

1 Introduced by: Councilmember Smith

First Reading: December 5, 2018

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Second Reading:

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Effective Date:

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ORDINANCE NO. 2018-50

7

Amendments Regarding Right-of-Way Work Permits

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

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

18

19 **WHEREAS**, installation of small cell and other wireless telecommunications facilities
20 within the public right-of-way can pose a threat to the public health, welfare, safety, environment,
21 and property values either directly through the facilities themselves or indirectly by causing
22 changes to other facilities in the right-of-way;

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

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

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

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

34

35 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**
36 **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
37 follows:

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Title 11
STREETS

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Chapter 11.12
PERMITS AND IMPROVEMENTS

11.12.000 Definitions.

As used in this Chapter:

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

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

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

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

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

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

“FCC” means the Federal Communications Commission.

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

“Pole” means a single shaft of wood, steel, concrete, or other material at least 26 feet tall and capable of supporting the equipment mounted thereon in a safe and adequate manner, including a

75 privately owned utility pole.

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

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

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

81 **11.12.010 Permit required for grading, construction, and installation.**

82 A. No person shall grade, construct, cut, excavate or deposit any material on any City street, road,
83 highway, alley, driveway apron, sidewalk, right-of-way, curb or gutter or install any structure or
84 equipment in the City right-of-way, or begin any such work, without first obtaining a permit from
85 the City.

86 B. General findings required for issuance of all installation permits. A permit shall not be
87 issued for a proposed installation when the location selected in the application is in an area where
88 there is an overconcentration of structures or facilities in, on or over the right-of-way, as determined
89 by the Director in the Director’s reasonable discretion and judgment. Any structure or facility
90 installed in a City right-of-way, including those attached to a structure in the right-of-way, must:

- 91 1. Comply with all structural and safety standards specified by the Director;
- 92 2. Not obstruct pedestrian or vehicular traffic flow or sight lines, and not obstruct
93 parking or the entering and exiting of persons from vehicles parked in the right-of-way;
- 94 3. Comply with the Americans with Disabilities Act;
- 95 4. If a pole, have a diameter and height no greater than the maximums established by the
96 Director, but be tall enough to ensure that all attached equipment is at least 15 feet above
97 ground;
- 98 5. If a replacement pole, be located within 2 feet of the base of the previously existing
99 pole and at the same distance from the edge of the travel lane, unless the Director
100 determines that a different location is preferable to facilitate pedestrian use of the right of
101 way, vehicle and pedestrian sight lines, or the City’s use of the right-of-way;
- 102 6. If an equipment cabinet, comply with size limits and placement requirements
103 established by the Director, including maximum volume limits for all equipment cabinets
104 associated with a pole;
- 105 7. If an antenna, be demonstrated to be the least visible antenna possible to accomplish
106 the coverage objectives;

- 107 8. For antennas, antenna mounts and cabinets, be situated, screened, shrouded,
108 concealed or treated to minimize visual and acoustic impact (including having antennas
109 flush mounted to the extent reasonably feasible), as determined in consultation with the
110 Director. All antenna mounts shall be designed so as not to preclude possible future
111 collocation by the same or other operators or carriers;
- 112 9. Have a color and finish for antennas, antenna mounts, cabinets and poles to be
113 determined in consultation with the Director to minimize visual impact to the
114 neighborhood, taking into consideration historic area designations and color and design
115 schemes for City facilities, commercial districts, and other areas with aesthetic guidelines;
- 116 10. Be designed to be resistant to unauthorized access, climbing, vandalism, and other
117 activities that result in hazardous situations, interception of communications, or attractive
118 nuisances; and
- 119 11. Comply with such other requirements and conditions as the Director may determine
120 are appropriate.

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

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

127 **11.12.015 Communications facilities and communications support**
128 **structures--requirements and findings.**

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

- 131 1. Compliance with Section 11.12.010.
- 132 2. Compliance with all relevant requirements of the Montgomery County Zoning
133 Ordinance;
- 134 3. Absent a specific finding by the Director, communications facilities may only be
135 installed on existing utility poles, and only entities certificated by the Maryland Public
136 Service Commission pursuant to the Annotated Code of Maryland, Public Services and
137 Utilities, Division I, Title 7 or Title 8, as amended, may erect or contract to erect
138 replacement poles in the City's right-of-way. To allow the installation of an additional or
139 replacement pole, 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 4. If proposed to be attached to a privately-owned utility pole, be authorized by an
145 executed attachment agreement with the utility pole owner, setting forth, at a minimum, the
146 title, date and term of the agreement; and
- 147 5. Be necessary in the location of the proposed facility to provide adequate
148 telecommunications coverage;
- 149 6. Allow up to but not more than three antennas per pole;
- 150 7. Have no exterior wiring if the pole on which it is mounted can accommodate internal
151 wiring or, if necessary, have exterior wiring enclosed in a shielded conduit; and
- 152 8. Comply with such other requirements and conditions as the Director may determine
153 are appropriate.
- 154 B. Communications facilities and communications support structures proposed to be located on
155 City rights-of-way may be permitted upon a finding by the Director that:
- 156 1. The application complies with all standards and requirements set forth in
157 Subsection A;
- 158 2. The applicant has submitted proof of insurance, documentation of compliance with
159 federal RF emissions limitations, and a performance bond required under this chapter;
- 160 3. The Montgomery County Telecommunications Facility Coordinating Group Tower
161 Coordinator has recommended the proposed installation if the installation is subject to
162 review by the Montgomery County Transmission Facility Coordinating Group.
- 163 4. The installation will not harm any urban forest tree, or the location of the installation
164 minimizes the adverse impact of the installation on urban forest trees to the extent
165 reasonably possible given the need for communications coverage;
- 166 5. The installation work will be conducted in a manner that minimizes the adverse
167 impact of the project upon urban forest trees to the extent reasonable, including the use of
168 reasonable tree protection measures;
- 169 6. All communications facilities associated with a communications support structure,
170 including communications facilities associated with a proposed new antenna and
171 pre-existing communications facilities, will be no more than the maximum volume
172 determined by the Director;
- 173 7. The structure does not require antenna structure registration under 47 C.F.R. Chapter
174 1, Part 17, as amended; and

175 8. Each support structure, antenna, and equipment cabinet are labeled with the identity
176 of the owner or owner's agent, a 24-hour monitored phone number and email address for
177 reporting problems with the structure or facility, and a unique identification number.

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

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

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

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

192 **11.12.020 Permit application—Contents.**

193 A. General permit application requirements for all installation permit applications except
194 driveway apron permit applications. Applications for a permit under this chapter shall be filed with
195 the Director on forms provided by the Director. The application submission shall include, wherever
196 applicable, the following:

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

199 2. The following information within 50 feet of the site:

200 a. Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and
201 dimensions;

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

203 c. Construction details, including cross section pavement, curb and gutter, details of
204 drainage structures, culverts, headwalls, etc.;

205 d. Grading plan and profile, showing existing grades and finishing grades;

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

- 208 4. A statement committing to comply with applicable safety standards for the proposed
209 activities in the City right-of-way.
- 210 5. Identity and contact information for the entity performing the work in the right-of-way;
211 and
- 212 6. Any additional data and detail required by the Director.
- 213 B. Potential waiver of requirements for all installation permit applications. The Director may
214 waive plan detail requirements for any application to install attachments on existing structures that
215 does not involve excavation or the use of heavy equipment or vehicles outside of the paved
216 roadway.
- 217 C. Communications facilities and communications support structure permit applications. In
218 addition to the requirements of Subsection A of this section, applicants for a permit to install
219 communications facilities or communications support structures must submit documentation with
220 the following information pertaining to a proposed deployment of communications facilities or
221 communications support structures:
- 222 1. A technical description of the proposed communication facilities or support structures,
223 including the purpose and intent of the proposed facilities or support structures, a written
224 description identifying the geographic service area for the subject installation, photographs
225 of the communications equipment to be installed, a description of the noise emitted by the
226 proposed facilities, an accurate visual impact analysis with photo simulations, and a list of
227 any existing antennas mounted on the support structure if the application relates to a
228 proposed collocation.
- 229 2. A site plan drawing indicating the proposed installation, right-of-way, name of street (if
230 any) and width of right-of-way, utility pole identification number if proposed installation
231 involves attachment to or replacement of an existing utility pole, abutting lots, all trees in
232 the right-of-way within 50 feet of the proposed project, North point, and scale.
- 233 3. A detailed deployment plan describing facilities planned to be installed by the
234 applicant for the 24-month period following the permit issuance anywhere in the City or
235 within 500 feet of City limits, including on private property and Maryland state and county
236 rights-of-way, and a description of the completed deployment.
- 237 4. A completed RF exposure guidelines checklist and proof of all applicable licenses or
238 other approvals required by the FCC.
- 239 5. Such other information as the Director may require.
- 240 D. Driveway apron permit applications. Driveway apron applicants shall provide the address
241 and lot and block number where construction is to be done and a drawing showing measurement for
242 the property, all buildings, all porches, all permanent walks, all other permanently installed
243 improvements and the size and location of the driveway to be installed.

244 **11.12.030 Application requirements.**

245 An application for a permit under this chapter shall not be accepted by the Director unless and until
246 the required information is furnished, together with the necessary plans and specifications.

247 **11.12.040 Application revision and resubmission.**

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

253 **11.12.050 Examination of application—Issuance of permit.**

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

265 **11.12.060 Approval of plans required.**

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

272 **11.12.070 Permit fees.**

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

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

280 paid.

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

285 **11.12.080 Permit fees—Not to be credited or returned.**

286 Fees paid by any permittee whose permit has expired or become invalid shall not be credited
287 against the fees required for a new permit of the permittee. Fees for expired and invalid permits
288 shall not be returnable.

289 **11.12.090 Expiration of permits—Renewal.**

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

293 * * *

294 **11.12.140 Exceeding permit time periods prohibited.**

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

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

299 **11.12.185 Conditions for approval for all communications facilities and support structures.**

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

304 A. If new technology becomes available that reduces noise, RF emissions, or energy usage or that
305 reduces the size, visibility or obtrusiveness of a facility, the permittee shall replace outdated
306 facilities with current industry-standard facilities, after receiving all necessary permits and
307 approvals.

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

- 312 1. Identity, including the name, address and 24-hour contact phone number of the
313 permittee, the owner, the operator, and the agent or person responsible for the maintenance
314 of the facility; and
- 315 2. The legal status of the owner of the communications facility or communications
316 structure, including official identification numbers and FCC certification if applicable.
- 317 C. The permittee shall provide the City with emergency contact information and promptly
318 respond to emergencies relating to its communications facilities and communications support
319 structures.
- 320 D. At all times, the permittee shall ensure that the facility, as mounted with any collocated
321 facilities, complies with the most current industry standards for size and regulatory and operational
322 standards including, but not limited to, RF emissions standards adopted by the FCC. The City shall
323 retain a consultant, at the sole expense of the permittee, to perform testing demonstrating
324 compliance with current regulatory and operational standards. Tests shall occur upon
325 commencement of operations and annually between May 1 and June 30 thereafter.
- 326 E. If, at any time, the Director determines there is good cause to believe that the facility, as
327 mounted with any collocated facilities, may emit RF emissions that are likely to exceed FCC
328 standards, the Director may require the permittee to submit a technically sufficient written report
329 certified by a qualified independent RF emissions engineer, certifying that the facility is in
330 compliance with such FCC standards within 10 days.
- 331 F. The permittee shall pay for and provide a performance bond, which shall be in effect until the
332 facilities are fully and completely removed and the site reasonably returned to its original condition,
333 to cover permittee's obligations under these conditions of approval and the City Code. The bond
334 coverage shall include, but not be limited to, removal of the facility, and maintenance obligations.
335 The amount of the performance bond shall be set by the Director in an amount reasonably related to
336 the obligations covered by the bond and shall be specified in the conditions of approval.
- 337 G. The permittee shall indemnify and hold harmless the City from any claims arising from the
338 installation and presence of the communications facilities and communications support structures
339 and shall maintain liability insurance naming the City as additional insured in coverage amounts
340 determined by the Director until the facilities are fully and completely removed.
- 341 H. The permittee shall defend, indemnify, protect and hold harmless the City, its officers,
342 officials, agents, consultants, employees, and volunteers from and against any and all claims,
343 actions, or proceeding against the City and its officers, officials, agents, consultants, employees and
344 volunteers to attack, set aside, void or annul, an approval of the City concerning the permit and the
345 project. Such indemnification shall include damages, judgments, settlements, penalties, fines,
346 defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert
347 witness fees, or liability of any kind related to or arising from such claim, action, or proceeding. The
348 City shall promptly notify the permittee of any claim, action, or proceeding against which the City
349 seeks defense. Nothing contained herein shall prohibit City from participating in a defense of any

350 claim, action or proceeding, or revoking a permit and requiring the modification or removal of an
351 installation. The City shall have the option of coordinating the defense, including, but not limited
352 to, choosing counsel for the defense at permittee's expense.

353 I. Any modification, removal, or relocation of the facility shall be completed within 90 days of
354 written notification by the City unless exigencies dictate a shorter period for removal or relocation.
355 Modification or relocation of the facility shall require a permit. In the event the facility is not
356 modified, removed, or relocated within said period of time, the City may cause the same to be done
357 at the sole cost and expense of permittee. Further, due to exigent circumstances, the City may
358 modify, remove, or relocate wireless communications facilities without prior notice to permittee
359 provided permittee is notified within a reasonable period thereafter.

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

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

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

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

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

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

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

387 **11.12.190 Public notice and comment on wireless communications facilities and**
388 **communications support structure installation applications.**

389 A. When an application is filed for a permit to install communications facilities or a
390 communications support structure, including a replacement pole, in the City right-of-way:

391 1. the Director shall

392 a. post notice of the application on the City's web site;

393 b. make the application materials available for public inspection; and

394 c. receive and consider written comment and documentary evidence submitted
395 from the public;

396 d. schedule, and a representative of the applicant must attend, a community
397 meeting to provide the public with information about the proposed installation,
398 answer questions, receive information, and respond to concerns; and

399 e. seek and consider input from Takoma Park boards, commissions and
400 committees with applicable subject matter jurisdiction.

401 2. the applicant shall inform the public about the proposed installation and the date,
402 time, and location of the community meeting by:

403 a. posting a notice at the proposed site; and

404 b. provide providing written notice to property owners, residents and businesses
405 with property lines located within 500 feet of the proposed installation.

406 **11.12.200 Exceptions.**

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

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

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

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

416 3. Strict application of this chapter would be contrary to the public interest because the

417 harm to the public of strict application would be greater than the harm caused by granting an
418 exception.

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

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

429 **11.12.210 Right-of-way maintenance and administration fee.**

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

433 **11.12.220 Annual certification.**

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

439 **11.12.230 Violations and enforcement.**

440 A. A violation of this chapter and any regulations adopted to implement or enforce this chapter
441 is a Class A Municipal Infraction.

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

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

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

448 E. In addition to all other means of enforcement provided for by law and in this chapter, the City
449 Manager, Director, Code Enforcement Officers or police officers may issue a stop-work order to
450 any person who violates any provision of this chapter or any regulations adopted to implement or

451 enforce this chapter. Any person who receives such a stop-work order shall immediately cease
452 work. The person shall comply with all terms and conditions imposed by the stop-work order
453 before the work may resume.

454

455 **11.12.240 Waiver of communications facilities and support structure fees for public**
456 **benefits.**

457 The Director, in consultation with the City Manager, may waive or reduce application and annual
458 right-of-way maintenance and administration fees for communications facilities and support
459 structure installations and provide other benefits, excluding any that would weaken health and
460 safety protections, to applicants and permittees in exchange for public benefits to be provided by
461 the applicant or permittee, including, but not limited to, the installation of communications facilities
462 and support structures in underserved locations and the installation of connections to or discounted
463 service for multi-family rental facilities.

464 **11.12.250 Regulations.**

465 The Director may promulgate regulations to implement this chapter. Such regulations shall
466 include, but shall not be limited to, establishing application fees and right-of-way maintenance and
467 administration fees, requiring the posting of public notice of work in the right-of-way, requiring the
468 entity performing work in the right-of-way to attend a preconstruction meeting, requiring that the
469 timing of nonemergency work in the right-of-way be coordinated to minimize traffic disruption or
470 complications resulting from other construction activity taking place in the City, establishing time
471 frames for permit review, and establishing maximum volumes and dimensions for antennas,
472 equipment cabinets, and other communications facilities and support structures.

473

474

475 Adopted this _____ th day of _____ 2018, by roll-call vote as follows:

476 **Aye:**

477 **Nay:**

478 **Absent:**

479 **Abstain:**

480

481 **Explanatory Note:** Additions to the Code are underlined and deletions from the Code are shown as
482 ~~strikethrough~~.