



*Gregory J. Swain, County Attorney*

## MEMORANDUM

**To:** Members, Anne Arundel County Council

**From:** Lori L. Blair Klasmeier, Deputy County Attorney /s/

**Via:** Gregory J. Swain, County Attorney /s/

**Date:** September 16, 2019

**Subject:** Bill No. 75-19 – Purchasing – Zoning – Small Cell Systems – Leases  
Bill No. 76-19 – Public Works – County Rights-of-Way – Zoning – Small Cell Systems

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### Legislative Summary

This summary was prepared by the Anne Arundel County Office of Law for use by members of the Anne Arundel County Council during consideration of Bill No. 75-19 and Bill No. 76-19, which legislate various aspects of small cell wireless telecommunication systems in the County.

**Purpose.** The purpose of Bill No. 75-19 is to define “small cell systems”, to exclude the systems from the definition of “commercial telecommunication facilities”, and to exempt County leases for location of small cell systems from the requirement of County Council approval.

The purpose of Bill No. 76-19 is to impose requirements on small cell systems locating in County rights-of-way, establishing fees for small cell systems locating in County rights-of-way, requiring certificates of use for small cell systems, designating small cell systems as a conditional use in all zoning districts, and establishing the zoning conditions for small cells systems.

**Background.** Over the past couple years, wireless telecommunications providers have been developing and utilizing small, low power, short range installations to boost the wireless services provided through large cell towers. These “small cell systems” are currently used in densely populated areas to meet demand for 4G access. It is anticipated that small cell systems will ultimately be used to provide 5G service as it is deployed throughout the country. Small cell systems are usually antennas and associated equipment placed on streetlight fixtures, utility poles, transmission wires, or traffic signal equipment. They are generally only a few feet in length and

width, but they can weigh as much as a refrigerator. Associated equipment, such as batteries and fans, is installed at the base or near the antenna installation. The system also includes cabling for power and signal transmission.

Because small cell systems provide only short-range coverage, they will need to be deployed in large numbers. It will take more than 100 small cell installations to provide the same 4G coverage as one macro-tower. The Federal Communications Commission (“FCC”) has issued rules greatly limiting the ability of local governments to regulate small cell systems in their jurisdictions. These rules preclude local jurisdictions from prohibiting small cell installations, limit fees that can be charged for permitting and use of rights-of-way, and impose timelines on processing of permits. These rules are the subject of legal challenges asserted by various local jurisdictions, including Anne Arundel County, in federal courts. Much of this litigation has been consolidated in various federal circuits and is making its way through the legal process. In the meantime, wireless carriers are seeking sites and approvals for small cell systems.

Moreover, in its most recent session, the General Assembly considered proposed Statewide legislation relating to small cell systems. One Bill, Senate Bill 713, was formulated through a MACO initiative and included input from Anne Arundel County. No small cell legislation was passed by the General Assembly. Rather, it was decided that there would be a work group/task force to consider the issue and recommend legislative initiatives for the 2020 session.

The County has legislation and processes in place for commercial telecommunication facilities, which clearly anticipate and are intended to apply to macro-towers. The legislation and processes need to be modified to keep up with the emerging small cell technology. It is anticipated that, if a small cell system is to be located in a County right-of-way, the County will enter into a lease or license agreement with the system owner. County right-of-way is not subject to County zoning law, but various agencies in the executive branch have been formulating agreements and design standards to ensure that installations in County rights-of-way will be consistent with the conditions that will be imposed through zoning legislation on systems located on private property.

**Summary: Bill No. 75-19 – Purchasing – Zoning – Small Cell Systems – Leases.**

**Section 1** of the Bill renumbers the definitions in § 18-1-101 to accommodate the addition of “small cell systems” in Section 2.

**Section 2** of the Bill modifies the definition of “commercial telecommunication facility” in § 18-1-101(30) to exclude “small cell systems”. It then defines “small cell system” in § 18-1-101(121) as short range equipment to supplement wireless telecommunications. This definition is consistent with that proposed in Senate Bill 713 during the 2019 session of the General Assembly.

**Section 2** also modifies § 8-3-301 to exclude leases for small cell systems in County rights-of-way or on existing County facilities from the requirement that all leases with terms of 3 years or more be approved by the County Council.

**Section 3** provides that the Bill will become effective 45 days from the date that it becomes law.

**Summary: Bill No. 76-19 – Public Works – County Rights-of-Way – Zoning – Small Cell Systems**

**Section 1** of the Bill renumbers certain Code provisions to accommodate additions of Code sections and subsections in Section 2.

In **Section 2** of the Bill:

§ **13-3-101** is amended to add a definition of “small cell system” by referring to the definition being added to § **18-1-101**.

§ **13-3-106** is added to require an agreement for any small cell system locating in a County right-of-way or attaching to County assets and to enumerate the required terms for such an agreement.

§ **13-3-201(a)** and § **13-3-205(b)(2)** are amended to state that permits for work in the County right-of-way are not needed if the work does not make a material change to the airspace and that maintenance permits cover non-emergency activities specified in the permit that make no material change in airspace.

§ **13-3-304(c)** is added to specify fees for permits to locate or maintain small cell systems in a County right-of-way. These fees are based on actual costs to the County to process such permits, as permitted under the rules for small cell systems proposed by the FCC.

§ **18-1-101(30)** is modified to amend the definition of “commercial telecommunication facility” to exclude “small cell systems”.

§ **18-1-101(121)** is added to define “small cell system” as short range equipment to supplement wireless telecommunications. This definition is consistent with that proposed in Senate Bill 713 during the 2019 session of the General Assembly.

§ **18-2-202** is modified to make it clear that a zoning certificate of use is required for a small cell system.

The charts in §§ **18-4-106**, **18-5-102**, **18-6-103**, **18-7-107**, and **18-8-301** are modified to include small cells systems as a conditional use in all residential, commercial, industrial, maritime, and mixed use districts.

§ **18-10-146** is added to set forth the requirements for small cell systems as a conditional use, including defining certain terms. The definitions and the condition in subsection **(b)(2)** are consistent with Senate Bill 713 from the 2019 session of the General Assembly. The remaining conditions are consistent with the conditions and special exception requirements for commercial telecommunication facilities, found at § 18-10-114 of the County Code, and are modified based on the difference in size and function of small cell systems.

§ 18-13-206 is modified to allow small cell systems as a use in the RCA.

**Section 3** provides that the Bill will become effective 45 days from the date that it becomes law.

Please let me know if there are any questions.

cc:   Steuart Pittman, County Executive  
      Jennifer Purcell, Chief of Staff  
      Benjamin J. Birge, Chief Administrative Officer  
      Peter Baron, Legislative Liaison  
      Steven Kaii-Ziegler, Planning and Zoning Officer  
      Chris Phipps, Director, Department of Public Works  
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      Jim Beauchamp, Budget Officer