Public Hearing and Voting Session
Ordinance Amending Takoma Park Code, Chapter 11.12, Permits and Improvements to Regulate the Installation of Telecommunications Equipment in City Rights-of-Way

Recommended Council Action
Vote on the ordinance at first reading.

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. City legislation is necessary to regulate installations in our rights-of-way.

Federal law requires that local governments allow the installation of small antennas and related equipment in their rights-of-way and limits their authority to regulate the installations and the fees they may charge for installation permit applications and for use of the right of way.

Under the Telecommunications Act of 1996, Congress prohibits state or local regulations that “prohibit or have the effect of prohibiting the ability of an entity to provide . . . telecommunications service.” On September 26, 2018, the Federal Communications Commission (“FCC”) issued an order providing an expansive interpretation of the preemptive scope of the 1996 Act.

First, the FCC ruled that delays in approving antenna installation applications constitute a prohibition on the provision of service and imposed “shot clocks” of sixty days for the issuance of permits to attach antennas to existing structures and ninety days for the issuance of permits to install new antenna support structures.

Second, the FCC ruled that fees charged by local governments for permit application review and recurring fees for use of the right-of-way and use of government-owned structures in the right-of-way are limited to the cost the local government incurs to review the permit and to maintain its rights-of-way and support structures.

Third, the FCC ruled that aesthetic requirements imposed by local governments for the installation of antennas and support structures must be “(1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” The vagueness of these limitations, and the requirement that aesthetic standards, an inherently subjective issue, be “objective,” makes it difficult to anticipate permissible aesthetic requirements.

The proposed amendments to the Takoma Park Code are intended to comply with the limitations of federal law while maximizing the City’s control over its rights-of-way. Because Takoma Park was developed before 1968 and has above-ground utilities, the amendments favor the installation of antennas on existing Pepco-owned utility poles, which are prevalent throughout the City. (The only potential support structures the City owns are decorative light poles.) New poles are permitted only when there is no existing pole in a location necessary to provide wireless coverage or when an
existing pole is inadequate to support necessary wireless equipment, as a replacement for the existing pole.

The proposed ordinance is intended to maximize the City’s influence over aesthetic considerations. It authorizes the Public Works Director to develop regulations that limit the size of antennas and related equipment and requires that new installations be designed to minimize their visual impact and noise emissions.

In an effort to comply with the federal requirement that local regulations not discriminate against wireless communications facilities, the proposed amendments incorporate the aesthetic requirements into the requirements for other installations in the right of way.

Although federal law prohibits local radiofrequency emission regulations, the proposed Ordinance requires an initial certification that the emissions meet federal standards and annual testing.

Direct legal challenges to the recent FCC Order have already begun, and the City has joined a coalition of local governments filing a law suit in federal court.

Providing for the establishment of fees and additional aesthetic requirements via regulation gives the City flexibility to increase fees and further protect the public interest in the event that the legal challenges reduce the preemptive impact of the FCC Order.

The proposed amendments also include changes to the Code not specifically related to the installation of wireless facilities. The current fee for a right of way work permit, $40.00, which was established many years ago, has been removed from the Code and is to be established by regulation, which will facilitate a change to reflect the current cost of application review now and in the future. The amendments also eliminate the charge per linear foot for right-of-way disturbances, as the current practice of the City is to charge only the permit application fee and require that the permittee restore the right-of-way.

**Council Priority**
A Livable Community for All; Fiscally Sustainable Government

**Environmental Considerations**
- The proposed Ordinance requires compliance with the City’s tree protection and replacement requirements.
- The Federal Telecommunications Act of 1996 does not allow local governments to deny the siting of a small cell facility on the basis of radio frequency emissions effects, even though FCC Radio Frequency (RF) guidelines have not been updated since 1996.
- Wireless technologies generally use more power than wired technologies.

**Fiscal Considerations**
The Ordinance calls for regulations that establish fees that cover the costs associated with right-of-way permit application review and maintenance when installations occur in the right-of-way.

**Racial Equity Considerations**
The Ordinance 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. The ordinance allows for the provision of incentives for the installation of communications facilities in underserved areas and for providing new connections to multi-family rental facilities.
Attachments and Links

- Proposed Ordinance
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.

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.

As used in this Chapter:

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

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

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

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

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

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

“FCC” means the Federal Communications Commission.

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

“Permittee” means the person that receives a permit to work in or install facilities, equipment or structures in the right-of-way under this chapter and the person that owns facilities, equipment or structures permitted to be installed under this chapter, including the permittee’s officials, employees, agents, and contractors.
“Pole” means a single shaft of wood, steel, concrete, or other material at least 26 feet tall and capable of supporting the equipment mounted thereon in a safe and adequate manner, including an investor-owned utility pole.

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

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

11.12.010 Permit required for grading or construction, and installation.

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

B. No person, including any utility company, shall cut, install any road pole, equipment box, or public other structure in a City right-of-way for the purpose of installing or connecting underground power, communication lines, water or sewer lines, cable television wires or for any other purpose without first obtaining a permit from the City. A permit shall not be issued for a proposed structure when the location selected in the application is in an area where there is an overconcentration of structures or facilities in, on or over the right-of-way, as determined by the Director in the Director’s reasonable discretion and judgment. Any pole, equipment box, or other structure installed in a City right-of-way must:

C.1. Comply with all structural and safety standards specified by the Director;
2. Not obstruct pedestrian or vehicular traffic flow or sight lines;
3. Comply with the Americans with Disabilities Act;
4. If a pole, be at least 26 feet in height;
5. If a replacement of an existing pole, not exceed the height of the existing pole by more than 10 feet;
6. If an equipment box, not exceed size and placement requirements established by the Director;
7. Not obstruct parking, including preventing persons from entering and exiting vehicles parked in the right-of-way;
8. Have a color and finish determined in consultation with the Director to minimize visual impact to the neighborhood, taking into consideration historic area designations; and
9. Comply with such other requirements and conditions as the Director may determine are appropriate.
C. No person shall install any attachment to a pole or other structure in the City right-of-way without first obtaining a permit from the City. All attachments to structures in the City right-of-way must:

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

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

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

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

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

DE. A violation of this chapter and any regulations adopted to implement or enforce this chapter is a Class B offense.

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

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

11.12.020 Permit application—Contents.

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

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

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

11.12.030 Application requirements.

An application for a permit under Section sections 11.12.010 shall not be accepted by the Director unless and until the required information is furnished, together with the necessary plans and specifications, and the required application fee is paid as required under Section 11.12.070.

11.12.040 Application revision and resubmission.

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

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

11.12.060 Approval of plans required.

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

11.12.070 Permit and inspection fees.

A. Before any street, sidewalk, gutter, curb or drainage project may be begun on a road or street or within the boundaries of a dedication to public use, the applicant for a permit to undertake the project shall pay a fee established by the Director for road construction, right-of-way openings, pavement cuts, excavations and other disturbance work within a public right-of-way of the greater of $40.00 or the following:

1. For disturbance activities within the roadbed: $0.60 per linear foot.

2. For disturbance activities outside of the roadbed: $0.30 per linear foot.

B. In addition to the permit fee, a permittee shall reimburse the City, on an hourly basis, for reasonable engineering and staff expenses related to the review and inspection of construction within a public right-of-way. The hourly rates for such engineering and staff time shall be established by regulations promulgated in accordance with the provisions of Chapter 2.12.

C. In all cases in this chapter, the City Administrator or his or her designee

B. The Director may require that an escrow deposit or a bond to cover costs of possible damage or other related problems to public property be paid to the Treasurer. The amount of the escrow deposit or bond shall be determined by the City Administrator or his or her designee based on the project and shall be refunded after completion of the project with the approval of the City Administrator or his or her designee.
11.12.080 Permit fees—Not to be credited or returned.

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


Construction permits when issued by the Clerk shall be valid for a period of 6 months from the date of issuance. If any work under a permit has not been commenced within this period, the permit shall be invalid, and a new permit required before the project may be commenced.

* * *

11.12.140 Permit required to excavate public street. City right-of-way.

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

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

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

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11.12.170 Permit application—Communications facilities and communications support structures.

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

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

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

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

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

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

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

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

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

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

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

10.  Such other information as the Director may require.

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

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

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

E.  The Director shall require payment of an additional application fee if the Director
determines that material changes to an application after submission will materially increase the
time or costs of the permit review and treat the changed application as a new application for
purposes of any time limits for permit decisions under applicable law.
F. The applicants shall submit a copy of the Montgomery County Transmission Facility Coordinating Group Tower Coordinator’s recommendation for a proposed installation that is subject to review by the Montgomery County Transmission Facility Coordinating Group.

11.12.180 Communications facilities and communications support structures requirements and findings.

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

1. Absent a specific finding by the Director, communications facilities may only be installed on existing utility poles, and only entities certificated by the Maryland Public Service Commission pursuant to the Annotated Code of Maryland, Public Services and Utilities, Division I, Title 7 or Title 8, as amended, may erect or contract to erect replacement poles in the City's right-of-way. To allow the installation of a replacement pole, the Director must find that

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

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

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

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

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

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

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

   d. Have only antennas that are installed at a minimum height of 15 feet, concealed within an enclosure with a color and finish and mounted in a manner determined in consultation with the Director to minimize visual impact, taking into consideration historic area designations;
e. Have no exterior wiring, except that exterior wiring is permissible on a wooden pole when enclosed in a shielded conduit;

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

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

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

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

a. Comply with Section 11.12.010;

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

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

d. Have any exterior wiring enclosed in a shielded conduit;

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

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

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

h. Comply with such other requirements and conditions as the Director may determine are appropriate.

B. Communications facilities and communications support structures proposed to be located on City rights-of-way may be permitted upon a finding by the Director that:
1. The application complies with all standards and requirements set forth in Subsection A;

2. The location of the installation is not in an area where there is an overconcentration of poles or other facilities in, on or over the right-of-way;

3. The installation will not harm any urban forest tree, or the location of the installation minimizes the adverse impact of the installation on urban forest trees to the extent reasonably possible given the need for communications coverage;

4. The installation work will be conducted in a manner that minimizes the adverse impact of the project upon urban forest trees to the extent reasonable, including the use of reasonable tree protection measures;

5. All communications facilities associated with a communications support structure, including communications facilities associated with a proposed new antenna and pre-existing communications facilities, will be no more than the maximum volume determined by the Director;

6. The structure does not require antenna structure registration under 47 C.F.R. Chapter 1, Part 17, as amended;

7. The applicant has submitted proof of insurance, documentation of compliance with federal RF emissions limitations, and a performance bond required under this chapter; and

8. The Montgomery County Telecommunications Facility Coordinating Group Tower Coordinator has recommended the proposed installation.

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

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

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

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

G. In the case of a proposed attachment to an investor-owned utility pole in a City right-of-way, proof of the existence of an executed attachment agreement with the utility pole owner, setting forth, at a minimum, the title, date, and term of the agreement.
H. Work permitted under this section shall be exempt from Chapter 12.12, Urban Forest, except as provided herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

L. The permittee shall repair, restore, or replace any portion of the right-of-way that is damaged by its communications facilities and communications support structures or the installation or maintenance thereof. The permittee authorizes the City to repair, restore, or replace the damaged portion of the right-of-way and shall reimburse the City for the costs incurred if the permittee fails promptly to perform the work;
M. The City retains the right to cut or remove any communications facilities and communications support structures it deems necessary in response to a public emergency, and the permittee shall be responsible for the cost of restoration;

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

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

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

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

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

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

11.12.200 Exceptions.

A. No City permit shall be required under this Chapter to excavate any portion of a street that is a part of the state highway system and for which a state permit is required under the provisions of the Annotated Code of Maryland, Transportation, § 8-646 as amended.
B. Exceptions pertaining to any provision of this chapter, including, but not limited to, exceptions from findings that would otherwise justify denial, may be granted by the Director if the Director makes the finding that:

1. Denial of the facility as proposed would violate federal law, state law, or both; or
2. A provision of this chapter, as applied to applicant, would deprive applicant of its rights under federal law, state law, or both.
3. Strict application of this chapter would be contrary to the public interest because the harm to the public of strict application would be greater than the harm caused by granting an exception.

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

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


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

11.12.220 Annual certification.

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

11.12.230 Violations and enforcement.

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

B. Each day that a violation of a term or condition of a permit continues shall constitute a separate violation.
C. The City may abate outstanding violations and charge the cost of abatement to the permittee.

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

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

11.12.240 Regulations.

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