



October 5, 2018

DDOT Public Space Committee

Sent by email to: PublicSpace.Committee@dc.gov

**Comments of the Kalorama Citizens Association on the  
Draft Small Cell Design Guidelines Published by the DC  
Department of Transportation, August 24, 2018**

**October 5, 2018**

**1. Legal status of the Guidelines: The District should take the necessary steps to give the appropriate portions of the Guidelines mandatory legal effect.**

In producing the Guidelines the District has thus far opted to forgo enactment through the normal regulatory process, which would entail publication of a proposed rulemaking, opportunity for public comment, and scrutiny by the Council. The result is a set of rules that have no binding legal effect on either District officials or the small cell providers, although in some cases couched in mandatory language, and substantial portions of which consist of declarations about the city's special history and character or the intentions of the Guidelines' drafters. Moreover, there is at least one significant conflict between the Guidelines and the MLAs (as to the permissible height of mounting poles<sup>1</sup>), which presumably would have to be resolved in favor of the contractually binding MLAs as things now stand.

Consequently, after the October 15, 2018 hearing on the Guidelines, DDOT should prepare a revised draft, taking all comments into account, and publish it as a proposed rulemaking for eventual inclusion in the DCMR.<sup>2</sup> In so doing, it should revisit the MLAs, to the end of identifying conflicts or inconsistencies with the Guidelines, and undertake the necessary revisions in each, so as to produce a coherent overall regime to govern the installation of small cell facilities in the District.

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<sup>1</sup> Guidelines §5.3.4 limits the height of existing and standalone poles to 31 feet plus a possible 10%; MLA §5.1.2 establishes a 50-foot height limit, "unless in the Department's discretion a greater height is accepted."

<sup>2</sup> At present the draft text makes the following the following obscure reference to DC laws and Regulations: "The applications shall comply with the most current version of guidelines and regulations, including but not limited to" the DC Code, DCMR, two named DDOT Manuals, the Comprehensive Plan, the Shipstead-Luce Act and the National Historic Preservation Act.



## **2. Notice to ANCs and Councilmembers.**

### **A. Notice by the licensee.**

The Master License Agreement (MLA) §5.4.4. requires the Licensee to provide prior notice to the affected ANC and Councilmember before filing an application for a permit, but apparently limits this obligation of a permit for the “first wireless facility” to be installed in a neighborhood. The Draft Guidelines contain no notice requirement. They should require the licensee to give notice to the affected ANC and Councilmember in advance of the filing of each permit application. Otherwise, the ANC and Councilmember, and the public at large, will be deprived of any opportunity to be heard regarding the vast majority of permit applications, of which currently, they may be informed of only when they observe the work crew beginning to install the equipment. The notice should inform the ANC of its right to submit comments and objections to the Department of Transportation (DDOT) and of the deadline for such submission.

### **B. Notice by the Public Space Committee.**

The Public Space Committee should be required to notify the ANC immediately upon receipt of any permit application, as well as upon a determination that an application “is not consistent with these guidelines” and thus requires review and approval by the PSC, as envisaged in §4.2.1. That notice should inform it of its right to submit comments and objections, and provide at least **twenty** days within which to do so.

### **C. Notice should fully inform.**

The point of giving prior notice is to enable folks potentially affected by the proposed installation to formulate an informed view on it. Consequently, permit applications should include detailed plans showing locations of the most proximate buildings, all existing trees and their trunk diameters and any anticipated physical alteration of a tree, at present, or to accommodate any future installation, street light poles, other poles and the amenity zones on both sides of the street. This information should be provided to ANCs and made available online to the general public. A provision that street trees should not be butchered in the way that we currently see Pepco doing should be included.

## **3. Great weight.**

The Guidelines should require that DDOT reviewing staff and the Public Space



Committee give “great weight” to ANC comments regarding any proposed small cell installation, as is statutorily required of other agencies.

#### **4. At-or-above-grade installation of cabinetry.**

Chart 1 appears to bar such installation in the Monumental Core and historic districts for two types of poles, without the possibility of waiver, and for three types of poles with a possibility of waiver, stating “additional guidelines would have to be developed” for that purpose. The possibility of waiver in the latter cases should be eliminated as well, except for alleys, obviating the need for development of any additional guidelines, which in any event would have to be drafted and put out for comment before the Guidelines went into effect. At the same time, in view of the physical and aesthetic intrusiveness of the vaults installed at grade level on sidewalks or on poles, the public should be fully informed of the technical or economic reasons deemed to warrant permitting them anywhere.

#### **5. Strict compliance with appearance standards.**

The Guidelines should require (with no exceptions or waivers) the rejection of a permit application for a new pole that does not satisfy any one of the appearance-related requirements spelled out in §8 of the Guidelines.

#### **6. Location requirements.**

##### **A. Strict compliance with location preferences.**

The Guidelines should make the order of preferences set out in §5.2 mandatory, so that, for example, new poles cannot be installed on side streets were alley space is available for new poles.

##### **B. Limit new pole installation on side streets.**

The Guidelines should bar small cell installations on new poles on side streets, or, alternatively, require that they be limited in height to that of the Washington Globe poles (18 feet instead of the proposed 32 feet).

##### **C. Public parks and schools**

These should be added to the list in §5.1 of areas where small cell infrastructure is not permitted to be installed.



## **7. No use of Globe poles.**

The Guidelines should make express and unambiguous the ban on the use of the District's Washington Globe poles for small cell installations (which is implicit by omission on chart 1, where the District's cobrahead street light poles are listed as available for small cell use while the Washington Globe Poles are left off the list).

## **8. Proactively maximize "hoteling".**

The Guidelines should require "hoteling" throughout the District to reduce the number of possible new poles, visual and physical clutter in the right-of-way, and disruption of the public right-of-way for construction of new poles, the underground cabinets, and new communications; alternatively, they should reduce the per-blockface numerical limits on new poles so that hoteling will be encouraged.

## **9. Guidelines for locations affecting the Federal interest.**

Any additional proposed guidelines that are expected to emanate from NCPC or CFA, as envisaged in §4.2.2, should be produced and put out for comment before the Design Guidelines are put into effect.

Submitted 10-5-2018

A handwritten signature in blue ink that reads "Denis James".

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