



## Takoma Park City Council Meeting – December 5, 2018 Agenda Items 1 & 3

### **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

Introduced by:

Drafted by:

Kenneth Sigman  
City Attorney

First Reading:  
Second Reading:  
Effective Date:

**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.**

2  
3 As used in this Chapter:

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

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

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

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

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

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

29 “FCC” means the Federal Communications Commission.

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

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

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

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

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

41 **11.12.010 Permit required for grading or, construction, and installation.**

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

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

53 1. Comply with all structural and safety standards specified by the Director;

54 2. Not obstruct pedestrian or vehicular traffic flow or sight lines;

55 3. Comply with the Americans with Disabilities Act; ~~\_\_\_~~

56 4. If a pole, be at least 26 feet in height;

57 5. If a replacement of an existing pole, not exceed the height of the existing pole by more  
58 than 10 feet;

59 6. If an equipment box, not exceed size and placement requirements established by the  
60 Director;

61 7. Not obstruct parking, including preventing persons from entering and exiting vehicles  
62 parked in the right-of-way;

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

65 9. Comply with such other requirements and conditions as the Director may determine  
66 are appropriate.

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

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

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

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

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

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

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

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

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

101 **11.12.020 Permit application—Contents.**

102 A. All applications for ~~grading and~~ grading, construction, and installation permits as described in

103 Section\_11.12.010- shall be filed in the ~~Clerk's~~Director's office on forms provided by that office  
104 and shall be accompanied by 2 sets of detailed plans of the project, ~~indicating except that~~  
105 applications for communications facilities and communications support structures shall also be  
106 governed by Section 11.12.170. The plans for the project shall include, wherever applicable, the  
107 following:

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

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

### 126 **11.12.030 Application requirements.**

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

### 130 **11.12.040 Application revision and resubmission.**

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



136 **11.12.050 Examination of application—Issuance of permit.**

137 The Director, upon receipt of ~~an~~ a complete application for a ~~construction~~ permit, shall review the  
138 plans and specifications of the proposed project, and ~~if~~ consider any public comment on the Director  
139 ~~is~~ application and, if satisfied that the plans meet the minimum construction standards as provided in  
140 Chapter\_11.08- ~~and that~~ all other requirements of this chapter and associated administrative  
141 regulations have been complied with, ~~the Director shall so certify approval to the Clerk for issuance~~  
142 ~~of a construction~~ issue a permit. The Director may require modifications to a proposed project  
143 before granting a permit and impose conditions when granting a permit.

144 **11.12.060 Approval of plans required.**

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

151 **11.12.070 Permit and inspection fees.**

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

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

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

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

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

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

169 | **11.12.080 Permit fees—Not to be credited or returned.**

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

172 | **11.12.090 Expiration of permits—Renewal.**

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

176 |  
177 | \* \* \*

178 | **11.12.140 Permit required to excavate ~~public street~~ City right-of-way.**

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

181 | B. No person shall exceed the time period granted ~~on~~ 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 ~~B~~ 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  
188 | City 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 5 copies of the application form and 5 sets of documentation with the following information  
191 | pertaining to a proposed deployment of communications facilities or communications support  
192 | structures:

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

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

200 | 3. A site plan drawing indicating the proposed installation, right-of-way, name of street (if

201 any) and width of right-of-way, utility pole identification number if proposed installation  
202 involves attachment to or replacement of an existing utility pole, abutting lots, all trees in  
203 the right-of-way within 50 feet of the proposed project, all trees with a circumference of 24  
204 inches or more at 4.5 feet above ground level within 50 feet of the proposed project, North  
205 point, and scale.

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

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

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

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

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

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

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

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

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

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

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

236 F. The applicants shall submit a copy of the Montgomery County Transmission Facility  
237 Coordinating Group Tower Coordinator’s recommendation for a proposed installation that is  
238 subject to review by the Montgomery County Transmission Facility Coordinating Group.

239 **11.12.180 Communications facilities and communications support structures requirements**  
240 **and findings.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

283 a. Comply with Section 11.12.010;

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

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

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

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

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

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

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

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

- 302        1. The application complies with all standards and requirements set forth in  
303        Subsection A;
- 304        2. The location of the installation is not in an area where there is an overconcentration of  
305        poles or other facilities in, on or over the right-of-way;
- 306        3. The installation will not harm any urban forest tree, or the location of the installation  
307        minimizes the adverse impact of the installation on urban forest trees to the extent  
308        reasonably possible given the need for communications coverage;
- 309        4. The installation work will be conducted in a manner that minimizes the adverse  
310        impact of the project upon urban forest trees to the extent reasonable, including the use of  
311        reasonable tree protection measures;
- 312        5. All communications facilities associated with a communications support structure,  
313        including communications facilities associated with a proposed new antenna and  
314        pre-existing communications facilities, will be no more than the maximum volume  
315        determined by the Director;
- 316        6. The structure does not require antenna structure registration under 47 C.F.R. Chapter  
317        1, Part 17, as amended;
- 318        7. The applicant has submitted proof of insurance, documentation of compliance with  
319        federal RF emissions limitations, and a performance bond required under this chapter; and
- 320        8. The Montgomery County Telecommunications Facility Coordinating Group Tower  
321        Coordinator has recommended the proposed installation.
- 322        C. The Director may require modifications to a proposed project before granting a permit and  
323        impose conditions when granting a permit.
- 324        D. If the Director determines that any trees must be removed, the permit shall not be issued until  
325        the applicant pays the cost of replacing such trees, in accordance with the tree replacement  
326        requirements of Chapter 12.12, except that at least one replacement tree shall be required for each  
327        tree that must be removed;
- 328        E. The Director may waive minor variances from the requirements of this chapter if the variance  
329        does not jeopardize the public health, safety, or welfare.
- 330        F. The Director shall condition the issuance of a permit to install a replacement pole on the  
331        applicant's agreement to remove the original pole within 60 days.
- 332        G. In the case of a proposed attachment to an investor-owned utility pole in a City right-of-way,  
333        proof of the existence of an executed attachment agreement with the utility pole owner, setting  
334        forth, at a minimum, the title, date and term of the agreement.

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

337 **11.12.185 Conditions for approval for all communications facilities and support structures.**

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

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

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

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

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

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

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

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

366 F. The permittee shall pay for and provide a performance bond, which shall be in effect until the  
367 facilities are fully and completely removed and the site reasonably returned to its original condition,  
368 to cover permittee's obligations under these conditions of approval and the City Code. The bond  
369 coverage shall include, but not be limited to, removal of the facility, and maintenance obligations.

370 The amount of the performance bond shall be set by the Director in an amount reasonably related to  
371 the obligations covered by the bond and shall be specified in the conditions of approval.

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

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

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

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

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

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



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

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

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

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

424 **11.12.190 Public notice and comment on wireless communications facilities and**  
425 **communications support structure installation applications.**

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

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

443 **11.12.200 Exceptions.**

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

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

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

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

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

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

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

467 **11.12.210 Right-of-way maintenance fee.**

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

471 **11.12.220 Annual certification.**

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

476 **11.12.230 Violations and enforcement.**

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

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

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

482 **11.12.240 Waiver of communications facilities and support structure fees for public**  
483 **benefits.**

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

490 **11.12.240 Regulations.**

491 The Director may promulgate regulations to implement this chapter. Such regulations may  
492 include, but shall not be limited to, establishing application fees and right-of-way use fees,  
493 requiring the posting of public notice of work in the right-of-way, requiring the entity performing  
494 work in the right-of-way to attend a preconstruction meeting, requiring that the timing of  
495 nonemergency work in the right-of-way be coordinated to minimize traffic disruption or  
496 complications resulting from other construction activity taking place in the City, and establishing  
497 maximum volumes and dimensions for antennas, equipment cabinets, and other communications  
498 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~~.