

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, the City Council desires to protect the public health, safety, welfare and 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 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 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 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 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**

45 **Chapter 11.12**

46 **PERMITS AND IMPROVEMENTS**

47 **11.12.000 Definitions.**

48 As used in this Chapter:

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

52
53 “Applicant” means the person applying for a permit under this chapter, including the applicant’s
54 officials, employees, agents, and contractors.

55
56 “Collocation” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may be
57 amended, which defines that term as the mounting or installation of transmission equipment on an
58 eligible pole for the purpose of transmitting or receiving RF signals for communications purposes.
59 As an illustration and not a limitation, the FCC’s definition effectively means “to add” and does not
60 necessarily refer to more than one wireless communication facility installed at a single site.

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

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

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

71 “FCC” means the Federal Communications Commission.

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

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

79 “Privately owned utility pole” means a utility pole that is not owned by municipal, county, or state

80 government.

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

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

84 **11.12.010 Permit required for grading, construction, and installation.**

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

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

- 94 1. Comply with all structural and safety standards specified by the Director;
- 95 2. Not obstruct pedestrian or vehicular traffic flow or sight lines, and not obstruct
96 parking or the entering and exiting of persons from vehicles parked in the right-of-way;
- 97 3. Comply with the Americans with Disabilities Act;
- 98 4. If a pole, have a diameter and height no greater than the maximums established by the
99 Director, but be tall enough to ensure that all attached equipment is at least 15 feet above
100 ground;
- 101 5. If a replacement pole, be located within 2 feet of the base of the previously existing
102 pole and at the same distance from the edge of the travel lane, unless the Director
103 determines that a different location is preferable to facilitate pedestrian use of the right of
104 way, vehicle and pedestrian sight lines, or the City’s use of the right-of-way;
- 105 6. If an equipment cabinet, comply with size limits and placement requirements
106 established by the Director, including maximum volume limits for all equipment cabinets
107 associated with a pole;
- 108 7. If an antenna, be demonstrated to be the least visible antenna possible to accomplish
109 the coverage objectives;
- 110 8. For antennas, antenna mounts and cabinets, be situated, screened, shrouded,
111 concealed or treated to minimize visual and acoustic impact (including having antennas
112 flush mounted to the extent reasonably feasible), as determined in consultation with the

113 Director. All antenna mounts shall be designed so as not to preclude possible future
114 collocation by the same or other operators or carriers;

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

119 10. Be designed to be resistant to unauthorized access, climbing, vandalism, and other
120 activities that result in hazardous situations, interception of communications, or attractive
121 nuisances; and

122 11. Comply with such other requirements and conditions as the Director may determine
123 are appropriate.

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

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

130 **11.12.015 Communications facilities and communications support**
131 **structures--requirements and findings.**

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

134 1. Compliance with Section 11.12.010.

135 2. Compliance with all relevant requirements of the Montgomery County Zoning
136 Ordinance;

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

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

145 b. Existing poles do not have the capacity for the necessary communications
146 facilities.

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

180 reporting problems with the structure or facility, and a unique identification number.

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

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

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

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

195 **11.12.020 Permit application—Contents.**

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

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

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

203 a. Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and
204 dimensions;

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

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

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

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

211 4. A statement committing to comply with applicable safety standards for the proposed

212 activities in the City right-of-way.

213 5. Identity and contact information for the entity performing the work in the right-of-way;
214 and

215 6. Any additional data and detail required by the Director.

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

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

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

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

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

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

242 5. Such other information as the Director may require.

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

247 **11.12.030 Application requirements.**

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

250 **11.12.040 Application revision and resubmission.**

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

256 **11.12.050 Examination of application—Issuance of permit.**

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

268 **11.12.060 Approval of plans required.**

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

275 **11.12.070 Permit fees.**

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

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

283 paid.

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

288 **11.12.080 Permit fees—Not to be credited or returned.**

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

292 **11.12.090 Expiration of permits—Renewal.**

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

296 * * *

297 **11.12.140 Exceeding permit time periods prohibited.**

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

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

302 **11.12.185 Conditions for approval for all communications facilities and support structures.**

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

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

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

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

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

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

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

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

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

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

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

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

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

390 **11.12.190 Public notice and comment on wireless communications facilities and**
391 **communications support structure installation applications.**

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

394 1. the Director shall

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

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

397 c. receive and consider written comment and documentary evidence submitted
398 from the public;

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

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

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

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

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

409 **11.12.200 Exceptions.**

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

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

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

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

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

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

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

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

432 **11.12.210 Right-of-way maintenance and administration fee.**

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

436 **11.12.220 Annual certification.**

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

442 **11.12.230 Violations and enforcement.**

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

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

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

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

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

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

457

458 **11.12.240 Waiver of communications facilities and support structure fees for public**
459 **benefits.**

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

467 **11.12.250 Regulations.**

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

476

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

478 **Aye:**

479 **Nay:**

480 **Absent:**

481 **Abstain:**

482

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