

Rehoboth Beach Environment Committee Proposal of Recommendations for  
Wireless Communications Facilities Ordinance  
Approved by the Environment Committee  
August 7, 2020

**Summary:**

At the February 21 commissioner's meeting a presentation was made concerning Wireless Communications Facilities (WCF) being requested and permitted in the City. The Mayor and Commissioners requested the Environment Committee review and make a recommendation related to permitting, placement and regulations of WCF including potential amendments to ordinance 270-46.1.2.

The Rehoboth Beach Environment Committee recommends that the Board of Commissioners of the City of Rehoboth Beach adopt code provisions that follow all applicable laws in the permitting, placement and regulations of Wireless Communications Facilities (WCF) in the city while proceeding with caution in residential areas. The goal is to have an Ordinance that protects the public.

In the recent amendment to Ordinance 270 Section I, A, Purposes, the City states: "The City also recognizes that it has an obligation to protect public safety and to minimize the adverse effects of such facilities through the standards set". And to "Minimize the adverse visual effects and the number of such facilities through proper design, siting, screening, material, color and finish." These recommendations are to assist the City to achieve that purpose.

In addition, the 2010 Comprehensive Development Plan section 8.321 a, City Policies for Commercial Land Use states, "The City will assure that its land use plan and zoning code are drawn to avoid any negative impacts of commercial development upon residential neighborhoods."

**Proposed Recommendations:**

A. Amend the Zoning Ordinance 270-46.1.2 as follows:

1. Wireless Communications Facilities will be set back 60 feet from any residential dwelling unless approved through a Conditional Use proceeding.
2. Add a provision to make clear the wireless provider is required to demonstrate that the installed wireless communications facility complies with any new or amended requirements issued by the FCC or authority having jurisdiction. The City will annually review the permit for compliance with FCC regulations and have the right to revoke the permit and demand removal of the wireless communication facility if any new or amended requirements are not being met.
3. Add a provision that the wireless provider is required to have an independent licensed RF engineer measure emissions from each small cell at the site, certify that

the wireless communication facility itself and in combination with surrounding RF emissions complies with FCC regulations at the time of installation and submit a yearly report to the City. Each application shall include 3D modeling of RF emissions for each proposed site.

4. Add a provision to notify all residents within 500 feet of the location where a permit application has been submitted to the City. Each applicant should be required to post signage at proposed site within 5 days of submitting application for WCF with application number, and contacts for additional information.
5. All applications should immediately be posted to City website. Property owners shall be provided with opportunity to present written comments on any application and such input will be evaluated by City as part of application review process

B. Any permit application for WCF should include the following requirements:

1. Report by Wireless Communications Company conducted by an independent certified Radio Frequency Engineer showing Radio Frequency emissions measured in the area prior to installation. Report must show that calculations of RF totals after installation of new antenna meet FCC bulletin 65. FCC 1.1306(b) (3)
2. The quantity, type and orientation of antenna planned for the WCF. Including the maximum total planned at complete buildout.
3. A new WCF co-located with an existing WCF on a single structure could potentially cause human exposure to levels of RF in excess of the limits of FCC 1.1310. Provide a report showing total RF levels of co-located antenna.
4. Required general liability coverage should be documented for each WCF provider in accordance with 270-46-1.2 requirements and be carefully reviewed.
5. Report by Professional Engineer stating that the pole is structurally sufficient to carry the weight of the WCF and could withstand hurricane force winds, floods and lightning strike without becoming a safety or fire hazard.
6. Report by Delmarva power certifying that the pole is structurally sufficient and can accommodate the WCF and supporting equipment.
7. Drawings to scale showing all structures, residential dwellings, essential utilities in the fall line of the proposed WCF.
8. Photographs of the proposed site showing the WCF digitally simulated to evaluate aesthetic and property devaluation impacts to surrounding properties.
9. Listing of other feasible alternative site locations and complete description of why the proposed site is the best site when compared to each of the other alternate sites.
10. To preserve pedestrian walkways and maintain ADA clearances all WCF supporting equipment is required to be underground. In the event this is not possible include all supporting documentation.

C. Request to State Legislature

The City of Rehoboth Beach to issue a resolution requesting the Delaware State Legislature study health effects of 5G RF (similar to what has been done in New Hampshire, Oregon, Louisiana, and New York).

## **Rationale:**

### Review of FCC Requirements

WCF are deemed necessary for the public good by the FCC. Federal Law prohibits local jurisdictions from impeding their development. This is being challenged by local jurisdictions including Montgomery County in Federal Court. Zoning Ordinance 270-46.1.2 requires compliance with FCC Bulletin 65, guidelines for human exposure to Radio Frequency Electromagnetic Fields. But, Per FCC 1.1308 local government may not:

*“regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the regulations contained in this chapter concerning the environmental effects of such emissions.”*

In addition the purpose of Bulletin 65 is to determine *“whether proposed or existing transmitting facilities, operations or devices comply with limits for human exposure to Radio Frequency (RF) fields”*

The FCC has upheld some limitations, provided they are not overly restrictive and when they promote efficient use of land resources, achieve aesthetic and other community values, and prevent safety hazards and incompatibility between land uses. According to the FCC:

*“We conclude that aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.”*

*“aesthetic requirements that are reasonable in that they are technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments are also permissible.”*

*“Some parties complain of municipal requirements regarding the spacing of wireless installations—i.e., mandating that facilities be sited at least 100, 500, or 1,000 feet, or some other minimum distance, away from other facilities, ostensibly to avoid excessive overhead “clutter” that would be visible from public*

areas.<sup>250</sup> *We acknowledge that while some such requirements may violate 253(a), others may be reasonable aesthetic requirements.*”

The FCC has upheld some regulations on land use provided there is another suitable and available location for the proposed WCF. The FCC states that local jurisdictions “*shall not unreasonably discriminate among providers of functionally equivalent services; and (II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.*”

The recommended changes to ordinance 270-46.1.2 meet these FCC requirements.

In addition:

1. The City intends to comply with FCC standards set in bulletin 65 for Radio Frequency emissions. It is not possible to check for compliance without certified professional testing. Testing must be conducted, and submitted to the City for review to assure the safety of residents.
2. The new Ordinance 270-46.1.2 adopted in November of 2019 changes the point of approval for a new WCF from an elected official to the City Building Inspector. This has the undesired effect of eliminating transparency in government. City residents have no way of knowing that a permit application has been filed. In addition, the Americans with Disabilities Act (ADA) protects people with an Electromagnetic Sensitivity (EMS) diagnosis from being in close proximity to a WCF. The City currently has no way to notify the residents of the proposed WCF so they may exercise this right under the ADA.
3. The City is making an effort to comply with all FCC regulations and still maintain the aesthetic quality of the city, promote and protect public safety, preserve and promote harmonious land uses, and promote visual resources.
4. The City’s setback rules and small lot sizes place residences in close proximity to public rights of way (ROW). A WCF in the city’s ROW could be as close as 15 ft to a residence. This would negatively impact the aesthetics and value of the adjacent properties.
5. The City’s public ROW is a uniquely valuable public resource closely linked with the town’s beauty and allure as a tourist destination. WCF placed without proper planning can be unsightly and out-of-character and degrade the appeal of the City as a tourist destination.
6. The City’s electric poles are outdated and overloaded with clutter and not designed to carry modern Wireless Communication Facilities that can be a safety, electrocution, or fire hazard in residential areas.

7. City infrastructure is old and vulnerable to fire, flood and hurricanes. It is dangerous for residents to be within the fall zone of a WCF.

8. The city has alternative locations for WCF in the right-of-way that are not in close proximity to a residence. Residential areas are serviced by wired and underground cable.

9. The outcome of the appeals to the FCC Small Cell order in the United States Ninth Circuit Court have yet to be decided and safety studies have not been done.

### **Action by other Cities and States:**

#### Setbacks from Residential Dwellings

Petaluma, CA - 500ft

Suisin, CA - 300ft

Calabasas, CA - 1000ft

Westlake, CA - 500ft

Sonoma, CA - 500ft

Walnut City, CA - 1500ft

Los Altos, CA 500 ft multi-family dwellings

Mason, OH - 100ft

San Rafael, CA - 500ft

#### Legislation

NY State - Bill 8637 passed to study the risks to humans and the environment due to increase in RF exposure.

New Hampshire - Bill HB 522 passed to establish commission to study environmental and health effects of evolving 5G technology.

Montana - House passed a resolution calling on Congress to update the 1996 standards to allow health considerations to be taken into account when determining the location of small cells in residential areas.

Louisiana - Bill HR 145 requests the Department of Environmental Quality and Department of Health to study the effects of evolving 5G technology.

Oregon - SB 283 requires the Oregon Health Authority to review peer-reviewed, independently funded scientific studies of the health effects of exposure to microwave radiation, particularly exposure that results from the use of wireless network technologies in schools.

#### Ordinance and Resolutions

2020

County of Hawai'i, HI - July 22, Passed resolution 678 20 to cease the buildout of 5G wireless infrastructure until it is proven through independent research to be safe to human health and the environment.

Nevada, CA - June 2, City Council passed the first reading of an ordinance amending the City's 5G wireless telecom ordinance to include random testing Radio Frequency radiation up to every two years on any WCF.

Farragut, TN - May 14, Approved a resolution to halt 5G until health risks are evaluated by sound science

Easton, CN - May 7, Passed a resolution to cease and desist build out of 5G until December 31, 2020 due to health and safety risks and lack of testing. .

Sandy Springs GA - April 1, Issues stop work order on all installations in residential neighborhoods.

Keene, NH - March, Voted to block applications for 5G until January and draft an ordinance to set location and design standards.

Santa Barbara, CA - March, Voted to delay licensing agreement on downtown light fixtures.

## 2019

Los Altos CA - Passed Ordinance 2019-35 requiring 500 foot setback from multi-family residences and not permitted in utility easements in residential neighborhoods.

Hallandale Beach FL - Unanimous city resolution called on Florida legislature and Federal Government to study the health effects of small cells and develop guidelines for 5G that protect public health.

Fairfax CA - Passed Ordinance 819 that prohibits small cells in residential zones, and requires a 1500 foot separation between small cells. Requires the city to study the viability of a fiber optic cable network as an alternative.

Carmel City, IN - Approved resolution calling for state legislature to limit deployment of 5G until evidence establishes it poses no health risks to humans.

Palo Alto, CA - City Council approved resolution to establish minimum setbacks from homes and schools.

Palos Verdes, CA - Ordinance 12.18 requires certified testing by RF engineer and notification of residents within 500 feet. Restrictions on residential areas.

San Diego, CA - Draft ordinance 5-31-2019 established setbacks of 1000ft to school, child care, hospital and churches.

## 2018

San Rafael, CA - Requires 500 foot setback from residential areas and 500 feet of separation between cells.

Mill Valley, CA - Adopts ordinance prohibiting new or updated WCF in residential zoning districts.

Sonoma CA - Requires a test by licensed RF engineer to measure emissions from each small cell and provide notice to all property owners within 500 ft.

Monterey, CA - City commissioners voted 7-0 to deny Verizons application for a small cell tower to be placed in a residential area.

Mason, OH - Prohibits small cells in residential areas or within 100 ft of residence with 2000ft spacing

Greendale, WI - Resolution R2018-20 opposing the FCC order because it limits town control over rights-of-way.

Current litigation yet to be decided

Montgomery County MD appeal 9th circuit - FCC 1996 standards do not protect public health. Oral Arguments heard February 10, 2020. Decision pending.

90 Jurisdictions including Montgomery, Ann Arundel, Howard and Baltimore counties, Seattle, San Francisco, Portland OR and Austin TX suing FCC for “usurping local authority” Oral Arguments heard February 10, 2020 Decision pending

On July 29, 2020 in US Court of Appeals for District of Columbia Circuit the EHT v. FCC challenges the FCC’s refusal to update its 25-year-old obsolete RF human exposure “safety” standards to protect public health and the environment. The FCC has violated the Administrative Procedure Act (APA), the National Environmental Policy Act (NEPA), and the 1996 Telecommunications Act (TCA). Decision Pending.