structure.

(2) One Thousand Five Hundred Dollars (\$1,500.00) for an application to co-locate on an existing Telecommunications Transmission Facility.

(3) Five Hundred Dollars (\$500.00) for a Minor Modification.

(4) Five Hundred Dollars (\$500.00) at the time of filing an annual plan update to the applicant's master plan.

(5) Two Hundred Fifty Dollars (\$250.00) for modification or revision of the application and/or plans. The fee shall be a minimum of Two Hundred Fifty Dollars (\$250.00) unless an extensive application and plan review is required, then the fee shall be determined by the TTFCC Chair and sufficient to offset the cost of the additional plan review and services.

(b) The application fee is in addition to any permit or other right-of-way charges required.

(CB-98-1998; CB-67-2008)

Sec. 5A-155. Telecommunications transmission facility inventory.

(a) Prior to August 1 of each year, each agency of the County and each agency which receives County funding shall submit to the Telecommunications Transmission Facility Coordinator its telecommunications transmission facility location plan. The plan shall identify the location of each existing telecommunication transmission facility and the proposed location of each facility to be constructed by or for such agency in the succeeding two years. The plan shall be updated whenever the actual or proposed location of a facility changes.

(b) Prior to August 1 of each year, each owner of a telecommunications transmission facility in the County shall submit to the Telecommunications Transmission Facility Coordinator its telecommunication transmission facility location plan. The plan shall identify the location of each existing telecommunication transmission facility and the proposed location of each facility proposed to be constructed in the succeeding two years.

(c) Before a recommendation may be granted to site a telecommunications transmission facility in the County, the Telecommunications Transmission Facility Coordinator shall draft a master plan of actual and proposed telecommunications transmission facilities in the County. The TTFCC Chair shall submit the master plan to the County Executive for advisory approval. The County Executive will transmit the master plan to the County Council for advisory approval only no later than October 1 of each year. The County Council shall have sixty (60) calendar days to review and comment. The months of August and December shall not be considered when calculating the sixty (60) day period. The County Council may provide any recommendation(s) to the proposed plan within the sixty (60) day period by submitting a letter to the TTFCC Chair. The master plan shall identify areas of the County where additional sites for telecommunications transmission facilities are anticipated to be needed to provide service for public and private uses. Notice of all changes to the plan shall be made as provided in this Subsection.

(d) The TTFCC Chair shall submit the TTFCC Annual Report to the County Executive for approval. The County Executive will transmit the Annual Report to the County Council no later than May 1 of each year. The report shall inform the County Executive and the County Council of the activities of the TTFCC and recommend strategies for further improving the deployment of wireless services to the citizens.

(CB-98-1998; CB-2-2006; CB-67-2008)

Sec. 5A-156. Telecommunications transmission facility applications.

(a) Every applicant for a building permit or other permit for the erection of a telecommunications transmission facility shall submit to the Telecommunications Transmission Facility Coordinator a telecommunications transmission facility location plan or an amendment to an existing plan. The plan shall clearly identify the location of every existing telecommunications transmission facility and the proposed location of each facility to be constructed or located in accordance with the permit application.

(b) Every applicant for a building permit or other permit for the erection of a telecommunications transmission facility shall submit to the Telecommunications Transmission Facility Coordinator a statement regarding whether the telecommunications transmission facility is proposed for location on an existing structure. If the application includes the construction or erection of a new supporting structure for the facility, the applicant shall provide a detailed statement describing the applicant's efforts to locate the proposed telecommunications transmission facility on an existing structure; a description of any potential alternate locations for the telecommunications transmission facility not requiring such construction or erection; and a brief explanation of the reasons why such sites were not selected.

(c) The Telecommunications Transmission Facility Coordinator shall not disclose to any person any information in the plan which qualifies as confidential information under the Maryland Public Information Act.

(d) Nothing in this provision shall exempt an applicant from any applicable zoning requirements or other requirements of law.

(e) At least 30 days prior to the acceptance by the Telecommunications Transmission Facility Coordinating Committee of an application for a Telecommunications Transmission Facility for a new monopole, tower or pole for the support of an antenna (electronic, radio, television, transmitting, or receiving) every applicant shall send an informational mailing to all adjoining property owners, including owners whose property lie directly across a street, alley, or stream and to every municipality located within one mile of the new facility, to the County Council member of the District where the new facility is proposed and to all civic associations registered with the Maryland-National Capital Park and Planning Commission located within one mile of the new monopole, tower or pole for the support of an antenna. The parties will be notified by the informational mailing that they may request a briefing within 30 days of the mailing. An application that proposes to increase the height of an existing tower, monopole or pole is included as one that requires notification required in this Section.

(f) Every applicant and the TTFCC Chair or Chair's designee shall meet and brief the above mentioned parties if requested by these parties within 30 days of the date of sending the informational mailing. The requested meeting and briefing must occur prior to the recommendation of the new facility by the Telecommunications Transmission Facility Coordinating Committee.

(g) All applications shall be reviewed in an efficient and timely manner, with a goal of making a TTFCC recommendation within 60 days after a complete application is submitted to the Telecommunications Transmission Facility Coordinator.

(h) Applications for Minor Modifications and COWs may be administratively reviewed and recommended by the TTFCC Chair or designee on behalf of the TTFCC without prior review by the TTFCC members.

(i) The recommendation for an application by the TTFCC or TTFCC Chair will remain valid for one year from the date of the TTFCC's disposition. If a building permit application has not been made within that time the TTFCC's recommendation is no longer valid and a new application must be submitted for review by the TTFCC. All previous applications for which a TTFCC recommendation has been issued which have not been permitted within one year of the effective date of enactment of this bill will no longer be valid.

(CB-98-1998; CB-34-2007; CB-67-2008)

Sec. 5A-157. Uniform contracts for use of County facilities.

(a) The Telecommunications Transmission Facility Coordinator, with the approval of the County Executive, shall develop and make available to persons desiring to erect a telecommunications transmission facility in the County a uniform contract for the location of telecommunications transmission facilities on land and structure owned and leased by the County.

(b) The Telecommunications Transmission Facility Coordinator, with the approval of the County Executive, shall develop and make available to persons desiring to erect a telecommunications transmission facility in the County a uniform rent and fee schedule designed to minimize differential treatment of telecommunications transmission facility owners.

(CB-98-1998; CB-67-2008)

Sec. 5A-158. Administration; Executive regulations.

(a) The County Executive shall administer and enforce this Division.

(b) The County Executive may adopt regulations that are consistent with this Division to administer and implement this Division.

(CB-98-1998; CB-67-2008)

Sec. 5A-159. through Sec. 5A-167. Reserved.