

Introduced by: Councilmember Smith

First Reading: December 5, 2018

Second Reading:

Effective Date:

**ORDINANCE NO. 2018-50**

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

**WHEREAS,** ~~because of technological advances~~ the City Council desires to protect the public health, safety, welfare and increased consumer demand for environment from the adverse effects of the proliferation of telecommunications facilities to the maximum extent permissible under federal law;

**WHEREAS,** the reasonably regulated and orderly deployment of wireless broadband service, telecommunications facilities in the public right-of-way is desirable, but unregulated or disorderly deployment represents a threat to the health, welfare, safety, environment, and property values of the community; and

**WHEREAS,** installation of small cell and other wireless telecommunications carriers are seeking to install small, short range antennas to provide customers with faster and more reliable cell service; and facilities within the public right-of-way can pose a threat to the public health, welfare, safety, environment, and property values either directly through the facilities themselves or indirectly by causing changes to other facilities in the right-of-way;

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

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

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

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

**WHEREAS,** the Council identified its goals for these amendments to the Takoma Park Code in Resolution 2018 ~~---~~ 62 'Regarding the Installation of Wireless Telecommunications Facilities'.

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

**Title 11**  
**STREETS**

\* \* \*

**Chapter 11.12**  
**PERMITS AND IMPROVEMENTS**

1 **11.12.000 Definitions.**  
2

3 As used in this Chapter:

4 “Antenna” means that part of a wireless communications facility designed to radiate or receive RF  
5 signals or electromagnetic waves for the provision of services, including, but not limited to,  
6 cellular, paging, personal communications services and microwave communications.-  
7

8 “Applicant” means the person applying for a permit under this chapter, including the applicant’s  
9 officials, employees, agents, and contractors.—~~“Collocation” means the same as defined by the  
10 FCC in 47 C.F.R. Section 1.40001(b)(2), as may be amended, which defines that term as the  
11 mounting or installation of transmission equipment on an eligible pole for the purpose of  
12 transmitting or receiving RF signals for communications purposes. As an illustration and not a  
13 limitation, the FCC’s definition effectively means “to add” and does not necessarily refer to more  
14 than one wireless communication facility installed at a single site.~~  
15

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

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

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

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

31 “FCC” means the Federal Communications Commission.

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

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

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

40 “Privately owned utility pole” means a utility pole that is not owned by municipal, county, or state  
41 government.

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

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

#### 45 **11.12.010 Permit required for grading, construction, and installation.**

46 A. No person shall grade, construct, cut, excavate or ~~excavate~~ deposit any material on any City  
47 street, road, highway, alley, driveway apron, sidewalk, right-of-way, curb or gutter or install any  
48 structure or equipment in the City right-of-way, or begin any ~~of the work of~~ such ~~grading or~~  
49 ~~construction work~~, without first obtaining a permit from the City.

50 B. ~~No person shall install any pole, equipment cabinet, or other structure in a City right-~~ General  
51 findings required for issuance of- ~~way without first obtaining a permit from the City.~~ all installation  
52 permits. A permit shall not be issued for a proposed ~~structure installation~~ when the location  
53 selected in the application is in an area where there is an overconcentration of structures or facilities  
54 in, on or over the right-of-way, as determined by the Director in the Director’s reasonable discretion  
55 and judgment. Any ~~pole, equipment cabinet, or other~~ structure or facility installed in a City  
56 right-of-way, including those attached to a structure in the right-of-way, must:

- 57 1. Comply with all structural and safety standards specified by the Director;
- 58 2. Not obstruct pedestrian or vehicular traffic flow or sight lines, and not obstruct  
59 parking or the entering and exiting of persons from vehicles parked in the right-of-way;
- 60 3. Comply with the Americans with Disabilities Act;
- 61 4. If a pole, have a diameter and height no greater than the maximums established by the  
62 Director, but be tall enough to ensure that all attached equipment is at least ~~26~~ 15 feet ~~in-~~  
63 ~~height~~ above ground;
- 64 5. If a replacement pole, be ~~no more than 10 feet taller than the pole to be replaced and~~  
65 ~~be~~ located within 2 feet of the base of the previously existing ~~utility~~ pole and at the same  
66 distance from the edge of the travel lane, unless the Director determines that a different  
67 location is preferable to facilitate pedestrian use of the right of way, vehicle and pedestrian  
68 sight lines, or the City’s use of the right-of-way;
- 69 56. If an equipment cabinet, comply with size limits and placement requirements  
70 established by the Director ~~and, if visible, must be screened, shrouded, or concealed or~~  
71 ~~treated to minimize visual and acoustic impact, as determined in consultation with the~~  
72 ~~Director, taking into consideration historic area designations.~~ Equipment cabinets shall be

73 ~~situated so as to reduce visual and acoustic impact without compromising their function,~~  
74 ~~including maximum volume limits for all equipment cabinets associated with a pole;~~

75 ~~6.— Not obstruct parking, including preventing persons from entering and exiting vehicles~~  
76 ~~parked in the right-of-way;—~~

77 ~~7.7. If an antenna, be demonstrated to be the least visible antenna possible to accomplish~~  
78 ~~the coverage objectives;~~

79 ~~8. For antennas, antenna mounts and cabinets, be situated, screened, shrouded,~~  
80 ~~concealed or treated to minimize visual and acoustic impact (including having antennas~~  
81 ~~flush mounted to the extent reasonably feasible), as determined in consultation with the~~  
82 ~~Director. All antenna mounts shall be designed so as not to preclude possible future~~  
83 ~~collocation by the same or other operators or carriers;~~

84 ~~9. Have a color and finish for antennas, antenna mounts, cabinets and poles to be~~  
85 ~~determined in consultation with the Director to minimize visual impact to the~~  
86 ~~neighborhood, taking into consideration historic area designations; and and color and~~  
87 ~~design schemes for City facilities, commercial districts, and other areas with aesthetic~~  
88 ~~guidelines;~~

89 ~~§10. Be designed to be resistant to unauthorized access, climbing, vandalism, and other~~  
90 ~~activities that result in hazardous situations, interception of communications, or attractive~~  
91 ~~nuisances; and~~

92 ~~11. Comply with such other requirements and conditions as the Director may determine~~  
93 ~~are appropriate.~~

94 ~~C.— No person shall install any attachment to a pole or other structure in the City right-of-way~~  
95 ~~without first obtaining a permit from the City.— All attachments to structures in the City~~  
96 ~~right-of-way must: The Director may require modifications to a proposed project before granting~~  
97 ~~a permit and impose conditions when granting a permit.~~

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

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

102 ~~3.— If an antenna, be attached to an existing pole or replacement pole, be mounted at least~~  
103 ~~15 feet above ground, and be demonstrated to be the least visible antenna possible to~~  
104 ~~accomplish the coverage objectives and be screened, shrouded, or concealed, or treated to~~  
105 ~~minimize visual and acoustic impact, as determined in consultation with the Director, taking~~  
106 ~~into consideration historic area designations.— Antenna elements shall be flush mounted, to~~  
107 ~~the extent reasonably feasible.— All antenna mounts shall be designed so as not to preclude~~  
108 ~~possible future collocation by the same or other operators or carriers.— Antennas shall be~~  
109 ~~situated so as to reduce visual and acoustic impact without compromising their function.—~~

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

112 D.— ~~\_\_\_\_\_~~ In the event of an unexpected repair or emergency, ~~a utility company~~the responsible  
113 person may commence such repair and emergency response work as required under the  
114 circumstances, provided that the ~~utility company~~responsible person shall notify the City as  
115 promptly as possible of such repair or emergency work and shall obtain a permit from the City for  
116 such work, if required, as soon as possible.

117 ~~E. A violation of this chapter and any regulations adopted to implement or enforce this chapter is~~  
118 ~~a Class A offense.~~

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

125 ~~G. Anything installed~~**11.12.015 Communications facilities and communications support**  
126 **structures--requirements and findings.**

127 A. Communications facilities and communications support structures proposed to be located in  
128 the City right-of-way shall meet the following requirements:

129 1. Compliance with Section 11.12.010.

130 2. Compliance with all relevant requirements of the Montgomery County Zoning  
131 Ordinance;

132 3. Absent a specific finding by the Director, communications facilities may only be  
133 installed on existing utility poles, and only entities certificated by the Maryland Public  
134 Service Commission pursuant to the Annotated Code of Maryland, Public Services and  
135 Utilities, Division I, Title 7 or Title 8, as amended, may erect or contract to erect  
136 replacement poles in the City's right-of-way. ~~without a permit or in violation of the terms~~  
137 ~~and conditions of a permit shall be removed upon demand by the City, and the City shall~~  
138 ~~have the authority to remove~~To allow the installation of an additional or replacement pole,  
139 the Director must find that

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

142 b. Existing poles do not have the capacity for the necessary communications  
143 facilities.

144 ~~and restore the right-of-way and charge the cost of the removal and restoration~~4. If  
145 proposed to be attached to the person that caused a privately-owned utility pole, be  
146 authorized by an executed attachment agreement with the utility pole owner, setting forth, at

- 147 a minimum, the title, date and term of the agreement; and
- 148 5. Be necessary in the location of the proposed facility to provide adequate  
149 telecommunications coverage;
- 150 6. Allow up to but not more than three antennas per pole;
- 151 7. Have no exterior wiring if the pole on which it is mounted can accommodate internal  
152 wiring or, if necessary, have exterior wiring enclosed in a shielded conduit; and
- 153 8. Comply with such other requirements and conditions as the Director may determine  
154 are appropriate.
- 155 B. Communications facilities and communications support structures proposed to be located on  
156 City rights-of-way may be permitted upon a finding by the Director that:
- 157 1. The application complies with all standards and requirements set forth in  
158 Subsection A;
- 159 2. The applicant has submitted proof of insurance, documentation of compliance with  
160 federal RF emissions limitations, and a performance bond required under this chapter;
- 161 3. The Montgomery County Telecommunications Facility Coordinating Group Tower  
162 Coordinator has recommended the proposed installation if the installation is subject to  
163 review by the Montgomery County Transmission Facility Coordinating Group.
- 164 4. The installation will not harm any urban forest tree, or the location of the installation  
165 minimizes the adverse impact of the installation on urban forest trees to the extent  
166 reasonably possible given the need for communications coverage;
- 167 5. The installation work will be conducted in a manner that minimizes the adverse  
168 impact of the project upon urban forest trees to the extent reasonable, including the use of  
169 reasonable tree protection measures;
- 170 6. All communications facilities associated with a communications support structure,  
171 including communications facilities associated with a proposed new antenna and  
172 pre-existing communications facilities, will be no more than the maximum volume  
173 determined by the Director;
- 174 7. The structure does not require antenna structure registration under 47 C.F.R. Chapter  
175 1, Part 17, as amended; and
- 176 8. Each support structure, antenna, and equipment cabinet are labeled with the identity  
177 of the owner or owner's agent, a 24-hour monitored phone number and email address for  
178 reporting problems with the structure or facility, and a unique identification number.
- 179 C. If the Director determines that any trees must be removed, the permit shall not be issued until  
180 the applicant pays the cost of replacing such trees, in accordance with the tree replacement

181 requirements of Chapter 12.12, except that at least one replacement tree shall be required for each  
182 tree that must be removed.

183 D. The Director may waive minor variances from the requirements of this section if the variance  
184 does not jeopardize the public health, safety, or welfare.

185 E. Work permitted under this section shall be subject to the goals of Chapter 12.12, Urban  
186 Forest, as set forth in Section 12.12.010, but shall be exempt from the procedural requirements of  
187 Chapter 12.12.010 except as provided herein.

188 F. Upon installation of an antenna, the RF emissions for the antenna or, if applicable, the  
189 cumulative RF emissions from the new antenna and any collocated antennas, shall be tested for  
190 compliance with federal limits. If an antenna exceeds federal RF emissions limits or causes the  
191 antennas collocated on a support structure to exceed federal RF emissions limits, the newly  
192 installed antenna must be removed by the applicant within five days at its own expense.

193 **11.12.020 Permit application—Contents.**

194 ~~A. All applications General permit application requirements for grading, construction, and all~~  
195 ~~installation permits as described in Section 11.12.010 permit applications except driveway apron~~  
196 ~~permit applications. Applications for a permit under this chapter shall be filed in with the Director's~~  
197 ~~office Director on forms provided by that office and shall be accompanied by 2 sets of detailed plans~~  
198 ~~of the project, except that applications for communications facilities and communications support~~  
199 ~~structures shall also be governed by Section 11.12.170. Director. The plans for the~~  
200 ~~project application submission shall include, wherever applicable, the following:~~

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

203 2. ~~Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and dimensions; The~~  
204 ~~following information within 50 feet of the site:~~

205 3a. ~~Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and~~  
206 ~~dimensions;~~

207 b. Catch basins, inlets, culverts and other drainage structures, and dimensions;

208 4. ~~c.~~ Construction details, including cross section pavement, curb and gutter,  
209 details of drainage structures, culverts, headwalls, etc.;

210 5. ~~d.~~ Grading plan and profile, showing existing grades and finishing grades;

211 3. A certificate from an independent licensed professional engineer that a proposed  
212 installation is structurally sound.

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



215 | 65. Identity and contact information for the entity performing the work in the  
216 | right-of-way; and

217 | 76. Any additional data and detail required by the Director.

218 | 8-B. Potential waiver of requirements for all installation permit applications. The Director  
219 | may waive plan detail requirements for any application to install attachments on existing structures  
220 | that does not involve excavation or the use of heavy equipment or vehicles outside of the paved  
221 | roadway.

222 | C. Communications facilities and communications support structure permit applications. In  
223 | addition to the requirements of Subsection A of this section, applicants for a permit to install  
224 | communications facilities or communications support structures must submit documentation with  
225 | the following information pertaining to a proposed deployment of communications facilities or  
226 | communications support structures:

227 | 1. A technical description of the proposed communication facilities or support structures,  
228 | including the purpose and intent of the proposed facilities or support structures, a written  
229 | description identifying the geographic service area for the subject installation, photographs  
230 | of the communications equipment to be installed, a description of the noise emitted by the  
231 | proposed facilities, B.—an accurate visual impact analysis with photo simulations, and a list  
232 | of any existing antennas mounted on the support structure if the application relates to a  
233 | proposed collocation.

234 | 2. A site plan drawing indicating the proposed installation, right-of-way, name of street (if  
235 | any) and width of right-of-way, utility pole identification number if proposed installation  
236 | involves attachment to or replacement of an existing utility pole, abutting lots, all trees in  
237 | the right-of-way within 50 feet of the proposed project, North point, and scale.

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

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

244 | 5. Such other information as the Director may require.

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

249 | **11.12.030 Application requirements.**

250 | An application for a permit under ~~sections 11.12.010~~this chapter shall not be accepted by the  
251 | Director unless and until the required information is furnished, together with the necessary plans

252 | and specifications, ~~and the required application fee is paid.~~

253 | **11.12.040 Application revision and resubmission.**

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

259 | **11.12.050 Examination of application—Issuance of permit.**

260 | The Director, upon receipt of a complete application for a permit, shall review the plans and  
261 | specifications of the proposed project and consider any public comment on the application and, if  
262 | satisfied that the plans meet the minimum construction standards as provided in Chapter 11.08 and  
263 | all other requirements of this chapter and associated administrative regulations have been complied  
264 | with, shall issue a permit. The Director may require modifications to a proposed project before  
265 | granting a permit and impose conditions when granting a permit. The Director may condition the  
266 | issuance of a permit upon the applicant's payment of an escrow deposit or obtaining a bond to cover  
267 | costs of possible damage or other related problems to public property be paid to the City. The  
268 | amount of the escrow deposit or bond shall be determined by the Director based on the project and  
269 | shall be refunded after completion of the project with the approval of the Director, except as  
270 | provided otherwise in this chapter.

271 | **11.12.060 Approval of plans required.**

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

278 | **11.12.070 Permit fees.**

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

283 | ~~B.—The Director may require that an escrow deposit or a bond to cover costs of possible damage or~~  
284 | ~~other related problems to public property be paid to the City. The amount of the escrow deposit or~~  
285 | ~~bond shall be determined by the Director based on the project and shall be refunded after~~  
286 | ~~completion of the project with the approval of the Director.~~

287 | Every applicant shall pay a permit application fee upon submission of the application. Such  
288 | fees shall not be refundable. The Director shall establish a permit application fee schedule that  
289 | allows the City to recover the actual cost of application processing, review, inspection, and

290 certification of compliance of the completed installation, and such fees may be increased if  
291 reasonably required to cover additional costs in cases such as when applications or technology are  
292 unusually complex or the City needs to consult outside experts as part of the permit review process.

293 B. An application for a permit shall not be processed by the Director until the required fee is  
294 paid.

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

299 **11.12.080 Permit fees—Not to be credited or returned.**

300 Fees paid by any permittee whose permit has expired or become invalid shall not be credited  
301 against the fees required for a new permit of the permittee. ~~No fees~~Fees for expired and invalid  
302 permits shall not be returnable.

303 **11.12.090 Expiration of permits—Renewal.**

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

307 \* \* \*

308 **11.12.140 Permit required to excavate City right-of-way. Exceeding permit time periods**  
309 **prohibited.**

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

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

314 ~~C.—A violation of this section is a Class A offense.—~~

315 \* \* \*

316 ~~**11.12.170—Permit application—Communications facilities and communications support**~~  
317 ~~**structures.**~~

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

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

323 structures:

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

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

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

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

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

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

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

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

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

351 ~~10. Such other information as the Director may require.~~

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

355 ~~C. Every applicant shall pay a permit application fee upon submission of the application. Such~~  
356 ~~fees shall not be refundable. The Director shall establish a permit application fee schedule that~~  
357 ~~allows the City to recover the actual cost of application review, and such fees may be increased if~~  
358 ~~reasonably required to cover additional costs in cases such as when applications or technology are~~

359 ~~unusually complex or the City needs to consult outside experts as part of the permit review process.~~

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

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

367 ~~F.— The applicants shall submit a copy of the Montgomery County Transmission Facility~~  
368 ~~Coordinating Group Tower Coordinator’s recommendation for a proposed installation that is~~  
369 ~~subject to review by the Montgomery County Transmission Facility Coordinating Group.~~

370 **~~11.12.180— Communications facilities and communications support structures requirements~~**  
371 **~~and findings.~~**

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

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

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

382 ~~b.— Existing poles do not have the capacity for the necessary communications~~  
383 ~~facilities.~~

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

388 ~~3.— Any communications facilities in the right of way shall:~~

389 ~~a.— Comply with Section 11.12.010;~~

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

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

- 393 ~~d. — Have no exterior wiring if the pole on which it is mounted can accommodate~~  
394 ~~internal wiring and, if necessary, have exterior wiring enclosed in a shielded~~  
395 ~~conduit;—~~
- 396 ~~e. — Have any associated equipment cabinet installed at the base at ground level or~~  
397 ~~at least 15 feet above ground, not exceed the maximum volume established by the~~  
398 ~~Director, and have a color and finish determined in consultation with the Director to~~  
399 ~~minimize visual and acoustic impact, taking into consideration historic area~~  
400 ~~designations, unless the cabinet is a stealth design approved by the Director;—~~
- 401 ~~f. — Be designed to accommodate the collocation of three different antennas and~~  
402 ~~related equipment;—~~
- 403 ~~g. — Be recommended for installation by the Montgomery County Transmission~~  
404 ~~Facility Coordinating Group Tower Coordinator if subject to review by the~~  
405 ~~Montgomery County Transmission Facility Coordinating Group;—~~
- 406 ~~h. — Comply with all relevant requirements of the Montgomery County Zoning~~  
407 ~~Ordinance; and~~
- 408 ~~i. — Comply with such other requirements and conditions as the Director may~~  
409 ~~determine are appropriate.~~

410 ~~4. — Any replacement pole installed in a City right-of-way must:~~

411 ~~a. — Comply with all requirements of Section 11.12.010;~~

412 ~~b. — Comply with all relevant requirements of the Montgomery County Zoning~~  
413 ~~Ordinance;~~

414 ~~c. — Be designed to accommodate the collocation of at least three different antennas~~  
415 ~~and related equipment; and~~

416 ~~d. — Comply with such other requirements and conditions as the Director may~~  
417 ~~determine are necessary and appropriate.~~

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

420 ~~1. — The application complies with all standards and requirements set forth in~~  
421 ~~Subsection A;~~

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

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

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

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

434 ~~6. The structure does not require antenna structure registration under 47 C.F.R. Chapter~~  
435 ~~1, Part 17, as amended;~~

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

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

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

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

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

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

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

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

455 **11.12.185 Conditions for approval for all communications facilities and support structures.**

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

460 A. ~~AsIf~~ new technology becomes available that reduces noise, RF emissions, or energy usage or  
461 that reduces the size, visibility or obtrusiveness of a facility, the permittee shall replace outdated



462 | facilities with- current industry-standard facilities, after receiving all necessary permits and  
463 | approvals.

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

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

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

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

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

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

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

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

497 H. The permittee shall defend, indemnify, protect and hold harmless the City, its officers,  
498 officials, agents, consultants, employees, and volunteers from and against any and all claims,  
499 actions, or proceeding against the City and its officers, officials, agents, consultants, employees and



500 volunteers to attack, set aside, void or annul, an approval of the City concerning the permit and the  
501 project. Such indemnification shall include damages, judgments, settlements, penalties, fines,  
502 defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert  
503 witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The  
504 City shall promptly notify the permittee of any claim, action, or proceeding- against which the City  
505 seeks defense. Nothing contained herein shall prohibit City from participating in a defense of any  
506 claim, action or proceeding-, or revoking a permit and requiring the modification or removal of an  
507 installation. The City shall have the option of coordinating the defense, including, but not limited  
508 to, choosing counsel for the defense at permittee's expense.

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

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

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

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

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

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

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

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

546 **11.12.190 Public notice and comment on wireless communications facilities and**  
547 **communications support structure installation applications.**

548 A. When an application is filed for a permit to install communications facilities or a  
549 communications support structure, including a replacement pole, in the City right-of-way, ~~the~~  
550 ~~Director shall post notice of the application on the City's web site, direct the applicant to post a~~  
551 ~~notice at the proposed site, make the application materials available for public inspection, direct the~~  
552 ~~applicant to provide written notice to residents and businesses with property lines located within~~  
553 ~~500 feet of the proposed support structure, and receive and consider written comment and~~  
554 ~~documentary evidence submitted from the public in accordance with procedures established by the~~  
555 ~~Director. The Director shall schedule, and a representative of the applicant must attend, a~~  
556 ~~community meeting to provide the public with information about the proposed support structure,~~  
557 ~~answer questions, receive information, and respond to concerns.;~~

558 ~~B. When an application is filed for a permit to install an antenna and any related~~  
559 ~~communications facilities on a support structure in the City right-of-way upon which no~~  
560 ~~antennas are already attached, 1. the Director shall~~

561 ~~a. post notice of the application on the City's web site, direct the applicant to post~~  
562 ~~a notice at the proposed site,;~~

563 ~~b. make the application materials available for public inspection, direct the~~  
564 ~~applicant to provide written notice to residents and businesses with property lines~~  
565 ~~located within 500 feet of the proposed antenna, and; and~~

566 ~~c. receive and consider written comment and documentary evidence submitted~~  
567 ~~from the public in accordance with procedures established by the Director. The~~  
568 ~~Director shall;~~

569 ~~d. schedule, and a representative of the applicant must attend, a community~~  
570 ~~meeting to provide the public with information about the proposed antenna and~~  
571 ~~communications facilities installation, answer questions, receive information, and~~  
572 ~~respond to concerns; and~~

573 ~~C. When an application is filed for a permit to collocate one or more additional~~  
574 ~~antennas and related communications facilities on an existing communications~~  
575 ~~support structure, e. seek and consider input from Takoma Park boards,~~  
576 ~~commissions and committees with applicable subject matter jurisdiction.~~

577 ~~2. the Director applicant shall post inform the public about the proposed installation and~~

578 | the date, time, and location of the community meeting by:  
579 | a. posting a notice at the proposed site; and  
580 | b. of the application, make the application materials available for public  
581 | inspection; provide providing written notice to property owners, residents and  
582 | businesses with property lines located within 200500 feet of the proposed facility,  
583 | and receive and consider written comment and documentary evidence submitted  
584 | from the public in accordance with procedures established by the  
585 | Director installation.

586 | **11.12.200 Exceptions.**

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

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

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

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

596 | 3. Strict application of this chapter would be contrary to the public interest because the  
597 | harm to the public of strict application would be greater than the harm caused by granting an  
598 | exception.

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

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

610 | **11.12.210 Right-of-way maintenance and administration fee.**

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

614 **11.12.220 Annual certification.**

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

620 **11.12.230 Violations and enforcement**~~11.12.220 Annual certification.~~

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

626 ~~11.12.230 Violations and enforcement.~~

627 A. A violation of **permit requirements.**

628 ~~A. Violations of the terms and conditions of a permit shall constitute this chapter and any~~  
629 ~~regulations adopted to implement or enforce this chapter is a Class A Municipal Infraction.—~~

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

632 ~~C.B. Each day that a violation of a term or condition of a permit continues shall constitute a~~  
633 ~~separate violation.~~

634 ~~C. Each day that an installation for which the City has not issued a permit remains in the City~~  
635 ~~right-of-way shall constitute a separate violation.~~

636 D. The City may abate outstanding violations and charge the cost of abatement to the  
637 responsible person.

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

644 ~~permittee.~~

645 **11.12.240 Waiver of communications facilities and support structure fees for public**  
646 **benefits.**

647 The Director, in consultation with the City Manager, may waive or reduce application and annual

648 | right-of-way maintenance and administration fees for communications facilities and support  
649 | structure installations and provide other benefits, excluding any that would weaken health and  
650 | safety protections, to applicants and permittees in exchange for public benefits to be provided by  
651 | the applicant or permittee, including, but not limited to, the installation of communications facilities  
652 | and support structures in underserved ~~and economically disadvantaged~~ locations and the  
653 | installation of connections to or discounted service for multi-family rental facilities.

654 | **11.12.240250 Regulations.**

655 | The Director may promulgate regulations to implement this chapter. Such regulations ~~may~~shall  
656 | include, but shall not be limited to, establishing application fees and right-of-way ~~use~~maintenance  
657 | and administration fees, requiring the posting of public notice of work in the right-of-way, requiring  
658 | the entity performing work in the right-of-way to attend a preconstruction meeting, requiring that  
659 | the timing of nonemergency work in the right-of-way be coordinated to minimize traffic disruption  
660 | or complications resulting from other construction activity taking place in the City, establishing  
661 | time frames for permit review, and establishing maximum volumes and dimensions for antennas,  
662 | equipment cabinets, and other communications facilities and support structures.

663

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

665 | **Aye:**

666 | **Nay:**

667 | **Absent:**

668 | **Abstain:**

669

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