

1 CITY OF HYATTSVILLE

2
3 ORDINANCE 2022-06

4
5 An ordinance whereby the City Council amends Chapter 105, Articles VII and VIII
6 of the Hyattsville Code.

7
8 WHEREAS, the Maryland Code, Local Government Article, Section 5–202, as amended,
9 authorizes the legislative body of each municipal corporation in the State of Maryland to pass
10 ordinances that such legislative body deems necessary to assure the good government of the
11 municipality, to protect and preserve the municipality’s rights, property and privileges, to preserve
12 peace and good order, to secure persons and property from danger and destruction, and to protect
13 the health, comfort, and convenience of the citizens of the municipality; and

14
15 WHEREAS, the City Council desires to protect the public health, safety, welfare and
16 environment regarding telecommunications facilities; and

17
18 WHEREAS, installation of small cell and other wireless telecommunications facilities
19 within the public right-of-way can pose a threat to the public health, welfare, safety, environment,
20 and property values either directly through the facilities themselves or indirectly by causing
21 changes to other facilities in the right of way; and

22
23 WHEREAS, wireless carriers and the companies that provide infrastructure to support the
24 wireless carriers are increasingly seeking to install antennas in public rights-of-way; and

25
26 WHEREAS, while the Prince George’s County Zoning Code regulates the installation of
27 telecommunications antennas and support structures in Hyattsville, the City has authority to
28 regulate such installations in City rights-of-way; and

29
30 WHEREAS, federal law significantly restricts local government authority to regulate the
31 installation of telecommunications facilities.

32
33 NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Hyattsville
34 in regular session assembled that Chapter 105, Article VII, Wireless Facilities and Supporting
35 Structures, and Article VII, Penalty Provisions, be hereby amended to read as follows:

36 THE CODE

37
38 Chapter 105

39
40 STREETS AND SIDEWALKS

41
42 Article VII Wireless Facilities and
43 Supporting Structures

44 * * *

1 **§ 105-45 Application for Permit Definitions**

2 As used in this chapter:

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

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

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

14 “Communications facility” means, collectively, the equipment at a fixed location or locations
15 within a City right-of-way that enables communications services, including: (1) radio transceivers,
16 antennas, coaxial, fiber-optic or other cabling, power supply, backup battery, and comparable
17 equipment, regardless of technological configuration; and (2) all other equipment associated with
18 any of the foregoing. A communications facility does not include the pole, tower or support
19 structure to which the equipment is attached.

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

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

24 “FCC” means the Federal Communications Commission.

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

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

32 “Privately owned utility pole” means a utility pole that is not owned by municipal, County, or State
33 government.

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

36

1 **§ 105-4546 Applications for permit**

2 A. The installation of wireless communications facilities and communications support
3 structures in a City right-of-way shall require a permit under this chapter. No permit shall be issued
4 with respect to the installation of wireless communications facilities or communications support
5 structures in, on or over any City street, sidewalk, or right-of-way unless and until the permit
6 applicant and the City have negotiated and executed a franchise or right-of-way use agreement
7 setting forth the terms and conditions, including fair compensation to the City, for the applicants'
8 use of the City right-of-way and, where applicable, lease payments for the use of any City-owned
9 poles or facilities.

10 B. In addition to the other information required by this article, an application for such a permit
11 shall submit the following information pertaining to particular sites or a proposed deployment:

12 (1) A technical description of the proposed facilities, along with detailed diagrams
13 accurately depicting all proposed facilities and support structures;

14 (2) A detailed deployment plan describing construction planned for the twelve-month
15 period following the issuance of the permit, and a description of the completed deployment;

16 (3) An engineering certification relating to the proposed construction signed by a
17 professional engineer licensed in Maryland;

18 (4) A statement describing the applicant's intentions with respect to co-location;

19 (5) A statement demonstrating the permittee's duty to comply with applicable safety
20 standards for the proposed activities in the City rights-of-way;

21 (6) In the case of a proposed attachment to a City-owned facility located in the City rights-
22 of-way, an executed attachment agreement with the City;

23 (7) In the case of a proposed attachment to an investor-owned utility pole in the rights-of-
24 way, an executed attachment agreement with the utility pole owner; and

25 (8) Such other information as the City Administrator may require.

26 C. The applicant shall pay a processing fee to the City at the time application to install wireless
27 facilities in a public right-of-way is made, in addition to any other fees required by this chapter or
28 by this Code generally. The amount of the fee shall be set by the City Administrator.

29 D. General findings required for issuance of permits regarding communications facilities and
30 communications support structures. A permit shall not be issued for the proposed installation of
31 communications facilities and communications support structures in the City right-of-way when
32 the location selected in the application is in an area where there is an overconcentration of
33 communications facilities or communications support structures, on or over the right-of-way, as
34 determined by the Director in the Director's reasonable discretion and judgment. Any
35 communications facilities and communications support structures installed in a City right-of-way,
36 including those attached to a structure in the right-of-way must:

- 1 1. Comply with all structural and safety standards specified by the Director;
- 2 2. Not obstruct pedestrian or vehicular traffic flow or sight lines, and not to obstruct
- 3 parking or the entering and exiting of persons from vehicles parked in the right-of-way.
- 4 3. Comply with the Americans with Disabilities Act;
- 5 4. If a communications support structure, have a diameter and height no greater than
- 6 the maximums established by the Director, but be tall enough to ensure that all attached
- 7 equipment is at least 15 feet above ground;
- 8 5. If a replacement communications support structure, be located within 2 feet of the
- 9 base of the previously existing communications support structure and at the same distance
- 10 from the edge of the travel lane, unless the Director determines that a different location is
- 11 preferable to facilitate pedestrian use of the right-of-way, vehicle and pedestrian sight
- 12 lines, or the City's use of the right-of-way;
- 13 6. If an antenna, be demonstrated to be the least visible antenna possible to accomplish
- 14 the coverage objectives;
- 15 7. For antennas, antenna mounts, and cabinets, be situated, screened, shrouded,
- 16 concealed or treated to minimize visual and acoustic impact (including having antennas
- 17 flush mounted to the extent reasonably feasible), as determined in consultation with the
- 18 Director. All antenna mounts shall be designed so as not to preclude possible future
- 19 collocation by the same or other operators or carries;
- 20 8. Have a color and finish for antennas, antenna mounts, cabinets and poles to be
- 21 determined in consultation with the Director to minimize visual impact to the
- 22 neighborhood, taking into consideration historic area designations and color and design
- 23 schemes for City facilities, commercial districts, and other areas with aesthetic guidelines;
- 24 9. Be designed to be resistant to unauthorized access, climbing, vandalism, and other
- 25 activities that result in hazardous situations, interception of communications or attractive
- 26 nuisances; and
- 27 10. Comply with such other requirements and conditions as the Director may determine
- 28 are appropriate.
- 29 E. The Director may require modifications to a proposed project before granting a permit and
- 30 impose conditions when granting a permit.
- 31 F. In the event of an unexpected repair or emergency, the responsible person may commence
- 32 such repair and emergency response work as required under the circumstances, provided that the
- 33 responsible person shall notify the City as promptly as possible of such repair or emergency work
- 34 and shall obtain a permit from the City for such work, if required, as soon as possible.

35

1 **§ 105-467 Communications Facilities and Communication Support Structures—**
2 **Requirements and Findings**

3 ~~A. Wireless facilities and support structures proposed to be located on streets, sidewalks or other~~
4 ~~rights of way in the City shall meet the following requirements: Communications facilities and~~
5 ~~communications support structures proposed to be located in the City right-of-way shall meet the~~
6 ~~following requirements:~~

7 1. ~~Absent a special finding by the City Administrator: Compliance with Section 105-~~
8 ~~46;~~

9 ~~(a) Wireless facilities may only be installed on existing utility poles or light poles;~~
10 ~~and~~

11 ~~(b) Only entities authorized by the Maryland Public Service Commission pursuant~~
12 ~~to Maryland Code Annotated, Public Utilities Article, §§ 5-410 and 8-103, as~~
13 ~~amended from time to time, may erect new poles in the City's right-of-way, and~~
14 ~~only then for the purpose of supporting telephone lines to provide telephone service.~~

15 2. ~~Any new pole, including a replacement pole, installed in City rights of way to~~
16 ~~support wireless facilities shall: Compliance with all relevant requirements of the Prince~~
17 ~~George's County Zoning Ordinance;~~

18 ~~(a) Comply with all structural and safety standards specified by the City~~
19 ~~Administrator;~~

20 ~~(b) Not obstruct pedestrian or vehicular traffic flow or sight lines;~~

21 ~~(c) Not exceed the average height of the existing streetlight poles or utility poles~~
22 ~~within the area extending 1,000 feet in any direction of the proposed structure;~~

23 ~~(d) Be designed to accommodate the co-location of at least three different wireless~~
24 ~~providers' antennas and related equipment;~~

25 ~~(e) If metal, be treated or painted with nonreflective paint, and in a way to conform~~
26 ~~to or blend into the surroundings; and~~

27 ~~(f) Comply with such other requirements and conditions as the City Administrator~~
28 ~~may conclude are appropriate to impose.~~

29 3. ~~Any wireless facilities installed on a pole or any other structure in the rights of way~~
30 ~~shall: Absent a specific finding by the Director, communications facilities may only be~~
31 ~~installed on existing utility poles, and only entities certified by the Maryland Public Service~~
32 ~~Commission pursuant to the Annotated Code of Maryland, Public Services and Utilities,~~
33 ~~Division I, Title 7 or Title 8, as amended, may erect or contract to erect replacement poles~~
34 ~~in the City's right-of-way. To allow the installation of an additional or replacement pole,~~
35 ~~the Director must find that~~

36 ~~a. Have an equipment box or boxes no greater in collective size than 17 cubic feet~~
37 ~~in volume with no one side/dimension exceeding 4.25 feet; Additional~~
38 ~~communications facilities are necessary in the location of the proposed pole to~~
39 ~~provide adequate telecommunications coverage; and~~

1 (b) ~~Have panel antennas no greater than two feet in height, and omni/dome antennas~~
2 ~~no greater than four feet in height and no wider than three feet in diameter; Existing~~
3 ~~poles do not have the capacity for the necessary communications facilities.~~

4 (c) ~~Have no more than three panel antennas per pole and no more than one~~
5 ~~omni/dome antenna per pole;~~

6 (d) ~~Have microwave dishes no greater than two feet in diameter, with no more than~~
7 ~~three microwave dishes per pole;~~

8 (e) ~~Be located and designed, including materials, color, and texture, so as to~~
9 ~~minimize visual impact on surrounding properties and as seen from the streets and~~
10 ~~sidewalks; and~~

11 (f) ~~Comply with such other requirements and conditions as the City Administrator~~
12 ~~may conclude are appropriate to impose.~~

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

16 5. Be necessary in the location of the proposed facility to provide adequate
17 telecommunications coverage;

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

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

21 8. Comply with such other requirements and conditions as the Director may determine
22 are appropriate.

23 ~~B. Wireless facilities and support structures proposed to be located on streets, sidewalks or other~~
24 ~~rights-of-way in the City may be permitted upon a finding by the City Administrator that:~~
25 Communications facilities and communications support structures proposed to be located on City
26 rights-of-way may be permitted upon a finding by the Director that:

27 ~~1. The application complies with all standards and requirements set forth in § 105-~~
28 ~~46A; The application complies with all standards and requirements set forth in Subsection~~
29 ~~A;~~

30 ~~2. The location selected in the application is not in an area where there is an over-~~
31 ~~concentration of poles or other facilities in, on or over the streets, sidewalks or other rights-~~
32 ~~of-way; The applicant has submitted proof of insurance, documentation of compliance with~~
33 ~~federal RF emissions limitations, and a performance bond required under this Chapter;~~

34 ~~3. The location selected, and scale and appearance of the wireless facilities and~~
35 ~~support structures to be installed, are consistent with the general character of the~~
36 ~~neighborhood; The Prince George's County Telecommunications Transmission Facility~~
37 ~~Coordinating Committee has recommended the proposed installation if the installation is~~
38 ~~subject to review by the Prince George's County Telecommunications Transmission~~
39 ~~Facility Coordinating Committee.~~

1 4. ~~The applicant has agreed to and provided adequate insurance, bonding and~~
2 ~~indemnification to protect the City and its residents from injury or liability relating to or~~
3 ~~arising from the proposed facilities and structures; The installation will not harm any trees~~
4 ~~identified under Section 112-2 or the location of the installation minimizes the adverse~~
5 ~~impact of the installation on such trees to the extent reasonably possible given the need for~~
6 ~~communications coverage;~~

7 5. ~~The applicant has entered into the franchise or right-of-way use agreement with the~~
8 ~~City required by § 105-45A; and The installation work will be conducted in a manner that~~
9 ~~minimizes the adverse impact of the project upon trees identified under Section 112-2 to~~
10 ~~the extent reasonable, including the use of reasonable tree protection measures;~~

11 6. ~~The wireless facilities, if located in a residential area, do not generate any noise.~~
12 ~~All communications facilities associated with a communications support structure,~~
13 ~~including communications facilities associated with a proposed new antenna and pre-~~
14 ~~existing communications facilities, will be no more than the maximum volume determined~~
15 ~~by the Director;~~

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

18 8. ~~Each support structure, antenna, and equipment cabinet are labeled with the identity~~
19 ~~of the owner or owner's agent, a twenty-four (24) hour monitored phone number and email~~
20 ~~address for reporting problems with the structure or facility, and a unique identification~~
21 ~~number.~~

22 C. If the Director determines that any trees must be removed, the permit shall not be issued
23 until the applicant pays the cost of replacing such trees, in accordance with the tree replacement
24 requirements of Chapter 112, except that at least one replacement tree shall be required for each
25 tree that must be removed.

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

28 E. Work permitted under this section shall be subject to the goals of Chapter 112, Urban
29 Forest, as set forth in Section 112-1, but shall be exempt from the procedural requirements of
30 Section 112-1, except as provided herein.

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

36 **§ 105-50 Permit Application—Contents.**

37 A. General Permit Application Requirements for All Installation Permit Applications Except
38 Driveway Apron Permit Applications. Applications for a permit under this chapter shall be filed
39 with the Director on forms provided by the Director. The application submission shall include,
40 wherever applicable, the following:

41 1. Right-of-way, name of street (if any) and width of right-of-way, abutting lots, GIS
42 location, north point, and scale;

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

2 a. Pavement plan, curb and gutter, sidewalks, curb cuts and driveways, and
3 dimensions;

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

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

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

8 3. A certificate from an independent licensed professional engineer that a proposed
9 installation is structurally sound;

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

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

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

15 B. Potential Waiver of Requirements for All Installation Permit Applications. The Director
16 may waive plan detail requirements for any application to install attachments on existing structures
17 that does not involve excavation or the use of heavy equipment or vehicles outside of the paved
18 roadway.

19 C. Communications Facilities and Communications Support Structure Permit Applications.
20 In addition to the requirements of subsection (A) of this section, applicants for a permit to install
21 communications facilities or communications support structures must submit documentation with
22 the following information pertaining to a proposed deployment of communications facilities or
23 communications support structures:

24 1. A technical description of the proposed communication facilities or support
25 structures, including the purpose and intent of the proposed facilities or support structures,
26 a written description identifying the geographic service area for the subject installation,
27 photographs of the communications equipment to be installed, a description of the noise
28 emitted by the proposed facilities, an accurate visual impact analysis with photo
29 simulations, and a list of any existing antennas mounted on the support structure if the
30 application relates to a proposed collocation;

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

35 3. A detailed deployment plan describing facilities planned to be installed by the
36 applicant for the 24-month period following the permit issuance anywhere in the City or
37 within 500 feet of City limits, including on private property and Maryland State and County
38 rights-of-way, and a description of the completed deployment;

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

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

2 D. Driveway Apron Permit Applications. Driveway apron applicants shall provide the address
3 and lot and block number where construction is to be done and a drawing showing measurement
4 for the property, all buildings, all porches, all permanent walks, all other permanently installed
5 improvements and the size and location of the driveway to be installed.

6 **§ 105-55 Application requirements**

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

9 **§ 150-60 Application revision and resubmission.**

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

15 **§ 150-65 Examination of Application—Issuance of Permit**

16 The Director, upon receipt of a complete application for a permit, shall review the plans and
17 specifications of the proposed project and consider any public comment on the application and, if
18 satisfied that the plans meet the minimum construction standards as provided in Chapter 11.08 and
19 all other requirements of this chapter and associated administrative regulations have been complied
20 with, shall issue a permit. The Director may require modifications to a proposed project before
21 granting a permit and impose conditions when granting a permit. The Director may condition the
22 issuance of a permit upon the applicant’s payment of an escrow deposit or obtaining a bond to
23 cover costs of possible damage or other related problems to public property be paid to the City.
24 The amount of the escrow deposit or bond shall be determined by the Director based on the project
25 and shall be refunded after completion of the project with the approval of the Director, except as
26 provided otherwise in this chapter.

27 **§ 150-70 Approval of Plans Required.**

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

34 **§ 150-75 Permit fees**

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

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

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

7 **§ 150-80 Permit fees—Not to be credited or returned**

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

11 **§ 150-85 Expiration of Permits—Renewal.**

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

15 **§ 150-87 Rental Fees**

16 The Director may establish, by regulation, rental fees associated with the use or placement of
17 communications facilities and/or communications support structures owned by the City or those
18 located on City owned property, which shall be assessed to permittees as specified in said
19 regulations.

20 **§ 150-90 Exceeding Permit Time Periods Prohibited**

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

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

25 **§ 150-95 Conditions for Approval for all Communications Facilities and Support**
26 **Structures**

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

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

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

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

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

6 C. The permittee shall provide the City with emergency contact information and promptly
7 respond to emergencies relating to its communications facilities and communications support
8 structures.

9 D. The permittee shall ensure that the facility, as mounted with any collocated facilities,
10 complies with the most current industry standards for size and regulatory and operational standards
11 that reduce noise, RF emissions, or energy usage or that reduce the size, visibility or obtrusiveness
12 of a facility including, but not limited to, RF emissions standards adopted by the FCC. Within 10
13 days upon commencement of operations, the permittee must submit a technically sufficient written
14 report by a qualified independent RF emissions engineer, certifying that the facility is in
15 compliance with such FCC standards.

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

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

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

32 H. The permittee shall defend, indemnify, protect and hold harmless the City, its officers,
33 officials, agents, consultants, employees, and volunteers from and against any and all claims,
34 actions, or proceedings against the City and its officers, officials, agents, consultants, employees
35 and volunteers to attack, set aside, void or annul an approval of the City concerning the permit and
36 the project. Such indemnification shall include damages, judgments, settlements, penalties, fines,
37 defensive costs or expenses, including, but not limited to, interest, attorneys' fees and expert
38 witness fees, or liability of any kind related to or arising from such claim, action, or proceeding.
39 The City shall promptly notify the permittee of any claim, action, or proceeding against which the
40 City seeks defense. Nothing contained herein shall prohibit City from participating in a defense of
41 any claim, action or proceeding, or revoking a permit and requiring the modification or removal
42 of an installation. The City shall have the option of coordinating the defense, including, but not
43 limited to, choosing counsel for the defense at permittee's expense.

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

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

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

15 L. The permittee shall repair, restore, or replace any portion of the right-of-way that is
16 damaged by its communications facilities and communications support structures or the
17 installation or maintenance thereof. The permittee authorizes the City to repair, restore, or replace
18 the damaged portion of the right-of-way and shall reimburse the City for the costs incurred if the
19 permittee fails promptly to perform the work.

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

23 N. The permittee promptly shall relocate or remove and replace, as appropriate, its
24 communications facilities and communications support structures upon written request by the City
25 when the City determines that the facility or structure materially interferes with the City's use of
26 the right-of-way. The permittee authorizes the City to remove its communications facilities and
27 communications support structures and shall reimburse the City for the costs incurred if the
28 permittee fails promptly to respond to a request from the City.

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

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

35 **§ 150-100 Exceptions**

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

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

42 1. Denial of the facility as proposed would violate Federal law, State law, or both; or

1 2. A provision of this chapter, as applied to applicant, would deprive applicant of its
2 rights under Federal law, State law, or both; or

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

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

10 D. The applicant shall have the burden of proving that denial of the facility as proposed would
11 violate Federal law, State law, or both, or that the provisions of this chapter, as applied to applicant,
12 would deprive applicant of its rights under Federal law, State law, or both, using the evidentiary
13 standards required by that law at issue. The City shall have the right to hire an independent
14 consultant, at the applicant's expense, to evaluate the issues raised by the exception request and
15 shall have the right to submit rebuttal evidence to refute the applicant's claim.

16 **§ 105-105 Right-of-way maintenance and Administration fee.**

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

20 **§ 105-110 Violations and Enforcement**

21 A. A violation of this chapter and any regulations adopted to implement or enforce this chapter
22 is a Class A municipal infraction.

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

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

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

29 E. In addition to all other means of enforcement provided for by law and in this chapter, the
30 City Administrator, Director, Code Enforcement Officers or police officers may issue a stop-work
31 order to any person who violates any provision of this Chapter or any regulations adopted to
32 implement or enforce this chapter. Any person who receives such a stop-work order shall
33 immediately cease work. The person shall comply with all terms and conditions imposed by the
34 stop-work order before the work may resume.

35 **§ 105-115 Waiver of Communications Facilities and Support Structure Fees for Public**
36 **Benefits.**

37 The Director, in consultation with the City Administrator, may waive or reduce application and
38 annual right-of-way maintenance and administration fees for communications facilities and
39 support structure installations and provide other benefits, excluding any that would weaken health
40 and safety protections, to applicants and permittees in exchange for public benefits to be provided
41 by the applicant or permittee, including, but not limited to, the installation of communications

1 facilities and support structures in underserved locations and the installation of connections to or
2 discounted service for multifamily rental facilities.

3 **§ 105-120 Regulations**

4 The Director shall endeavor to promulgate regulations to implement this Chapter within 90 days.
5 Such regulations shall include, but shall not be limited to, establishing application fees and right-
6 of-way maintenance and administration fees, requiring the posting of public notice of work in the
7 right-of-way, requiring the entity performing work in the right-of-way to attend a preconstruction
8 meeting, requiring that the timing of nonemergency work in the right-of-way be coordinated to
9 minimize traffic disruption or complications resulting from other construction activity taking place
10 in the City, establishing time frames for permit review, and establishing maximum volumes and
11 dimensions for antennas, equipment cabinets, and other communications facilities and support
12 structures.

13 **Article VIII Penalty Provisions**

14 § 105-48125 Violations and penalties.

15 ~~Violations of this chapter shall be punishable as a municipal infraction as provided in Chapter 20~~
16 ~~of this Code. The fine for any single initial violation shall be \$100 and the fine for each repeat of~~
17 ~~that offense shall be \$200.~~

18 A. A violation of this Chapter and any regulations adopted to implement or enforce this
19 Article is a municipal infraction, as provided in Chapter 20 of this Code. The fine for any single
20 initial violation shall be one half of the maximum fine allowed by MD. Local Government Code
21 Ann. § 6-102 (2021) and the fine for each repeat offense shall be equal to the maximum allowed
22 by MD. Local Government Code Ann. § 6-102 (2021)

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

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

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

29 E. In addition to all other means of enforcement provided for by law and in this Article, the
30 City Administrator, Director, Code Enforcement Officers or police officers may issue a stop-
31 work order to any person who violates any provision of this Chapter or any regulations adopted
32 to implement or enforce this Chapter. Any person who receives such a stop-work order shall
33 immediately cease work. The person shall comply with all terms and conditions imposed by the
34 stop-work order before the work may resume.

36 **AND BE IT FURTHER ORDAINED** that a fair summary of this ordinance shall
37 forthwith be published in twice in a newspaper having general circulation in the City and otherwise
38 be made available to the public;

39 **INTRODUCED** by the City Council of the City of Hyattsville, Maryland, at a regular
40 public meeting on _____.

