

Zoning Text Amendment No.: 19-07
Concerning: Telecommunications
Towers – Limited Use
Draft No. & Date: 1 – 9/24/19
Introduced: October 1, 2019
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsor: Councilmember Riemer
Co-Sponsors: Councilmembers Albornoz and Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow certain telecommunications towers as a limited or conditional use in certain residential zones;
- revise the standards for telecommunications towers allowed as a limited or conditional use;
- revise the conditional use findings required for the replacement of a pre-existing pole; and
- generally amend use requirements to address certain telecommunications towers.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 3.1. “Use Table”
Section 3.1.6. “Use Table”
DIVISION 3.5. “Commercial Uses”
Section 3.5.2. “Communication Facility”
DIVISION 7.3. “Regulatory Approvals”
Section 7.3.1. “Conditional Use”

EXPLANATION: **Boldface** indicates a Heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

1 **Sec. 1. DIVISION 59-3.1 is amended as follows:**

2 **DIVISION 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

5 The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under

6 Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential		Residential															Commercial/ Residential			Employment				Industrial		
					Residential Detached								Residential Townhouse			Residential Multi-Unit													
					AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL
* * *																													
COMMERCIAL																													
* * *																													
Communication Facility	3.5.2																												
Cable Communications System	3.5.2.A	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	C	C	C	
Media Broadcast Tower	3.5.2.B	C	C	C		C	C	C	C	C	C				C	C	C				C		L	C	C	C	P		
Telecommunications Tower	3.5.2.C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L	L	L	L/C	L/C	L	L/C	L	L	L		

7 **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

8 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

9 **DIVISION 3.5. Commercial Uses**

10 * * *

11 **Section 3.5.2. Communication Facility**

12 * * *

13 **C. Telecommunications Tower**

14 * * *

15 **2. Use Standards**

16 * * *

17 b. [In the Commercial/Residential, Industrial, and Employment
18 zones, where] Where a Telecommunications Tower is allowed
19 as a limited use and the tower would replace a pre-existing
20 utility pole, streetlight pole, or site plan approved parking lot
21 light pole, the tower is allowed if it satisfies the following
22 standards:

23 i. Any permit application to the Department of Permitting
24 Services concerning a Telecommunications Tower must
25 include a recommendation from the Transmission
26 Facility Coordinating group issued within 90 days of the
27 submission of the permit application.

28 ii. In the Commercial/Residential, Industrial, and
29 Employment zones, the pre-existing pole and the
30 replacement tower must be at least 10 feet from an
31 existing building, excluding any setback encroachments
32 allowed under Section 4.1.7.B.5.

33 iii. In the Agricultural, Rural Residential, and Residential
34 zones, the pre-existing pole and the replacement tower

35 must be at least 60 feet from any building intended for
36 human occupation, excluding any setback encroachments
37 allowed under Section 4.1.7.B.5.

38 [i] iv. Antennas must comply with the Antenna Classification
39 Standard A under Section 59.3.5.2.C.1.b, be concealed
40 within an enclosure the same color as the pole, be
41 installed at a minimum height of 15 feet, and be installed
42 parallel with the tower.

43 [ii] v. The tower must be located:

44 (a) within 2 feet of the base of a pre-existing pole and
45 at the same distance from the curb line, or edge of
46 travel lane in an open section, as the pre-existing
47 pole in a public right-of-way;

48 [(b) at least 10 feet from an existing building;]

49 [(c)] (b) outside of the roadway clear zone as
50 determined by the Department of Permitting
51 Services;

52 [(d)] (c) in a manner that allows for adequate sight
53 distances as determined by the Department of
54 Permitting Services; and

55 [(e)] (d) in a manner that complies with streetlight
56 maintenance requirements as determined by the
57 Department of Transportation.

58 [iii] vi. A pre-existing streetlight or parking lot light pole
59 must be removed within 10 business days after power is
60 activated to the replacement tower, and a pre-existing

61 utility pole must be removed within 180 days after a
62 replacement utility pole is installed.

63 [iv] vii. The height of the tower, including any attached
64 antennas and equipment, must not exceed:

65 (a) for streetlights, the height of the pole that is being
66 replaced:

67 (1) plus 6 feet when abutting a right-of-way
68 with a paved section width of 65 feet or less;

69 or

70 (2) plus 15 feet when abutting a right-of-way
71 with a paved section width greater than 65
72 feet.

73 (b) for utility poles and parking lot lights, the height of
74 the pre-existing utility or parking lot light pole plus
75 10 feet.

76 [v] viii. The tower must be the same color as the pre-
77 existing pole.

78 [vi.] ix. The tower must have no exterior wiring, except
79 that exterior wiring may be enclosed in shielded conduit
80 on wooden or utility poles.

81 [vii] x. Any equipment cabinet:

82 (a) must not exceed a maximum volume of 12 cubic
83 feet;

84 (b) if used to support antennas on a replacement
85 streetlight pole, must be installed in the
86 Telecommunications Tower base or at ground

87 level, unless this requirement is waived by the
88 Department of Transportation;

89 (c) must be the same color or pattern as the pre-
90 existing tower[, except as provided in Section
91 59.3.5.2.C.2.b.vii(d)] 3.5.2.C.b.x(d); and

92 (d) may be a stealth design approved for safety by the
93 Department of Transportation.

94 [viii] xi. The tower must include a replacement streetlight,
95 if a streetlight existed on the pre-existing pole.

96 [ix] xii. The design of a replacement tower located in a
97 public right-of-way, including the footer and the
98 replacement streetlight, must be approved by the
99 Department of Transportation.

100 [x] xiii. The noise level of any [fans] equipment must
101 comply with Chapter 31B.

102 [xi] xiv. Signs or illumination [on the antennas or support
103 structure], except a streetlight, on the antennas or support
104 structure are prohibited unless required by the Federal
105 Communications Commission or the County.

106 [xii] xv. The owner of the tower [or the antenna attached to
107 the tower] must maintain their tower[.]. The owner of the
108 antenna must maintain the [antennas,] antenna and
109 equipment in a safe condition[.]. Both owners must
110 remove graffiti[,] and repair damage from their facility.

111 [xiii] xvi. If a tower does not have a streetlight, the tower
112 must be removed at the [cost] expense of the owner of
113 the tower when the tower is no longer in use for more

114 than 12 months. Any antenna and equipment must be
115 removed at the [cost] expense of the owner of the
116 antenna and equipment when the [antennas] antenna and
117 equipment are no longer in use for more than 12 months.
118 The [Telecommunications] Transmission [Facilities]
119 Facility Coordinating Group must be notified within 30
120 days of the removal.

121 c. Where a Telecommunications Tower is allowed as a conditional
122 use, it may be permitted by the Hearing Examiner under
123 [Section 3.5.2.C.2.a, limited use standards, Section 7.3.1,
124 Conditional Use,] either Subsection 3.5.2.C.2.d or Subsection
125 3.5.2.C.2.a, limited use standards. In addition, Section 7.3.1
126 and the following procedures and standards must be satisfied:
127 i. Before the Hearing Examiner approves any conditional
128 use for a Telecommunications Tower, the proposed
129 facility must be reviewed by the [County] Transmission
130 Facility Coordinating Group. The applicant for a
131 conditional use must file a recommendation from the
132 Transmission Facility Coordinating Group with the
133 Hearing Examiner at least 5 days before the date set for
134 the public hearing. The recommendation must be no
135 more than 90 days old when the conditional use
136 application is accepted.

137 * * *

138 d. In the Agricultural, Rural Residential, and Residential zones,
139 where a Telecommunications Tower that is proposed to be less
140 than 50 feet in height does not meet the limited use standards

141 under Subsection 3.5.2.C.2.a, it may be permitted by the
142 Hearing Examiner as a conditional use without regard to
143 Section 7.3.1 only if the following procedures and standards are
144 satisfied:

- 145 i. An application must include:
 - 146 (a) the subject property's ownership and, if the
147 applicant is not the owner, authorization by the
148 owner to file the application;
 - 149 (b) fees as approved by the District Council;
 - 150 (c) a statement of how the proposed development
151 satisfies the criteria to grant the application;
 - 152 (d) a certified copy of the official zoning vicinity map
153 showing the area within at least 1,000 feet
154 surrounding the subject property;
 - 155 (e) a written description of operational features of the
156 proposed use;
 - 157 (f) plans showing existing buildings, structures,
158 rights-of-way, tree coverage, vegetation, historic
159 resources, and the location and design of
160 streetlights, utilities, or parking lot poles within
161 300 feet of the proposed location;
 - 162 (g) a list of all property owners, homeowners
163 associations, civic associations, condominiums,
164 and renter associations within 300 feet of the
165 proposed tower;

- 166 (h) plans showing height and architectural design of
167 the tower and cabinets, including color materials,
168 and any proposed landscaping and lighting;
169 (i) photograph simulations with a direct view of the
170 tower and site from at least 3 directions;
171 (j) at least one alternative site that maximizes the
172 setback from any building intended for human
173 occupation or reduces the height of the proposed
174 tower.
- 175 ii. Before the Hearing Examiner reviews any conditional
176 use for a Telecommunications Tower, the proposed
177 facility must be reviewed by the Transmission Facility
178 Coordinating Group. The Transmission Facility
179 Coordinating Group must declare whether the application
180 is complete, verify the information in the draft
181 application, and must issue a recommendation within 20
182 days of accepting a complete Telecommunications Tower
183 application. The applicant for a conditional use must file
184 a complete copy of the recommendation from the
185 Transmission Facility Coordinating Group with the
186 Hearing Examiner at least 30 days before the date set for
187 the public hearing. The Transmission Facility
188 Coordinating Group recommendation must have been
189 made within 90 days of its submission to the Hearing
190 Examiner.

- 191 iii. The Hearing Examiner must schedule a public hearing to
192 begin within 30 days after the date a complete application
193 is accepted by the Hearing Examiner.
- 194 (a) Within 10 days of when an application is accepted,
195 the Office of Zoning and Administrative Hearings
196 must notify all property owners within 300 feet of
197 the application of:
- 198 (1) the filed application;
199 (2) the hearing date; and
200 (3) information on changes to the hearing date
201 or the consolidation found on the Office of
202 Zoning and Administrative Hearing’s
203 website.
- 204 A sign that satisfies Section 59.7.5 must also be
205 posted at the site of the application at the same
206 time.
- 207 (b) The Hearing Examiner may postpone the public
208 hearing and must post notice on the website of the
209 Office of Zoning and Administrative Hearings of
210 any changes to the application, the application
211 schedule, or consolidation of multiple applications.
- 212 (c) The Hearing Examiner may request information
213 from Planning Department Staff.
- 214 iv. A Telecommunications Tower must be set back, as
215 measured from the base of the support structure.
- 216 v. (a) The Telecommunications Tower must be at least
217 60 feet from any building intended for human

218 occupation, excluding encroachments that are
219 allowed under Section 4.1.7.B.5 and no taller than
220 30 feet; or
221 (b) if the Hearing Examiner determines that additional
222 height and reduced setback are needed to provide
223 service or a reduced setback or increased height
224 will allow the support structure to be located on
225 the property in a less visually obtrusive location,
226 the Hearing Examiner may reduce the setback
227 requirement to at least 30 feet or increase the
228 height. In making this determination, the Hearing
229 Examiner must consider the height of the structure,
230 topography, existing tree coverage and vegetation,
231 proximity to nearby residential properties, and
232 visibility from the street.
233 vi. The Hearing Examiner may not approve a conditional
234 use if the use abuts or confronts an individual resource or
235 is in a historic district in the Master Plan for Historic
236 Preservation.
237 vii. The tower must be located to minimize its visual impact
238 as compared to any alternative location where the tower
239 could be located to provide service. Neither screening
240 under Division 6.5 nor the procedures and standards
241 under Section 7.3.1 are required. The Hearing Examiner
242 may require the tower to be less visually obtrusive by use
243 of screen, coloring, or other visual mitigation options,
244 after the character of residential properties within 400

245 feet, existing tree coverage and vegetation, and design
246 and presence of streetlight, utility, or parking lot poles.

247 e. When multiple applications for Telecommunications Towers
248 raise common questions of law or fact, the Hearing Examiner
249 may order a joint hearing or consolidation of any or all of the
250 claims, issues, or actions. Any such order may be prompted by
251 a motion from any party or at the Examiner’s own initiative.
252 The Hearing Examiner may enter an order regulating the
253 proceeding to avoid unnecessary costs or delay. The following
254 procedures for consolidated hearings govern:

255 i. All applications must be filed within 30 days of each
256 other and be accompanied by a motion for consolidation.

257 ii. The proposed sites, starting at a chosen site, must be
258 located such that no site is further than 3,000 feet from
259 the chosen site in the application.

260 iii. The proposed sites must be located in the same zone,
261 within the same Master Plan area, and in a neighborhood
262 with similar building heights and setbacks.

263 iv. Each tower must be of the same or similar proposed
264 height, structure, and characteristics.

265 v. A motion to consolidate must include a statement
266 specifying the common issues of law and fact.

267 vi. The Hearing Examiner may order a consolidated hearing
268 if the Examiner finds that a consolidated hearing will
269 more fairly and efficiently resolve the matters at issue.

270 vii. If the motion to consolidate is granted, the applicant and
271 opposition must include all proposed hearing exhibits
272 with their pre-hearing statements.

273 viii. The Hearing Examiner has the discretion to require the
274 designation of specific persons to conduct cross-
275 examination on behalf of other individuals and to limit
276 the amount of time given for each party's case in chief.
277 Each side must be allowed equal time.

278 f. Any party aggrieved by the Hearing Examiner's decision may
279 file a petition for judicial review under the Maryland rules
280 within 15 days of the publication of the decision.

281 * * *

282 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
283 date of Council adoption.

284

285 This is a correct copy of Council action.

286

287 _____

288 Mary Anne Paradise
289 Acting Clerk of the Council