

**Section 5 of the Village of Chevy Chase  
Small Wireless Telecommunications Facilities  
(2023 Amendments)**

Resolution No.: 1-23-1  
Introduced: 1/10/23  
Adopted:  
Effective Date:

AN ORDINANCE TO AMEND CHAPTER 13 OF THE CODE OF ORDINANCES TO CLARIFY PROVISIONS; ADD PERMIT APPLICATION REQUIREMENTS; ADD AND MODIFY STANDARDS FOR DEPLOYMENT; DISALLOW PRUNING OF TREES EXCEPT AS MINIMALLY REASONABLY NECESSARY; REQUIRE REPLACED POLES TO BE REMOVED WITHIN 180 DAYS; REDUCE THE ALLOWABLE EQUIPMENT SIZE FROM 28 TO 12 CUBIC FEET; REQUIRE ANNUAL CERTIFICATION CONCERNING FACILITIES IN USE; AND ADD PROVISIONS FOR VARIANCE REQUESTS AND APPEALS.

WHEREAS, Maryland Code, Local Government Article, Section 5-202, as amended, grants to the legislative body of every incorporated municipality in Maryland general power to pass such ordinances not contrary to the Constitution of Maryland, or the public general law, as deemed necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality;

WHEREAS, United States Code, Title 47, Section 332, provides that a local government may exercise control regarding the placement, construction, and modification of personal wireless service facilities, provided the local government does not unreasonably discriminate among providers of functionally equivalent services; and does not prohibit the provision of personal wireless services;

WHEREAS, United States Code, Title 47, Section 332, provides that a local government shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request; and any decision by a local government to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record;

WHEREAS, United States Code, Title 47, Section 1455, provides that a local government may deny a facility request for a modification of an existing wireless tower or base station if it substantially changes the physical dimensions of such tower or base station, including requests for the collocation, removal, or replacement of transmission equipment;

WHEREAS, Section 5 of the Village of Chevy Chase holds and maintains the streets and highways within its municipal boundaries in trust for the benefit, use, and convenience of the general public;

WHEREAS, Section 501 of the Section 5 of the Village of Chevy Chase Charter authorizes the Section 5 Council to pass ordinances as it may deem necessary for the preservation of Section 5's property, rights, and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger, or destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare, and happiness of the residents of and visitors in Section 5;

WHEREAS, after proper notice to the public, the Section 5 Council introduced the following Ordinance in an open meeting conducted on the 10th day of January, 2023;

WHEREAS, after proper notice to the public, the Section 5 Council considered the following Ordinance in an open meeting conducted on the \_\_\_\_\_ day of \_\_\_\_\_, 2023;

WHEREAS, upon consideration of the testimony and evidence presented at the public hearing, the Section 5 Council finds that the ordinance as hereinafter set forth is necessary for the good government of Section 5; for the protection and preservation of Section 5's property, rights and privileges; for the preservation of peace and good order; for securing persons and property from violence, danger and destruction; and for the protection and promotion of the health, safety, comfort, and convenience of residents.

NOW, THEREFORE, BE IT ORDAINED AND ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by the Section 5 Council, acting under and by virtue of the authority given it by the Maryland Code and the Section 5 Charter, the Section 5 Council does hereby adopt the foregoing Ordinance and amend the Section 5 Code as follows:

\* \* \*

## CHAPTER 13

### SMALL WIRELESS TELECOMMUNICATIONS FACILITIES

#### Sec. 13-100. Intent and Purpose.

It is the intent of the Section 5 Council to promote the Section's public health, safety, and general welfare by providing regulatory requirements for the installation, **operation**, and maintenance of small wireless telecommunications facilities in the public rights-of-way. The purpose of this Chapter is to regulate the same to enhance vehicular and pedestrian safety and avoid interference with motorist and pedestrian sightlines; to minimize damage to trees; to reduce visual clutter and prevent unsightly or out-of-character deployments; to preserve the value of property and the character of the neighborhood; and to otherwise protect the health, safety, and general welfare of ~~the town~~ **Section 5** and its residents, and the public at large.

Sec. 13-101. Definitions.

“*Base Station*” means a structure or equipment at a fixed location that enables wireless communications between user equipment and a communications network. The term does not include a Tower or any equipment associated with a Tower.

“*Collocate*” means to install or mount a small wireless facility in the public right-of-way on an existing support structure, an existing tower, or on an existing pole to which a small wireless facility is attached at the time of the application. "Collocation" has a corresponding meaning.

“*Communications Facility*” means, collectively, the equipment at a fixed location or locations within the public right-of-way that enables Wireless 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. The term does not include the Pole, Tower, or Support Structure to which the equipment is attached.

“*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 a public right-of-way. The term does not include a Tower or Support Structure.

“*Small Wireless Facility*” means a Wireless Facility that meets all of the following conditions:

- (1) The structure on which antenna facilities are mounted (i) is fifty (50) feet or less in height, including existing antennas, or (ii) is no more than ten (10) percent taller than other adjacent structures, or (iii) is not extended to a height of more than fifty (50) feet or by more than ten (10) percent above its preexisting height, whichever is greater;
- (2) Each antenna associated with the deployment, excluding the associated equipment **but including any enclosure containing an antenna**, is no more than three (3) cubic feet in volume;
- (3) All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than ~~twenty-eight (28)~~ **twelve (12)** cubic feet in volume;
- (4) The facility does not require antenna structure registration under Federal law; and
- (5) The facility does not result in human exposure to radiofrequency radiation in excess of applicable safety standards under Federal law.

“*Support Structure*” means a structure in a public right-of-way other than ~~a pole or a tower,~~ **including a pole, to which a Wireless Facility is attached, or proposed to be attached to which a wireless facility is attached at the time of the application.**

“*Tower*” means any structure in a public right-of-way, within or outside the boundaries of Section 5, built for the sole or primary purpose of supporting a Wireless Facility. A Tower does not include a Pole or a Support Structure.

“*Wireless Facility*” means the equipment at a fixed location or locations in the public right-of-way that enables Wireless Services. A Small Wireless Facility is a type of a Wireless Facility. The term does not include the Pole, Tower, or Support Structure on, under, or within which the equipment is located or collocated, or the coaxial, fiber-optic, or other cabling between Communications Facilities or Poles, or that is otherwise not immediately adjacent to or directly associated with a particular antenna. **As used in this Chapter, “Wireless Facility” and “Communications Facility” are synonymous.**

“*Wireless Service Provider*” means a person who provides Wireless Services.

“*Wireless Services*” means any wireless services using licensed or unlicensed spectrum, whether at a fixed location or mobile, provided to the public.

**Sec. 13-102. Only Small Wireless Facilities Permitted.**

**Unless otherwise required by law, no Wireless Facility other than a Small Wireless Facility may be installed or operated in the public rights-of-way.**

~~Sec. 13-102~~ **13-103.** Permit and Access Agreement Required.

- (a) No person shall construct, install, maintain, or perform any work in the public right-of-way related to a Communications Facility, **Support Structure**, or any Tower, without first receiving a Permit and paying any applicable fee, as required under this Title. No permit shall be issued **by the Section 5 Manager and Building Inspector** until the applicant has entered into a Right-of-Way Access Agreement in a form approved by Section 5, according to this Title. A permit shall not be required for ordinary maintenance and repair, as determined by Section 5. **A permit application shall be filed with Section 5 no later than seven (7) calendar days after a siting, modification, permit, or other application has been filed with Montgomery County, Maryland, for the same work.**
- (b) The Right-of-Way Access Agreement shall set forth, at a minimum, the following: (a) the maximum term of the agreement and the bases for termination; (b) the scope of the authority; (c) the operator’s maintenance obligations; (d) the operator’s indemnification and insurance requirements; (e) emergency contacts and required response to emergencies related to facilities; and (f) Section 5’s right to access and inspect the operator’s books and records **and facilities located in the right-of-way.**
- (c) **A right-of-way access agreement may be terminated by Section 5 as set forth in the access agreement, or, in the event this Chapter is amended or replaced and Section 5 determines, consistent with applicable law, that termination is necessary. In such event, a new permit and right-of-way access agreement shall be required according to the requirements of the amended or replaced chapter.**

~~Sec. 13-103~~ **13-104.** Permit Application Requirements.

- (a) An application for a permit under this Title must contain or be submitted with the following:
- (i) The applicant's name, address, telephone number, and e-mail address, including emergency contact information for the Applicant;
  - (ii) The names, addresses, telephone numbers, and e-mail addresses of all consultants, if any, acting on behalf of the Applicant with respect to the filing of the Application;
  - (iii) A description of the proposed work and the purposes and intent of the proposed facility sufficient to demonstrate compliance with the provisions of this Title;
  - (iv) If applicable, a copy of the authorization for use of the property from the Pole, Tower, or Support Structure owner on or in which the Communications Facility will be placed or attached;
  - (v) Detailed construction drawings regarding the proposed facility;
  - (vi) **A representation as to whether the applicant contends that the application is an eligible facilities request within the meaning of 47 CFR Section 1.6100(b)(3), as amended or replaced, and, if so, drawings and an engineer's certification establishing the accuracy of that contention.**
  - (vii) A structural report performed by a duly licensed engineer evidencing that the Pole, Tower or Support Structure can adequately support the Collocation (or that the Pole, Tower, or Support Structure will be modified to meet structural requirements) in accordance with applicable codes;
  - (viii) **A detailed deployment plan describing all Communications Facilities, Poles, Towers, or Support Structures planned to be used or installed by the applicant for twenty-four (24) months following the permit application anywhere in Section 5, and a description of any completed deployments within Section 5.**
  - (ix) A certification by a radiofrequency engineer that the Communications Facility will comply with the radiofrequency radiation emission standards adopted by the Federal Communications Commission; and
  - (x) The applicable application fee, bond, Right-of-Way Access Agreement, and right-of-way access fee, as may be adopted and amended by resolution of the Section 5 Council.
- (b) Section 5 may require the posting of a bond to guarantee the prompt and proper restoration of the public right-of-way. The bond may be in such amount as the Section 5 Manager deems necessary, ~~in~~ **at** the Manager's discretion **to allow the prompt and proper restoration of the public right-of-way.**
- (c) In exchange for the privilege of non-exclusive use of the public right-of-way, the applicant shall pay Section 5 such access fee as may be established and amended by Section 5 by resolution from time to time.
- (d) Any permit issued under this Title shall be valid for a period of twelve (12) months after issuance, and may be extended by the Section 5 Manager for up to an additional twelve (12) months upon written request of the applicant, prior to permit expiration, if the failure

to complete construction is as a result of circumstances beyond the reasonable control of the applicant.

- (e) No work may be performed except in strict accordance with applicable law and the Section 5 permit and all approved plans and specifications.
- (f) No permit shall be issued except to a Wireless Service Provider with immediate plans for use of the subject Communications Facility. A permit issued under this Title may not be assigned or transferred.

Sec. ~~13-104~~ **13-105**. Standards for Deployment in the Public Right-of-Way.

- (a) *No Interference with Right-of-Way*. No person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower, so as to interfere with the use of the public right-of-way by Section 5, the general public, or other persons authorized to use or be present in or upon the public right-of-way, or otherwise hinder the ability of Section 5 to improve, modify, relocate, abandon or vacate a public right-of-way or any portion thereof. Unless otherwise approved by Section 5, any Communications Facility must be located no closer than: (i) two (2) feet from any curb, sidewalk, or other improvement within the right-of-way; and (ii) five (5) feet from any driveway apron, and be otherwise located to avoid interference with pedestrian and motorist sightlines and use.
- (b) *Compliance with Design Standards; Unsightly or Out-of-Character Deployments; Noise Abatement*. Unless otherwise approved by Section 5 **as required by applicable law in order** to prevent an effective prohibition of service, ~~in violation of applicable law~~, no person shall locate or maintain a Communications Facility, Pole, or any Tower except in accordance with the following design standards:
  1. All Communications Facilities shall be located and designed so as to minimize visual impact on surrounding properties and from public rights-of-way, and so as to not interfere with motorist and pedestrian sightlines, especially at intersections.
  2. All radio transceivers, antennas, power supply (including backup battery), and comparable equipment installed on a Tower, Pole, or other Support Structure shall be installed at a height of at least fifteen (15) feet above ground level.
  3. No ~~Tower~~ **Wireless Facility in the right-of-way** may be located closer than ~~one thousand (1,000)~~ **five hundred (500)** feet of another ~~Tower~~ **Wireless Facility in the right-of-way**.
  4. No more than ~~five~~ **three (3)** antennas may be located on any single Tower, Pole, or Support Structure.
  5. All coaxial, fiber-optic, or other cabling and wires shall be contained inside the Tower, Pole, or other Support Structure or shall be flush-mounted and covered with a metal,

plastic or similar material matching the color of the Tower, Pole, or other Support Structure on which it is installed.

6. **Unless otherwise approved by Section 5 as required by law to prevent an effective prohibition of service, Communications Facilities shall be collocated. A Tower or other Support Structure shall be constructed in a manner that allows Collocation.**
7. **All Communications Facilities shall be constructed in a manner to allow the public rights-of-way to be maintained in compliance with the Americans with Disabilities Act, as amended or replaced.**
8. **Fans or other elements of a Communication Facility that emit noise shall be accompanied by noise abatement measures as are appropriate to prevent noise disturbances.**
6. **9.** All Communications Facilities shall comply with such additional design standards as may be set forth in administrative regulations issued by Section 5.

(c) *Protection of Trees.* Unless otherwise approved by Section 5 **as required by applicable law in order** to prevent an effective prohibition of service, in violation of applicable law, no person shall locate or maintain a Communications Facility, Pole, Support Structure, or any Tower, so as to interfere with the health of a tree. **Trees may not be pruned to accommodate a Communications Facility, Pole, Tower, or Support Structure, except as minimally reasonably necessary.**

(d) *Location Underground.* [Reserved].

(e) ~~*Modification of Wireless Facilities*~~ **Eligible facilities requests.** Section 5 shall approve any request for a modification of an ~~eligible~~ existing Tower or base station that does not substantially change the physical dimensions of such Tower or base station, in accordance with Federal law. **Any such approval, whether through affirmative action by Section 5 or by operations of law, shall be subject to the conditions that (i) the proposed modification as built does in fact qualify as an eligible facilities request under 47 CFR Section 1.6100(b)(3), and (ii) the facility as modified complies with all applicable provisions of this Chapter.**

(f) *Restoration of Public Right-of-Way.* The applicant shall restore, repair, and/or replace any portion of the public right-of-way that is damaged or disturbed by the applicant's work, to the satisfaction of Section 5. Such restoration work shall be completed no later than thirty (30) days following completion of the project, or termination of the Right-of-Way Access Agreement, and shall be warranted by the applicant for a period of one (1) year to be free from defects in materials and workmanship. **In the case of Pole replacement, the original Pole shall be removed by the owner of the Pole no later than one hundred eighty (180) days following the installation of the new Pole.**

(g) *Removal, Relocation, and Abandonment.* Within thirty (30) days following written notice from Section 5, or such other time as Section 5 may **reasonably** require, Section 5 may **require** ~~terminate a right-of-way access agreement or require other action in connection~~

~~therewith, and the owner shall, at its own cost and expense, to protect, support, temporarily or permanently disconnect, remove, relocate, change or alter the position of~~ **all or any part** of its Communications Facilities, Poles, Support Structures or Towers within the public right-of-way, and restore the right-of-way as required by Section 5, whenever either: (i) ~~the terms of the right-of-way access agreement have been~~ **terminated violated as provided in the right-of-way access agreement or this Chapter**; (ii) the Communications Facility has not been used for a period of ninety (90) days, or has otherwise been abandoned or not maintained, or (iii) Section 5 has **reasonably** ~~determined in its sole discretion~~ that such action is necessary for the construction, installation, repair, or maintenance of any public improvement or otherwise necessary for the public health, safety, or welfare. If the owner fails to take action as required by this section, Section 5 or its contractor may do so and the owner shall be responsible for all costs and expenses incurred by Section 5 related to such work.

**(h) Annual Certification. Each year on July 1, a Wireless Service Provider shall submit an affidavit to Section 5 that shall list, by location, all Small Wireless Facilities it owns within Section 5, and shall certify: (1) each such installation remains in use; (2) such in-use facility remains covered by required insurance; and (3) each such installation which is no longer in use.**

#### **Sec. 13-106. Variances and Appeals to the Council.**

**(A) Authority of Council. The Council may grant variances from the requirements of this Chapter, upon proof by a preponderance of the evidence that strict compliance would effectively prohibit the provision of service, and the variance is the minimum reasonably necessary to overcome the aforesaid prohibition and allow service.**

**(B) Procedure for granting variances. The procedure for applying for and obtaining a variance or obtaining a hearing for an appeal shall be as follows:**

**(1) Application for variance. Application for a variance may be made by any applicant who has been denied a permit for nonconformance with the requirements of this Chapter or by any applicant seeking a deviation from these requirements.**

**(2) Supporting data. Each application shall be accompanied by the following:**

**(a) Surveys, plats, or other accurate drawings showing boundaries, dimensions, area, topography, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of the structures from the nearest public right-of-way lines.**

**(b) Plans, architectural drawings, photographs, elevations, and specifications depicting fully the exterior appearance of the existing and that of the proposed construction involved in the application. Other detailed information may be provided as may be necessary for the Council to fully understand the need for a variance.**



(c) The lease, rental agreement or contract to purchase any utility pole involved in the application, to demonstrate the applicant's legal right to prosecute the application.

(d) All additional exhibits which the applicant intends to introduce. A summary of what the applicant expects to prove, including the names of applicant's witnesses, summaries of the testimonies of expert witnesses, and the estimated time for presentation of the applicant's case.

(3) Appeals to Council. Any person aggrieved by a decision or action of the Section Manager or Building Inspector arising from the granting or denial of a permit may file an appeal to the Council. Such appeal shall be filed within thirty (30) days after issuance of the decision or notice of action by the Section Manager or Building Inspector. The Section Manager shall transmit to the Council all documents and papers pertaining to the appeal which shall constitute the record on appeal.

(4) Procedures for Variances and Appeals.

(a) The Section Manager shall place the matter on the Council meeting agenda and announce a public hearing thereon which shall be held at a regular monthly or special meeting of the Council. The Section Manager shall give written notice of such hearing to the parties in interest and hand deliver to the abutting property owners at least ten (10) days prior to the meeting of the Council at which meeting such application is to be heard, provided, however, that this posting and service requirement may be altered in order to comply with applicable Federal time limits.

(b) Public hearings on applications. The Council shall hold a public hearing on all applications for the grant of a variance and all appeals from requirements, determinations and decisions by the Section Manager or Building Inspector. For the conduct of any such review hearing, a quorum shall be no fewer than three (3) members of the Council and in all instances an affirmative vote of three (3) members of the Council shall be required to overrule any decision, ruling or determination of the Building Inspector or Section Manager or to approve any variance, provided that nothing in this section shall be construed to relieve any person from the requirements of obtaining a permit or variance as the required by the County. At the hearing, any party may appear in person by agent or by attorney.

(c) Conditions. In granting a variance, the Council may require such conditions as in its judgment secure substantially the objectives of the requirements so modified and protect the public interest. In exercising its powers the Council may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination of the Building Inspector or Section Manager as it deems appropriate.

(d) Record of Decision. The decision of the Council shall be in writing and signed. Any decision shall be effective on the date the Council approves its written decision. The secretary of the Council shall keep minutes of all review hearings, showing the vote of each member, including whether the member was absent or declined to vote. These minutes and the Council's decision shall be filed in Section 5's office and shall be a public record.

**(e) Extension for variances. The Council may extend any time limit imposed as a condition of a variance upon a reasonable showing that there has been no material change in circumstance since the variance was granted and, despite due diligence by the permittee, additional time is necessary to accomplish the approved construction.**

**Sec. 13-106. Appeals to Court.**

**Any party aggrieved by the decision of the Council under Section 13-105 of this Chapter may appeal within thirty (30) days to the Montgomery County Circuit Court and thereafter to the appellate courts of Maryland within the time and manner prescribed within the Maryland Rules of Procedure relating to the judicial review of administrative agency decisions. The time for appeals shall begin to run from the date of the written decision of approval or denial or from the date the application for variance was denied for want of the necessary total of affirmative votes.**

\* \* \*

AND BE IT FURTHER ORDAINED AND ORDERED, by the Section 5 Council, acting under and by virtue of the authority granted to it by the Maryland Code, and the Charter of Section 5 of the Village of Chevy Chase, that:

(1) If any part or provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, the part or provision held to be invalid shall not affect the validity of the Ordinance as a whole or any remaining part thereof; and

(2) This Ordinance shall take effect on the \_\_\_\_\_ day of \_\_\_\_\_, 2023 (20 days after adoption).

ATTEST:

SECTION 5 OF THE VILLAGE  
OF CHEVY CHASE

\_\_\_\_\_  
Patricia Xeller, Secretary

\_\_\_\_\_  
Greg Chernack, Chair

**Underline** indicates new material  
**~~Strikethrough~~** indicates material deleted  
\* \* \* indicates material unchanged