

EMERGENCY ORDINANCE NO. O-01-2019

AN EMERGENCY ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF KENSINGTON TO AMEND CHAPTER 3, "STREETS, SIDEWALKS, MAINTENANCE AND USE OF THE PUBLIC RIGHTS OF WAY", BY ADOPTING ARTICLE III, "WIRELESS TELECOMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY", §3-301, "SCOPE", §3-302 "DEFINITIONS", §3-303 "GENERAL STANDARDS FOR WIRELESS TELECOMMUNICATIONS FACILITIES IN THE RIGHTS-OF-WAY", § 3-304 "APPLICATION SUBMISSION REQUIREMENTS AND FINAL INSPECTION", §3-305 "TERMINATION OF PERMIT/BREACH"; §3-306, "INFRASTRUCTURE OWNED OR CONTROLLED BY THE CITY", §3-307. INSURANCE, §3-308. MAKE-READY WORK, §3-309 RIGHT-OF -WAY REPAIR. §30310. FACILITIES NO LONGER NEEDED, §3-311 SURETY BONDS. §3-312, "FEES, AND §3-313, "VIOLATIONS", TO PROVIDE FOR CERTAIN STANDARDS AND REGULATIONS RELATING TO THE LOCATION OF SMALL WIRELESS TELECOMMUNICATIONS TOWERS, ANTENNAS, AND OTHER STRUCTURES WITHIN THE CITY'S PUBLIC RIGHTS-OF-WAY OR ON CITY PROPERTY, CONSISTENT WITH FEDERAL AND STATE LAW; AND PROVIDING A FEE AND ANNUAL CHARGE. TO PROVIDE FOR CERTAIN STANDARDS AND REGULATIONS RELATING TO THE LOCATION OF SMALL WIRELESS TELECOMMUNICATIONS TOWERS, ANTENNAS, AND OTHER STRUCTURES WITHIN THE TOWN'S PUBLIC RIGHTS-OF-WAY OR ON TOWN PROPERTY, CONSISTENT WITH FEDERAL AND STATE LAW; AND PROVIDING A FEE, ANNUAL CHARGE AND A PENALTY.

WHEREAS, pursuant to §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, the Town of Kensington (hereinafter, the "Town") has the power to pass such ordinances as it deems necessary to protect the health, safety and welfare of the citizens of the municipality and to prevent and remove nuisances; and

WHEREAS, §5-202 of the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the Town of Kensington have the authority to pass such ordinances as it deems necessary to preserve peace and good order, and to protect the health, comfort and convenience of the residents of the municipality; and

<u>CAPS</u>	: Indicate matter added to existing law.
[Brackets]	: Indicate matter deleted from law.
Asterisks ***	: Indicate matter remaining unchanged in existing law but not set forth in Ordinance
<u>CAPS</u>	: Indicate matter added in amendment
[Brackets]	: Indicate matter deleted in amendment

WHEREAS, the Town Charter, Article X, “Public Ways and Sidewalks”, §1002, “Control of Public Ways”, authorizes the Town to control its rights of way; and

WHEREAS, the Mayor and Council determined that it is in the public interest to provide for regulation of the installation of wireless telecommunications facilities in the Town’s rights of way that is consistent with federal and state law; and

WHEREAS, the Mayor and Council have determined under Section 409 of the Charter that this ordinance shall be adopted as an emergency measure and be effective upon adoption.

Section 1. **NOW THEREFORE, BE IT ORDAINED AND ENACTED**, by the Mayor and Council of the Town of Kensington that Chapter 3, “Streets, Sidewalks, Maintenance and Use of the Public Rights of Way”, Article III, “Wireless Telecommunications Facilities in Public Rights-Of-Way”, §3-301, “Scope”, be and it is hereby enacted to read as follows:

§3-301 **SCOPE.**

A. IN GENERAL. UNLESS EXEMPTED, EVERY PERSON WHO DESIRES TO PLACE A SMALL WIRELESS TELECOMMUNICATIONS FACILITY IN TOWN RIGHTS-OF-WAY, TO INCLUDE DEPLOYMENT OF PERSONAL WIRELESS SERVICE INFRASTRUCTURE, OR MODIFY AN EXISTING WIRELESS TELECOMMUNICATIONS FACILITY, INCLUDING WITHOUT LIMITATION FOR THE:

(1) COLLOCATION OF A SMALL WIRELESS FACILITY;

(2) ATTACHMENT OF A SMALL WIRELESS FACILITY TO A POLE OWNED BY AN AUTHORITY;

(3) INSTALLATION OF A POLE;

(4) MODIFICATION OF A SMALL WIRELESS FACILITY OR A POLE.

MUST OBTAIN A WIRELESS PLACEMENT PERMIT AUTHORIZING THE PLACEMENT OR MODIFICATION.

B. EXEMPTIONS. THE FOLLOWING ARE EXEMPTED FROM THE REQUIREMENTS OF THIS CHAPTER:

- (1) THE PLACEMENT OR MODIFICATION OF WIRELESS TELECOMMUNICATIONS FACILITIES ON SUPPORTING STRUCTURES OWNED, OR UNDER THE CONTROL OF, THE TOWN, THE USE OF WHICH IS SUBJECT TO A CONTRACT FOR USE OF THE FACILITY BETWEEN THE TOWN AND THE ENTITY OR ENTITIES THAT OWN OR CONTROL THE WIRELESS TELECOMMUNICATIONS FACILITY;
- (2) THE PLACEMENT OR MODIFICATION OF WIRELESS FACILITIES BY THE TOWN OR BY ANY OTHER AGENCY OF THE STATE SOLELY FOR PUBLIC SAFETY PURPOSES.
- (3) MODIFICATIONS TO AN EXISTING WIRELESS TELECOMMUNICATIONS FACILITY THAT MAKES NO MATERIAL CHANGE TO THE FOOTPRINT OF A FACILITY OR TO THE SURFACE OR SUBSURFACE OF A

PUBLIC STREET IF THE ACTIVITY DOES NOT DISRUPT OR IMPEDE TRAFFIC IN THE TRAVELED PORTION OF A STREET, AND IF THE WORK ACTIVITY DOES NOT CHANGE THE VISUAL OR AUDIBLE CHARACTERISTICS OF THE WIRELESS TELECOMMUNICATIONS FACILITY. THE TOWN, BY REGULATION, MAY ALSO EXEMPT WIRELESS TELECOMMUNICATIONS FACILITIES THAT OTHERWISE ARE SUBJECT TO THE PROVISIONS OF THIS SECTION FROM THE OBLIGATION TO OBTAIN A PERMIT TO INSTALL OR MODIFY A WIRELESS TELECOMMUNICATIONS FACILITY WHERE IT IS DETERMINED THAT BECAUSE OF THE PHYSICAL CHARACTERISTICS OF THE PROPOSED FACILITIES, AND THE WORK ASSOCIATED WITH THEM, SUCH A PERMIT IS NOT REQUIRED TO PROTECT THE PUBLIC HEALTH, WELFARE OR SAFETY, TO MAINTAIN THE CHARACTER OF A NEIGHBORHOOD OR CORRIDOR, OR TO OTHERWISE SERVE THE PURPOSES OF THIS ORDINANCE.

- (4) INSTALLATION OF A MOBILE CELL FACILITY OR A SIMILAR STRUCTURE FOR A TEMPORARY PERIOD IN CONNECTION WITH AN EMERGENCY OR EVENT, BUT

NO LONGER THAN REQUIRED FOR THE EMERGENCY OR EVENT, PROVIDED THAT INSTALLATION DOES NOT INVOLVE EXCAVATION, MOVEMENT OR REMOVAL OF EXISTING FACILITIES, AND THAT AT LEAST 30 DAYS PRIOR WRITTEN NOTIFICATION IS PROVIDED TO THE TOWN, AND CONSENT FOR PLACEMENT IS GRANTED.

- (5) A MICRO WIRELESS FACILITY STRUNG BETWEEN TWO UTILITY POLES AS DEFINED IN §301-26 AND PROVIDED FURTHER THAT THE INSTALLATION DOES NOT REQUIRE REPLACEMENT OF THE STRAND, OR EXCAVATION, MODIFICATION OR REPLACEMENT OF THE UTILITY POLES.

C. OTHER APPLICABLE REQUIREMENTS. IN ADDITION TO THE WIRELESS TELECOMMUNICATIONS PERMIT REQUIRED HEREIN, THE PLACEMENT OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE PUBLIC-RIGHTS OF WAY REQUIRES THE PERSONS WHO WILL OWN OR CONTROL THOSE FACILITIES TO OBTAIN THE FRANCHISES, LICENSE AGREEMENTS AND PERMITS REQUIRED BY APPLICABLE LAW, AND TO COMPLY WITH APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO, APPLICABLE LAW GOVERNING RADIO FREQUENCY (RF) EMISSIONS. NOTHING IN THIS CHAPTER PRECLUDES THE TOWN FROM APPLYING ITS GENERALLY APPLICABLE HEALTH, SAFETY, AND WELFARE REGULATIONS

WHEN GRANTING CONSENT FOR A SMALL CELL FACILITY OR WIRELESS SUPPORT STRUCTURE IN THE TOWN'S RIGHT OF WAY.

D. PUBLIC USE. EXCEPT AS OTHERWISE PROVIDED BY MARYLAND LAW, ANY USE OF THE RIGHT OF WAY AUTHORIZED PURSUANT TO THIS CHAPTER WILL BE SUBORDINATE TO THE TOWN'S USE AND USE BY THE PUBLIC.

Section 2. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington that Chapter 3, "Streets, Sidewalks, Maintenance and Use of the Public Rights of Way", Article III, "Wireless Telecommunications Facilities In Public Rights-Of-Way", §3-302, "Definitions", be and it is hereby enacted to read as follows:

§3-302 DEFINITIONS.

TERMS USED IN THIS ARTICLE SHALL HAVE THE FOLLOWING MEANINGS:

- A. APPLICATION: A FORMAL REQUEST, INCLUDING ALL REQUIRED AND REQUESTED DOCUMENTATION AND INFORMATION SUBMITTED BY AN APPLICANT TO THE TOWN FOR A WIRELESS PLACEMENT PERMIT.
- B. APPLICANT: A PERSON FILING AN APPLICATION FOR PLACEMENT OR MODIFICATION OF A WIRELESS TELECOMMUNICATIONS FACILITY IN THE RIGHTS-OF-WAY.

C. ANTENNA: AN APPARATUS DESIGNED TO EMIT RADIO FREQUENCY (RF) AND OPERATE FROM A FIXED LOCATION TO PROVIDE WIRELESS SERVICES.

D. ANTENNA EQUIPMENT: EQUIPMENT, SWITCHES, WIRING, CABLING, POWER SOURCES, SHELTERS OR CABINETS ASSOCIATED WITH AN ANTENNA, LOCATED AT THE SAME FIXED LOCATION AS THE ANTENNA, AND, WHEN COLLOCATED ON A STRUCTURE, IS MOUNTED OR INSTALLED AT THE SAME TIME AS SUCH ANTENNA.

E. APPLICABLE LAWS/CODES: UNIFORM BUILDING, FIRE, SAFETY, ELECTRICAL, PLUMBING, OR MECHANICAL CODES ADOPTED BY A RECOGNIZED NATIONAL CODE ORGANIZATION TO THE EXTENT SUCH CODES HAVE BEEN ADOPTED BY THE TOWN, INCLUDING ANY AMENDMENTS ADOPTED BY THE TOWN, OR OTHERWISE ARE APPLICABLE IN THE JURISDICTION. THE TERM INCLUDES THE REGULATIONS OF THE FEDERAL COMMUNICATIONS COMMISSION AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AS WELL AS ANY LOCAL STANDARDS OR REGULATIONS GOVERNING THE USE OF RIGHTS-OF-WAY.

F. BASE STATION: THE TERM BASE STATION SHALL HAS THE SAME MEANING AS IN 47 C.F.R. SECTION 1.40001.

G. CERTIFICATE OF COMPLETION: A DOCUMENT THAT IS REQUIRED FROM AND ISSUED BY THE TOWN CONFIRMING THAT ALL WORK DESCRIBED IN THE APPLICATION, AS APPROVED: (I) WAS PROPERLY

PERMITTED, INCLUDING, WITHOUT LIMITATION, ALL REQUIRED PERMITS FOR BUILDING, ELECTRICAL WORK, STREET OR CURB CUTTING, AND EXCAVATION; (II) WAS DONE IN COMPLIANCE WITH AND FULFILLMENT OF ALL CONDITIONS OF ALL PERMITS, INCLUDING ALL STATED DEADLINES; (III) WAS FULLY CONSTRUCTED AND/OR PLACED AS APPROVED AND PERMITTED; AND (IV) WAS FINALLY INSPECTED BY THE TOWN, AND WAS APPROVED BY THE TOWN AFTER SAID FINAL INSPECTION.

H. COLLOCATE: TO INSTALL OR MOUNT A SMALL WIRELESS FACILITY IN THE PUBLIC ROW ON AN EXISTING SUPPORT STRUCTURE, AN EXISTING TOWER, OR ON AN EXISTING POLE TO WHICH A SMALL WIRELESS FACILITY IS ATTACHED AT THE TIME OF THE APPLICATION. "COLLOCATION" HAS A CORRESPONDING MEANING.

I. MAKE-READY WORK: WORK THAT AN AUTHORITY REASONABLY DETERMINES TO BE REQUIRED TO ACCOMMODATE A WIRELESS INFRASTRUCTURE PROVIDER'S INSTALLATION UNDER THIS SUBTITLE AND TO COMPLY WITH ALL APPLICABLE STANDARDS. THE WORK MAY INCLUDE, BUT IS NOT LIMITED TO, REPAIR, REARRANGEMENT, REPLACEMENT AND CONSTRUCTION OF POLE; INSPECTIONS; ENGINEERING WORK AND CERTIFICATION; PERMITTING WORK; TREE TRIMMING (OTHER THAN TREE TRIMMING PERFORMED FOR NORMAL MAINTENANCE PURPOSES); SITE PREPARATION; AND ELECTRICAL POWER

CONFIGURATION. THE TERM DOES NOT INCLUDE A WIRELESS INFRASTRUCTURE PROVIDER'S ROUTINE MAINTENANCE.

J. RIGHTS-OF-WAY: THE TERM RIGHTS-OF-WAY INCLUDE ANY PORTION OF ANY STREET, ROAD OR PUBLIC WAY WHICH THE TOWN HAS THE RESPONSIBILITY TO MAINTAIN OR MANAGE.

K. MICRO WIRELESS FACILITY: A SMALL WIRELESS FACILITY HAVING DIMENSIONS NO LARGER THAN 24 INCHES IN LENGTH, 15 INCHES IN WIDTH AND 12 INCHES IN HEIGHT AND AN EXTERIOR ANTENNA, IF ANY, NO LONGER THAN 11 INCHES.

L. SMALL WIRELESS FACILITY: CONSISTENT WITH SUBPART U, PART 1 OF TITLE 47, "STATE AND LOCAL GOVERNMENT REGULATION OF THE PLACEMENT, CONSTRUCTION, AND MODIFICATION OF PERSONAL WIRELESS SERVICE FACILITIES", A FACILITY THAT MEETS EACH OF THE FOLLOWING CONDITIONS:

a. THE STRUCTURE ON WHICH ANTENNA FACILITIES ARE MOUNTED—

i. IS 50 FEET OR LESS IN HEIGHT, OR

ii. IS NO MORE THAN 10 PERCENT TALLER THAN
OTHER ADJACENT STRUCTURES, OR

iii. IS NOT EXTENDED TO A HEIGHT OF MORE THAN 10
PERCENT ABOVE ITS PREEXISTING HEIGHT AS A

RESULT OF THE COLLOCATION OF NEW ANTENNA
FACILITIES; AND

b. EACH ANTENNA (EXCLUDING ASSOCIATED ANTENNA
EQUIPMENT) IS NO MORE THAN THREE CUBIC FEET IN
VOLUME; AND

c. ALL ANTENNA EQUIPMENT ASSOCIATED WITH THE
FACILITY (EXCLUDING ANTENNAS) ARE CUMULATIVELY
NO MORE THAN 28 CUBIC FEET IN VOLUME; AND

d. THE FACILITY DOES NOT REQUIRE ANTENNA STRUCTURE
REGISTRATION;

e. THE FACILITY DOES NOT RESULT IN HUMAN EXPOSURE
TO RADIOFREQUENCY RADIATION IN EXCESS OF THE
APPLICABLE SAFETY STANDARDS SPECIFIED BY
FEDERAL LAW

M. SUPPORT STRUCTURE: ANY STRUCTURE CAPABLE OF SUPPORTING
A BASE STATION.

N. TOWER: ANY STRUCTURE BUILT FOR THE SOLE OR PRIMARY
PURPOSE OF SUPPORTING ANY FCC-LICENSED OR AUTHORIZED
ANTENNAS AND THEIR ASSOCIATED FACILITIES, INCLUDING
STRUCTURES THAT ARE CONSTRUCTED FOR WIRELESS

COMMUNICATIONS SERVICES INCLUDING, BUT NOT LIMITED TO, PRIVATE, BROADCAST, AND PUBLIC SAFETY SERVICES, AS WELL AS UNLICENSED WIRELESS SERVICES AND FIXED WIRELESS SERVICES SUCH AS MICROWAVE BACKHAUL, AND THE ASSOCIATED SITE. THIS DEFINITION DOES NOT INCLUDE UTILITY POLES.

O. UTILITY POLE: A STRUCTURE IN THE RIGHTS OF WAY DESIGNED TO SUPPORT ELECTRIC, TELEPHONE AND SIMILAR UTILITY LINES. A TOWER IS NOT A UTILITY POLE.

P. WIRELESS PERMIT: A PERMIT ISSUED PURSUANT TO THIS CHAPTER AND AUTHORIZING THE PLACEMENT OR MODIFICATION OF A WIRELESS TELECOMMUNICATIONS FACILITY OF A DESIGN SPECIFIED IN THE PERMIT AT A PARTICULAR LOCATION WITHIN THE RIGHTS OF WAY; AND THE MODIFICATION OF ANY EXISTING SUPPORT STRUCTURE TO WHICH THE WIRELESS TELECOMMUNICATIONS FACILITY IS PROPOSED TO BE ATTACHED.

Q. WIRELESS SERVICE PROVIDER. AN ENTITY THAT PROVIDES WIRELESS SERVICES TO END USERS.

R. WIRELESS INFRASTRUCTURE PROVIDER: A PERSON THAT OWNS, CONTROLS, OPERATES OR MANAGES A WIRELESS TELECOMMUNICATION FACILITY OR PORTION THEREOF WITHIN THE RIGHT-OF-WAY.

S. WIRELESS REGULATIONS: THOSE REGULATIONS ADOPTED TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE.

T. WIRELESS TELECOMMUNICATIONS FACILITY, OR FACILITY:
EQUIPMENT AT A FIXED LOCATION THAT ENABLES WIRELESS
COMMUNICATIONS BETWEEN USER EQUIPMENT AND A
COMMUNICATIONS NETWORK INCLUDING WITHOUT LIMITATION
RADIO TRANSCEIVERS, ANTENNAS, BASE STATION, UNDERGROUND
WIRING, COAXIAL OR FIBER-OPTIC CABLE, REGULAR AND BACKUP
POWER SUPPLIES, AND COMPARABLE EQUIPMENT, REGARDLESS OF
TECHNOLOGICAL CONFIGURATION.

Section 3. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and
Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks,
Maintenance and Use of the Public Rights of Way", Article III, §3-303, "General Standards
for Wireless Telecommunications Facilities in the Rights-of-Way" be and it is hereby repealed,
re-enacted and amended to read as follows:

**§3-303 GENERAL STANDARDS FOR WIRELESSTELECOMMUNICATIONS
FACILITIES IN THE RIGHTS-OF-WAY.**

- A. GENERALLY. WIRELESS TELECOMMUNICATIONS FACILITIES SHALL
MEET THE MINIMUM REQUIREMENTS SET FORTH IN THIS CHAPTER
AND THE WIRELESS REGULATIONS APPROVED BY THE MAYOR AND
COUNCIL, IN ADDITION TO THE REQUIREMENTS OF ANY OTHER
APPLICABLE LAW.
- B. REGULATIONS. THE WIRELESS REGULATIONS AND ADMINISTRATIVE
DECISIONS ON APPLICATIONS FOR PLACEMENT OF WIRELESS

TELECOMMUNICATIONS FACILITIES IN THE RIGHTS OF WAY SHALL, AT A MINIMUM, ENSURE THAT THE REQUIREMENTS OF THIS SECTION ARE SATISFIED, UNLESS IT IS DETERMINED THAT APPLICANT HAS ESTABLISHED THAT DENIAL OF AN APPLICATION WOULD, WITHIN THE MEANING OF FEDERAL LAW, PROHIBIT OR EFFECTIVELY PROHIBIT THE PROVISION OF PERSONAL WIRELESS SERVICES, OR OTHERWISE VIOLATE APPLICABLE LAWS OR REGULATIONS. IF THAT DETERMINATION IS MADE, THE REQUIREMENTS OF THIS CHAPTER AND ANY TOWN WIRELESS REGULATIONS MAY BE WAIVED, BUT ONLY TO THE MINIMUM EXTENT REQUIRED TO AVOID THE PROHIBITION.

C. STANDARDS. WIRELESS TELECOMMUNICATIONS FACILITIES SHALL BE INSTALLED AND MODIFIED IN A MANNER THAT:

- (1) MINIMIZES RISKS TO PUBLIC SAFETY, AVOIDS PLACEMENT OF ABOVEGROUND FACILITIES IN UNDERGROUND AREAS, AVOIDS INSTALLATION OF NEW SUPPORT STRUCTURES OR EQUIPMENT CABINETS IN THE PUBLIC RIGHTS OF WAY, AND MAXIMIZES USE OF EXISTING STRUCTURES AND POLES, AVOIDS PLACEMENT IN RESIDENTIAL AREAS WHEN COMMERCIAL AREAS ARE REASONABLY AVAILABLE, AND OTHERWISE MAINTAINS THE INTEGRITY AND CHARACTER OF THE NEIGHBORHOODS AND CORRIDORS IN WHICH THE FACILITIES ARE LOCATED;

- (2) ENSURES THAT INSTALLATIONS ARE SUBJECT TO PERIODIC REVIEW TO MINIMIZE THE INTRUSION ON THE RIGHTS OF WAY;
- (3) UNLESS APPROVED BY THE TOWN, ANY TELECOMMUNICATIONS FACILITY MUST BE LOCATED NO CLOSER THAN: (I) TWO (2) FEET FROM ANY CURB, SIDEWALK, OR OTHER IMPROVEMENT WITHIN THE RIGHT-OF-WAY; AND (II) FIVE (5) FEET FROM ANY DRIVEWAY APRON, AND BE OTHERWISE LOCATED TO AVOID INTERFERENCE WITH PEDESTRIAN AND MOTORIST SIGHTLINES AND USE.
- (4) ENSURES THAT THE TOWN BEARS NO RISK OR LIABILITY AS A RESULT OF THE INSTALLATIONS, AND THAT SUCH USE DOES NOT INCONVENIENCE THE PUBLIC, INTERFERE WITH THE LEGAL USES OF THE PUBLIC RIGHTS OF WAY OR PUBLIC ASSETS BY OTHERS, OR HINDER THE ABILITY OF THE TOWN OR OTHER GOVERNMENT AGENCIES TO IMPROVE, MODIFY, RELOCATE, ABANDON OR VACATE THE PUBLIC RIGHTS OF WAY OR ANY PORTION THEREOF, OR TO CAUSE THE IMPROVEMENT, MODIFICATION, RELOCATION, VACATION OR ABANDONMENT OF FACILITIES IN THE RIGHTS OF WAY.
- (5) ENSURES THAT LOCATION OF FACILITIES ON EXISTING POLES OR STRUCTURES IS WITHIN THE TOLERANCE OF THOSE POLES OR STRUCTURES.

D. CONCEALMENT. PERMITS FOR WIRELESS TELECOMMUNICATIONS

FACILITIES SHALL INCORPORATE SPECIFIC CONCEALMENT ELEMENTS TO MINIMIZE VISUAL IMPACTS, AND DESIGN REQUIREMENTS ENSURING COMPLIANCE WITH ALL STANDARDS FOR NOISE EMISSIONS. UNLESS IT IS DETERMINED THAT ANOTHER DESIGN IS LESS INTRUSIVE, OR PLACEMENT IS REQUIRED UNDER APPLICABLE LAW:

- (1) ANTENNAS LOCATED AT THE TOP OF SUPPORT STRUCTURES SHALL BE INCORPORATED INTO THE STRUCTURE, OR PLACED WITHIN SHROUDS OF A SIZE SUCH THAT THE ANTENNA APPEARS TO BE PART OF THE SUPPORT STRUCTURE.
- (2) ANTENNAS PLACED ELSEWHERE ON A SUPPORT STRUCTURE SHALL BE INTEGRATED INTO THE STRUCTURE, OR BE DESIGNED AND PLACED TO MINIMIZE VISUAL IMPACT.
- (3) RADIO UNITS OR EQUIPMENT CABINETS HOLDING RADIO UNITS AND MOUNTED ON A UTILITY POLE SHALL BE PLACED AS HIGH AS POSSIBLE ON A SUPPORT STRUCTURE, LOCATED TO AVOID INTERFERING WITH, OR CREATING ANY HAZARD TO, ANY OTHER USE OF THE PUBLIC RIGHTS OF WAY, AND LOCATED ON ONE SIDE OF THE UTILITY POLE. UNLESS THE RADIO UNITS OR EQUIPMENT CABINETS CAN BE CONCEALED BY APPROPRIATE TRAFFIC SIGNAGE, RADIO

UNITS OR EQUIPMENT CABINETS MOUNTED BELOW THE COMMUNICATIONS SPACE ON UTILITY POLES SHALL BE DESIGNED SO THAT THE LARGEST DIMENSION IS VERTICAL, AND THE WIDTH IS SUCH THAT THE RADIO UNITS OR EQUIPMENT CABINETS ARE MINIMALLY VISIBLE FROM THE OPPOSITE SIDE OF THE SUPPORT STRUCTURE ON WHICH THEY ARE PLACED;

- (4) WIRING AND CABLING SHALL BE NEAT AND CONCEALED WITHIN OR FLUSH TO THE SUPPORT STRUCTURE, ENSURING CONCEALMENT OF THESE COMPONENTS TO THE GREATEST EXTENT POSSIBLE.
- (5) GROUND-MOUNTED EQUIPMENT ASSOCIATED WITH A WIRELESS TELECOMMUNICATIONS FACILITY SHALL BE PERMITTED ONLY WHERE CONSISTENT WITH THE PORTION OF THE CORRIDOR IN WHICH IT IS TO BE PLACED, AND MAY BE REQUIRED TO BE UNDERGROUND, LOCATED IN ALLEYS OR OTHERWISE SHIELDED. IN NO EVENT MAY GROUND-MOUNTED EQUIPMENT INTERFERE WITH PEDESTRIAN OR VEHICULAR TRAFFIC.
- (6) NO PERMIT SHALL BE ISSUED OR EFFECTIVE UNLESS IT IS SHOWN THAT THE WIRELESS TELECOMMUNICATIONS FACILITY WILL COMPLY WITH FEDERAL COMMUNICATION

COMMISSION ("FCC") REGULATIONS GOVERNING RADIO FREQUENCY ("RF") EMISSIONS. EVERY WIRELESS FACILITY SHALL AT ALL TIMES COMPLY WITH APPLICABLE FCC REGULATIONS GOVERNING RF EMISSIONS, AND FAILURE TO COMPLY THEREWITH SHALL BE A TREATED AS A MATERIAL VIOLATION OF THE TERMS OF ANY PERMIT OR LEASE.

- (7) NO TOWERS SHALL BE PERMITTED IN THE PUBLIC RIGHTS OF WAY, AND NO WIRELESS TELECOMMUNICATIONS FACILITIES SHALL BE PERMITTED ABOVE-GROUND IN UNDERGROUND AREAS; PROVIDED THAT THE TOWN MAY PERMIT PLACEMENTS WHERE ALL ELEMENTS OF THE WIRELESS TELECOMMUNICATIONS FACILITY ARE CONCEALED AND THE FACILITY DOES NOT APPEAR TO A CASUAL OBSERVER TO BE A WIRELESS TELECOMMUNICATIONS FACILITY.
- (8) NO PERMIT SHALL ISSUE EXCEPT TO WIRELESS SERVICE PROVIDERS WITH IMMEDIATE PLANS FOR USE OF THE PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY; OR WIRELESS INFRASTRUCTURE PROVIDERS WITH CONTRACTS WITH WIRELESS SERVICE PROVIDERS WHICH REQUIRE THE SERVICE PROVIDER IMMEDIATELY TO USE THE PROPOSED

WIRELESS TELECOMMUNICATIONS FACILITY.

- (9) UNLESS APPROPRIATELY PLACED, AND CONCEALED, SO THAT THE SIZE OF THE FACILITY CANNOT BE INCREASED EXCEPT WITH THE DISCRETIONARY APPROVAL OF THE TOWN, NO WIRELESS TELECOMMUNICATIONS FACILITY IS PERMITTED IN RIGHTS-OF-WAY IN ALLEYS.
- (10) NO WIRELESS TELECOMMUNICATIONS FACILITY IS PERMITTED IN ANY LOCAL HISTORIC DISTRICT WITHOUT THE APPROVAL OF THE MONTGOMERY COUNTY HISTORIC PRESERVATION COMMISSION.

Section 4. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington Maryland that Chapter 3, “Streets, Sidewalks, Maintenance and Use of the Public Rights of Way”, Article III, §3-304, “Application submission requirements and final inspection” be and it is hereby enacted to read as follows:

§ 3-304 APPLICATION SUBMISSION REQUIREMENTS AND FINAL INSPECTION.

A. SUBMISSION. APPLICANT SHALL SUBMIT A PAPER COPY AND AN ELECTRONIC COPY OF ANY APPLICATION, AMENDMENTS OR SUPPLEMENTS TO AN APPLICATION, OR RESPONSES TO REQUESTS FOR INFORMATION REGARDING AN APPLICATION, TO THE DESIGNATED TOWN DEPARTMENT.

B. CONTENT. AN APPLICATION MUST CONTAIN:

- (1) THE NAME OF THE APPLICANT, ITS TELEPHONE NUMBER AND CONTACT INFORMATION, AND IF THE APPLICANT IS A WIRELESS INFRASTRUCTURE PROVIDER, THE NAME AND CONTACT INFORMATION FOR THE WIRELESS SERVICE PROVIDER THAT WILL BE USING THE WIRELESS TELECOMMUNICATIONS FACILITY;
- (2) A COMPLETE DESCRIPTION OF THE PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY AND THE WORK THAT WILL BE REQUIRED TO INSTALL OR MODIFY IT, INCLUDING BUT NOT LIMITED TO DETAIL REGARDING PROPOSED EXCAVATIONS, IF ANY; DETAILED SITE PLANS SHOWING THE LOCATION OF THE WIRELESS TELECOMMUNICATIONS FACILITY, A PRE-CONSTRUCTION SURVEY; A PROPOSED SCHEDULE FOR COMPLETION, CERTIFIED BY A LICENSED PROFESSIONAL ENGINEER; A CERTIFICATION BY A RADIOFREQUENCY ENGINEER THAT THE TELECOMMUNICATIONS FACILITY WILL COMPLY WITH THE RADIOFREQUENCY RADIATION EMISSION STANDARDS ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION; AND A DESCRIPTION

OF THE DISTANCE TO THE NEAREST RESIDENTIAL DWELLING UNIT AND ANY CONTRIBUTING HISTORICAL STRUCTURE WITHIN 500 FEET OF THE FACILITY. BEFORE AND AFTER 360 DEGREE PHOTO SIMULATIONS MUST BE PROVIDED. THE ELECTRONIC VERSION OF AN APPLICATION MUST BE IN A STANDARD FORMAT THAT CAN BE EASILY UPLOADED ON A WEB PAGE FOR REVIEW BY THE PUBLIC.

- (3) AN APPLICATION FOR MODIFICATION OF AN ELIGIBLE SUPPORT STRUCTURE MUST CONTAIN INFORMATION SUFFICIENT TO SHOW THAT THE APPLICATION QUALIFIES UNDER OF 47 C.F.R. SECTION 1.40001. THE APPLICATION MUST RELATE TO AN EXISTING WIRELESS TELECOMMUNICATIONS FACILITY THAT HAS BEEN APPROVED BY THE TOWN PURSUANT TO THIS ARTICLE. BEFORE AND AFTER 360 DEGREE PHOTO SIMULATIONS MUST BE PROVIDED WITH DETAILED SPECIFICATIONS DEMONSTRATING THAT THE MODIFICATION DOES NOT SUBSTANTIALLY CHANGE THE PHYSICAL DIMENSIONS OF THE EXISTING APPROVED STRUCTURE.

- (4) AN APPLICATION FOR A PERMIT SHALL BE

SUBMITTED IN THE FORMAT AND MANNER SPECIFIED BY THE DESIGNATED DEPARTMENT. APPLICATIONS MUST CONTAIN ALL INFORMATION REQUIRED HEREIN AND BY ANY WIRELESS REGULATIONS TO DEMONSTRATE THAT APPLICANT IS ENTITLED TO THE PERMIT REQUESTED.

- (5) APPLICANT MUST PROVIDE ANY INFORMATION UPON WHICH IT RELIES IN SUPPORT OF A CLAIM THAT DENIAL OF THE APPLICATION WOULD PROHIBIT OR EFFECTIVELY PROHIBIT THE PROVISION OF SERVICE IN VIOLATION OF FEDERAL LAW, OR OTHERWISE VIOLATE APPLICABLE LAW. APPLICANTS ARE NOT PERMITTED TO SUPPLEMENT THIS SHOWING IF DOING SO WOULD PREVENT TOWN FROM COMPLYING WITH ANY DEADLINE FOR ACTION ON AN APPLICATION.
- (6) PROOF THAT NOTICE HAS BEEN MAILED TO OWNERS OF ALL PROPERTY, AND THE RESIDENT MANAGER FOR ANY MULTI-FAMILY DWELLING UNIT THAT INCLUDES TEN (10) OR MORE UNITS, WITHIN 300 FEET OF THE PROPOSED WIRELESS TELECOMMUNICATIONS FACILITY.

- (7) A COPY OF ANY POLE OR STRUCTURE ATTACHMENT AGREEMENT MUST BE PROVIDED, AS WELL AS SUFFICIENT INFORMATION TO DETERMINE THAT THE INSTALLATION CAN BE SUPPORTED BY AND DOES NOT EXCEED THE TOLERANCES OF THE POLE OR STRUCTURE AND SPECIFICATIONS FOR EACH ELEMENT OF THE WIRELESS TELECOMMUNICATIONS FACILITY, CLEARLY DESCRIBING THE SITE AND ALL STRUCTURES AND FACILITIES AT THE SITE BEFORE AND AFTER INSTALLATION OR MODIFICATION; A STRUCTURAL REPORT PERFORMED BY A DULY LICENSED ENGINEER EVIDENCING THAT THE POLE, TOWER OR SUPPORT STRUCTURE CAN ADEQUATELY SUPPORT THE COLLOCATION (OR THAT THE POLE, TOWER, OR SUPPORT STRUCTURE WILL BE MODIFIED TO MEET STRUCTURAL REQUIREMENTS) IN ACCORDANCE WITH APPLICABLE CODES;
- (8) PAYMENT OF ANY REQUIRED FEES.
- (9) BEFORE A PERMIT IS ISSUED, A CONCURRENT AGREEMENT TO ANY REQUIRED FRANCHISE, ACCESS OR LICENSE AGREEMENT MUST BE PROVIDED.

C. FEES. APPLICANT MUST PROVIDE AN APPLICATION FEE, AND SHALL

BE REQUIRED TO PAY ALL COSTS REASONABLY INCURRED BY TOWN IN REVIEWING THE APPLICATION, INCLUDING COSTS INCURRED IN RETAINING OUTSIDE CONSULTANTS. APPLICANT SHALL ALSO PAY AN ACCESS FEE. FEES SHALL BE REVIEWED PERIODICALLY, AND RAISED OR LOWERED BASED ON COSTS THE TOWN EXPECTS TO INCUR.

D. THE TOWN MAY ELECT TO PROVIDE PUBLIC NOTICE OF AN APPLICATION AND HOLD A PUBLIC HEARING PRIOR TO THE APPROVAL OF AN APPLICATION. IF THE TOWN ELECTS TO HOLD A PUBLIC HEARING ON AN APPLICATION, THE APPLICANT SHALL BE REPRESENTED AT THE PUBLIC HEARING AND BE AVAILABLE TO ANSWER INQUIRIES ABOUT THE APPLICATION.

E. AS PART OF THE PERMIT PROCESS, THE TOWN MAY REQUIRE A WIRELESS FACILITY TO BE FULLY OPERATIONAL WITHIN A SPECIFIED PERIOD AFTER THE DATE THE LAST OR FINAL PERMIT IS ISSUED, UNLESS THE TOWN AND THE APPLICANT AGREE TO EXTEND THE PERIOD.

F. WAIVERS. REQUESTS FOR WAIVERS FROM ANY REQUIREMENT OF THIS ARTICLE SHALL BE MADE IN WRITING TO THE TOWN MANAGER OR DESIGNEE. THE SAME MAY GRANT A REQUEST FOR WAIVER IF IT IS DEMONSTRATED THAT, NOTWITHSTANDING THE ISSUANCE OF A WAIVER, THE TOWN

WILL BE PROVIDED ALL INFORMATION NECESSARY TO UNDERSTAND THE NATURE OF THE CONSTRUCTION OR OTHER ACTIVITY TO BE CONDUCTED PURSUANT TO THE PERMIT SOUGHT.

G. PROCESSING OF APPLICATIONS. FOR SMALL WIRELESS FACILITIES, PERSONAL WIRELESS FACILITIES, AS THOSE TERMS ARE DEFINED UNDER FEDERAL LAW, AND ELIGIBLE FACILITIES REQUESTS, AS THAT TERM IS DEFINED UNDER FEDERAL LAW, APPLICATIONS WILL BE PROCESSED IN CONFORMITY WITH STATE, LOCAL AND FEDERAL LAW, AS AMENDED. CURRENTLY, THE FCC HAS REQUIRED THAT SUCH APPLICATIONS BE PROCESSED WITHIN 60 DAYS OF RECEIPT OF A COMPLETED APPLICATION FOR FACILITIES THAT WILL BE COLLOCATED ON PREEXISTING STRUCTURES, AND 90 DAYS FOR NEW CONSTRUCTION.

H. REJECTION FOR INCOMPLETENESS. NOTICES OF INCOMPLETENESS SHALL BE PROVIDED IN CONFORMITY WITH STATE, AND LOCAL AND FEDERAL LAW. IF SUCH AN APPLICATION IS INCOMPLETE, IT MAY BE REJECTED BY A WRITTEN ORDER SPECIFYING THE MATERIAL OMITTED FROM THE APPLICATION, OR THE TOWN MAY NOTIFY THE APPLICANT OF THE MATERIAL OMITTED AND PROVIDE AN OPPORTUNITY TO

SUBMIT THE MISSING MATERIAL. THE TIME IMPOSED BY
FEDERAL, STATE OR LOCAL LAW FOR THE PROCESSING OF AN
APPLICATION DOES NOT BEGIN TO RUN UNTIL AN APPLICATION
IS COMPLETE.

- I. FINAL INSPECTION. UPON COMPLETION OF THE APPROVED WORK,
THE APPLICANT MUST FILE A STATEMENT OF THE PROFESSIONAL
OPINION BY AN INDEPENDENT, QUALIFIED ENGINEER LICENSED IN
THE STATE OF MARYLAND THAT INDICATES THAT THE
INSTALLATION, BASED UPON THEIR ACTUAL INSPECTIONS, IN THEIR
OPINION AND TO THE BEST OF THEIR KNOWLEDGE, MEETS THE
REQUIREMENTS OF THE APPROVED PLAN DOCUMENTS, THIS
ARTICLE AND OTHER APPLICABLE LAW. CERTIFICATIONS MUST BE
SIGNED AND SEALED BY THE QUALIFIED ENGINEER MAKING THE
STATEMENT. UPON RECEIPT OF THE STATEMENT, AND ANY
REQUIRED TOWN INSPECTION, THE WORK MAY BE ACCEPTED AND A
CERTIFICATE OF COMPLETION MAY BE ISSUED BY THE TOWN.

Section 5. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and
Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks,
Maintenance and Use of the Public Rights of Way", Article III, §3-305, "Termination of
permit/breach" be and it is hereby enacted to read as follows:

§3-305 TERMINATION OF PERMIT/BREACH.

- A. FOR BREACH. A WIRELESS TELECOMMUNICATIONS PERMIT MAY BE REVOKED FOR FAILURE TO COMPLY WITH THE CONDITIONS OF THE PERMIT, FRANCHISE, LICENSE OR APPLICABLE LAW. UPON REVOCATION, THE WIRELESS TELECOMMUNICATIONS FACILITY MUST BE REMOVED WITHIN 30 DAYS OF WRITTEN NOTICE; PROVIDED THAT REMOVAL OF SUPPORT STRUCTURE OWNED BY TOWN, A UTILITY, OR ANOTHER ENTITY AUTHORIZED TO MAINTAIN A SUPPORT STRUCTURE IN THE RIGHT OF WAY NEED NOT BE REMOVED, BUT MUST BE RESTORED TO ITS PRIOR CONDITION, EXCEPT AS SPECIFICALLY PERMITTED BY THE TOWN. ALL COSTS INCURRED BY THE TOWN IN CONNECTION WITH THE REVOCATION AND REMOVAL SHALL BE PAID BY ENTITIES WHO OWN OR CONTROL ANY PART OF THE WIRELESS TELECOMMUNICATIONS FACILITY.
- B. FOR INSTALLATION WITHOUT A PERMIT. A WIRELESS TELECOMMUNICATIONS FACILITY INSTALLED WITHOUT A WIRELESS PERMIT (EXCEPT FOR THOSE EXEMPTED BY THIS ARTICLE) MUST BE REMOVED WITHIN 30 DAYS OF WRITTEN NOTICE; PROVIDED THAT REMOVAL OF SUPPORT STRUCTURE OWNED BY TOWN, A UTILITY, OR ANOTHER ENTITY AUTHORIZED TO MAINTAIN A SUPPORT STRUCTURE IN THE RIGHT OF WAY

NEED NOT BE REMOVED, BUT MUST BE RESTORED TO ITS PRIOR CONDITION, EXCEPT AS SPECIFICALLY PERMITTED BY THE TOWN. ALL COSTS INCURRED BY THE TOWN IN CONNECTION WITH THE REVOCATION AND REMOVAL SHALL BE PAID BY ENTITIES WHO OWN OR CONTROL ANY PART OF THE WIRELESS TELECOMMUNICATIONS FACILITY.

- C. TERM. A WIRELESS PERMIT, OTHER THAN A PERMIT ISSUED PURSUANT TO AN ELIGIBLE FACILITIES REQUEST, SHALL BE VALID FOR A PERIOD OF FIVE (5) YEARS. AN ELIGIBLE FACILITIES PERMIT SHALL EXPIRE AT THE SAME TIME THE PERMIT FOR THE UNDERLYING EXISTING WIRELESS TELECOMMUNICATIONS FACILITY EXPIRES. A PERSON HOLDING A WIRELESS TELECOMMUNICATIONS PERMIT MUST EITHER REMOVE THE WIRELESS TELECOMMUNICATIONS FACILITY UPON EXPIRATION (PROVIDED THAT REMOVAL OF SUPPORT STRUCTURE OWNED BY TOWN, A UTILITY, OR ANOTHER ENTITY AUTHORIZED TO MAINTAIN A SUPPORT STRUCTURE IN THE RIGHT OF WAY NEED NOT BE REMOVED, BUT MUST BE RESTORED TO ITS PRIOR CONDITION, EXCEPT AS SPECIFICALLY PERMITTED BY THE TOWN); OR, AT LEAST 90 DAYS PRIOR TO EXPIRATION, MUST SUBMIT AN APPLICATION TO RENEW THE PERMIT, WHICH APPLICATION

MUST DEMONSTRATE THAT THE IMPACT OF THE WIRELESS TELECOMMUNICATIONS FACILITY CANNOT BE REDUCED. THE WIRELESS TELECOMMUNICATIONS FACILITY MUST REMAIN IN PLACE UNTIL IT IS ACTED UPON BY THE TOWN, AND ANY APPEALS FROM THE TOWN'S DECISION ARE EXHAUSTED.

Section 6. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks, Maintenance and Use of the Public Rights of Way", Article III, §3-306, "Infrastructure owned or controlled by the Town" be and it is hereby enacted to read as follows:

§3-306. INFRASTRUCTURE OWNED OR CONTROLLED BY THE TOWN.

THE TOWN MAY NEGOTIATE AGREEMENTS FOR USE OF TOWN OWNED OR CONTROLLED LIGHT STANDARDS AND TRAFFIC SIGNALS IN THE PUBLIC RIGHTS OF WAY FOR PLACEMENT OF WIRELESS TELECOMMUNICATIONS FACILITIES ON THOSE STRUCTURES. THE AGREEMENT SHALL SPECIFY THE COMPENSATION TO THE TOWN FOR USE OF THE STRUCTURES. THE PERSON SEEKING THE AGREEMENT SHALL ADDITIONALLY REIMBURSE THE TOWN FOR ALL COSTS THE TOWN INCURS IN CONNECTION WITH ITS REVIEW OF, AND ACTION UPON THE PERSON'S REQUEST FOR AN AGREEMENT.

Section 7. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks,

Maintenance and Use of the Public Rights of Way”, Article II, §3-307, “Insurance” be and it is hereby enacted to read as follows:

§3-307. INSURANCE.

A. THE TOWN SHALL REQUIRE A WIRELESS INFRASTRUCTURE PROVIDER TO INDEMNIFY AND HOLD HARMLESS THE TOWN AND ITS OFFICIALS, OFFICERS AND EMPLOYEES AGAINST ANY LOSS, DAMAGE, OR LIABILITY TO THE EXTENT THAT IT IS CAUSED BY THE NEGLIGENT OR WILLFUL ACT OR OMISSION OF THE WIRELESS INFRASTRUCTURE PROVIDER WHO OWNS OR OPERATES SMALL WIRELESS FACILITIES OR POLES IN THE RIGHT-OF-WAY, ITS AGENTS, OFFICERS, DIRECTORS, REPRESENTATIVES, EMPLOYEES, AFFILIATES, OR SUBCONTRACTORS, OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS, OR REPRESENTATIVES.

B. DURING THE PERIOD IN WHICH THE FACILITIES OF A WIRELESS INFRASTRUCTURE PROVIDER ARE LOCATED ON OR ATTACHED TO THE TOWN’S ASSETS OR RIGHTS-OF-WAY, THE TOWN MAY REQUIRE A WIRELESS INFRASTRUCTURE PROVIDER TO:

(1) CARRY, AT THE WIRELESS INFRASTRUCTURE PROVIDER'S SOLE COST AND EXPENSE, THE FOLLOWING TYPES OF THIRD-PARTY INSURANCE:

(i) PROPERTY INSURANCE FOR ITS PROPERTY'S REPLACEMENT COST AGAINST ALL RISKS;

(ii) WORKERS' COMPENSATION INSURANCE, AS REQUIRED BY LAW;

AND

(iii) COMMERCIAL GENERAL LIABILITY INSURANCE WITH RESPECT TO ITS ACTIVITIES ON TOWN IMPROVEMENTS OR RIGHTS-OF-WAY TO AFFORD PROTECTION WITH LIMITS NOT INCONSISTENT WITH ITS REQUIREMENTS OF OTHER USERS OF TOWN IMPROVEMENTS OR RIGHTS-OF-WAY, INCLUDING COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE;

AND

(2) INCLUDE THE TOWN AS AN ADDITIONAL INSURED ON THE COMMERCIAL GENERAL LIABILITY POLICY AND PROVIDE CERTIFICATION AND DOCUMENTATION OF INCLUSION OF THE TOWN IN A COMMERCIAL GENERAL LIABILITY POLICY AS REASONABLY REQUIRED BY THE TOWN.

Section 8. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks, Maintenance and Use of the Public Rights of Way", Article III, §3-308, "Make-Ready Work" be and it is hereby enacted to read as follows:

§3-308 MAKE-READY WORK.

A. THE TOWN MAY PROVIDE A WIRELESS INFRASTRUCTURE PROVIDER THE OPTION OF EITHER HAVING THE WIRELESS INFRASTRUCTURE PROVIDER PERFORM ANY NECESSARY MAKE-READY WORK THROUGH

THE USE OF QUALIFIED CONTRACTORS AUTHORIZED BY THE TOWN, OR HAVING THE TOWN PERFORM ANY NECESSARY MAKE-READY WORK AT THE SOLE COST OF THE WIRELESS INFRASTRUCTURE PROVIDER.

B. UPON COMPLETION OF THE MAKE-READY WORK PERFORMED BY THE TOWN AT THE REQUEST OF A WIRELESS INFRASTRUCTURE PROVIDER, THE WIRELESS INFRASTRUCTURE PROVIDER SHALL REIMBURSE THE TOWN FOR THE TOWN'S ACTUAL AND DOCUMENTED COST OF THE MAKE-READY WORK.

Section 9. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks, Maintenance and Use of the Public Rights of Way", Article III, §3-309, "Right of Way Repair" be and it is hereby enacted to read as follows:

§3-309 RIGHT-OF -WAY REPAIR.

A WIRELESS INFRASTRUCTURE PROVIDER SHALL BE REQUIRED TO PROMPTLY:

- A. REPAIR ANY DAMAGE TO THE PUBLIC RIGHT-OF-WAY OR ANY DAMAGES TO FACILITIES IN THE RIGHT-OF-WAY DIRECTLY CAUSED BY THE ACTIVITIES OF THE WIRELESS INFRASTRUCTURE PROVIDER AND RETURN THE RIGHT-OF-WAY TO THE RIGHT-OF-WAY'S CONDITION PRIOR TO THE DAMAGES CAUSED BY THE WIRELESS INFRASTRUCTURE PROVIDER.
- B. REMOVE AND RELOCATE THE PERMITTED SMALL CELL FACILITY AND/OR WIRELESS SUPPORT STRUCTURE AT THE WIRELESS

INFRASTRUCTURE PROVIDER'S SOLE EXPENSE TO ACCOMMODATE CONSTRUCTION OF A PUBLIC IMPROVEMENT PROJECT BY THE TOWN. IF THE WIRELESS INFRASTRUCTURE PROVIDER FAILS TO REMOVE OR RELOCATE THE SMALL CELL FACILITY AND/OR WIRELESS SUPPORT STRUCTURE OR PORTION THEREOF AS REQUESTED BY THE TOWN WITHIN 120 DAYS OF THE TOWN'S NOTICE, THEN THE TOWN SHALL BE ENTITLED TO REMOVE THE SMALL CELL FACILITY AND/OR WIRELESS SUPPORT STRUCTURE, OR PORTION THEREOF AT THE WIRELESS INFRASTRUCTURE PROVIDER'S SOLE COST AND EXPENSE, WITHOUT FURTHER NOTICE TO THE WIRELESS INFRASTRUCTURE PROVIDER. THE WIRELESS INFRASTRUCTURE PROVIDER SHALL, WITHIN 30 DAYS FOLLOWING ISSUANCE OF INVOICE FOR THE SAME, REIMBURSE THE TOWN FOR ITS REASONABLE EXPENSES INCURRED IN THE REMOVAL (INCLUDING, WITHOUT LIMITATION, OVERHEAD AND STORAGE EXPENSES) OF THE SMALL CELL FACILITIES AND/OR WIRELESS SUPPORT STRUCTURE, OR PORTION THEREOF.

- C. AT ITS SOLE COST AND EXPENSE, PROMPTLY DISCONNECT, REMOVE, OR RELOCATE THE APPLICABLE SMALL CELL FACILITY AND/OR WIRELESS SUPPORT STRUCTURE WITHIN THE TIME FRAME AND IN THE MANNER REQUIRED BY THE TOWN IF THE TOWN REASONABLY DETERMINES THAT THE DISCONNECTION, REMOVAL, OR RELOCATION

OF ANY PART OF A SMALL CELL FACILITY AND/OR WIRELESS SUPPORT STRUCTURE (A) IS NECESSARY TO PROTECT THE PUBLIC HEALTH, SAFETY, WELFARE, OR TOWN PROPERTY, OR (B) THE WIRELESS INFRASTRUCTURE PROVIDER FAILS TO OBTAIN ALL APPLICABLE LICENSES, PERMITS, AND CERTIFICATIONS REQUIRED BY LAW FOR ITS SMALL CELL FACILITY AND/OR WIRELESS SUPPORT STRUCTURE. IF THE TOWN REASONABLY DETERMINES THAT THERE IS IMMINENT DANGER TO THE PUBLIC, THEN THE TOWN MAY IMMEDIATELY DISCONNECT, REMOVE, OR RELOCATE THE APPLICABLE SMALL CELL FACILITY AND/OR WIRELESS SUPPORT STRUCTURE AT THE WIRELESS INFRASTRUCTURE PROVIDER'S SOLE COST AND EXPENSE.

Section 10. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks, Maintenance and Use of the Public Rights of Way", Article III, §3-310, "Facilities no longer needed" be and it is hereby enacted to read as follows:

§3-310. FACILITIES NO LONGER NEEDED.

- A. A WIRELESS INFRASTRUCTURE PROVIDER SHALL PROMPTLY NOTIFY THE TOWN OF A DECISION TO REMOVE FROM SERVICE A WIRELESS FACILITY LOCATED ON A PUBLIC RIGHT-OF-WAY.
- B. A WIRELESS INFRASTRUCTURE PROVIDER SHALL REMOVE A WIRELESS FACILITY THAT IS NO LONGER NEEDED FOR SERVICE AND

LOCATED ON A PUBLIC RIGHT-OF-WAY AT THE SOLE COST AND EXPENSE OF THE WIRELESS INFRASTRUCTURE PROVIDER.

- C. IF THE TOWN CONCLUDES THAT A WIRELESS FACILITY HAS BEEN ABANDONED IN PLACE, THE TOWN MAY REMOVE THE WIRELESS FACILITY AND INVOICE THE WIRELESS INFRASTRUCTURE PROVIDER FOR THE ACTUAL AND DOCUMENTED COST INCURRED BY THE TOWN FOR REMOVAL.
- D. UNTIL A WIRELESS FACILITY THAT IS LOCATED ON PUBLIC RIGHT-OF-WAY IS REMOVED FROM THE PUBLIC RIGHT-OF-WAY, A WIRELESS INFRASTRUCTURE PROVIDER SHALL PAY ALL FEES AND CHARGES DUE THE TOWN, REGARDLESS OF WHETHER A WIRELESS FACILITY IS OPERATIONAL.

Section 11. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the Town of Kensington Maryland that Chapter 3, "Streets, Sidewalks, Maintenance and Use of the Public Rights of Way", Article II, §3-3115, "Surety bonds" be and it is hereby enacted to read as follows:

§3-311 SURETY BONDS

- A. THE TOWN MAY REQUIRE A SURETY BONDING FOR WIRELESS INFRASTRUCTURE PROVIDERS.
- B. THE PURPOSE OF A SURETY BOND REQUIRED UNDER SUBSECTION (A) OF THIS SECTION SHALL BE TO:

- (1) PROVIDE FOR THE REMOVAL OF ABANDONED OR IMPROPERLY MAINTAINED SMALL WIRELESS FACILITIES, INCLUDING THOSE THAT THE TOWN REQUIRES TO BE REMOVED TO PROTECT PUBLIC HEALTH, SAFETY, OR WELFARE, AND RESTORE THE RIGHTS-OF-WAY; AND
- (2) RECOUP RATES OR FEES THAT HAVE NOT BEEN PAID BY A WIRELESS INFRASTRUCTURE PROVIDER, SUBJECT TO THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO THE WIRELESS INFRASTRUCTURE PROVIDER AND THE OPPORTUNITY TO PAY THE RATES OR FEES OUTSTANDING.

Section 12. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the Town of Kensington that Chapter 3, “Streets, Sidewalks, Maintenance and Use of the Public Rights of Way”, Article III, §3-312, “Fees” be and it is hereby enacted to read as follows:

§3-312 FEES.

THE FOLLOWING ENUMERATIONS ARE THE CURRENT FEES AND CHARGES UNDER THIS ARTICLE III.

APPLICATION FEE

WIRELESS COMMUNICATIONS FACILITIES AND RELATED OVERHEAD AND UNDERGROUND WIRING, CABLE, HOSES, PIPES AND SIMILAR FACILITIES

- | | |
|---|------------|
| A. UP TO FIVE | \$500.00 |
| B. EACH ADDITIONAL | \$100.00 |
| C. EACH NEW POLE | \$1,000.00 |
| D. ACTUAL COST TO REVIEW APPLICATIONS, IF IN EXCESS OF SET FEES | |

ACCESS FEE - \$270 PER SMALL WIRELESS FACILITY PER YEAR

Section 13. **BE IT FURTHER ORDAINED AND ENACTED** by the Mayor and Council of the Town of Kensington that Chapter 3, “Streets, Sidewalks, Maintenance and Use of the Public Rights of Way”, Article III, §3-313, “Violations” be and it is hereby enacted to read as follows:

§3-313 VIOLATIONS.

A VIOLATION OF ANY PROVISION OF THIS ARTICLE III SHALL CONSTITUTE A CLASS ** MUNICIPAL INFRACTION AS PRESCRIBED IN CHAPTER X OF THIS CODE OF ORDINANCES. EACH DAY A VIOLATION CONTINUES MAY BE DEEMED A SEPARATE OFFENSE.

Section 14. **AND BE IT FURTHER ORDAINED** If any section, subsection, provision, sentence, clause, phrase or word of this Ordinance is for any reason held to be illegal or otherwise invalid by any court of competent jurisdiction, such invalidity shall be severable, and shall not affect or impair any remaining section, subsection, provision, sentence, clause, phrase or word included within this Ordinance, it being the intent of the Town that the remainder of the Ordinance shall be and shall remain in full force and effect, valid and enforceable.

Section 15. **AND BE IT FURTHER ORDAINED** that this
Emergency Ordinance shall take effect upon adoption.

INTRODUCED by the Mayor and Town Council of the Town of
Kensington, at a regular meeting on February 11, 2019 and thereafter this

Emergency Ordinance was prominently posted in the Town Hall and available for inspection by the public.

ADOPTED by the Mayor and Town Council of the Town of Kensington, Maryland, at a regular meeting on February 11, 2019.

This Ordinance shall become effective on immediately provided that the ordinance or a fair summary thereof is:

- a. Posted at the town hall by the next business day for at least two (2) weeks;
- b. Posted on the official town website;
- c. Sent to those persons listed on the official town email list /mail subscription service; and
- d. Published once in the town newsletter.

INTRODUCED by the Mayor and Council of the Town of Kensington, Maryland at a public meeting assembled on the 11th day of February 2019.

ADOPTED by the Mayor and Council of the Town of Kensington, Maryland at a public meeting assembled on the 11th day of February 2019.

EFFECTIVE the 11th day of February 2019.

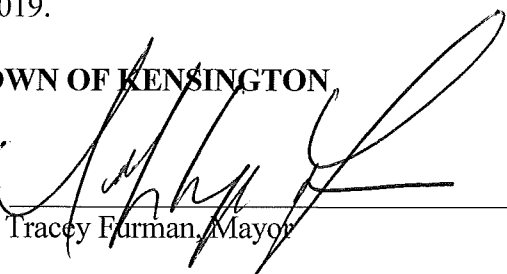
ATTEST:

By:


Susan Engels, Clerk-Treasurer

TOWN OF KENSINGTON

By:


Tracey Furman, Mayor

APPROVED AS TO FORM: