

1 Introduced by: Councilmember Smith

First Reading: December 5, 2018

2 Second Reading: January 9, 2019

3 Effective Date: January 9, 2019

4  
5  
6 **ORDINANCE NO. 2018-50**

7  
8 **Amendments Regarding Right-of-Way Work Permits**

9  
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; and

13  
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;

23  
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

26  
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  
29 regulate such installations in City rights-of-way; and

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

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

36  
37 **NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF**  
38 **TAKOMA PARK, MARYLAND**, that, effective immediately, Title 11, Streets, Chapter 11.12,  
39 Permits and Improvements, of the Takoma Park Code is hereby amended as follows:

40  
41 **Title 11**  
42 **STREETS**

43 \* \* \*

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

45  
46 **11.12.000 Definitions.**  
47

48 As used in this Chapter:  
49

50 “Antenna” means that part of a wireless communications facility designed to radiate or receive  
51 RF signals or electromagnetic waves for the provision of services, including, but not limited to,  
52 cellular, paging, personal communications services and microwave communications.  
53

54 “Applicant” means the person applying for a permit under this chapter, including the applicant’s  
55 officials, employees, agents, and contractors.  
56

57 “Collocation” means the same as defined by the FCC in 47 C.F.R. Section 1.40001(b)(2), as may  
58 be amended, which defines that term as the mounting or installation of transmission equipment on  
59 an eligible pole for the purpose of transmitting or receiving RF signals for communications  
60 purposes. As an illustration and not a limitation, the FCC’s definition effectively means “to add”  
61 and does not necessarily refer to more than one wireless communication facility installed at a  
62 single site.  
63

64 “Communications facility” means, collectively, the equipment at a fixed location or locations  
65 within a City right-of-way that enables communications services, including: (i) radio transceivers,  
66 antennas, coaxial, fiber-optic or other cabling, power supply, backup battery, and comparable  
67 equipment, regardless of technological configuration; and (ii) all other equipment associated with  
68 any of the foregoing. A communications facility does not include the pole, tower or support  
69 structure to which the equipment is attached.  
70

71 “Communications support structure” means a proposed or existing pole located in the City right-  
72 of-way or a pole proposed to replace an existing pole in the right-of-way to which  
73 communications facilities are attached or proposed or intended to be attached.  
74

75 “Director” means the Director of Public Works or his or her designee.  
76

77 “FCC” means the Federal Communications Commission.  
78

79 “Permittee” means the person that receives a permit to work in or install facilities, equipment or  
80 structures in the right of way under this chapter and the person that owns facilities, equipment or  
81 structures permitted to be installed under this chapter, including the permittee’s officials,  
82 employees, agents, and contractors.  
83

84 “Pole” means a single shaft of wood, steel, concrete, or other material at least 26 feet tall and  
85 capable of supporting the equipment mounted thereon in a safe and adequate manner, including a  
86 privately owned utility pole.  
87

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

89 state government.

90  
91 “RF” means radio frequency or electromagnetic waves between 30 kHz and 300 GHz in the  
92 electromagnetic spectrum range.

93  
94 “Urban forest tree” means an urban forest tree as defined in Chapter 12.12.

95  
96 **11.12.010 Permit required for grading-~~or~~, construction, and installation.**

97  
98 A. No person shall grade, construct, cut-~~or~~, excavate ~~any~~ or deposit any material on any City  
99 street, road, highway, alley, driveway apron, sidewalk, right-of-way, curb or gutter or install any  
100 structure or equipment in the City right-of-way, or begin any ~~of the work of such grading or~~  
101 ~~construction~~work, without first obtaining a permit from the City.

102  
103 B. General findings required for issuance of all installation permits. A permit shall not be  
104 issued for a proposed installation when the location selected in the application is in an area where  
105 there is an overconcentration of structures or facilities in, on or over the right-of-way, as  
106 determined by the Director in the Director’s reasonable discretion and judgment. Any structure  
107 or facility installed in a City right-of-way, including those attached to a structure in the right-of-  
108 way, must:

109  
110 1. Comply with all structural and safety standards specified by the Director;

111  
112 2. Not obstruct pedestrian or vehicular traffic flow or sight lines, and not obstruct  
113 parking or the entering and exiting of persons from vehicles parked in the right-of-way;

114  
115 3. Comply with the Americans with Disabilities Act;

116  
117 4. If a pole, have a diameter and height no greater than the maximums established by  
118 the Director, but be tall enough to ensure that all attached equipment is at least 15 feet  
119 above ground;

120  
121 5. If a replacement pole, be located within 2 feet of the base of the previously existing  
122 pole and at the same distance from the edge of the travel lane, unless the Director  
123 determines that a different location is preferable to facilitate pedestrian use of the right of  
124 way, vehicle and pedestrian sight lines, or the City’s use of the right-of-way;

125  
126 6. If an equipment cabinet, comply with size limits and placement requirements  
127 established by the Director, including maximum volume limits for all equipment cabinets  
128 associated with a pole;

129  
130 7. If an antenna, be demonstrated to be the least visible antenna possible to  
131 accomplish the coverage objectives;

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

138  
139 9. Have a color and finish for antennas, antenna mounts, cabinets and poles to be  
140 determined in consultation with the Director to minimize visual impact to the  
141 neighborhood, taking into consideration historic area designations and color and design  
142 schemes for City facilities, commercial districts, and other areas with aesthetic guidelines;

143  
144 10. Be designed to be resistant to unauthorized access, climbing, vandalism, and other  
145 activities that result in hazardous situations, interception of communications, or attractive  
146 nuisances; and

147  
148 11. Comply with such other requirements and conditions as the Director may  
149 determine are appropriate.

150  
151 ~~C. B.— No person, including any utility company, shall cut any road or public right of way for~~  
152 ~~the purpose of installing or connecting underground power, communication lines, water or sewer~~  
153 ~~lines, cable television wires or for any other purpose without first obtaining a permit from the~~  
154 ~~City.~~

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

157  
158 ~~D. In the event of an unexpected repair or emergency, a utility company the responsible person~~  
159 ~~may commence such repair and emergency response work as required under the circumstances,~~  
160 ~~provided that the utility company responsible person shall notify the City as promptly as possible~~  
161 ~~of such repair or emergency work and shall obtain a permit from the City for such work, if~~  
162 ~~required, as soon as possible.~~

163  
164 ~~D.— A violation of this chapter and any regulations adopted to implement or enforce this chapter~~  
165 ~~is a Class B offense.~~

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

173  
174 **11.12.015 Communications facilities and communications support structures--**  
175 **requirements and findings.**  
176

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

179 1. Compliance with Section 11.12.010;

180 2. Compliance with all relevant requirements of the Montgomery County Zoning  
181 Ordinance;

182  
183 3. Absent a specific finding by the Director, communications facilities may only be  
184 installed on existing utility poles, and only entities certificated by the Maryland Public  
185 Service Commission pursuant to the Annotated Code of Maryland, Public Services and  
186 Utilities, Division I, Title 7 or Title 8, as amended, may erect or contract to erect  
187 replacement poles in the City's right-of-way. To allow the installation of an additional or  
188 replacement pole, the Director must find that

189  
190 a. Additional communications facilities are necessary in the location of the  
191 proposed pole to provide adequate telecommunications coverage; and

192  
193 b. Existing poles do not have the capacity for the necessary communications  
194 facilities.

195  
196 4. If proposed to be attached to a privately-owned utility pole, be authorized by an  
197 executed attachment agreement with the utility pole owner, setting forth, at a minimum,  
198 the title, date and term of the agreement;

199  
200 5. Be necessary in the location of the proposed facility to provide adequate  
201 telecommunications coverage;

202  
203 6. Allow up to but not more than three antennas per pole;

204  
205 7. Have no exterior wiring if the pole on which it is mounted can accommodate  
206 internal wiring or, if necessary, have exterior wiring enclosed in a shielded conduit; and

207  
208 8. Comply with such other requirements and conditions as the Director may determine  
209 are appropriate.

210  
211 B. Communications facilities and communications support structures proposed to be located  
212 on City rights-of-way may be permitted upon a finding by the Director that:

213  
214 1. The application complies with all standards and requirements set forth in  
215 Subsection A;

216  
217 2. The applicant has submitted proof of insurance, documentation of compliance with  
218 federal RF emissions limitations, and a performance bond required under this chapter;

219  
220 3. The Montgomery County Telecommunications Facility Coordinating Group Tower  
221 Coordinator has recommended the proposed installation if the installation is subject to  
222 review by the Montgomery County Transmission Facility Coordinating Group.  
223

224 4. The installation will not harm any urban forest tree, or the location of the installation  
225 minimizes the adverse impact of the installation on urban forest trees to the extent  
226 reasonably possible given the need for communications coverage;  
227

228 5. The installation work will be conducted in a manner that minimizes the adverse  
229 impact of the project upon urban forest trees to the extent reasonable, including the use of  
230 reasonable tree protection measures;  
231

232 6. All communications facilities associated with a communications support structure,  
233 including communications facilities associated with a proposed new antenna and pre-  
234 existing communications facilities, will be no more than the maximum volume determined  
235 by the Director;  
236

237 7. The structure does not require antenna structure registration under 47 C.F.R. Chapter  
238 1, Part 17, as amended; and  
239

240 8. Each support structure, antenna, and equipment cabinet are labeled with the identity  
241 of the owner or owner's agent, a 24-hour monitored phone number and email address for  
242 reporting problems with the structure or facility, and a unique identification number.  
243

244 C. If the Director determines that any trees must be removed, the permit shall not be issued  
245 until the applicant pays the cost of replacing such trees, in accordance with the tree replacement  
246 requirements of Chapter 12.12, except that at least one replacement tree shall be required for each  
247 tree that must be removed.  
248

249 D. The Director may waive minor variances from the requirements of this section if the  
250 variance does not jeopardize the public health, safety, or welfare.  
251

252 E. Work permitted under this section shall be subject to the goals of Chapter 12.12, Urban  
253 Forest, as set forth in Section 12.12.010, but shall be exempt from the procedural requirements of  
254 Chapter 12.12.010 except as provided herein.  
255

256 F. Upon installation of an antenna, the RF emissions for the antenna or, if applicable, the  
257 cumulative RF emissions from the new antenna and any collocated antennas, shall be tested for  
258 compliance with federal limits. If an antenna exceeds federal RF emissions limits or causes the  
259 antennas collocated on a support structure to exceed federal RF emissions limits, the newly  
260 installed antenna must be removed by the applicant within five days at its own expense.  
261

262 **11.12.020 Permit application—Contents.**

263  
264 A. ~~All~~ General permit application requirements for all installation permit applications for  
265 grading and construction permits as described in Section 11.12.010 except driveway apron permit  
266 applications. Applications for a permit under this chapter shall be filed ~~in~~with the Clerk's  
267 officeDirector on forms provided by ~~that office and~~the Director. The application submission shall  
268 be accompanied by 2 sets of detailed plans of the project, indicatinginclude, wherever applicable,  
269 the following:

270  
271 1. Right-of-way, name of street (if any) and width of right-of-way, abutting lots, GIS  
272 location, North point, and scale;

273  
274 2. The following information within 50 feet of the site:

275 a. Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and  
276 dimensions;

277  
278 b. Catch basins, inlets, culverts and other drainage structures, and dimensions;

279  
280 c. Construction details, including cross section pavement, curb and gutter,  
281 details of drainage structures, culverts, headwalls, etc.;

282  
283 d. Grading plan and profile, showing existing grades and finishing grades;

284  
285 3. A certificate from an independent licensed professional engineer that a proposed  
286 installation is structurally sound;

287  
288 4. A statement committing to comply with applicable safety standards for the proposed  
289 activities in the City right-of-way;

290  
291 5. Identity and contact information for the entity performing the work in the right-of-  
292 way; and

293  
294 6. Any additional data and detail required by the Director ~~of Public Works.~~

295  
296 B. Potential waiver of requirements for all installation permit applications. The Director may  
297 waive plan detail requirements for any application to install attachments on existing structures  
298 that does not involve excavation or the Director's representative use of heavy equipment or  
299 vehicles outside of the paved roadway.

300  
301 B.—C. Communications facilities and communications support structure permit applications.  
302 In addition to the requirements of Subsection A of this section, applicants for a permit to install  
303 communications facilities or communications support structures must submit documentation with  
304 the following information pertaining to a proposed deployment of communications facilities or  
305 communications support structures:  
306

307  
308 1. A technical description of the proposed communication facilities or support  
309 structures, including the purpose and intent of the proposed facilities or support structures,  
310 a written description identifying the geographic service area for the subject installation,  
311 photographs of the communications equipment to be installed, a description of the noise  
312 emitted by the proposed facilities, an accurate visual impact analysis with photo  
313 simulations, and a list of any existing antennas mounted on the support structure if the  
314 application relates to a proposed collocation;  
315

316 2. A site plan drawing indicating the proposed installation, right-of-way, name of street  
317 (if any) and width of right-of-way, utility pole identification number if proposed  
318 installation involves attachment to or replacement of an existing utility pole, abutting lots,  
319 all trees in the right-of-way within 50 feet of the proposed project, North point, and scale;  
320

321 3. A detailed deployment plan describing facilities planned to be installed by the  
322 applicant for the 24-month period following the permit issuance anywhere in the City or  
323 within 500 feet of City limits, including on private property and Maryland state and  
324 county rights-of-way, and a description of the completed deployment;  
325

326 4. A completed RF exposure guidelines checklist and proof of all applicable licenses or  
327 other approvals required by the FCC; and  
328

329 5. Such other information as the Director may require.  
330

331 D. Driveway apron permit applications. Driveway apron applicants shall provide the address  
332 and lot and block number where construction is to be done and a drawing showing measurement  
333 for the property, all buildings, all porches, all permanent walks, all other permanently installed  
334 improvements and the size and location of the driveway to be installed.  
335

### 336 **11.12.030 Application requirements.** 337

338 An application for a permit under ~~Section 11.12.010~~ this chapter shall not be accepted by the  
339 Director unless and until the required information is furnished, together with the necessary plans  
340 and specifications, ~~and the required fee is paid as required under Section 11.12.070.~~  
341

### 342 **11.12.040 Application revision and resubmission.** 343

344 In cases where the plans and specifications submitted to the Director do not meet the minimum  
345 construction standards as provided in this chapter, or if unusual conditions require a special  
346 determination by the Director as to type of construction, the plans and specifications, with  
347 necessary revisions noted appropriately thereon, shall be returned to the applicant for revision and  
348 resubmission.  
349

### 350 **11.12.050 Examination of application—Issuance of permit.**



351  
352 The Director, upon receipt of ~~an~~ a complete application for a ~~construction~~ permit, shall review the  
353 plans and specifications of the proposed project, and ~~if~~ consider any public comment on the  
354 ~~Director is~~ application and, if satisfied that the plans meet the minimum construction standards as  
355 provided in Chapter- 11.08- and ~~that~~ all other requirements of this chapter and associated  
356 administrative regulations have been complied with, the shall issue a permit. The Director may  
357 require modifications to a proposed project before granting a permit and impose conditions when  
358 granting a permit. The Director shall so certify approval to the Clerk for may condition the  
359 issuance of a construction permit. permit upon the applicant's payment of an escrow deposit or  
360 obtaining a bond to cover costs of possible damage or other related problems to public property  
361 be paid to the City. The amount of the escrow deposit or bond shall be determined by the Director  
362 based on the project and shall be refunded after completion of the project with the approval of the  
363 Director, except as provided otherwise in this chapter.

364  
365 **11.12.060 Approval of plans required.**

366  
367 ~~No~~ If a new subdivision or resubdivision is required, then no construction permit shall be issued  
368 by the ~~Clerk~~ Director unless and until the ~~Clerk~~ Director has evidence in writing from the  
369 Maryland-National Capital Park and Planning Commission that a preliminary plan and profiles  
370 and grades for the subdivision in which the proposed highway, road, street or alley construction is  
371 located has been approved by the Park and Planning Commission and by the Washington  
372 Suburban Sanitary Commission, as applicable.

373  
374 **11.12.070 Permit and inspection fees.**

375  
376 ~~A. Before any street, sidewalk, gutter, curb or drainage project may be begun on a road or street~~  
377 ~~or within the boundaries of a dedication to public use, the applicant for a permit to undertake the~~  
378 ~~project shall pay a fee for road construction, right of way openings, pavement cuts, excavations~~  
379 ~~and other disturbance work within a public right of way of the greater of \$40.00 or the following:~~

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

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

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

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

393  
394 B. An application for a permit shall not be processed by the Director until the required fee is

395 paid.

396

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

401 =

402 ~~€. In all cases in this chapter, the City Administrator or his or her designee may require that an~~  
403 ~~escrow deposit or a bond to cover costs of possible damage or other related problems to public~~  
404 ~~property be paid to the Treasurer. The amount of the escrow deposit or bond shall be determined~~  
405 ~~by the City Administrator or his or her designee based on the project and shall be refunded after~~  
406 ~~completion of the project with the approval of the City Administrator or his or her designee.~~

407

408 **11.12.080 Permit fees—Not to be credited or returned.**

409

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

413

414 **11.12.090 Expiration of permits—Renewal.**

415

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

419

420

\* \* \*

421 **11.12.140 ~~Permit required to excavate public street.~~ Exceeding permit time periods**  
422 **prohibited.**

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

425

426 B. No person shall exceed the time period granted ~~on~~ by such permit in performance of the  
427 project for which the permit was issued.

428 **11.12.185 Conditions for approval for all communications facilities and support structures.**

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

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

437  
438 B. The permittee shall submit and maintain current at all times basic contact and site  
439 information on a form to be supplied by the City. The permittee shall notify the City of any  
440 changes to the information submitted within seven days of any change, including change of the  
441 name or legal status of the owner or operator, and the emergency contact information shall be  
442 updated on the pole as expeditiously as possible. This information shall include, but is not  
443 limited to, the following:

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

447  
448 2. The legal status of the owner of the communications facility or communications  
449 structure, including official identification numbers and FCC certification if applicable.

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

453 D. At all times, the permittee shall ensure that the facility, as mounted with any collocated  
454 facilities, complies with the most current industry standards for size and regulatory and  
455 operational standards that reduce noise, RF emissions, or energy usage or that reduce the size,  
456 visibility or obtrusiveness of a facility including, but not limited to, RF emissions standards  
457 adopted by the FCC. The City shall retain a consultant, at the sole expense of the permittee, to  
458 perform testing demonstrating compliance with current regulatory and operational standards.  
459 Tests shall occur upon commencement of operations and annually between May 1 and June 30  
460 thereafter.

461  
462 E. If, at any time, the Director determines there is good cause to believe that the facility, as  
463 mounted with any collocated facilities, may emit RF emissions that are likely to exceed FCC  
464 standards, the Director may require the permittee to submit a technically sufficient written report  
465 certified by a qualified independent RF emissions engineer, certifying that the facility is in  
466 compliance with such FCC standards within 10 days.

467  
468 F. The permittee shall pay for and provide a performance bond, which shall be in effect until  
469 the facilities are fully and completely removed and the site reasonably returned to its original  
470 condition, to cover permittee's obligations under these conditions of approval and the City Code.  
471 The bond coverage shall include, but not be limited to, removal of the facility, and maintenance  
472 obligations. The amount of the performance bond shall be set by the Director in an amount

473 reasonably related to the obligations covered by the bond and shall be specified in the conditions  
474 of approval.

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

479 H. The permittee shall defend, indemnify, protect and hold harmless the City, its officers,  
480 officials, agents, consultants, employees, and volunteers from and against any and all claims,  
481 actions, or proceeding against the City and its officers, officials, agents, consultants, employees  
482 and volunteers to attack, set aside, void or annul, an approval of the City concerning the permit  
483 and the project. Such indemnification shall include damages, judgments, settlements, penalties,  
484 finances, defensive costs or expenses, including, but not limited to, interest, attorneys' fees and  
485 expert witness fees, or liability of any kind related to or arising from such claim, action, or  
486 proceeding. The City shall promptly notify the permittee of any claim, action, or proceeding  
487 against which the City seeks defense. Nothing contained herein shall prohibit City from  
488 participating in a defense of any claim, action or proceeding, or revoking a permit and requiring  
489 the modification or removal of an installation. The City shall have the option of coordinating the  
490 defense, including, but not limited to, choosing counsel for the defense at permittee's expense.

491  
492 I. Any modification, removal, or relocation of the facility shall be completed within 90 days of  
493 written notification by the City unless exigencies dictate a shorter period for removal or  
494 relocation. Modification or relocation of the facility shall require a permit. In the event the facility  
495 is not modified, removed, or relocated within said period of time, the City may cause the same to  
496 be done at the sole cost and expense of permittee. Further, due to exigent circumstances, the City  
497 may modify, remove, or relocate wireless communications facilities without prior notice to  
498 permittee provided permittee is notified within a reasonable period thereafter.

499  
500 J. All work performed by the permittee in connection with the installation, connection,  
501 maintenance, modification, or removal of the communications facilities and support structures  
502 shall comply with Chapter 14.12, Noise Control, and the provisions of the Maryland Vehicle Law  
503 regarding the idling of vehicles, and the storage and staging of equipment shall be conducted in  
504 conformity with any requirements established for the work by the Director.

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

507  
508 L. The permittee shall repair, restore, or replace any portion of the right-of-way that is  
509 damaged by its communications facilities and communications support structures or the  
510 installation or maintenance thereof. The permittee authorizes the City to repair, restore, or  
511 replace the damaged portion of the right-of-way and shall reimburse the City for the costs  
512 incurred if the permittee fails promptly to perform the work;

513

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

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

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

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

529 **11.12.190 Public notice and comment on wireless communications facilities and**  
530 **communications support structure installation applications.**

531  
532 A. When an application is filed for a permit to install communications facilities or a  
533 communications support structure, including a replacement pole, in the City right-of-way:

534  
535 1. the Director shall

536  
537 a. post notice of the application on the City's web site;

538  
539 b. make the application materials available for public inspection; and

540  
541 c. receive and consider written comment and documentary evidence submitted  
542 from the public;

543  
544 d. schedule, and a representative of the applicant must attend, a community  
545 meeting to provide the public with information about the proposed installation,  
546 answer questions, receive information, and respond to concerns; and

547  
548 e. seek and consider input from Takoma Park boards, commissions and  
549 committees with applicable subject matter jurisdiction.

550  
551 2. the applicant shall inform the public about the proposed installation and the date,  
552 time, and location of the community meeting by:  
553

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

555  
556 b. providing written notice to property owners, residents and businesses with  
557 property lines located within 500 feet of the proposed installation.

558  
559 **11.12.200 Exceptions.**

560  
561 A. No City permit shall be required under this chapter to excavate any portion of a street that  
562 is a part of the state highway system and for which a state permit is required under the provisions  
563 of the Annotated Code of Maryland, Transportation, § 8-646 as amended.

564  
565 B. Exceptions pertaining to any provision of this chapter, including, but not limited to,  
566 exceptions from findings that would otherwise justify denial, may be granted by the Director if  
567 the Director makes the finding that:

568  
569 1. Denial of the facility as proposed would violate federal law, state law, or both; or

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

572  
573 3. Strict application of this chapter would be contrary to the public interest because the  
574 harm to the public of strict application would be greater than the harm caused by granting  
575 an exception.

576  
577 C. An applicant may only request an exception under paragraph B at the time of applying for a  
578 permit. The request must include both the specific provision(s) of this chapter from which the  
579 exception is sought and the basis of the request. Any request for an exception after the City has  
580 deemed an application complete and accepted it shall be treated as a new application.

581  
582 D. The applicant shall have the burden of proving that denial of the facility as proposed would  
583 violate federal law, state law, or both, or that the provisions of this chapter, as applied to  
584 applicant, would deprive applicant of its rights under federal law, state law, or both, using the  
585 evidentiary standards required by that law at issue. The City shall have the right to hire an  
586 independent consultant, at the applicant's expense, to evaluate the issues raised by the exception  
587 request and shall have the right to submit rebuttal evidence to refute the applicant's claim.

588  
589 **11.12.210 Right-of-way maintenance and administration fee.**

590  
591 The owner of a communications facility or support structure shall pay an annual right-of-way  
592 maintenance and administration fee within 15 days of the approval of the permit application and  
593 on the anniversary date of the permit approval each year thereafter.

594  
595 **11.12.220 Annual certification.**

596  
597 Between June 1 and July 1 of each year that a permitted communications facility or support

598 structure remains in the City right-of-way, the owner shall submit to the Director an affidavit  
599 signed by an authorized representative of the owner confirming that the facility or support  
600 structure remains in use and remains covered by insurance and that the facility is the current  
601 industry standard facility of that type as required under this chapter.

602  
603 **11.12.230 Violations and enforcement.**

604  
605 A. A violation of this section chapter and any regulations adopted to implement or enforce  
606 this chapter is a Class B offense. A Municipal Infraction.

607  
608 B. Each day that a violation of a term or condition of a permit continues shall constitute a  
609 separate violation.

610  
611 C. Each day that an installation for which the City has not issued a permit remains in the City  
612 right-of-way shall constitute a separate violation.

613  
614 D. The City may abate outstanding violations and charge the cost of abatement to the  
615 responsible person.

616  
617 E. In addition to all other means of enforcement provided for by law and in this chapter, the  
618 City Manager, Director, Code Enforcement Officers or police officers may issue a stop-work  
619 order to any person who violates any provision of this chapter or any regulations adopted to  
620 implement or enforce this chapter. Any person who receives such a stop-work order shall  
621 immediately cease work. The person shall comply with all terms and conditions imposed by the  
622 stop-work order before the work may resume.

623  
624 **11.12.240 Waiver of communications facilities and support structure fees for public**  
625 **benefits.**

626  
627 The Director, in consultation with the City Manager, may waive or reduce application and annual  
628 right-of-way maintenance and administration fees for communications facilities and support  
629 structure installations and provide other benefits, excluding any that would weaken health and  
630 safety protections, to applicants and permittees in exchange for public benefits to be provided by  
631 the applicant or permittee, including, but not limited to, the installation of communications  
632 facilities and support structures in underserved locations and the installation of connections to or  
633 discounted service for multi-family rental facilities.

634  
635 **11.12.250 Regulations.**

636  
637 The Director shall endeavor to promulgate regulations to implement this chapter within 90 days.  
638 Such regulations shall include, but shall not be limited to, establishing application fees and right-  
639 of-way maintenance and administration fees, requiring the posting of public notice of work in the  
640 right-of-way, requiring the entity performing work in the right-of-way to attend a preconstruction  
641 meeting, requiring that the timing of nonemergency work in the right-of-way be coordinated to

642 minimize traffic disruption or complications resulting from other construction activity taking  
643 place in the City, establishing time frames for permit review, and establishing maximum volumes  
644 and dimensions for antennas, equipment cabinets, and other communications facilities and  
645 support structures.

646  
647 Adopted this 9th day of January, 2019, by roll-call vote as follows:

648  
649 **Aye:** Stewart, Kovar, Dyballa, Kostiuk, Seamens, Smith, Searcy

650 **Nay:** None

651 **Absent:** None

652 **Abstain:** None

653  
654 **Explanatory Note:** Additions to the Code are underlined and deletions from the Code are shown  
655 as ~~strikethrough~~.