

Introduced by:

First Reading:
Second Reading:
Effective Date:

Drafted by:

Kenneth Sigman
City Attorney

ORDINANCE NO. 2018-_____

Amendments Regarding Right-of-Way Work Permits

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

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

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

WHEREAS, federal law significantly restricts local government authority to regulate the installation of telecommunications facilities; ~~and~~

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

WHEREAS, the Council identified its goals for these amendments to the Takoma Park Code in Resolution 2018-_____ 'Regarding the Installation of Wireless Telecommunications Facilities'.

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

**Title 11
STREETS**

* * *

Chapter 11.12
PERMITS AND IMPROVEMENTS

1 **11.12.000 Definitions.**
2

3 As used in this Chapter:

4 | “Antenna” means that part of a wireless ~~telecommunications~~communications facility designed to
5 radiate or receive RF signals or electromagnetic waves for the provision of services, including, but
6 not limited to, cellular, paging, personal communications services and microwave communications.

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

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

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

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

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

30 “FCC” means the Federal Communications Commission.

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

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

36 “Pole” means a single shaft of wood, steel, concrete, or other material at least 26 feet tall and
37 capable of supporting the equipment mounted thereon in a safe and adequate manner, including an
38 investor-owned utility pole.

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

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

42 **11.12.010 Permit required for grading, construction, and installation.**

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

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

- 52 1. Comply with all structural and safety standards specified by the Director;
- 53 2. Not obstruct pedestrian or vehicular traffic flow or sight lines;
- 54 3. Comply with the Americans with Disabilities Act;
- 55 4. If a pole, be at least 26 feet in height;
- 56 | 5. ~~If a replacement of an existing pole, not exceed~~be no more than 10 feet taller than the
57 height pole to be replaced and be located within 2 feet of the base of the existing pole by
58 more than 10 feet; utility pole and at the same distance from the edge of the travel lane
- 59 | ~~65. If an equipment box, not exceed~~cabinet, comply with size limits and placement
60 requirements established by the Director and, if visible, must be screened, shrouded, or
61 concealed or treated to minimize visual and acoustic impact, as determined in consultation
62 with the Director, taking into consideration historic area designations. Equipment cabinets
63 shall be situated so as to reduce visual and acoustic impact without compromising their
64 function;
- 65 | ~~76.~~ Not obstruct parking, including preventing persons from entering and exiting
66 vehicles parked in the right-of-way;
- 67 | ~~87.~~ Have a color and finish determined in consultation with the Director to minimize
68 visual impact to the neighborhood, taking into consideration historic area designations; and

69 | 98. Comply with such other requirements and conditions as the Director may determine
70 | are appropriate.

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

74 | 1. For each pole, have an equipment ~~box~~cabinet or ~~boxes~~cabinets no greater in collective
75 | size than the volume established by the Director;

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

78 | 3. If an antenna, be attached to an existing pole or replacement pole, be mounted at least
79 | 15 feet above ground, and be demonstrated to be the least visible antenna possible to
80 | accomplish the coverage objectives and be screened, shrouded, or concealed, or treated to
81 | minimize visual and acoustic impact, as determined in consultation with the Director, taking
82 | into consideration historic area designations. Antenna elements shall be flush mounted, to
83 | the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude
84 | possible future collocation by the same or other operators or carriers. Antennas shall be
85 | situated so as to reduce visual and acoustic impact without compromising their function.

86 | 4. Comply with such other requirements and conditions as the Director may determine
87 | are necessary and appropriate.

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

92 | E. A violation of this chapter and any regulations adopted to implement or enforce this chapter is
93 | a Class A offense.

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

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

104 | **11.12.020 Permit application—Contents.**

105 A. All applications for grading, construction, and installation permits as described in Section
106 11.12.010 shall be filed in the Director's office on forms provided by that office and shall be
107 accompanied by 2 sets of detailed plans of the project, except that applications for communications
108 facilities and communications support structures shall also be governed by Section 11.12.170. The
109 plans for the project shall include, wherever applicable, the following:

- 110 1. Right-of-way, name of street (if any) and width of right-of-way, abutting lots, GIS
111 location, North point, and scale;
- 112 2. Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and dimensions;
- 113 3. Catch basins, inlets, culverts and other drainage structures, and dimensions;
- 114 4. Construction details, including cross section pavement, curb and gutter, details of
115 drainage structures, culverts, headwalls, etc.;
- 116 5. Grading plan and profile, showing existing grades and finishing grades;
- 117 6. Identity and contact information for the entity performing the work in the right-of-way;
118 and
- 119 7. Any additional data and detail required by the Director.
- 120 8. The Director may waive plan detail requirements for any application to install
121 attachments on existing structures that does not involve excavation or the use of heavy
122 equipment or vehicles outside of the paved roadway.

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

127 **11.12.030 Application requirements.**

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

131 **11.12.040 Application revision and resubmission.**

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

137 **11.12.050 Examination of application—Issuance of permit.**

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

144 **11.12.060 Approval of plans required.**

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

151 **11.12.070 Permit fees.**

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

156

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

161 **11.12.080 Permit fees—Not to be credited or returned.**

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

164 **11.12.090 Expiration of permits—Renewal.**

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

168

* * *

169 **11.12.140 Permit required to excavate City right-of-way.**

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

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

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

175 * * *

176 **11.12.170 Permit application--Communications facilities and communications support**
177 **structures.**

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

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

184 1. A technical description of the proposed communication facilities or support structures,
185 including the purpose and intent of the proposed facilities or support structures, a written
186 description identifying the geographic service area for the subject installation, photographs
187 of the ~~telecommunications~~communications equipment to be installed, a description of the
188 noise emitted by the proposed facilities, and an accurate visual impact analysis with photo
189 simulations.

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

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

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

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

204 6. A statement relating to intent to collocate antennas on the proposed facility or support
205 structure.

206 7. For new antennas, unless proposing the collocation of the antenna, an explanation as
207 to why the antenna cannot be collocated.

208 8. A statement committing to comply with applicable safety standards for the proposed
209 activities in the City right-of-way.

210 9. A completed RF exposure guidelines checklist and proof of all applicable licenses or
211 other approvals required by the FCC.

212 10. Such other information as the Director may require.

213 11. The Director may waive appropriate plan detail requirements for any application to
214 install attachments on existing poles that do not involve excavation or the use of heavy
215 equipment or vehicles outside of the paved roadway.

216 C. Every applicant shall pay a permit application fee upon submission of the application. Such
217 fees shall not be refundable. The Director shall establish a permit application fee schedule that
218 allows the City to recover the actual cost of application review, and such fees may be increased if
219 reasonably required to cover additional costs in cases such as when applications or technology are
220 unusually complex or the City needs to consult outside experts as part of the permit review process.

221 D. An application for a permit shall not be accepted by the Director unless and until the required
222 information is furnished, together with the necessary plans and specifications, and the required fee
223 is paid.

224 E. The Director shall require payment of an additional application fee if the Director
225 determines that material changes to an application after submission will materially increase the
226 time or costs of the permit review and treat the changed application as a new application for
227 purposes of any time limits for permit decisions under applicable law.

228 F. The applicants shall submit a copy of the Montgomery County Transmission Facility
229 Coordinating Group Tower Coordinator's recommendation for a proposed installation that is
230 subject to review by the Montgomery County Transmission Facility Coordinating Group.

231 **11.12.180 Communications facilities and communications support structures requirements**
232 **and findings.**

233 A. Communications facilities and communications support structures proposed to be located in
234 the City right-of-way shall meet the following requirements, which the applicant must demonstrate:

235 1. Absent a specific finding by the Director, communications facilities may only be
236 installed on existing utility poles, and only entities certificated by the Maryland Public
237 Service Commission pursuant to the Annotated Code of Maryland, Public Services and

238 Utilities, Division I, Title 7 or Title 8, as amended, may erect or contract to erect
239 replacement poles in the City's right-of-way. To allow the installation of a replacement pole,
240 the Director must find that

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

243 b. ~~Existing poles do not exist in the area where the proposed communications~~
244 ~~facilities are necessary or existing~~ Existing poles do not have the capacity for the
245 necessary communications facilities.

246 2. Each communications ~~facility~~ facility and communications support structure must be
247 designed to be resistant to unauthorized access, climbing, vandalism, and other activities
248 that result in hazardous situations, interception of communications, visual blight, or
249 attractive nuisances.

250 3. ~~Any replacement pole installed in a City right-of-way must:~~

251 ~~a. Comply with all requirements of Section 11.12.010(B);~~

252 ~~b. Comply with all relevant requirements of the Montgomery County Zoning~~
253 ~~Ordinance;~~

254 ~~c. If proposed as necessary because an existing pole does not have the capacity~~
255 ~~for the necessary communications facilities, be no more than 10 feet taller than the~~
256 ~~existing pole and be located within 2 feet of the base of an existing utility pole and at~~
257 ~~the same distance from the edge of the travel lane;~~

258 ~~d. Have only antennas that are installed at a minimum height of 15 feet,~~
259 ~~concealed within an enclosure with a color and finish and mounted in a manner~~
260 ~~determined in consultation with the Director to minimize visual impact, taking into~~
261 ~~consideration historic area designations;~~

262 ~~e. Have no exterior wiring, except that exterior wiring is permissible on a~~
263 ~~wooden pole when enclosed in a shielded conduit;~~

264 ~~f. If it includes an equipment cabinet, the equipment cabinet must be installed at~~
265 ~~the base at ground level or at least 15 feet above ground, not exceed the maximum~~
266 ~~volume established by the Director, and have a color and finish determined in~~
267 ~~consultation with the Director to minimize visual and acoustic impact, taking into~~
268 ~~consideration historic area designations unless the cabinet is a stealth design~~
269 ~~approved by the Director;~~

270 ~~g. Be designed to accommodate the collocation of at least three different~~
271 ~~antennas and related equipment; and~~

272 | h. ~~Comply with such other requirements and conditions as the Director may~~
273 | ~~determine are necessary and appropriate.~~

274 | ~~4.~~ Any communications facilities in the right-of-way shall:

275 | a. Comply with Section 11.12.010;

276 | b. Be necessary in the location of the proposed facility to provide adequate
277 | telecommunications coverage;

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

279 | d. ~~Have any~~ Have no exterior wiring if the pole on which it is mounted can
280 | accommodate internal wiring and, if necessary, have exterior wiring enclosed in a
281 | shielded conduit;

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

287 | f. Be designed to accommodate the collocation of ~~at least~~ three different
288 | antennas and related equipment;

289 | g. Be recommended for installation by the Montgomery County Transmission
290 | Facility Coordinating Group Tower Coordinator if subject to review by the
291 | Montgomery County Transmission Facility Coordinating Group; ~~and~~

292 | ~~h.~~ Comply with all relevant requirements of the Montgomery County Zoning
293 | Ordinance; and

294 | i. Comply with such other requirements and conditions as the Director may
295 | determine are appropriate.

296 | 4. Any replacement pole installed in a City right-of-way must:

297 | a. Comply with all requirements of Section 11.12.010;

298 | b. Comply with all relevant requirements of the Montgomery County Zoning
299 | Ordinance;

300 | c. Be designed to accommodate the collocation of at least three different antennas
301 | and related equipment; and

302 | d. Comply with such other requirements and conditions as the Director may
303 | determine are necessary and appropriate.

304 B. Communications facilities and communications support structures proposed to be located on
305 City rights-of-way may be permitted upon a finding by the Director that:

- 306 1. The application complies with all standards and requirements set forth in
307 Subsection A;
- 308 2. The location of the installation is not in an area where there is an overconcentration of
309 poles or other facilities in, on or over the right-of-way;
- 310 3. The installation will not harm any urban forest tree, or the location of the installation
311 minimizes the adverse impact of the installation on urban forest trees to the extent
312 reasonably possible given the need for communications coverage;
- 313 4. The installation work will be conducted in a manner that minimizes the adverse
314 impact of the project upon urban forest trees to the extent reasonable, including the use of
315 reasonable tree protection measures;
- 316 5. All communications facilities associated with a communications support structure,
317 including communications facilities associated with a proposed new antenna and
318 pre-existing communications facilities, will be no more than the maximum volume
319 determined by the Director;
- 320 6. The structure does not require antenna structure registration under 47 C.F.R. Chapter
321 1, Part 17, as amended;
- 322 7. The applicant has submitted proof of insurance, documentation of compliance with
323 federal RF emissions limitations, and a performance bond required under this chapter; and
- 324 8. The Montgomery County Telecommunications Facility Coordinating Group Tower
325 Coordinator has recommended the proposed installation.

326 C. The Director may require modifications to a proposed project before granting a permit and
327 impose conditions when granting a permit.

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

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

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

336 G. In the case of a proposed attachment to an investor-owned utility pole in a City right-of-way,

337 proof of the existence of an executed attachment agreement with the utility pole owner, setting
338 forth, at a minimum, the title, date and term of the agreement.

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

341 **11.12.185 Conditions for approval for all communications facilities and support structures.**

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

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

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

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

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

357 C. The permittee shall provide the City with emergency contact information and promptly
358 respond to emergencies relating to its communications facilities and communications support
359 structures.

360 D. At all times, the permittee shall ensure that the facility complies with the most current industry
361 standards for size and regulatory and operational standards including, but not limited to, RF
362 emissions standards adopted by the FCC. The City shall retain a consultant, at the sole expense of
363 the permittee, to perform testing demonstrating compliance with current regulatory and operational
364 standards. Tests shall occur upon commencement of operations and annually between May 1 and
365 June 30 thereafter.

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

370 F. The permittee shall pay for and provide a performance bond, which shall be in effect until the
371 facilities are fully and completely removed and the site reasonably returned to its original condition,

372 to cover permittee's obligations under these conditions of approval and the City Code. The bond
373 coverage shall include, but not be limited to, removal of the facility, and maintenance obligations.
374 The amount of the performance bond shall be set by the Director in an amount reasonably related to
375 the obligations covered by the bond and shall be specified in the conditions of approval.

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

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

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

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

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

408 L. The permittee shall repair, restore, or replace any portion of the right-of-way that is damaged
409 by its communications facilities and communications support structures or the installation or
410 maintenance thereof. The permittee authorizes the City to repair, restore, or replace the damaged

411 portion of the right-of-way and shall reimburse the City for the costs incurred if the permittee fails
412 promptly to perform the work;

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

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

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

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

428 **11.12.190 Public notice and comment on wireless communications facilities and**
429 **communications support structure installation applications.**

430 A. When an application is filed for a permit to install ~~one or more equipment cabinets or a~~
431 communications support structure, including ~~a replacement equipment cabinet and~~
432 replacement pole, in the City right-of-way, the Director shall post notice of the application on
433 the City's web site, direct the applicant to post a notice at the proposed site, make the application
434 materials available for public inspection, direct the applicant to provide written notice to residents
435 and businesses with property lines located within 500 feet of the proposed ~~facility~~support structure,
436 and receive and consider written comment and documentary evidence submitted from the public in
437 accordance with procedures established by the Director. The Director shall schedule, and a
438 representative of the applicant must attend, a community meeting to provide the public with
439 information about the proposed support structure, answer questions, receive information, and
440 respond to concerns.

441 B. When an application is filed for a permit to install an antenna and any related
442 communications facilities on a support structure in the City right-of-way upon which no antennas
443 are already attached, the Director shall post notice of the application on the City's web site, direct
444 the applicant to post a notice at the proposed site, make the application materials available for
445 public inspection, direct the applicant to provide written notice to residents and businesses with
446 property lines located within 500 feet of the proposed antenna, and receive and consider written
447 comment and documentary evidence submitted from the public in accordance with procedures
448 established by the Director. The Director shall schedule, and a representative of the applicant must
449 attend, a community meeting to provide the public with information about the ~~planned new-~~

450 ~~equipment cabinet(s) or support structure(s), proposed antenna and communications facilities,~~
451 answer questions, receive information, and respond to concerns.–

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

458 **11.12.200 Exceptions.**

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

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

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

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

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

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

476 D. The applicant shall have the burden of proving that denial of the facility as proposed would
477 violate federal law, state law, or both, or that the provisions of this chapter, as applied to applicant,
478 would deprive applicant of its rights under federal law, state law, or both, using the evidentiary
479 standards required by that law at issue. The City shall have the right to hire an independent
480 consultant, at the applicant's expense, to evaluate the issues raised by the exception request and
481 shall have the right to submit rebuttal evidence to refute the applicant's claim.

482 **11.12.210 Right-of-way maintenance fee.**

483 The owner of a communications facility or support structure shall pay the annual right-of-way
484 maintenance fee within 15 days of the approval of the permit application and on the anniversary date

485 of the permit approval each year thereafter.

486 **11.12.220 Annual certification.**

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

492 **11.12.230 Violations and enforcement of permit requirements.**

493 A. Violations of the terms and conditions of a permit shall constitute a Class A Municipal
494 Infraction.

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

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

498 **11.12.240 Waiver of communications facilities and support structure fees for public**
499 **benefits.**

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

506 **11.12.240 Regulations.**

507 The Director may promulgate regulations to implement this chapter. Such regulations may
508 include, but shall not be limited to, establishing application fees and right-of-way use fees,
509 requiring the posting of public notice of work in the right-of-way, requiring the entity performing
510 work in the right-of-way to attend a preconstruction meeting, requiring that the timing of
511 nonemergency work in the right-of-way be coordinated to minimize traffic disruption or
512 complications resulting from other construction activity taking place in the City, and establishing
513 maximum volumes and dimensions for antennas, equipment cabinets, and other communications
514 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~~.