

THE MAYOR AND COUNCIL OF BOONSBORO
BOONSBORO SMALL CELL FACILITIES DEPLOYMENT ORDINANCE

PROCEDURAL RULES

WHO MAY APPLY. An adult person, corporation, partnership, limited liability company or other legal entity recognized under Maryland law, in good standing, and if a non-Maryland entity, qualified to do business in Maryland, having a frequency allocation from the Federal Communications Commission for each frequency proposed to be transmitted from a public right-of-way in the Town, may apply to the Mayor and Council for approval to use a public right-of-way in the Town as a location for a small cell wireless communication facility. An application on behalf of a corporation, partnership, legal liability company or other entity shall be accompanied by an authorizing resolution of the board of directors or other governing body of the applicant. If the applicant is a limited liability company, the application shall be submitted by a managing member designated in an operating agreement, accompanied by a true copy of the operating agreement. An application may be filed on behalf of an applicant by an attorney in good standing admitted to the practice of law before the Court of Appeals of Maryland. The Mayor and Council may require further proof of authorization as a condition of approval. An installer or consultant who is neither the applicant nor an employee of the applicant shall not be permitted to submit an application.

PRE-APPLICATION PROCEDURE. As provided in the Ordinance, applicants are encouraged to meet with representatives of the Town prior to submitting an application. The Town may be contacted by telephone at (301) 432-5141 to schedule a pre-application informational conference. Applicants are encouraged to view the proposed site or sites prior to submitting an application. An application shall indicate as part of the application whether the applicant has participated in a pre-application conference, and if so, the time, date and each participating representative of the applicant in the conference. An application shall indicate whether the applicant has viewed the site or sites which are the subject of an application, and if so, the time, date and each participating representative of the applicant.

APPLICATION TO CONFORM TO ORDINANCE, PROCEDURAL RULES AND GUIDELINES. The application shall conform to the requirements of the Boonsboro Small Cell Deployment Ordinance, as amended from time to time, these Procedural Rules, and the Guidelines adopted from time to time by resolution of the Mayor and Council. The Ordinance, procedural Rules and Guidelines are available for review at Town Hall, and on the Town website. In submitting an application, the applicant acknowledges that the applicant has reviewed the Ordinance, these Procedural Rules and the Guidelines.

APPLICATION TO CONFORM TO FEDERAL COMMUNICATIONS LAWS. An application shall conform to the Order of the Federal Communications Commission, as defined in the Ordinance, to all applicable Federal statutes, and to all applicable regulations, orders, rulings and other requirements of the Federal Communications Commission. A copy of the frequency allocation for any frequency intended to be transmitted from a public right-of-way in the Town granted to the applicant by the Federal Communications Commission shall be included as part of the application.

APPLICATION TO CONFORM TO MARYLAND LAW. An application shall conform to all applicable Maryland statutes and regulations promulgated pursuant thereto, and all judgments, declarations and decrees of the Courts of Maryland and the Federal courts sitting in Maryland.

FORM OF APPLICATION. Except as otherwise provided in the Ordinance or these Procedural Rules, no particular form or format is required. The Mayor and Council do not provide forms for use in submitting an application. An application consists of the information, plats, drawings and other materials provided by the Applicant in accordance with the Ordinance, these Procedural Rules and the Guidelines. The application and all information and materials submitted as part of the application or supporting the application shall be legible and in the English language, unless otherwise authorized by the Mayor and Council for good cause shown. Any request to submit all or part of an application in other than the English language shall be accompanied by a waiver of the time requirements of the Order, and payment of the actual and reasonable expenses of an accurate and complete translation into English, as determined by the Mayor and Council. The Town Clerk is authorized to receive applications on behalf of the Mayor and Council at Town Hall. The application shall be submitted in the form of original paper copies. An application shall be filed by the real party in interest. The application shall be signed and verified by or on behalf of the applicant. The original paper application shall be accompanied at the time of submission by ten (10) legible copies delivered to the Mayor and Council at Town Hall. An identical digital version of the application shall also be provided to the Mayor and Council at or prior to the time of filing the paper application. The scale and resolution of all plats and drawings submitted in paper or digital form shall be sufficient to permit reading of the information depicted without enhancement or magnification. The digital version of the application shall be identical in content and organization to the original paper application. Receipt of a digital version of an application shall not be considered receipt of the application. Receipt by the Mayor and Council of the required digital copy shall be a condition precedent of acceptance and approval of the original paper application. The digital copy shall be provided on media and in form readable by the Town Clerk without special software or equipment. The format of the digital copy shall be .pdf unless otherwise approved in advance by the Town Clerk. The required digital version of an application may be submitted by one or more CD's, DVD's, flash drives or emails. Other forms of submission, such as DropBox® or similar cloud-based services shall not be accepted or permitted without prior approval of the Town Clerk. Submission of a digital copy shall not constitute filing of an application. Applications shall be received by the Mayor and Council by delivery and acceptance of delivery at Town Hall during normal business hours. The time of receipt at Town Hall shall be the presumptive time of filing for the purpose of establishing the time by which action approving or disapproving an application shall be determined for purposes of compliance with the Order or applicable Maryland statutory law. A record shall be maintained by the Mayor and Council of the dates of receipt of applications received at Town Hall. A dated receipt shall be provided to the applicant upon request.

CONTACT INFORMATION. The application shall identify an individual representative to whom the Town may provide notices and communications to the applicant, including the mailing address, daytime telephone number and email address of the contact person. The applicant shall

promptly notify the Town of any changes in the identification or contact information of the individual representative.

INFORMATION REQUIRED TO BE INCLUDED IN APPLICATION. As provided in the Ordinance, the determination of the applicant as to the information and materials to be submitted in support of an application is the responsibility of the applicant. No applications will be evaluated for completeness at the time of submission. An application not including all of the information required to be submitted under the Ordinance, these Procedural Rules, or the Guidelines shall nevertheless be considered by the Mayor and Council as submitted. The burden of proof, including the burdens of production and persuasion, are on the applicant, and do not shift in the application or consideration process. The application shall include all information, drawings and plats required to be included by the Ordinance, these Procedural Rules and the Guidelines.

SCALE DRAWINGS AND NOTES. As part of the application an applicant shall submit scale drawings meeting the formal requirements for the submission of a site plan under the Town's Land Development Ordinance, including thereon or therewith depiction graphically or in explanatory notes, the following:

STRUCTURES: The applicant shall identify the exact location in relation to the affected and adjacent street, curb, sidewalk and property contiguous to the right-of-way (identifying as to each contiguous property the current owner, street address, tax map and parcel number, and Liber/folio deed reference) of each pole or other structure or surface to which the applicant proposes to attach or locate any component of the proposed small cell wireless communications facility, component, equipment, cable, antenna or system.

ELEVATION DRAWINGS. The applicant shall provide elevation drawings (from the perspective of a pedestrian on the sidewalk approaching from each direction, from the street and from any adjacent building or buildings) depicting the proposed installation and its relationship to all buildings, streets, sidewalks, existing poles and structures in the right-of-way in the vicinity of the proposed installation. The current height of each pole or other structure to which the applicant intends to attach any component of the proposed small cell wireless communications facility or system shall be indicated on the drawing. The proposed modified height of any pole or other structure shall be indicated on the drawing. Poles or other structures intended to be modified or replaced shall be identified and the identification shall be accompanied by an explanation of the manner of modification or replacement, and the reason(s) for which the modification or replacement is requested.

RELATIONSHIP TO SURROUNDING STRUCTURES: An accurate and complete two-dimensional plat or scale drawing depicting the distance between the requested location of each proposed component of the component of the proposed small cell wireless communications facility or system and each adjacent or nearby permanently constructed, placed or installed building, pole, structure, encroachment, fixture or improvement within a distance of twenty (20) feet of the nearest part of the component of the proposed small cell wireless communications facility or system. Examples of such adjacent structures include, but are not limited to, light poles, telephone poles, utility poles, decorative light poles, signs utility cabinets, porches, stoops,

steps, rails, driveways, adjacent public and private sidewalks, residential entrances, commercial entrances, other entrances, handicapped access ramps, railings, guy wires or cables, overhanging structures, lighting, signs, traffic signals, drainage facilities, emergency access, tree trunks (specifying the diameter at chest height), vegetation, planters, pedestrian obstructions or obstacles.

METHOD OF ATTACHMENT: A description in words, diagrams, or both of the manner of proposed attachment of any component of the proposed small cell wireless communications facility, system or appurtenance to any pole, structure or location, including a description of the fasteners, adhesives or other attachment methods proposed, whether the manner of installation will require drilling or creation of any holes in or modifications to the existing pole or structure, the use of any supporting cable, shelf, bracket or other supporting structure or method, and any other modifications or attachments proposed to be made to any existing pole, structure or location.

HEIGHT ABOVE GROUND. A scale drawing or drawings indicating as to each component of the proposed small cell wireless communications facility or system indicating whether the component will be located at ground level, or, if above or below ground level, the height above or depth below ground level at which the component is proposed to be located and the pole or structure on which the component is proposed to be installed.

STREETS AND SIDEWALKS. A description in words, diagrams, or both of any contemplated temporary or permanent modification or disturbance to any street or alley, or any brick, stone, paved or other sidewalk or walkway for pedestrian use, and any adjacent planter, tree or other vegetation, including a description of the manner in which any such temporary modification of a sidewalk or walkway will be undertaken, restored and corrected. Any excavation, drilling, trenching or horizontal or vertical boring, including but not limited to any excavation, drilling or boring in connection with the installation of any new poles or structures, or other subsurface work shall be described in detail as part of the application by the submission of engineered drawings, and accompanied by documentary evidence of submission to and response from "Miss Utility" in accordance with §§12-101 *et seq.* of the Public Utilities Article of the Annotated Code of Maryland.

POWER SOURCE. If the equipment or facilities to be installed will obtain electrical power from a public utility provider, the provider shall be identified and the written consent of the provider to serve the proposed facility or equipment shall be provided with the application. Each point of connection to the public utility lines shall be indicated graphically on the drawings submitted. The voltage of the power source shall be indicated for each point of connection shown. Power is not available from the Town decorative lighting system installed as part of the recent Maryland Main Street project. (Applicants are advised that the decorative fiberglass poles are structurally inadequate to support additional equipment, facilities or cables. The proposed attachment or electrical connection to the decorative pole lighting system shall be considered a sufficient ground for disapproval of an application).

MODIFICATION OF POLES AND STRUCTURES. The applicant shall provide a description in words, graphics or both indicating any contemplated disturbance or relocation of

the utility wires, equipment or other facilities of any other person, utility provider, cable service, firm or entity using the pole or other structure to which the applicant proposes to attach any component of a small cell wireless communications facility or system, including the location of the disturbed facility proposed to be disturbed or relocated, the name and address of the owner of the disturbed facility, the manner of disturbance or modification proposed, and if temporary, the duration of the proposed disturbance. The application shall include a copy of notice from the applicant to the owner of any existing utility equipment or fixture proposed to be relocated or disturbed, and the written confirmation of the owner that a complete copy of the application has been provided to and received by the owner at or before the time of submission of an application to the Mayor and Council, together with a copy of the Ordinance, these procedural rules, and the Guidelines.

DISTURBANCE OF SIGNS, ETC. A description of any signs erected by or for the Town, including but not limited to street and traffic signs, which may be temporarily disturbed or relocated, and any benches, monuments or other public amenities, including the nature of and reason for the disturbance.

NON-COMPLIANCE WITH GUIDELINES. If any noncompliance with the Guidelines is contemplated, a description of the nature of the contemplated noncompliance, and how the applicant proposes to mitigate the noncompliance.

SPECIFICATION OF EQUIPMENT TO BE INSTALLED. As part of the application, the applicant shall submit complete detailed and accurate specifications of the equipment and facilities proposed to be installed, including the name of manufacturer, model number and description of each component, its dimensions, weight, power source, backup power supply (if any), frequencies in megahertz of intended transmission, specified radio frequency power output in watts, effective radiated power in watts, the dimensions, composition and proposed location of any transmitting and/or receiving antennas or antenna arrays, any audible hum, oscillation or noise generated by the component, any light emitted by any component, and if located in the historic district, any logos appearing on the equipment or components visible from the ground level of the right-of-way.

TIMETABLE. As part of the application, the applicant shall provide a reasonably accurate schedule indicating the beginning and ending dates of the proposed installation, or, if in phases, the beginning and ending dates of each phase.

MAKE-READY WORK. The Town does not perform or provide any "make-ready" work, as described in the Order. Any contemplated make-ready work should be described and included within the scope of the application, indicating any permission or consent required for the performance of the make-ready work, and by whom the make-ready work is to be performed. The make-ready work shall be included in the financial assurances and insurance coverages required by the Ordinance.

PROOF OF PUBLIC RIGHT-OF-WAY. The burden is on the applicant to establish that the proposed location of the facilities and appurtenances described in the application is entirely within a public right-of-way controlled by The Town of Boonsboro. Ownership of the proposed

location by the Town in fee simple may be established by submission of a copy of a probative deed or plat recorded among the Land Records of Washington County, Maryland, including an explanatory statement indicating how the deed or plat submitted establishes the right of the Town to use the easement. In the alternative, ownership of the proposed location may be established by providing a true copy of a final, unappealable judgment, declaration or decree of a court of competent jurisdiction, in person or in rem, establishing the right of the Town to own or control the portion of the right-of way where the installation is proposed. No right-of-way in the Town shall be established by prescription except as judicially determined. In the case of an asserted express or implied easement as a basis for the Town's control of the right-of-way, the application shall identify each owner of the servient estate or tenancy, including each legal and equitable holder of a fee simple, leasehold or mortgagee's title or interest in the servient estate or tenancy, and the full name and current, valid mailing address for each legal and equitable owner. In the event the location proposed is not owned in fee simple by the Town, the applicant shall provide the written consent of each owner thereof, as described above, for the use of the easement in form suitable for recording among the land records of Washington County. The absence of proof of ownership in fee simple, or in the alternative, control by other than a fee simple interest of the right-of-way by the Town is deemed a material consideration in the approval of an application by the Mayor and Council. In the event the application relies on a dominant interest or tenancy on the part of the Town in an easement, the applicant shall also provide documents which establish the permissible manner and scope of use of the easement by the dominant tenant or interest holder, indicating whether the scope of the easement is sufficient as expressed, or by the manner of an asserted prescriptive use, to include the right of the Town to allow the establishment of the small cell wireless communications system, facilities and appurtenances proposed by the applicant pursuant to the easement. In the alternative, the applicant may submit such argument or probative evidence, including expert opinion or opinion of qualified legal counsel (including therewith the qualifications of an attorney whose opinion is submitted), as the applicant may elect to provide in support of any claim or contention that the right-of-way proposed for the installation of wireless communications facilities or appurtenances is owned or controlled by the Town, or otherwise held by the Town for the benefit of the public, and allows the Town to permit the applicant to use the right-of-way for the purposes intended by the applicant. The Town may seek the advice of the Town Attorney or other legal counsel in assessing whether the applicant has satisfied the applicant's burden of proof.

FEES AND INITIAL RECURRING FEES TO ACCOMPANY APPLICATION. All fees and initial annual recurring fees required by the Ordinance to be paid by the Applicant shall be paid in full no later than the time of submission of the original paper application. Payment may be remitted by check payable to the order of "Mayor and Council of Boonsboro" or wired funds. Wiring instructions may be obtained from the Town Clerk on request. Applications tendered prior to payment in full of the required fees shall not be received. Except for initial recurring fees, the fees submitted with an application are non-refundable. If a check is submitted to the Town but returned or otherwise dishonored by the drawee for insufficient funds or other disqualifying reason, the return or dishonor shall be sufficient grounds for disapproval of an application.

NOTICE TO ADJACENT AND CONTIGUOUS PROPERTY OWNERS.

Contemporaneously with the submission of an application to the Mayor and Council, the

applicant shall provide a complete and accurate paper copy of the application to each contiguous property owner. For the purposes of this paragraph, contiguous property owner includes a property owner whose property abuts a public right-of way in which the applicant proposes to install all or any part or component of a small cell wireless communications facility, system or appurtenances, the nearest part of whose property is within fifty (50) feet of any part of the proposed location of the proposed small cell wireless communications facility, system, or any appurtenance thereof.

CONSIDERATION OF APPLICATION. Once received, no application may be returned by the Mayor and Council for incompleteness. Once received, no application may be amended or supplemented, except with the written consent of the Mayor and Council. An application may be withdrawn by the Applicant, in the discretion of the applicant, upon written notice delivered to and received by the Mayor and Council at any time before a vote of the Mayor and Council approving or denying the application. An application may be re-submitted following withdrawal. All votes of the Mayor and Council shall occur during an open meeting as defined in the Maryland Open Meetings Act. The Mayor and Council may receive and consider any public input at any meeting at which the application is considered. The Mayor and Council may receive the comments, analysis and recommendations of the Planning Commission of the Town. The Mayor and Council may impose conditions in approving an application. Applications may be disapproved in whole or in part by the Mayor and Council. The proceedings and deliberations of the Mayor and Council shall be conducted in public, except as otherwise provided in the Maryland Open Meetings Act, and are administrative in character. Comments from members of the public or other participants need not be sworn. Cross-examination need not be permitted. Formal judicial rules of evidence do not apply. The applicant shall be provided the opportunity to participate in any meeting at which the application is considered. The applicant is encouraged to participate. In the event an application is not approved, in whole or in part, the Mayor and Council shall issue a statement of the reasons for disapproval within 30 days of the vote disapproving the application or part thereof. The Mayor and Council shall provide written notice of its approval or denial to the Applicant. Except as required under Maryland statutory law, an application which is neither approved nor disapproved by the Mayor and Council shall not be deemed approved.

JUDICIAL REVIEW. Subject to the jurisdiction of the Circuit Court for Frederick County, any person or legal entity having standing and aggrieved by the decision of the Mayor and Council under the applicable principles of Maryland administrative law may appeal the decision of the Mayor and Council to the Circuit Court for Washington County in accordance with Chapter 7, Title 200 of the Maryland Rules, within thirty (30) days of the vote of the Mayor and Council approving an application, in whole or in part, or the denial of an application, in whole or in part. In the case of approval, a petition for judicial review shall be filed in the Circuit Court for Washington County no later than thirty (30) days following the vote of the Mayor and Council approving the application or part thereof. However, in the case of disapproval in whole or in part, a petition for judicial review shall be filed in the Circuit Court for Washington County no later than thirty (30) days following the issuance in writing by the Mayor and Council of the reasons for disapproval, in whole or in part, of the application. Any party aggrieved by a decision of the Mayor and Council shall have all other available remedies, at law or in equity, subject to the requirement, to the extent applicable, of exhaustion of administrative remedies.

POST-APPROVAL PROCEDURE. Upon final, unappealable approval of an application, and at least thirty (30) days prior to commencing any work associated with the installation of the small cell wireless communication facility in the Town, the applicant shall provide bonding and insurance to the Town in accordance with the Order. An applicant shall enter into an indemnification and hold harmless agreement prepared by or on behalf of the Mayor and Council or approved in form and substance by the Mayor and Council conforming to the Order and applicable Maryland statutory law. An applicant conforming the financial assurances described in the Order may be permitted to self-insure, in the reasonable discretion of the Mayor and Council. All work, including any make-ready work, shall be subject to all applicable building, electrical and other codes, laws, ordinances and regulations, except to the extent preempted by Federal or Maryland law. Reasonable advance public notice shall be given by the applicant prior to commencement of any work and activities which may create a risk of property damage, or personal injury, harm or death to pedestrians, motorists, passengers, residents, guests, invitees or others. The applicant shall request and participate in any inspection required by any applicable building, electrical or other code or requirement. The applicant shall repair and remediate any property damages proximately caused in whole or in part by the installation, work or activity. Upon completion of the installation by the applicant, but in no event later than ninety (90) days thereafter, the applicant shall provide the Town with as-built drawings accurately depicting the small cell wireless communication facility and appurtenances installed by the applicant. The Mayor and Council may refer the as-built drawings to the Town Engineer, or another engineer selected by the Mayor and Council to advise the Mayor and Council regarding the accuracy, completeness and sufficiency of the as-built drawings submitted. In the event the Mayor and Council find the drawings to be inaccurate, insufficient or incomplete, the applicant shall revise the drawings and provide the Mayor and Council with revised drawings addressing the deficiency.

SEVERABILITY. If any part of these Procedural Rules is declared invalid by the final, unappealable judgment of a court of competent jurisdiction, the remaining provisions are intended to be severable, and shall remain valid and enforceable.

PURPOSE; CONSTRUCTION. These Procedural Rules are intended to be construed in furtherance of the legislative public policy of the Town in avoiding incompatibility with existing and planned residential, business and governmental uses and activities in the Town, and preserving the aesthetic and historic character of the Town and its historic district.

RESOLUTION 2019-03 ADOPTED THIS _____ DAY OF _____, 2019.

WITNESS/ATTEST:

MAYOR AND COUNCIL OF
BOONSBORO

Town Clerk

By: _____
Howard W. Long, Mayor