

1 Introduced by:  
2  
3 Drafted by:  
4  
5 Kenneth Sigman  
6 City Attorney  
7

First Reading:  
Second Reading:  
Effective Date:

8 **ORDINANCE NO. 2018-\_\_\_\_\_**  
9

10 **Amendments Regarding Right-of-Way Work Permits**  
11

12 **WHEREAS**, because of technological advances and increased consumer demand for  
13 wireless broadband service, wireless telecommunications carriers are seeking to install small, short  
14 range antennas to provide customers with faster and more reliable cell service; and  
15

16 **WHEREAS**, wireless carriers and the companies that provide infrastructure to support the  
17 wireless carriers are increasingly seeking to install antennas in public rights-of-way; and

18 **WHEREAS**, while the Montgomery County Zoning Code regulates the installation of  
19 telecommunications antennas and support structures on private property in Takoma Park, the City  
20 has the authority to regulate such installations in City rights-of-way; and

21 **WHEREAS**, federal law significantly restricts local government authority to regulate the  
22 installation of telecommunications facilities;  
23

24 **WHEREAS**, the City Council desires to protect the public health, safety, and welfare from  
25 the adverse effects of the proliferation of telecommunications facilities to the maximum extent  
26 permissible under federal law; and  
27

28 **WHEREAS**, the Council identified its goals for these amendments to the Takoma Park  
29 Code in Resolution 2018-\_\_\_ 'Regarding the Installation of Wireless Telecommunications  
30 Facilities'.  
31

32 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
33 **TAKOMA PARK, MARYLAND**, that, effective ninety days from the date of adoption, Title 11,  
34 Streets, Chapter 11.12, Permits and Improvements, of the Takoma Park Code is hereby amended as  
35 follows:

36 **Title 11**  
37 **STREETS**

38 \* \* \*

39 **Chapter 11.12**  
40 **PERMITS AND IMPROVEMENTS**

41 **11.12.000 Definitions.**

42

43 As used in this Chapter:

44 “Antenna” means that part of a wireless communications facility designed to radiate or receive RF  
45 signals or electromagnetic waves for the provision of services, including, but not limited to,  
46 cellular, paging, personal communications services and microwave communications.

47 “Applicant” means the person applying for a permit under this chapter, including the applicant’s  
48 officials, employees, agents, and contractors. “Collocation” means the same as defined by the  
49 FCC in 47 C.F.R. Section 1.40001(b)(2), as may be amended, which defines that term as the  
50 mounting or installation of transmission equipment on an eligible pole for the purpose of  
51 transmitting or receiving RF signals for communications purposes. As an illustration and not a  
52 limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more  
53 than one wireless communication facility installed at a single site.

54 “Collocation” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may be  
55 amended, which defines that term as the mounting or installation of transmission equipment on an  
56 eligible pole for the purpose of transmitting or receiving RF signals for communications purposes.  
57 As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not  
58 necessarily refer to more than one wireless communication facility installed at a single site.

59 “Communications facility” means, collectively, the equipment at a fixed location or locations  
60 within a City right-of-way that enables communications services, including: (i) radio transceivers,  
61 antennas, coaxial, fiber-optic or other cabling, power supply, backup battery, and comparable  
62 equipment, regardless of technological configuration; and (ii) all other equipment associated with  
63 any of the foregoing. A communications facility does not include the pole, tower or support  
64 structure to which the equipment is attached.

65 “Communications support structure” means a pole located in the City right-of-way or proposed to  
66 replace an existing pole in the right-of-way to which communications facilities are attached or  
67 proposed or intended to be attached.

68 “Director” means the Director of Public Works or his or her designee.

69 “FCC” means the Federal Communications Commission.

70 “Investor-owned utility pole” means a utility pole that is not owned by the City.

71 “Permittee” means the person that receives a permit to work in or install facilities, equipment or  
72 structures in the right of way under this chapter and the person that owns facilities, equipment or  
73 structures permitted to be installed under this chapter, including the permittee’s officials,  
74 employees, agents, and contractors.

75 “Pole” means a single shaft of wood, steel, concrete, or other material at least 26 feet tall and

76 capable of supporting the equipment mounted thereon in a safe and adequate manner, including an  
77 investor-owned utility pole.

78 “RF” means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the  
79 electromagnetic spectrum range.

80 “Urban forest tree” means an urban forest tree as defined in Chapter 12.12.

81 **11.12.010 Permit required for grading, construction, and installation.**

82 A. No person shall grade, construct, cut or excavate any City street, road, highway, alley,  
83 driveway apron, sidewalk, right-of-way, curb or gutter, or begin any of the work of such grading or  
84 construction, without first obtaining a permit from the City.

85 B. No person shall install any pole, equipment cabinet, or other structure in a City right-of-way  
86 without first obtaining a permit from the City. A permit shall not be issued for a proposed  
87 structure when the location selected in the application is in an area where there is an  
88 overconcentration of structures or facilities in, on or over the right-of-way, as determined by the  
89 Director in the Director’s reasonable discretion and judgment. Any pole, equipment cabinet, or  
90 other structure installed in a City right-of-way must:

- 91 1. Comply with all structural and safety standards specified by the Director;
- 92 2. Not obstruct pedestrian or vehicular traffic flow or sight lines;
- 93 3. Comply with the Americans with Disabilities Act;
- 94 4. If a pole, be at least 26 feet in height;
- 95 5. If a replacement pole, be no more than 10 feet taller than the pole to be replaced and  
96 be located within 2 feet of the base of the existing utility pole and at the same distance from  
97 the edge of the travel lane
- 98 5. If an equipment cabinet, comply with size limits and placement requirements  
99 established by the Director and, if visible, must be screened, shrouded, or concealed or  
100 treated to minimize visual and acoustic impact, as determined in consultation with the  
101 Director, taking into consideration historic area designations. Equipment cabinets shall be  
102 situated so as to reduce visual and acoustic impact without compromising their function;
- 103 6. Not obstruct parking, including preventing persons from entering and exiting vehicles  
104 parked in the right-of-way;
- 105 7. Have a color and finish determined in consultation with the Director to minimize  
106 visual impact to the neighborhood, taking into consideration historic area designations; and
- 107 8. Comply with such other requirements and conditions as the Director may determine

108 are appropriate.

109 C. No person shall install any attachment to a pole or other structure in the City right-of-way  
110 without first obtaining a permit from the City. All attachments to structures in the City  
111 right-of-way must:

112 1. For each pole, have an equipment cabinet or cabinets no greater in collective size than  
113 the volume established by the Director;

114 2. Have a color and finish determined in consultation with the Director to minimize  
115 visual impact to the neighborhood, taking into consideration historic area designations;

116 3. If an antenna, be attached to an existing pole or replacement pole, be mounted at least  
117 15 feet above ground, and be demonstrated to be the least visible antenna possible to  
118 accomplish the coverage objectives and be screened, shrouded, or concealed, or treated to  
119 minimize visual and acoustic impact, as determined in consultation with the Director, taking  
120 into consideration historic area designations. Antenna elements shall be flush mounted, to  
121 the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude  
122 possible future collocation by the same or other operators or carriers. Antennas shall be  
123 situated so as to reduce visual and acoustic impact without compromising their function.

124 4. Comply with such other requirements and conditions as the Director may determine  
125 are necessary and appropriate.

126 D. In the event of an unexpected repair or emergency, a utility company may commence such  
127 repair and emergency response work as required under the circumstances, provided that the utility  
128 company shall notify the City as promptly as possible of such repair or emergency work and shall  
129 obtain a permit from the City for such work, if required, as soon as possible.

130 E. A violation of this chapter and any regulations adopted to implement or enforce this chapter is  
131 a Class A offense.

132 F. In addition to all other means of enforcement provided for by law and in this chapter, the City  
133 Manager, Director, Code Enforcement Officers or police officers may issue a stop-work order to  
134 any person who violates any provision of this chapter or any regulations adopted to implement or  
135 enforce this chapter. Any person who receives such a stop-work order shall immediately cease  
136 work. The person shall comply with all terms and conditions imposed by the stop-work order  
137 before the work may resume.

138 G. Anything installed in the City right-of-way without a permit or in violation of the terms and  
139 conditions of a permit shall be removed upon demand by the City, and the City shall have the  
140 authority to remove the installation and restore the right-of-way and charge the cost of the removal  
141 and restoration to the person that caused the installation.

142 **11.12.020 Permit application—Contents.**

143 A. All applications for grading, construction, and installation permits as described in Section  
144 11.12.010 shall be filed in the Director’s office on forms provided by that office and shall be  
145 accompanied by 2 sets of detailed plans of the project, except that applications for communications  
146 facilities and communications support structures shall also be governed by Section 11.12.170. The  
147 plans for the project shall include, wherever applicable, the following:

- 148 1. Right-of-way, name of street (if any) and width of right-of-way, abutting lots, GIS  
149 location, North point, and scale;
- 150 2. Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and dimensions;
- 151 3. Catch basins, inlets, culverts and other drainage structures, and dimensions;
- 152 4. Construction details, including cross section pavement, curb and gutter, details of  
153 drainage structures, culverts, headwalls, etc.;
- 154 5. Grading plan and profile, showing existing grades and finishing grades;
- 155 6. Identity and contact information for the entity performing the work in the right-of-way;  
156 and
- 157 7. Any additional data and detail required by the Director.
- 158 8. The Director may waive plan detail requirements for any application to install  
159 attachments on existing structures that does not involve excavation or the use of heavy  
160 equipment or vehicles outside of the paved roadway.

161 B. Driveway apron applicants shall provide the address and lot and block number where  
162 construction is to be done and a drawing showing measurement for the property, all buildings, all  
163 porches, all permanent walks, all other permanently installed improvements and the size and  
164 location of the driveway to be installed.

165 **11.12.030 Application requirements.**

166 An application for a permit under sections 11.12.010 shall not be accepted by the Director unless  
167 and until the required information is furnished, together with the necessary plans and specifications,  
168 and the required application fee is paid.

169 **11.12.040 Application revision and resubmission.**

170 In cases where the plans and specifications submitted to the Director do not meet the minimum  
171 construction standards as provided in this chapter, or if unusual conditions require a special  
172 determination by the Director as to type of construction, the plans and specifications, with  
173 necessary revisions noted appropriately thereon, shall be returned to the applicant for revision and  
174 resubmission.

175 **11.12.050 Examination of application—Issuance of permit.**

176 The Director, upon receipt of a complete application for a permit, shall review the plans and  
177 specifications of the proposed project and consider any public comment on the application and, if  
178 satisfied that the plans meet the minimum construction standards as provided in Chapter 11.08 and  
179 all other requirements of this chapter and associated administrative regulations have been complied  
180 with, shall issue a permit. The Director may require modifications to a proposed project before  
181 granting a permit and impose conditions when granting a permit.

182 **11.12.060 Approval of plans required.**

183 If a new subdivision or resubdivision is required, then no construction permit shall be issued by the  
184 Director unless and until the Director has evidence in writing from the Maryland-National Capital  
185 Park and Planning Commission that a preliminary plan and profiles and grades for the subdivision  
186 in which the proposed highway, road, street or alley construction is located has been approved by  
187 the Park and Planning Commission and by the Washington Suburban Sanitary Commission, as  
188 applicable.

189 **11.12.070 Permit fees.**

190 A. Before any street, sidewalk, gutter, curb or drainage project may be begun on a road or street or  
191 within the boundaries of a dedication to public use, the applicant for a permit to undertake the  
192 project shall pay a fee established by the Director for road construction, right-of-way openings,  
193 pavement cuts, excavations and other disturbance work within a City right-of-way.

194 B. The Director may require that an escrow deposit or a bond to cover costs of possible damage or  
195 other related problems to public property be paid to the City. The amount of the escrow deposit or  
196 bond shall be determined by the Director based on the project and shall be refunded after  
197 completion of the project with the approval of the Director.

198 **11.12.080 Permit fees—Not to be credited or returned.**

199 Fees paid by any permittee whose permit has expired or become invalid shall not be credited  
200 against the fees required for a new permit of the permittee. No fees shall be returnable.

201 **11.12.090 Expiration of permits—Renewal.**

202 Permits shall be valid for a period of 6 months from the date of issuance. If any work under a permit  
203 has not been commenced within this period, the permit shall be invalid, and a new permit required  
204 before the project may be commenced.

205 \* \* \*

206 **11.12.140 Permit required to excavate City right-of-way.**

207 A. No person without a permit shall make an excavation in any right-of-way or other public space  
208 or remove from or deposit in the area any earth or other material.

209 B. No person shall exceed the time period granted by such permit in performance of the project  
210 for which the permit was issued.

211 C. A violation of this section is a Class A offense.

212 \* \* \*

213 **11.12.170 Permit application--Communications facilities and communications support**  
214 **structures.**

215 A. The installation of communications facilities and communications support structures in a  
216 City right-of-way shall require a permit under this Chapter.

217 B. An applicant for such a permit shall complete an application form created by the Director and  
218 submit 5 copies of the application form and 5 sets of documentation with the following information  
219 pertaining to a proposed deployment of communications facilities or communications support  
220 structures:

221 1. A technical description of the proposed communication facilities or support structures,  
222 including the purpose and intent of the proposed facilities or support structures, a written  
223 description identifying the geographic service area for the subject installation, photographs  
224 of the communications equipment to be installed, a description of the noise emitted by the  
225 proposed facilities, and an accurate visual impact analysis with photo simulations.

226 2. Right-of-way, name of street (if any) and width of right-of-way, abutting lots, GIS  
227 location, North point, and scale.

228 3. A site plan drawing indicating the proposed installation, right-of-way, name of street (if  
229 any) and width of right-of-way, utility pole identification number if proposed installation  
230 involves attachment to or replacement of an existing utility pole, abutting lots, all trees in  
231 the right-of-way within 50 feet of the proposed project, all trees with a circumference of 24  
232 inches or more at 4.5 feet above ground level within 50 feet of the proposed project, North  
233 point, and scale.

234 4. A certificate from an independent licensed professional engineer that the proposed  
235 installation is structurally sound.

236 5. A detailed deployment plan describing facilities planned to be installed by the  
237 applicant for the 24-month period following the permit issuance anywhere in the City or  
238 within 500 feet of City limits, including on private property and Maryland state and county  
239 right-of-way, and a description of the completed deployment.

240 6. A statement relating to intent to collocate antennas on the proposed facility or support

- 241 structure.
- 242 7. For new antennas, unless proposing the collocation of the antenna, an explanation as  
243 to why the antenna cannot be collocated.
- 244 8. A statement committing to comply with applicable safety standards for the proposed  
245 activities in the City right-of-way.
- 246 9. A completed RF exposure guidelines checklist and proof of all applicable licenses or  
247 other approvals required by the FCC.
- 248 10. Such other information as the Director may require.
- 249 11. The Director may waive appropriate plan detail requirements for any application to  
250 install attachments on existing poles that do not involve excavation or the use of heavy  
251 equipment or vehicles outside of the paved roadway.
- 252 C. Every applicant shall pay a permit application fee upon submission of the application. Such  
253 fees shall not be refundable. The Director shall establish a permit application fee schedule that  
254 allows the City to recover the actual cost of application review, and such fees may be increased if  
255 reasonably required to cover additional costs in cases such as when applications or technology are  
256 unusually complex or the City needs to consult outside experts as part of the permit review process.
- 257 D. An application for a permit shall not be accepted by the Director unless and until the required  
258 information is furnished, together with the necessary plans and specifications, and the required fee  
259 is paid.
- 260 E. The Director shall require payment of an additional application fee if the Director  
261 determines that material changes to an application after submission will materially increase the  
262 time or costs of the permit review and treat the changed application as a new application for  
263 purposes of any time limits for permit decisions under applicable law.
- 264 F. The applicants shall submit a copy of the Montgomery County Transmission Facility  
265 Coordinating Group Tower Coordinator's recommendation for a proposed installation that is  
266 subject to review by the Montgomery County Transmission Facility Coordinating Group.
- 267 **11.12.180 Communications facilities and communications support structures requirements**  
268 **and findings.**
- 269 A. Communications facilities and communications support structures proposed to be located in  
270 the City right-of-way shall meet the following requirements, which the applicant must demonstrate:
- 271 1. Absent a specific finding by the Director, communications facilities may only be  
272 installed on existing utility poles, and only entities certificated by the Maryland Public  
273 Service Commission pursuant to the Annotated Code of Maryland, Public Services and  
274 Utilities, Division I, Title 7 or Title 8, as amended, may erect or contract to erect



275 replacement poles in the City's right-of-way. To allow the installation of a replacement pole,  
276 the Director must find that

277 a. Additional communications facilities are necessary in the location of the  
278 proposed pole to provide adequate telecommunications coverage; and

279 b. Existing poles do not have the capacity for the necessary communications  
280 facilities.

281 2. Each communications facility and communications support structure must be  
282 designed to be resistant to unauthorized access, climbing, vandalism, and other activities  
283 that result in hazardous situations, interception of communications, visual blight, or  
284 attractive nuisances.

285 3. Any communications facilities in the right-of-way shall:

286 a. Comply with Section 11.12.010;

287 b. Be necessary in the location of the proposed facility to provide adequate  
288 telecommunications coverage;

289 c. Not result in more than three antennas per pole;

290 d. Have no exterior wiring if the pole on which it is mounted can accommodate  
291 internal wiring and, if necessary, have exterior wiring enclosed in a shielded  
292 conduit;

293 e. Have any associated equipment cabinet installed at the base at ground level or  
294 at least 15 feet above ground, not exceed the maximum volume established by the  
295 Director, and have a color and finish determined in consultation with the Director to  
296 minimize visual and acoustic impact, taking into consideration historic area  
297 designations, unless the cabinet is a stealth design approved by the Director;

298 f. Be designed to accommodate the collocation of three different antennas and  
299 related equipment;

300 g. Be recommended for installation by the Montgomery County Transmission  
301 Facility Coordinating Group Tower Coordinator if subject to review by the  
302 Montgomery County Transmission Facility Coordinating Group;

303 h. Comply with all relevant requirements of the Montgomery County Zoning  
304 Ordinance; and

305 i. Comply with such other requirements and conditions as the Director may  
306 determine are appropriate.

- 307 4. Any replacement pole installed in a City right-of-way must:
- 308 a. Comply with all requirements of Section 11.12.010;
- 309 b. Comply with all relevant requirements of the Montgomery County Zoning  
310 Ordinance;
- 311 c. Be designed to accommodate the collocation of at least three different antennas  
312 and related equipment; and
- 313 d. Comply with such other requirements and conditions as the Director may  
314 determine are necessary and appropriate.
- 315 B. Communications facilities and communications support structures proposed to be located on  
316 City rights-of-way may be permitted upon a finding by the Director that:
- 317 1. The application complies with all standards and requirements set forth in  
318 Subsection A;
- 319 2. The location of the installation is not in an area where there is an overconcentration of  
320 poles or other facilities in, on or over the right-of-way;
- 321 3. The installation will not harm any urban forest tree, or the location of the installation  
322 minimizes the adverse impact of the installation on urban forest trees to the extent  
323 reasonably possible given the need for communications coverage;
- 324 4. The installation work will be conducted in a manner that minimizes the adverse  
325 impact of the project upon urban forest trees to the extent reasonable, including the use of  
326 reasonable tree protection measures;
- 327 5. All communications facilities associated with a communications support structure,  
328 including communications facilities associated with a proposed new antenna and  
329 pre-existing communications facilities, will be no more than the maximum volume  
330 determined by the Director;
- 331 6. The structure does not require antenna structure registration under 47 C.F.R. Chapter  
332 1, Part 17, as amended;
- 333 7. The applicant has submitted proof of insurance, documentation of compliance with  
334 federal RF emissions limitations, and a performance bond required under this chapter; and
- 335 8. The Montgomery County Telecommunications Facility Coordinating Group Tower  
336 Coordinator has recommended the proposed installation.
- 337 C. The Director may require modifications to a proposed project before granting a permit and  
338 impose conditions when granting a permit.

339 D. If the Director determines that any trees must be removed, the permit shall not be issued until  
340 the applicant pays the cost of replacing such trees, in accordance with the tree replacement  
341 requirements of Chapter 12.12, except that at least one replacement tree shall be required for each  
342 tree that must be removed;

343 E. The Director may waive minor variances from the requirements of this chapter if the variance  
344 does not jeopardize the public health, safety, or welfare.

345 F. The Director shall condition the issuance of a permit to install a replacement pole on the  
346 applicant's agreement to remove the original pole within 60 days.

347 G. In the case of a proposed attachment to an investor-owned utility pole in a City right-of-way,  
348 proof of the existence of an executed attachment agreement with the utility pole owner, setting  
349 forth, at a minimum, the title, date and term of the agreement.

350 H. Work permitted under this section shall be exempt from Chapter 12.12, Urban Forest, except  
351 as provided herein.

352 **11.12.185 Conditions for approval for all communications facilities and support structures.**

353 In addition to compliance with the requirements of this chapter, upon approval all permittees and  
354 facilities shall be subject to each of the following conditions of approval, as well as any  
355 modification of these conditions or additional conditions of approval deemed necessary by the  
356 Director:

357 A. As new technology becomes available, the permittee shall replace outdated facilities with  
358 current industry-standard facilities, after receiving all necessary permits and approvals.

359 B. The permittee shall submit and maintain current at all times basic contact and site information  
360 on a form to be supplied by the City. The permittee shall notify the City of any changes to the  
361 information submitted within seven days of any change, including change of the name or legal  
362 status of the owner or operator. This information shall include, but is not limited to, the following:

363 1. Identity, including the name, address and 24-hour contact phone number of the  
364 permittee, the owner, the operator, and the agent or person responsible for the maintenance  
365 of the facility; and

366 2. The legal status of the owner of the communications facility or communications  
367 structure, including official identification numbers and FCC certification if applicable.

368 C. The permittee shall provide the City with emergency contact information and promptly  
369 respond to emergencies relating to its communications facilities and communications support  
370 structures.

371 D. At all times, the permittee shall ensure that the facility complies with the most current industry  
372 standards for size and regulatory and operational standards including, but not limited to, RF

373 emissions standards adopted by the FCC. The City shall retain a consultant, at the sole expense of  
374 the permittee, to perform testing demonstrating compliance with current regulatory and operational  
375 standards. Tests shall occur upon commencement of operations and annually between May 1 and  
376 June 30 thereafter.

377 E. If, at any time, the Director determines there is good cause to believe that the facility may emit  
378 RF emissions that are likely to exceed FCC standards, the Director may require the permittee to  
379 submit a technically sufficient written report certified by a qualified independent RF emissions  
380 engineer, certifying that the facility is in compliance with such FCC standards within 10 days.

381 F. The permittee shall pay for and provide a performance bond, which shall be in effect until the  
382 facilities are fully and completely removed and the site reasonably returned to its original condition,  
383 to cover permittee's obligations under these conditions of approval and the City Code. The bond  
384 coverage shall include, but not be limited to, removal of the facility, and maintenance obligations.  
385 The amount of the performance bond shall be set by the Director in an amount reasonably related to  
386 the obligations covered by the bond and shall be specified in the conditions of approval.

387 G. The permittee shall indemnify and hold harmless the City from any claims arising from the  
388 installation and presence of the communications facilities and communications support structures  
389 and shall maintain liability insurance naming the City as additional insured in coverage amounts  
390 determined by the Director until the facilities are fully and completely removed.

391 H. The permittee shall defend, indemnify, protect and hold harmless the City, its officers,  
392 officials, agents, consultants, employees, and volunteers from and against any and all claims,  
393 actions, or proceeding against the City and its officers, officials, agents, consultants, employees and  
394 volunteers to attack, set aside, void or annul, an approval of the City concerning the permit and the  
395 project. Such indemnification shall include damages, judgments, settlements, penalties, fines,  
396 defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert  
397 witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The  
398 City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained  
399 herein shall prohibit City from participating in a defense of any claim, action or proceeding. The  
400 City shall have the option of coordinating the defense, including, but not limited to, choosing  
401 counsel for the defense at permittee's expense.

402 I. Any modification, removal, or relocation of the facility shall be completed within 90 days of  
403 written notification by the City unless exigencies dictate a shorter period for removal or relocation.  
404 Modification or relocation of the facility shall require a permit. The permittee shall be entitled, on  
405 permittee's election, to either a pro-rata refund of fees paid for the original permit or to a new  
406 permit, without additional fee, at a location as close to the original location as permissible under  
407 this chapter. In the event the facility is not modified, removed, or relocated within said period of  
408 time, the City may cause the same to be done at the sole cost and expense of permittee. Further, due  
409 to exigent circumstances, the City may modify, remove, or relocate wireless communications  
410 facilities without prior notice to permittee provided permittee is notified within a reasonable period  
411 thereafter.

412 J. All work performed by the permittee in connection with the installation, connection,  
413 maintenance, modification, or removal of the communications facilities and support structures shall  
414 comply with Chapter 14.12, Noise Control, and the provisions of the Maryland Vehicle Law  
415 regarding the idling of vehicles, and the storage and staging of equipment shall be conducted in  
416 conformity with any requirements established for the work by the Director.

417 K. The permittee shall, at its sole expense, keep its communications facilities and  
418 communications support structures in a safe condition and in good and neat order and repair.

419 L. The permittee shall repair, restore, or replace any portion of the right-of-way that is damaged  
420 by its communications facilities and communications support structures or the installation or  
421 maintenance thereof. The permittee authorizes the City to repair, restore, or replace the damaged  
422 portion of the right-of-way and shall reimburse the City for the costs incurred if the permittee fails  
423 promptly to perform the work;

424 M. The City retains the right to cut or remove any communications facilities and  
425 communications support structures it deems necessary in response to a public emergency, and the  
426 permittee shall be responsible for the cost of restoration;

427 N. The permittee promptly shall relocate or remove and replace, as appropriate, its  
428 communications facilities and communications support structures upon written request by the City  
429 when the City determines that the facility or structure materially interferes with the City's use of the  
430 right-of-way. The permittee authorizes the City to remove its communications facilities and  
431 communications support structures and shall reimburse the City for the costs incurred if the  
432 permittee fails promptly to respond to a request from the City;

433 O. If the permittee ceases to operate or abandons any of its communications facilities or  
434 communications support structures, it shall remove them within 60 days. If the permittee fails to  
435 remove the abandoned facilities or support structures, the City may perform the work and collect  
436 the reasonable cost thereof from the permittee.

437 P. All conditions of approval shall be binding as to the applicant, permittee and all successors in  
438 interest.

439 **11.12.190 Public notice and comment on wireless communications facilities and**  
440 **communications support structure installation applications.**

441 A. When an application is filed for a permit to install a communications support structure,  
442 including a replacement pole, in the City right-of-way, the Director shall post notice of the  
443 application on the City's web site, direct the applicant to post a notice at the proposed site, make the  
444 application materials available for public inspection, direct the applicant to provide written notice  
445 to residents and businesses with property lines located within 500 feet of the proposed support  
446 structure, and receive and consider written comment and documentary evidence submitted from the  
447 public in accordance with procedures established by the Director. The Director shall schedule,  
448 and a representative of the applicant must attend, a community meeting to provide the public with  
449 information about the proposed support structure, answer questions, receive information, and

450 respond to concerns.

451 B. When an application is filed for a permit to install an antenna and any related  
452 communications facilities on a support structure in the City right-of-way upon which no antennas  
453 are already attached, the Director shall post notice of the application on the City's web site, direct  
454 the applicant to post a notice at the proposed site, make the application materials available for  
455 public inspection, direct the applicant to provide written notice to residents and businesses with  
456 property lines located within 500 feet of the proposed antenna, and receive and consider written  
457 comment and documentary evidence submitted from the public in accordance with procedures  
458 established by the Director. The Director shall schedule, and a representative of the applicant must  
459 attend, a community meeting to provide the public with information about the proposed antenna  
460 and communications facilities, answer questions, receive information, and respond to concerns.

461 C. When an application is filed for a permit to collocate one or more additional antennas and  
462 related communications facilities on an existing communications support structure, the Director  
463 shall post notice of the application, make the application materials available for public inspection,  
464 provide written notice to residents and businesses with property lines located within 200 feet of the  
465 proposed facility, and receive and consider written comment and documentary evidence submitted  
466 from the public in accordance with procedures established by the Director.

467 **11.12.200 Exceptions.**

468 A. No City permit shall be required under this Chapter to excavate any portion of a street that is  
469 a part of the state highway system and for which a state permit is required under the provisions of  
470 the Annotated Code of Maryland, Transportation, § 8-646 as amended.

471 B. Exceptions pertaining to any provision of this chapter, including, but not limited to,  
472 exceptions from findings that would otherwise justify denial, may be granted by the Director if the  
473 Director makes the finding that:

474 1. Denial of the facility as proposed would violate federal law, state law, or both; or

475 2. A provision of this chapter, as applied to applicant, would deprive applicant of its  
476 rights under federal law, state law, or both.

477 3. Strict application of this chapter would be contrary to the public interest because the  
478 harm to the public of strict application would be greater than the harm caused by granting an  
479 exception.

480 C. An applicant may only request an exception under paragraph B at the time of applying for a  
481 wireless communications facility permit. The request must include both the specific provision(s) of  
482 this chapter from which the exception is sought and the basis of the request. Any request for an  
483 exception after the City has deemed an application complete and accepted it shall be treated as a  
484 new application.

485 D. The applicant shall have the burden of proving that denial of the facility as proposed would

486 violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant,  
487 would deprive applicant of its rights under federal law, state law, or both, using the evidentiary  
488 standards required by that law at issue. The City shall have the right to hire an independent  
489 consultant, at the applicant's expense, to evaluate the issues raised by the exception request and  
490 shall have the right to submit rebuttal evidence to refute the applicant's claim.

491 **11.12.210 Right-of-way maintenance fee.**

492 The owner of a communications facility or support structure shall pay the annual right-of-way  
493 maintenance fee within 15 days of the approval of the permit application and on the anniversary date  
494 of the permit approval each year thereafter.

495 **11.12.220 Annual certification.**

496 Between June 1 and July 1 of each year that a permitted communications facility or support  
497 structure remains in the City right-of-way, the owner shall submit to the Director an affidavit signed  
498 by an authorized representative of the owner confirming that the facility or support structure  
499 remains in use and remains covered by insurance and that the facility is the current industry  
500 standard facility of that type as required under this chapter.

501 **11.12.230 Violations and enforcement of permit requirements.**

502 A. Violations of the terms and conditions of a permit shall constitute a Class A Municipal  
503 Infraction.

504 B. Each day that a violation of a term or condition of a permit continues shall constitute a  
505 separate violation.

506 C. The City may abate outstanding violations and charge the cost of abatement to the permittee.

507 **11.12.240 Waiver of communications facilities and support structure fees for public**  
508 **benefits.**

509 The Director, in consultation with the City Manager, may waive or reduce application and annual  
510 right-of-way maintenance fees for communications facilities and support structure installations and  
511 provide other benefits to applicants and permittees in exchange for public benefits to be provided  
512 by the applicant or permittee, including, but not limited to, the installation of communications  
513 facilities and support structures in underserved and economically disadvantaged locations and the  
514 installation of connections to or discounted service for multi-family rental facilities.

515 **11.12.240 Regulations.**

516 The Director may promulgate regulations to implement this chapter. Such regulations may  
517 include, but shall not be limited to, establishing application fees and right-of-way use fees,  
518 requiring the posting of public notice of work in the right-of-way, requiring the entity performing  
519 work in the right-of-way to attend a preconstruction meeting, requiring that the timing of

520 nonemergency work in the right-of-way be coordinated to minimize traffic disruption or  
521 complications resulting from other construction activity taking place in the City, and establishing  
522 maximum volumes and dimensions for antennas, equipment cabinets, and other communications  
523 facilities and support structures.



Adopted this \_\_\_\_\_ th day of \_\_\_\_\_ 2018, by roll-call vote as follows:

**Aye:**

**Nay:**

**Absent:**

**Abstain:**

**Explanatory Note:** Additions to the Code are underlined and deletions from the Code are shown as ~~strikethrough~~.