

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) of Section 18.205 “Roads, bridges, and rights-of-way – Obstructions,
6 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 18.206A,
17 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 Postal
28 Service, provided that each is mounted on a post in conformance with "A Guide
29 for Erecting Mailboxes on Highways" by the American Association of State
30 Highway and Transportation Officials, Third Edition, dated 1994;

- b. A utility pole or utility box WHICH ARE NOT A PART OF A WIRELESS FACILITY AS DEFINED IN SECTION 18.206A OF THIS SUBTITLE; or
- c. A sign permitted in a right-of-way under subtitle 5 "Signs" of title 3 "Buildings" of the Howard County Code.

SECTION 18.206A. WIRELESS FACILITIES ON PUBLIC STREET LIGHTS.

(A) *APPLICATION FOR A PERMIT.* A PERMIT IS REQUIRED FOR THE INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL OF WIRELESS FACILITIES ON A PUBLIC STREET LIGHT. A PERMIT SHALL NOT BE ISSUED BY THE DIRECTOR UNLESS AND UNTIL AN AGREEMENT FOR USE OF PUBLIC STREET LIGHTS SETTING FORTH THE TERMS AND CONDITIONS FOR THE INSTALLATION OF THE WIRELESS FACILITIES HAS BEEN REACHED BETWEEN THE COUNTY AND THE APPLICANT, WHICH SHALL INCLUDE FAIR COMPENSATION TO THE COUNTY FOR APPLICANT’S USE OF THE PUBLIC STREET LIGHTS.

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

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

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

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

(II) ANY FACILITY THAT IS PRIVATELY OWNED.

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

(I) ALL ELEMENTS OF THE FACILITY, INCLUDING ANTENNAS, CABINETS, CABLES, WIRES, AND RADIO UNITS; AND

(II) FACILITIES IN, AT, OR NEAR THE WIRELESS FACILITY AND ASSOCIATED WITH THE

1 FACILITY'S OPERATIONS, INCLUDING ELECTRIC METERS AND ELECTRICAL WIRING
2 WHETHER OR NOT OWNED OR MAINTAINED BY THE SAME PERSON THAT OWNS OTHER
3 PORTIONS OF THE WIRELESS FACILITY.

4 (4) *WIRELESS PROVIDER* MEANS THE ENTITIES THAT ARE AUTHORIZED BY THE FEDERAL
5 COMMUNICATION COMMISSION TO PROVIDE PERSONAL WIRELESS SERVICES AS DEFINED AT
6 47 U.S.C. SECTION 332(C)(7).

7 (C) *INFORMATION REQUIRED*. THE APPLICANT SHALL SUBMIT THE FOLLOWING INFORMATION IN THE
8 REQUEST TO USE THE PUBLIC STREET LIGHTS, AND SUCH OTHER INFORMATION AS THE COUNTY MAY
9 REQUEST IN CONNECTION WITH ITS REVIEW OF THE APPLICATION:

10 (1) A TECHNICAL DESCRIPTION OF THE PROPOSED WIRELESS FACILITIES INCLUDING DETAILED
11 SPECIFICATIONS AND DIAGRAMS ACCURATELY DEPICTING THE PROPOSED WIRELESS
12 FACILITIES, AND THE LOCATIONS OF THE PUBLIC STREET LIGHTS ON THE PUBLIC RIGHTS-OF-
13 WAY THE APPLICANT PROPOSES TO USE;

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

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

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

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

24 (6) SUCH OTHER INFORMATION AS THE COUNTY MAY REQUIRE IN AN APPLICATION FORM.

25 (D) *DISCRETION OF DIRECTOR*. A PERMIT SHALL NOT BE ISSUED WITH RESPECT TO ANY PUBLIC
26 STREET LIGHT, WHERE, IN THE JUDGMENT OF THE DIRECTOR, SUFFICIENT CAPACITY NO LONGER
27 EXISTS FOR ADDITIONAL WIRELESS FACILITIES TO BE PLACED IN THE PROPOSED LOCATION WITHOUT
28 JEOPARDIZING THE PHYSICAL INTEGRITY OF PUBLIC WATER AND SEWER AND OTHER UTILITIES OR
29 OTHER FACILITIES ALREADY PRESENT IN THE PROPOSED LOCATION, OR THE SAFE AND EFFICIENT
30 VEHICULAR OR PEDESTRIAN USE OF THE PUBLIC RIGHT-OF-WAY; OR WHERE THE USE OF THE PUBLIC
31 STREET LIGHT OR WORK ASSOCIATED WITH THE USE OR MAINTENANCE OF THE WIRELESS FACILITY

1 WOULD VIOLATE APPLICABLE LAW.

2 (E) *FEES FOR PERMIT REVIEW.* THE COUNTY SHALL CHARGE AND AN APPLICANT SHALL PAY AN
3 APPLICATION REVIEW FEE FOR THE REVIEW OF A PERMIT ISSUED UNDER THIS SECTION. THE PUBLIC
4 STREET LIGHT PERMIT REVIEW FEE SHALL BE ADOPTED BY RESOLUTION OF THE COUNTY COUNCIL
5 AND SHALL BE IN ADDITION TO ANY COMPENSATION AGREED TO BY THE PARTIES UNDER THE
6 AGREEMENT FOR USE OF THE PUBLIC STREET LIGHTS.

7 (F) *USE OF PUBLIC RIGHT-OF-WAY.* NOTHING IN THIS SECTION SHALL AFFECT OR LIMIT THE
8 COUNTY'S RIGHT TO CHARGE A SEPARATE FEE OR TO REQUIRE A SEPARATE CONSENT FOR ACCESS TO
9 OR THE USE OF THE PUBLIC RIGHTS-OF-WAY. ANY PERMIT GRANTED PURSUANT TO THIS SECTION
10 SHALL BE IN ADDITION TO, AND NOT IN LIEU OF, THE FEE AND PERMIT REQUIRED TO UTILIZE AND
11 CONSTRUCT WITHIN THE PUBLIC RIGHT-OF-WAY.

12

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