RESOLUTION NO. 2022 -02

RESOLUTION ESTABLISHING UTILITY INSTALLATION REQUIREMENTS FOR DISTRIBUTED ANTENNA SYSTEMS AND SMALL WIRELESS FACILITIES

WHEREAS, Section 94-83(e) of Chapter 94, entitled Utilities, of the Code of the Town of Ocean City, Maryland, authorizes and empowers the Mayor and City Council of Ocean City, by Resolution, to adopt regulations and policies related to Small Wireless Facility installations in its rights-of-way.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF OCEAN CITY THAT the following requirements apply to the installation of distributed antenna systems and small wireless facilities as those terms are defined in Federal law:

Distributed Antenna System ("DAS") and Small Wireless Facility Requirements

General:

Installation of a wireless facility within the Town's rights-of-way shall be limited to a distributed antenna system ("DAS") as defined by the Federal Communications Commission (47 CFR 90.219(a)), or a small wireless facility ("SWF") as defined by the Federal Communications Commission (47 CFR § 1.6002) (collectively "SWF"), and shall be applied for and issued through the Town of Ocean City ("Town") Utility Installation Agreement process and the Town's Application for a Permit to Install a Wireless Facility in Public Right-Of-Way or on Public Property.

No installation applications will be accepted or approved until a franchise, right-of-way use, or license agreement between the Utility Owner and the Mayor and City Council has been approved.

Utility Owner shall be a Facility Member-Owner of Miss Utility of Delmarva in order to install any underground equipment or underground infrastructure in the rights-of-way.

Utility Owner shall post a bond equivalent to that required of other utilities for any street cut work.

Utility Owner shall post a bond, in an amount selected by the Town, to guarantee removal of all equipment and poles at end of life or termination of applicable agreement.

All installations consisting of new poles, replacement poles, underground utility service connections, SWF, placement of any equipment on a Town owned structure, or any other work that disturbs an existing improvement in the municipal rights-of-way requires a permit and a Utility Installation Agreement, including payment of all associated fees.

Radio frequencies used shall be reviewed by the Department of Emergency Services to determine potential interference with Town Emergency Services and Public Safety radio equipment. Utility Owner will work with Emergency Services to mitigate any interference concerns prior to installation or any actual interference which may occur after installation.

LAW OFFICES

AYRES, JENKINS, GORDY & ALMAND, P.A.

SUITE 200
6200 COASTAL HIGHWAY
OCEAN CITY, MD 21842

All exterior cabinets and mounting hardware shall be aluminum, galvanized painted steel, stainless steel, or other corrosion resistant material. Utility Owner is responsible for keeping equipment cabinets in good repair, including rust prevention and graffiti removal.

Utility Owner shall first consider co-location on an existing pole or other structure, or the replacement of an existing pole before submitting an application for a new pole. Co-location is required unless Utility Owner can document that co-location is technically infeasible and would materially inhibit deployment.

If necessary, accessory equipment associated or connected with a tower-based SWF which shall never exceed 28 cubic feet, shall be placed underground, or screened from public view. All ground-mounted accessory equipment, utility buildings and accessory structures shall be architecturally designed to blend into the environment in which they are situated.

Neither poles nor SWF shall cause any physical or visual obstruction to pedestrian or vehicular traffic, or otherwise create safety hazards to pedestrians or motorists, or otherwise inconvenience the public use of rights-of-way, as determined by the Town.

All structures and equipment shall be aesthetically and architecturally compatible with the surrounding environment and shall maximize the use of a like facade to blend with the existing surroundings and neighboring buildings to the greatest extent possible through the use of color, camouflaging and architectural treatment. All structures and equipment shall comply with the applicable design guidelines, as amended from time to time, to the greatest extent possible. The Town may consider the aesthetic impact of the proposed structures and equipment, including but not limited to, whether its decision upon the subject application will promote the harmonious and orderly development of the zoning district involved; encourage compatibility with the character and type of development existing in the area; prevent a negative impact on the aesthetic character of the community; preserve woodlands and trees existing at the site to the greatest possible extent; and encourage sound engineering and land development design and construction principles, practices and techniques.

In order to preserve the aesthetic character of the Town, including addressing the challenge of wireless installation proliferation, ensure public safety and manage public vehicular and pedestrian movement, the following Town standards for equipment, aesthetics, location, and spacing shall be applied:

Zone R-1 and MH with existing underground utility:

No new poles or SWF allowed.

Exception: New poles and SWF may be installed in designated "technology gardens". Location of these gardens will be negotiated by the Utility Owner with the respective community association, and each location will require the approval of the Mayor and City Council. Pole plus antenna height shall not exceed the height of adjacent existing light poles. Spacing of pole mounted SWF shall be no less than the spacing required in the R-2 Zoning District.

Zone R-2 with existing underground utility:

SWF shall be constructed on existing light poles or as a replacement of existing light poles only, height not to exceed existing light pole. For the purpose of increased street lighting or to achieve an aesthetic improvement, the City Engineer is empowered to allow a new pole with a mounted antenna where no pole exists. Pole material and style to match existing streetlight. Wood poles are not permitted. Unless co-located with an existing SWF, each municipal right-of-way license holder's installations shall be spaced a minimum of 900 feet apart (approx. 3 city blocks). Installations proposed within 300 feet of an existing SWF, antenna or pole of another license holder, must co-locate at the existing antenna or pole location, or document why the co-location is not technically feasible and would materially inhibit deployment. Said documentation shall include, but not necessarily be limited to, an engineering report provided to the Town.

Zone R-3 to R-3A with existing underground utility:

SWF shall be constructed on existing light poles or as a replacement of existing light poles only, height not to exceed 50 feet or maximum height allowed by zoning, whichever is less. The City Engineer is empowered to allow a new pole with a mounted antenna where no pole exists for the purpose of increased street lighting or aesthetic placement. Pole material and style to match existing streetlight. Wood poles are not permitted. Unless co-located with an existing SWF, each municipal right-of-way license holder's installations shall be spaced a minimum of 900 feet apart (approx. 3 city blocks). Installations proposed within 300 feet of an existing SWF, antenna or pole of another license holder must co-locate at the existing SWF, antenna or pole location, or document why the co-location is not technically feasible and would materially inhibit deployment. Said documentation shall include, but not necessarily be limited to, an engineering report provided to the Town.

All other zones with existing underground utilities:

New poles allowed. SWF may be constructed at locations as a replacement of existing light poles (preferred), or as new stand-alone installations. Height not to exceed 50 feet or maximum height allowed by zoning, whichever is less. Pole style to match existing streetlight. Wood poles are not permitted. Unless co-located with an existing SWF, each municipal right-of-way license holder's installations shall be spaced a minimum of 300 feet apart (approx. 1 city block). Installations proposed within 150 feet of an existing SWF, antenna or pole location of another license holder must co-locate at the existing SWF, antenna or pole location, or document why the co-location is not technically feasible and would materially inhibit deployment. Said documentation shall include, but not necessarily be limited to, an engineering report provided to the Town.

Zone R-1 and MH with above ground utilities:

No new poles or SWF allowed.

Exception: New poles and SWF may be installed in designated "technology gardens". Location of these gardens will be negotiated by the Utility Owner with the respective community association, and each location requires the approval of the Mayor and City Council. Pole plus antenna height shall not exceed the height of existing adjacent utility poles.

Spacing of pole mounted SWF shall be no less than the spacing required in the R-2 Zoning District.

Zone R-2 – R-3A, with above ground utilities:

No new poles or SWF allowed without the written approval of the Mayor and City Council. New poles shall be constructed of either concrete, fiberglass, or aluminum. Wood poles will not be permitted.

Exception: SWF may be constructed on existing utility poles, light poles or as replacement utility or light poles. When installed as a replacement utility pole, the replacement pole shall be either galvanized steel, aluminum, or fiberglass unless the Utility Owner can show good cause why a wood pole is required due to state or federal regulations. Height not to exceed that of existing adjacent utility poles or maximum zoning height, whichever is greater, but shall not be more than 50 feet. Pole material and style to match existing streetlight. Unless co-located with an existing SWF, each municipal right-of-way license holder's installations shall be spaced a minimum of 900 feet apart (approx. 3 city blocks). Installations proposed within 300 feet of an existing SWF, antenna or pole location of another license holder, must co-locate at the existing SWF, antenna or pole location, or document why co-location is not technically feasible and would materially inhibit deployment. Said documentation shall include, but not necessarily be limited to, an engineering report provided to the Town.

All other Zones with above ground utilities:

SWF may be constructed on existing utility poles, existing light poles, as replacement utility or replacement light poles (existing or replacement pole installation is preferred), or as new stand-alone installations. Height not to exceed 50 feet or height of adjacent utility poles, whichever is greater. Pole material and style to match existing streetlight. When installed as a replacement utility pole, the new pole shall be of either galvanized steel, aluminum, or fiberglass unless the Utility Owner can show good cause why a wood pole is required due to state or federal regulations. Unless co-located with an existing SWF, each municipal right-of-way license holder's installations shall be spaced a minimum of 300 feet apart (approx. 1 city block). Installations proposed within 150 feet of an existing SWF, antenna or pole of another license holder must co-locate at the existing SWF, antenna or pole location, or document why the co-location is not technically feasible and would materially inhibit deployment. Said documentation shall include, but not necessarily be limited to, an engineering report provided to the Town.

Modifications:

Modifications to existing approved SWF installations require approval from the City Engineer through the submittal of Town's Application for a Permit to Install a Wireless Facility in a Public Right-Of-Way or on Public Property. The City Engineer will review the application and either approve, approve with comments, deny, or require the Utility Owner to appear before the Mayor and City Council for approval.

RESOLVED AND EFFECTIVE this 7th day of February 2022.

ATTEST:

DIANA L. CHAVIS, Clerk

RICHARD W. MEEHAN, Mayor

MATTHEW M. JAMES, President

Approved as to form:

HEATHER E. STANSBURY
Ayres, Jenkins, Gordy & Almand, P.A.
Office of City Solicitor

ANTHONY J. DELUCA, Secretary