



Takoma Park City Council Meeting – November 28, 2018 Agenda Item 12 – ADDITIONAL INFORMATION

Work Session

Discussion of Proposed Amendments to Takoma Park Code, Chapter 11.12, Permits and Improvements, to Regulate the Installation of Telecommunications Equipment in City Rights-of-Way and Discussion of Resolution Identifying the Council's Goals for Adopting the Ordinance

Since publication of Agenda Item 12, a new version of Proposed Amendments to the Takoma Park Code to Regulate the Installation of Telecommunications Equipment in City Rights-of-Way and a Summary of Proposed Right-of-Way Cell Antenna Policies have been prepared by the City Attorney. The documents are attached. No other changes have been made to this information sheet.

Recommended Council Action

Continue discussion of proposed amendments to City Code; Discuss the draft Resolution

Context with Key Issues

As a result of increased demand for wireless broadband service and developments in wireless communications technology, cellular service providers have begun installing small short-range antennas as part of their network. While the Montgomery County Zoning Ordinance regulates the installation of antennas on private property in the City, City legislation is necessary to regulate installations in our rights-of-way.

Current Montgomery County zoning laws in residential areas requires that: a) new poles and replacement poles are considered telecommunication towers and must be set back 300 feet from a dwelling and b) antennas on existing structures must be setback 60 feet. The County was considering changes to this and other requirements for cell towers but the ZTA that was under consideration has been tabled and is not expected to be considered further by the current County Council.

The City can regulate some aspects of cell tower installation, such as the location, placement, aesthetics, notification process, and fees, and can establish a permitting process to ensure that any small cell towers or antennas, permitted by the County for placement in Takoma Park, meet certain safety and aesthetic requirements.

Over the past month, the City Council has been considering amending the Code to protect the City and our residents from the potential negative impacts of the installation of telecommunications equipment in the City rights-of-way. In addition to continuing that discussion, this evening the Council will also discuss the attached draft Resolution identifying its goals.

Council Priority

A Livable Community for All; Fiscally Sustainable Government

Environmental Considerations

N/A

Fiscal Considerations

One goal of the Resolution is for the City to be permitted to recover the costs associated with right-of-way permit application review and maintenance when installations occur in the right-of-way.

Racial Equity Considerations

The proposed Code amendments and Resolution would apply throughout the City. The City will endeavor to ensure that the installation of cell towers do not positively or adversely affect different parts of the City in an inequitable way. We will also monitor the availability of wireless broadband service throughout the City and encourage and advocate for deployment in underserved areas if disparities are discovered.

Attachments and Links

- Proposed Amendments to the Takoma Park Code to Regulate the Installation of Telecommunications Equipment in City Rights-of-Way
- Summary of Proposed Right-of-Way Cell Antenna Policies (November 27, 2018)
- Draft Resolution (*attached to original agenda item*)
- Cell Tower Discussion Guide (presentation slides) (*attached to original agenda item*)
- Small Cell Antenna Project Page: <https://takomaparkmd.gov/initiatives/project-directory/small-cell-antennas-in-the-citys-rights-of-way/>

1 **Proposed Amendments to the Takoma Park Code to Regulate the Installation of**
2 **Telecommunications Equipment in City Rights-of-Way**

3 **11/27/18**

4 **EXPLANATORY NOTE:** Changes to the existing Code are not shown in this document.

5 **TAKOMA PARK CODE**

6 **Title 11**
7 **STREETS**

8 * * *

9 **Chapter 11.12**
10 **PERMITS AND IMPROVEMENTS**

11 **11.12.000 Definitions.**

12
13 As used in this Chapter:

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

17 “Applicant” means the person applying for a permit under this chapter, including the applicant’s
18 officials, employees, agents, and contractors.

19 “Base station” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(1), as may
20 be amended, which defines that term as a structure or equipment at a fixed location that enables
21 FCC-licensed or authorized wireless communications between user equipment and a
22 communications network. The term includes, but is not limited to, radio transceivers, antennas,
23 coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment,
24 regardless of technological configuration (including distributed antenna systems and small-cell
25 networks). The term includes any structure that, at the time the relevant application is filed with the
26 State or local government under this section, supports or houses equipment described in 47 C.F.R.
27 Section 1.40001(b)(1)(i) and (ii) that has been reviewed and approved under the applicable
28 regulatory review process, even if the structure was not built for the sole or primary purpose of
29 providing such support. The term does not include any structure that, at the time the relevant
30 application is filed with the City, does not support or house equipment described in 47 C.F.R.
31 Section 1.40001(b)(1)(i) and (ii).

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

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

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

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

47 “FCC” means the Federal Communications Commission.

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

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

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

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

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

59 **11.12.010 Permit required for grading, construction, and installation.**

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

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

- 69 1. Comply with all structural and safety standards specified by the Director;
- 70 2. Not obstruct pedestrian or vehicular traffic flow or sight lines;
- 71 3. Comply with the Americans with Disabilities Act;
- 72 4. If a pole, be at least 26 feet in height;
- 73 5. If a replacement of an existing pole, not exceed the height of the existing pole by more
74 than 10 feet;
- 75 6. If an equipment box, not exceed size and placement requirements established by the
76 Director;
- 77 7. Not obstruct parking, including preventing persons from entering and exiting vehicles
78 parked in the right-of-way;
- 79 8. Have a color and finish determined in consultation with the Director to minimize visual
80 impact to the neighborhood; and
- 81 9. Comply with such other requirements and conditions as the Director may determine are
82 appropriate.

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

- 86 1. For each pole, have an equipment box or boxes no greater in collective size than the
87 volume established by the Director;
- 88 2. Be colored, treated, or painted with nonreflective paint that is similar to the color of the
89 structure upon which it is mounted or that otherwise minimizes visual impact to the
90 neighborhood, as determined in consultation with the Director;
- 91 3. If an antenna, be attached to an existing pole or replacement pole and be the least visible
92 antenna possible to accomplish the coverage objectives and be screened, shrouded, or
93 concealed, or treated to minimize visual and acoustic impact, as determined in consultation
94 with the Director. Antenna elements shall be flush mounted, to the extent reasonably
95 feasible. All antenna mounts shall be designed so as not to preclude possible future
96 collocation by the same or other operators or carriers. Antennas shall be situated as to reduce
97 visual and acoustic impact without compromising their function.
- 98 4. Comply with such other requirements and conditions as the Director may determine are
99 necessary and appropriate.

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

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

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

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

116 **11.12.020 Permit application—Contents.**

117 A. All applications for grading, construction, and installation permits as described in Section
118 11.12.010 shall be filed in the Director’s office on forms provided by that office and shall be
119 accompanied by 2 sets of detailed plans of the project, except that applications for communications
120 facilities and communications support structures shall be governed by Section 11.12.170. The plans
121 for the project shall include, wherever applicable, the following:

- 122 1. Right-of-way, name of street (if any) and width of right-of-way, abutting lots,, North
123 point, and scale;
- 124 2. Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and dimensions;
- 125 3. Catch basins, inlets, culverts and other drainage structures, and dimensions;
- 126 4. Construction details, including cross section pavement, curb and gutter, details of
127 drainage structures, culverts, headwalls, etc.;
- 128 5. Grading plan and profile, showing existing grades and finishing grades;
- 129 6. Identity and contact information for the entity performing the work in the right-of-way;
130 and
- 131 7. Any additional data required by the Director.
- 132 8. The Director may waive plan detail requirements for applications to install attachments on
133 existing structures that does not involve excavation or the use of heavy equipment or vehicles
134 outside of the paved roadway.

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

139 **11.12.030 Application requirements.**

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

143 **11.12.040 Application revision and resubmission.**

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

149 **11.12.050 Examination of application—Issuance of permit.**

150 The Director, upon receipt of an application for a permit, shall review the plans and specifications
151 of the proposed project and consider any public comment on the application and, if satisfied that the
152 plans meet the minimum construction standards as provided in Chapter 11.08 and all other
153 requirements of this chapter have been complied with, shall issue a permit.

154 **11.12.060 Approval of plans required.**

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

161 **11.12.070 Permit fees.**

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

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

170 **11.12.080 Permit fees—Not to be credited or returned.**

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

173 **11.12.090 Expiration of permits—Renewal.**

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

177 * * *

178 **11.12.140 Permit required to excavate City right-of-way.**

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

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

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

184 * * *

185 **11.12.170 Permit application--Communications facilities and communications support**
186 **structures.**

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

189 B. An applicant for such a permit shall complete an application form created by the Director and
190 submit the following information pertaining to particular sites or a proposed deployment of
191 communications facilities or communications support structures:

192 1. A technical description of the proposed communication facilities or support structures,
193 including the purpose and intent of the proposed facilities or support structures, a written
194 description identifying the geographic service area for the subject installation, photographs
195 of the telecommunications equipment to be installed, and an accurate visual impact analysis
196 with photo simulations.

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

203 3. A detailed deployment plan describing construction planned for the 24-month period
204 following the permit issuance anywhere in the City, including on private property and
205 Maryland state right-of-way, and a description of the completed deployment.

206 4. An engineering certification relating to the proposed installation.

207 5. A statement relating to intent to collocate antennas on the proposed facility or support
208 structure.

- 209 6. For new antennas, unless proposing the collocation of the antenna on an existing base
210 station, an explanation as to why the antenna cannot be collocated with other antennas.
- 211 7. A statement committing to comply with applicable safety standards for the proposed
212 activities in the City right-of-way.
- 213 8. A completed RF exposure guidelines checklist and proof of all applicable licenses or
214 other approvals required by the FCC.
- 215 10. Such other information as the Director may require.
- 216 11. The Director may waive plan detail requirements for applications to install attachments
217 on existing structures that does not involve excavation or the use of heavy equipment or
218 vehicles outside of the paved roadway.

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

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

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

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

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

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

- 245 2. Each communications facility and communications support structure must be designed
246 to be resistant to unauthorized access, climbing, vandalism, and other activities that result in
247 hazardous situations, interception of communications, visual blight, or attractive nuisances.
- 248 3. Any replacement pole installed in a City right-of-way must:
- 249 a. Comply with all requirements of Section 11.12.010(B);
- 250 b. Comply with all requirements of the Montgomery County Zoning Ordinance;
- 251 c. If necessary because a pole does not have the capacity for the necessary
252 communications facilities, be no more than 10 feet taller than the existing pole and
253 be located within 2 feet of the base of an existing utility pole and at the same
254 distance from the edge of the travel lane;
- 255 d. Have only antennas that are installed at a minimum height of 15 feet, concealed
256 within an enclosure with a color and finish and mounted in a manner determined in
257 consultation with the Director to minimize visual impact;
- 258 e. Have no exterior wiring, except that exterior wiring is permissible on a wooden
259 pole when enclosed in a shielded conduit;
- 260 f. If it includes an equipment cabinet, the equipment cabinet must be installed at
261 the base at ground level or at least 15 feet above ground, not exceed the maximum
262 volume established by the Director, and have a color and finish determined in
263 consultation with the Director to minimize visual and acoustic impact unless the
264 cabinet is a stealth design approved by the Director;
- 265 g. Be designed to accommodate the collocation of at least three different antennas
266 and related equipment; and
- 267 h. Comply with such other requirements and conditions as the Director may
268 determine are necessary and appropriate.
- 269 4. Any communications facilities installed on an existing pole or other structure in the
270 right-of-way shall:
- 271 a. Comply with Section 11.12.010;
- 272 b. Not result in more than three antennas per pole; and
- 273 c. Comply with such other requirements and conditions as the Director may
274 determine are appropriate.
- 275 B. Communications facilities and communications support structures proposed to be located on
276 City rights-of-way may be permitted upon a finding by the Director that:
- 277 1. The application complies with all standards and requirements set forth in Subsection A;

- 278 2. The location of the installation is not in an area where there is an overconcentration of
279 poles or other facilities in, on or over the right-of-way;
- 280 3. The installation will not harm any urban forest tree, or the location of the installation
281 minimizes the adverse impact of the installation on urban forest trees to the extent
282 reasonably possible given the need for communications coverage;
- 283 4. The installation work will be conducted in a manner that minimizes the adverse impact
284 of the project upon urban forest trees to the extent reasonable, including the use of
285 reasonable tree protection measures;
- 286 5. All communications facilities associated with a communications support structure,
287 including communications facilities associated with a proposed new antenna and pre-
288 existing communications facilities, will be no more than the maximum volume determined
289 by the Director;
- 290 6. The structure does not require antenna structure registration under 47 C.F.R. Chapter 1,
291 Part 17, as amended; and
- 292 7. The applicant has submitted proof of insurance, documentation of compliance with
293 federal RF emissions limitations, and a performance bond required under this chapter.

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

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

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

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

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

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

309 **11.12.185 Conditions for approval for all communications facilities and support structures.**

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

- 314 A. As new technology becomes available, the permittee shall replace larger, more visually
315 intrusive facilities with smaller, less visually intrusive facilities, after receiving all necessary
316 permits and approvals.
- 317 B. The permittee shall submit and maintain current at all times basic contact and site information
318 on a form to be supplied by the City. The permittee shall notify the City of any changes to the
319 information submitted within seven days of any change, including change of the name or legal
320 status of the owner or operator. This information shall include, but is not limited to, the following:
- 321 1. Identity, including the name, address and 24-hour contact phone number of the
322 permittee, the owner, the operator, and the agent or person responsible for the maintenance
323 of the facility; and
- 324 2. The legal status of the owner of the wireless telecommunications facility, including
325 official identification numbers and FCC certification.
- 326 C. The permittee shall provide the City with emergency contact information and promptly respond
327 to emergencies relating to its communications facilities and communications support structures.
- 328 D. At all times, the permittee shall ensure that the facility complies with the most current
329 regulatory and operational standards including, but not limited to, RF emissions standards adopted
330 by the FCC. The City shall retain a consultant, at the sole expense of the permittee, to perform
331 testing demonstrating compliance with current regulatory and operational standards. Tests shall
332 occur upon commencement of operations and annually between May 1 and June 30 thereafter.
- 333 E. If, at any time, the Director determines there is good cause to believe that the facility may emit
334 RF emissions that are likely to exceed FCC standards, the Director may require the permittee to
335 submit a technically sufficient written report certified by a qualified independent RF emissions
336 engineer, certifying that the facility is in compliance with such FCC standards.
- 337 F. The permittee shall pay for and provide a performance bond, which shall be in effect until the
338 facilities are fully and completely removed and the site reasonably returned to its original condition,
339 to cover permittee's obligations under these conditions of approval and the City Code. The bond
340 coverage shall include, but not be limited to, removal of the facility, and maintenance obligations.
341 The amount of the performance bond shall be set by the Director in an amount rationally related to
342 the obligations covered by the bond and shall be specified in the conditions of approval.
- 343 G. The permittee shall indemnify and hold harmless the City from any claims arising from the
344 installation and presence of the communications facilities and communications support structures
345 and shall maintain liability insurance naming the City as additional insured in coverage amounts
346 determined by the Director until the facilities are fully and completely removed.
- 347 H. The permittee shall defend, indemnify, protect and hold harmless the City, its officers,
348 officials, agents, consultants, employees, and volunteers from and against any and all claims,
349 actions, or proceeding against the City and its officers, officials, agents, consultants, employees and
350 volunteers to attack, set aside, void or annul, an approval of the City concerning the permit and the
351 project. Such indemnification shall include damages, judgments, settlements, penalties, fines,
352 defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert

353 witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The
354 City shall promptly notify the permittee of any claim, action, or proceeding. Nothing contained
355 herein shall prohibit City from participating in a defense of any claim, action or proceeding. The
356 City shall have the option of coordinating the defense, including, but not limited to, choosing
357 counsel for the defense at permittee's expense.

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

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

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

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

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

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

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

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

395 **11.12.190 Public notice and comment on wireless communications applications.**

396 A. When an application is filed for a permit to install one or more base stations or
397 communications support structures, including replacement base stations and replacement poles, in
398 the City right-of-way, the Director shall post notice of the application, make the application
399 materials available for public inspection, provide written notice to residents and businesses with
400 property lines located within 200 feet of the proposed facility, and receive and consider written
401 comment and documentary evidence submitted from the public in accordance with procedures
402 established by the Director. The Director shall schedule, and a representative of the applicant must
403 attend, a community meeting to provide the public with information about the planned new base
404 station(s) or support structure(s), answer questions, receive information, and respond to concerns.

405 B. When an application is filed for a permit to collocate one or more additional antennas on an
406 existing base station, the Director shall post notice of the application, make the application materials
407 available for public inspection, provide written notice to residents and businesses with property
408 lines located within 200 feet of the proposed facility, and receive and consider written comment and
409 documentary evidence submitted from the public in accordance with procedures established by the
410 Director.

411 **11.12.200 Exceptions.**

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

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

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

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

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

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

431 **11.12.210 Right-of-way maintenance fee.**

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

435 **11.12.220 Annual certification.**

436 Between June 1 and July 1 of each year that a permitted communications facility or support
437 structure remains in the City right-of-way, the owner shall submit to the Director an affidavit signed
438 by an authorized representative of the owner confirming that the facility or support structure
439 remains in use and remains covered by insurance as required under this chapter.

440 **11.12.230 Violations and enforcement.**

441 A. Violations of the terms and conditions of a permit shall constitute a Class A Municipal
442 Infraction.

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

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

446 **11.12.240 Waiver of communications facilities and support structure fees for public benefits.**

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

453 **11.12.240 Regulations.**

454 The Director may promulgate regulations to implement this chapter. Such regulations may include,
455 but shall not be limited to, establishing application fees and right-of-way use fees, requiring the
456 posting of public notice of work in the right-of-way, requiring the entity performing work in the
457 right-of-way to attend a preconstruction meeting, requiring that the timing of nonemergency work
458 in the right-of-way be coordinated to minimize traffic disruption or complications resulting from
459 other construction activity taking place in the City, and establishing maximum volumes and
460 dimensions for antennas, equipment cabinets, and other communications facilities and support
461 structures.

SUMMARY OF PROPOSED RIGHT-OF-WAY CELL ANTENNA POLICIES

November 27, 2018

1. Placement

- a. Montgomery County Zoning Ordinance setback requirements govern.
- b. Minimizes clutter in the right of way by requiring the mounting of antennas on existing utility poles or replacement utility poles (installed in the same location as existing poles) if existing utility poles cannot support the new equipment.
- c. Encourages reasonable consolidation of antennas by requiring that each base station be capable of supporting at least three antennas and that no more than three antennas be mounted on an individual pole.
- d. For replacement poles, show gap in coverage that no existing pole can cover.

2. Aesthetics

- a. Requires that new poles and equipment be designed, mounted and treated, screened, or shrouded to minimize visual impact.
- b. Applicants must consult with the City to determine the least visually and acoustically intrusive design.
- c. Applicants must submit photographs of proposed equipment and as-built drawings with applications.
- d. Replacement poles must not exceed height of existing pole by more than 10 feet.
- e. Installations that would create overcrowding in the right-of-way prohibited.
- f. Requires that antennas and equipment be placed on the ground (equipment) or at least 15 feet above ground (antennas and equipment) to reduce visual clutter.
- g. Limits volume of equipment boxes and antennas.
- h. Wiring must be placed inside poles or enclosed in conduit.
- i. Limits cumulative volume of communications equipment associated with each pole.
- j. Requires that permittees replace existing facilities when technological advances allow for smaller, less visually and acoustically intrusive facilities.
- k. Requires ongoing maintenance.
- l. Requires removal of unused facilities.

3. Safety

- a. Initial certification of compliance with FCC limitations on RF emissions required.
- b. Permittees must comply with future RF emission limits.
- c. The City will conduct annual tests of RF emissions, the cost of which must be paid by the permittee.
- d. The City may require permittees to demonstrate current compliance with RF emissions limits if the City has reason to believe a facility's emissions are excessive and may remove facilities if emissions are not reduced.

- e. Facilities must be secure and resistant to hacking.
- f. Applicants and permittees must provide emergency contact information.
- g. Facilities not interfere with sight lines and use of the right-of-way.
- h. Facilities must not interfere with ADA accessibility of right-of-way.
- i. Certification of structural soundness required.

4. Fees

- a. Application Fees. Authorizes the establishment of an application fee schedule that allows for the recovery of the actual cost of application review.
- b. Annual Fees. Authorizes the establishment of an annual right-of-way maintenance fee that allows for the recovery of the actual added cost to the City of maintaining its right-of-way as a result of the presence of permitted communications facilities and structures.

5. Public Benefits and Racial Equity

- a. Allows for the negotiation of reduced fees in exchange for the provision of public benefits such as installations in underserved areas and new connections to multi-family rental facilities.

6. General

- a. Violations of permit requirements and conditions may be enforced via the municipal infraction process.
- b. Violations constitute Class A infractions, with a fine of \$500 for initial violations and \$1,000 for subsequent violations.
- c. The City may abate violations and charge the cost to the permittee.
- d. Applicants and permittees must maintain liability insurance and indemnify the City.
- e. The City may require relocation of facilities if necessary for public use of the right-of-way.
- f. Annual certification that a facility remains in use and is covered by insurance required.

7. Trees

- a. Requires compliance with the substantive requirements of the Tree Ordinance, including requiring that facilities be placed so as to minimize impact on trees, including excessive pruning, reasonable tree protection measures during installation, and replacement of trees that must be removed as the result of an installation.
- b. Exempts applicants from the formal tree permit process to avoid delays in the installation permit process that may cause federal shot clock violations.

8. Public Notice and Input

- a. Replacement Utility Poles and New Base Stations.

- i. Timely notice to the public of application.
 - ii. Application materials available for public inspection.
 - iii. Notice and comment period required for the public to submit written comment and documentary evidence regarding the application.
 - iv. Mandatory community meeting for applicant to provide information and receive and respond to public input.
- b. Collocation of a New Antenna with Existing Antennas.
 - i. Notice to the public of application.
 - ii. Application materials available for public inspection.
 - iii. Notice and comment period required for the public to submit written comment and documentary evidence regarding the application.

9. What the Ordinance Does Not Do

- a. Minimum distance between facilities—it does not appear to be technically feasible to establish minimum distances between facilities without preventing installations necessary to provide adequate coverage because of factors such as topography and signal interference.
- b. Mandatory public benefits—it does not appear to be legally permissible under federal law to mandate that applicants provide public benefits in exchange for the use of the public right-of-way because the cost of such benefits would be counted as a fee.
- c. Undergrounding. The authority to require undergrounding under federal law is questionable and undergrounding of equipment and wiring may not be desirable because of the impact on trees.
- d. Council review of applications. Requiring Council review of applications would make it difficult for the City to comply with federal shot clock requirements, would politicize the application process, and would interfere with the Council's ability to conduct legislative business.
- e. Formal public hearings. Requiring a formal public hearing would be costly, would make it difficult for the City to comply with federal shot clock requirements, and would create the opportunity for costly and time-consuming legal challenges on procedural grounds.

10. Issues to be Addressed in Regulations

- a. Maximum volume of equipment associated with each pole.
- b. Fees schedules.
- c. Fee discounts for batch applications.
- d. Site-plan requirements, including visual impact assessment and the number of the pole for installation.
- e. Application review schedule (in accordance with federal shot clock mandate).
- f. Application and certification forms.
- g. Insurance coverage amounts required.