

Introduced _____
Public Hearing _____
Council Action _____
Executive Action _____
Effective Date _____

County Council of Howard County, Maryland

2017 Legislative Session

Legislative Day No. 6

Bill No. 26 -2017

Introduced by: The Chairperson at the request of the County Executive

AN ACT requiring a permit for the installation of certain wireless facilities on public street lights; defining certain terms; amending certain definitions; requiring certain information in support of an application for a permit; requiring certain agreements; requiring that certain agreements include fair compensation; providing for the review of applications; authorizing certain fees; and generally related to public rights-of-way in Howard County.

Introduced and read first time _____, 2017. Ordered posted and hearing scheduled.

By order _____
Jessica Feldmark, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on _____, 2017.

By order _____
Jessica Feldmark, Administrator

This Bill was read the third time on _____, 2017 and Passed ____, Passed with amendments _____, Failed _____.

By order _____
Jessica Feldmark, Administrator

Sealed with the County Seal and presented to the County Executive for approval this ____ day of _____, 2017 at ____ a.m./p.m.

By order _____
Jessica Feldmark, Administrator

Approved/Vetoed by the County Executive _____, 2017

Allan H. Kittleman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **Section 1. Be It Enacted** by the County Council of Howard County, Maryland that the Howard
2 County Code is amended as follows:

3
4 1. By amending Title 18 “Public Works”
5 Subsection (a) and Subsection (c), both of Section 18.205 “Roads, bridges, and rights-of-
6 way – Obstructions, damage, and drainage”.

7
8 2. By adding Title 18 “Public Works”
9 Section 18.206A. “Wireless Facilities on Public Street Lights”.

10
11 **Title 18. Public Works.**
12 **Subtitle 2. Roads.**

13
14 **Section 18.205. Roads, bridges, and rights-of-way--Obstructions, damage, and drainage.**

15 (a) *Definitions:*

16 (1) In this [[section and in section 18.206]] SECTION, SECTION 18.206 AND SECTION
17 18.206A, the following terms have the meanings indicated:

18 (2) *Department* means the Howard County Department of Public Works.

19 (3) *Director* means the Director of the Department.

20 (4) *Public property* means a County-owned or controlled road, road right-of-way, shoulder,
21 sidewalk, ditch line, bridge, culvert, curbing, drainage facility, utility easement, or any
22 appurtenances or signs associated with any of the above.

23 (5) (i) *Structure* means anything constructed, the use of which requires permanent or
24 temporary location on the ground or attached to something having a temporary or
25 permanent location on the ground.

26 (ii) *Structure* does not include:

27 a. A newspaper box, or a mailbox meeting the standards of the United States
28 Postal Service, provided that each is mounted on a post in conformance with
29 "A Guide for Erecting Mailboxes on Highways" by the American Association
30 of State Highway and Transportation Officials, Third Edition, dated 1994;

1 b. A utility pole or utility box WHICH ARE NOT A PART OF A WIRELESS FACILITY AS
2 DEFINED IN SECTION 18.206A OF THIS SUBTITLE; or

3 c. A sign permitted in a right-of-way under subtitle 5 "Signs" of title 3
4 "Buildings" of the Howard County Code.

5 (c) Structures on Public Property. A person may not install temporary or permanent structures
6 in, on, over, through, or across public property [[without]]:

7 (1) WITHOUT the permission of the Director; OR

8 (2) UNLESS THE PERSON HAS AUTHORITY TO INSTALL THE STRUCTURE WITHOUT PERMISSION
9 UNDER STATE LAW, OR UNDER A FRANCHISE OR LICENSE ISSUED BY THE COUNTY.

10
11 **SECTION 18.206A. WIRELESS FACILITIES ON PUBLIC STREET LIGHTS.**

12 (A) *APPLICATION FOR A PERMIT.* A PERMIT IS REQUIRED FOR THE INSTALLATION, OPERATION,
13 MAINTENANCE, AND REMOVAL OF WIRELESS FACILITIES ON A PUBLIC STREET LIGHT. A PERMIT
14 SHALL NOT BE ISSUED BY THE DIRECTOR UNLESS AND UNTIL AN AGREEMENT FOR USE OF PUBLIC
15 STREET LIGHTS SETTING FORTH THE TERMS AND CONDITIONS FOR THE INSTALLATION OF THE
16 WIRELESS FACILITIES HAS BEEN REACHED BETWEEN THE COUNTY AND THE APPLICANT, ~~WHICH~~
17 ~~SHALL INCLUDE FAIR COMPENSATION TO THE COUNTY FOR APPLICANT'S USE OF THE PUBLIC~~
18 ~~STREET LIGHTS, AND WHICH AGREEMENT MAY INCLUDE THE ITEMS LISTED IN SUBSECTION (D) OF~~
19 THIS SECTION.

20 (B) *DEFINITIONS.* IN ADDITION TO THE TERMS PREVIOUSLY DEFINED IN THIS SUBTITLE, THE
21 FOLLOWING TERMS SHALL HAVE THE MEANINGS INDICATED:

22 (1) *PUBLIC RIGHT-OF-WAY* MEANS THE ROADS LISTED AS OWNED AND MAINTAINED BY THE
23 COUNTY IN THE "HOWARD COUNTY MASTER ROAD BOOK" AND WHICH ARE CLASSIFIED
24 AS ARTERIAL OR COLLECTOR.

25 (2) *PUBLIC STREET LIGHT* MEANS THE EXISTING STRUCTURE OWNED BY THE COUNTY,
26 PRIMARILY DESIGNED FOR LIGHTING A PUBLIC RIGHT-OF-WAY, INCLUDING THE SUPPORTING
27 POLE, LUMINAIRE, ARMS, LEASED ELECTRIC WIRES, FOUNDATIONS, INTERNAL DIVIDERS,
28 HAND HOLES, VAULTS, PEDESTALS, AND BASES. A PUBLIC STREET LIGHT DOES NOT
29 INCLUDE:

30 (i) A LIGHTING SYSTEM ATTACHED TO A UTILITY POLE, TRAFFIC SIGNAL POLE, BUILDING,
31 OR SIMILAR STRUCTURE; OR

1 (II) ANY FACILITY THAT IS PRIVATELY OWNED.

2 ~~(3) WIRELESS FACILITY MEANS A FACILITY AT A FIXED LOCATION THAT WIRELESSLY CONNECTS~~
3 ~~TO MOBILE STATIONS AND IS USED TO PROVIDE PERSONAL WIRELESS SERVICES AS DEFINED~~
4 ~~AT 47 U.S.C. 332(C)(7). WIRELESS FACILITY INCLUDES:~~

5 (3) WIRELESS FACILITY.

6 (I) WIRELESS FACILITY MEANS A FACILITY THAT:

7 A. IS LICENSED OR AUTHORIZED BY THE FEDERAL COMMUNICATIONS COMMISSION;

8 B. IS AT A FIXED LOCATION; AND

9 C. ENABLES WIRELESS COMMUNICATIONS BETWEEN USER EQUIPMENT AND A
10 COMMUNICATIONS NETWORK.

11 (II) A WIRELESS FACILITY INCLUDES:

12 A. EQUIPMENT ASSOCIATED WITH WIRELESS COMMUNICATIONS SERVICES SUCH AS
13 PRIVATE, BROADCAST, AND PUBLIC SAFETY SERVICES;

14 B. UNLICENSED WIRELESS SERVICES AND FIXED WIRELESS SERVICES SUCH AS
15 MICROWAVE BACKHAUL;

16 ~~(C).~~ ALL ELEMENTS OF THE FACILITY, INCLUDING INCLUDING, WITHOUT
17 LIMITATION, ANTENNAS, CABINETS, CABLES, WIRES, BACK-UP POWER SUPPLIES, AND
18 RADIO UNITS; AND

19 ~~D.(H)~~ FACILITIES IN, AT, OR NEAR THE WIRELESS FACILITY AND ASSOCIATED WITH
20 THE FACILITY'S OPERATIONS, INCLUDING ELECTRIC METERS AND ELECTRICAL
21 WIRING ~~WHETHER OR NOT~~ IRRESPECTIVE OF WHETHER THE METERS AND WIRING
22 ARE OWNED OR MAINTAINED BY THE SAME PERSON THAT OWNS OTHER PORTIONS OF
23 THE WIRELESS FACILITY.

24 (4) *WIRELESS PROVIDER* MEANS THE ENTITIES THAT ARE AUTHORIZED BY THE FEDERAL
25 COMMUNICATION COMMISSION TO PROVIDE PERSONAL WIRELESS SERVICES AS DEFINED AT
26 47 U.S.C. SECTION 332(C)(7).

27 (C) *INFORMATION REQUIRED.* THE COUNTY SHALL CREATE AN APPLICATION FORM THAT MAY
28 REQUIRE AN APPLICANT SHALL TO SUBMIT THE FOLLOWING INFORMATION IN THE REQUEST TO USE
29 THE PUBLIC STREET LIGHTS, AND SUCH OTHER INFORMATION AS THE COUNTY MAY
30 REQUEST IN CONNECTION WITH ITS REVIEW OF THE APPLICATION:

31 (1) A TECHNICAL DESCRIPTION OF THE PROPOSED WIRELESS FACILITIES INCLUDING DETAILED

1 SPECIFICATIONS AND DIAGRAMS ACCURATELY DEPICTING THE PROPOSED WIRELESS
2 FACILITIES, AND THE LOCATIONS OF THE PUBLIC STREET LIGHTS ON THE PUBLIC RIGHTS-
3 OF-WAY THE APPLICANT PROPOSES TO USE;

4 (2) A DETAILED DEPLOYMENT PLAN DESCRIBING CONSTRUCTION OF THE WIRELESS FACILITIES
5 PLANNED FOR THE 12-MONTH PERIOD FOLLOWING THE ISSUANCE OF THE PERMIT;

6 (3) ENGINEERING CERTIFICATIONS RELATING TO THE PROPOSED CONSTRUCTION;

7 (4) A STATEMENT DESCRIBING THE APPLICANT'S INTENTIONS WITH RESPECT TO COLLOCATION,
8 AND IF THE APPLICANT IS NOT A WIRELESS PROVIDER, THE IDENTITY OF THE WIRELESS
9 PROVIDER(S) USING THE PROPOSED WIRELESS FACILITIES;

10 (5) A STATEMENT DEMONSTRATING THE APPLICANT'S DUTY TO COMPLY WITH APPLICABLE
11 SAFETY STANDARDS FOR THE PROPOSED ACTIVITIES IN THE PUBLIC RIGHT-OF-WAY
12 INCLUDING EMERGENCY RESPONSE PLAN, SCHEDULE OF MAINTENANCE, OPERATION,
13 RELOCATION, AND REMOVAL OF THE WIRELESS FACILITIES AT APPLICANT'S SOLE COST; ~~AND~~

14 (6) SUCH OTHER INFORMATION AS THE COUNTY MAY REQUIRE IN AN APPLICATION ~~FORM~~.
15 FORM; AND

16 (7) SUCH OTHER INFORMATION AS THE COUNTY MAY REQUIRE IN ITS REVIEW OF THE
17 APPLICATION.

18 (D) AGREEMENT FOR USE OF PUBLIC STREET LIGHTS. AN AGREEMENT FOR USE OF PUBLIC STREET
19 LIGHTS SHALL INCLUDE TERMS AND CONDITIONS FOR THE INSTALLATION OF THE WIRELESS
20 FACILITIES AS AGREED UPON BY THE APPLICANT AND THE COUNTY, WHICH SHALL INCLUDE FAIR
21 COMPENSATION TO THE COUNTY FOR THE APPLICANT'S USE OF THE PUBLIC STREET LIGHTS AND
22 WHICH MAY ALSO INCLUDE:

23 (1) PROVISIONS THAT ALLOW FOR THE ROUTINE MAINTENANCE OF THE WIRELESS FACILITY;

24 (2) PROVISIONS THAT ALLOW FOR THE REPLACEMENT OF A WIRELESS FACILITY WITH ANOTHER
25 SMALL WIRELESS FACILITY THAT IS SUBSTANTIALLY SIMILAR OR SMALLER IN SIZE, WEIGHT,
26 AND HEIGHT;

27 (3) PROVISIONS THAT ALLOW FOR MULTIPLE WIRELESS FACILITIES;

28 (4) THE LENGTH OF TIME FOR WHICH AN APPLICATION MAY BE CONSIDERED; OR

29 (5) THE LENGTH OF TIME FOR WHICH A PERMIT WILL BE VALID.

30 ~~(D) DISCRETION OF DIRECTOR. A PERMIT SHALL NOT BE ISSUED WITH RESPECT TO ANY PUBLIC~~
31 ~~STREET LIGHT, WHERE, IN THE JUDGMENT OF THE DIRECTOR, SUFFICIENT CAPACITY NO LONGER~~

1 (E) DISCRETION OF DIRECTOR. THE DIRECTOR:

2 (1) MAY NOT ISSUE A PERMIT WHERE, IN THE JUDGMENT OF THE DIRECTOR, SUFFICIENT
3 CAPACITY NO LONGER EXISTS FOR ADDITIONAL WIRELESS FACILITIES TO BE PLACED IN THE
4 PROPOSED LOCATION WITHOUT JEOPARDIZING THE PHYSICAL INTEGRITY OF PUBLIC WATER
5 AND SEWER AND OTHER UTILITIES OR OTHER FACILITIES ALREADY PRESENT IN THE
6 PROPOSED LOCATION, OR THE SAFE AND EFFICIENT VEHICULAR OR PEDESTRIAN USE OF THE
7 PUBLIC RIGHT-OF-WAY; OR WHERE THE USE OF THE PUBLIC STREET LIGHT OR WORK
8 ASSOCIATED WITH THE USE OR MAINTENANCE OF THE WIRELESS FACILITY WOULD VIOLATE
9 APPLICABLE LAW.

10 (2) SHALL REVIEW THE APPLICATION FOR A PERMIT IN LIGHT OF THE APPLICATION'S
11 CONFORMITY WITH APPLICABLE REGULATIONS AND COMMUNITY DESIGN GUIDELINES AND
12 SHALL ISSUE A PERMIT ON NONDISCRIMINATORY TERMS AND CONDITIONS.

13 ~~(EE)~~ FEE FOR PERMIT REVIEW. THE COUNTY SHALL CHARGE AND AN APPLICANT SHALL PAY ~~AN~~ A
14 REASONABLE APPLICATION REVIEW FEE FOR THE REVIEW OF A PERMIT ISSUED UNDER THIS
15 SECTION. THE PUBLIC STREET LIGHT PERMIT REVIEW FEE SHALL BE ADOPTED BY RESOLUTION OF
16 THE COUNTY COUNCIL AND SHALL BE IN ADDITION TO ANY COMPENSATION AGREED TO BY THE
17 PARTIES UNDER THE AGREEMENT FOR USE OF THE PUBLIC STREET LIGHTS.

18 ~~(FG)~~ USE OF PUBLIC RIGHT-OF-WAY. NOTHING IN THIS SECTION SHALL AFFECT OR LIMIT THE
19 COUNTY'S RIGHT TO CHARGE A SEPARATE FEE OR TO REQUIRE A SEPARATE CONSENT FOR ACCESS
20 TO OR THE USE OF THE PUBLIC RIGHTS-OF-WAY. ANY PERMIT GRANTED PURSUANT TO THIS
21 SECTION SHALL BE IN ADDITION TO, AND NOT IN LIEU OF, THE FEE AND PERMIT REQUIRED TO
22 UTILIZE AND CONSTRUCT WITHIN THE PUBLIC RIGHT-OF-WAY.

23
24 ***Section 2. And Be It Further Enacted by the County Council of Howard County, Maryland that***
25 ***this Act shall become effective 61 days after its enactment.***