

**BOARD OF COMMISSIONERS
FOR THE
TOWN OF UPPER MARLBORO**

EMERGENCY ORDINANCE: 2019-01
SESSION: Special/Regular Town Meeting
INTRODUCED: January 22, 2019

AN EMERGENCY ORDINANCE OF THE TOWN OF UPPER MARLBORO AMENDING ORDINANCE 2017-04 (STREET CONSTRUCTION AND UTILITY CUTS) TO REGULATE SMALL CELL OR RELATED COMMUNICATIONS TECHNOLOGY PLACED IN THE MUNICIPAL RIGHTS-OF-WAY AND GENERALLY RELATING TO THE REGULATION AND CONTROL OF TOWN STREETS AND SIDEWALKS.

WHEREAS, under Section 82-63 of its Charter the Town of Upper Marlboro (the “Town”) has control of all public ways in the Town except such as may be under the jurisdiction of the Maryland State Roads Commission or the County governing body for Prince George’s County, and subject to the laws of the State of Maryland and the Charter, the Town may do whatever it deems necessary to establish, operate, and maintain in good condition the public ways of the Town; and

WHEREAS, because of technological advances and increased consumer demand for wireless broadband service, wireless telecommunications carriers are seeking to install small, short range antennas to provide customers with faster and more reliable cell service; and

WHEREAS, wireless carriers and the companies that provide infrastructure to support the wireless carriers are increasingly seeking to install antennas or small cellular base stations in public rights-of-way; and

WHEREAS, while the Prince George’s County Zoning Code may regulate the installation of telecommunications antennas and support structures on private property in Upper Marlboro, the Town has the authority to regulate such installations in Town rights-of-way; and

WHEREAS, federal law and newly promulgated rules significantly restricts local government authority to regulate the installation of telecommunications facilities and requires any desired municipal regulations to be in place prior to application; and

WHEREAS, the Town Board of Commissioners desires to protect the public health, safety, and welfare from the adverse effects of the proliferation of telecommunications facilities to the maximum extent permissible under federal law.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO, STATE OF MARYLAND, DOES ORDAIN, RATIFY, CHANGE AND

ENACT AN AMENDMENT TO ORDINANCE 2017-04 SUCH THAT SAID ORDINANCE AND THE SPECIFIC PROVISIONS THEREOF WRITTEN BELOW SHALL HEREBY READ AS FOLLOWS:

STREET CONSTRUCTION AND UTILITY CUTS OR INSTALLATIONS
ORDINANCE 2019-01

- SECTION 1:** STREET CONSTRUCTION AND UTILITY CUTS OR INSTALLATIONS
- SECTION 2:** ADOPTION OF COUNTY LAW
- SECTION 3:** REGULATORY SCOPE
- SECTION 4:** DEFINITIONS
- SECTION 5:** INSTALLATION, RESTORATION AND PATCHING STANDARDS
- SECTION 6:** WSSC’S EXEMPTION
- SECTION 7:** COMPLETION AND ACCEPTANCE OF IMPROVEMENTS OR REPAIRS
- SECTION 8:** PERMIT REQUIRED, FEES, APPLICATION FORMS, AND RECORDS
- SECTION 9:** AUTHORITY TO HIRE TOWN ENGINEER TO SUPERVISE OR INSPECT STREET IMPROVEMENTS AND INSTALLATIONS
- SECTION 10:** ENGINEERING FEE
- SECTION 11:** SUNDAY AND HOLIDAY WORK
- SECTION 12:** RESPONSIBILITY FOR DAMAGES; INSTALLATION REMOVALS
- SECTION 13:** COMPLIANCE WITH SAFETY REQUIREMENTS
- SECTION 14:** CONFLICT OF LAWS AND WAIVERS
- SECTION 15:** COMPLIANCE WITH SAFETY REQUIREMENTS
- SECTION 16:** PENALTIES FOR VIOLATION
- SECTION 17:** ADMINISTRATIVE AND JUDICIAL REVIEW

SECTION 1. STREET CONSTRUCTION AND UTILITY CUTS OR INSTALLATIONS

It shall be unlawful for any person or persons, firm or corporation to install any pole, structure, or equipment in the right-of-way or dig up, cut, excavate, break, destroy or in any way injure any sidewalk, curb, gutter, driveway, street or roadway within the Town of Upper Marlboro and under its jurisdiction without first obtaining a permit so to do from the Board of Commissioners.

SECTION 2. ADOPTION OF COUNTY LAW

The Board of Commissioners of the Town of Upper Marlboro hereby adopts by reference herein the ordinance, as amended from time to time, entitled “the Road Ordinance of Prince George's County, Maryland” codified in Subtitle 23 of the Prince George’s County Code, and further adopts herein, the minimum standards for street construction and repairs applicable to utility companies installing or maintaining utility facilities or improvements in the public ways as found in a document known as the “Prince George’s County Policy and Specification for Utility Installation and Maintenance,” as amended, sometimes further referenced herein as the “County Specifications Manual,” attached hereto and incorporated by reference herein as Appendix A and made available for inspection at the Town Hall, as well as the Prince George’s County Specifications and Standards for Roadways and Bridges, and the Md. SHA Standard Specifications for Construction and Materials. Any references to officials or agents of the County Government found in County law adopted herein shall be construed to apply to the applicable officials or agents of the Town Government.

SECTION 3. REGULATORY SCOPE

Except as otherwise stated in this Ordinance, from and after the effective date of this ordinance, no person, or entity including but not limited to a private or public utility company, or contractor shall grade, install, cut, construct, or re-construct any surface material, subsurface material, paving, drainage structure, curb, gutter, sidewalk, driveway entrance, retaining wall, step, equipment, cable, pole, tower or any other structure within the right-of-way of any public street, road, highway, avenue, lane, alley, or public way under the jurisdiction of the Town unless said person or entity shall first obtain a permit from the President of the Board of Commissioners or his designee, and complies with all applicable provisions of this Ordinance and referenced law.

SECTION 4. DEFINITIONS

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

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

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

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

“FCC” means the Federal Communications Commission.

“Investor-owned utility pole” means a utility pole that is not owned by the Town.

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

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

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

“Substantial change” means the same as defined by the FCC in 47 C.F.R. § 1.40001(b)(7), as may be amended, and as applicable to facilities in the public Right-of-Way, which defines that term as a collocation or modification that:

- (A.) increases the overall height more than 10% or 10 feet (whichever is greater);
- (B.) increases the width more than 6 feet from the edge of the Communications structure;
- (C.) involves the placement of any new enclosures on the ground when there are no existing ground-mounted enclosures;
- (D.) involves the placement of any new ground-mounted enclosures that are ten percent (10%) larger in height or volume than any existing ground-mounted enclosures;
- (E.) involves excavation or deployment of equipment outside the area in proximity to the installation and other wireless communications equipment already deployed on the ground;
- (F.) would defeat the existing concealment elements of the Communications support structure as determined by any uniform guidelines promulgated by the board or the President or his or her Designee; or
- (G.) violates a prior condition of approval of a permit for the site.

“Utility” means an organization franchised by the county, municipal or state government or otherwise authorized by law to install, operate and maintain facilities in public rights-of-way for the purpose of

distribution of fuel or energy, for communication, or the distribution of a public water supply and collection and conveyance of sanitary sewage or storm water.

SECTION 5. INSTALLATION, RESTORATION AND PATCHING STANDARDS

(A.) The technical standards for acceptable temporary and permanent utility patching in flexible asphalt pavement for the Town shall be the same as those found in Standards 300.18 and 300.19, along with the mill and overlay requirements for roadways under the 5-year moratorium period, Attachment 6, as published in the County Specifications Manual.

(B.) COMMUNICATIONS STRUCTURES OR FACILITIES. A permit shall not be issued for a proposed structure or facility when the location selected in the application is in an area where there is an overconcentration of structures or facilities in, on or over the right-of-way, as determined by the President or his or her Designee or in the President's or his or her Designee's reasonable discretion and judgment. Any pole, equipment box, or other structure installed in a Town right-of-way must:

1. Comply with all structural and safety standards specified in this ordinance and by the President in the Permit conditions or any uniform guidelines promulgated by the Board by resolution;
2. Not obstruct pedestrian or vehicular traffic flow or sight lines;
3. Comply with the Americans with Disabilities Act;
4. If a pole, be at least 26 feet in height or comparable height with existing utility poles, but not exceed 50 feet above ground level;
5. If a replacement of an existing pole, not exceed the height of the existing pole by more than 10 feet;
6. If an equipment box (ground mounted), not exceed a size of 28 cubic feet and, if located in the floodplain, shall be elevated on platforms, and subject to other placement requirements established by the President in the permit conditions or any uniform guidelines promulgated by the board by resolution;
7. Not obstruct parking, including preventing persons from entering and exiting vehicles parked in the right-of-way and in such manner that will not interfere with the use of other property;
8. Have a color and finish determined in consultation with the President or his or her Designee or any uniform guidelines promulgated by the Board by resolution to minimize visual impact to the neighborhood, taking into consideration any historic area designations; and
9. Comply with such other requirements and conditions as the President may determine are appropriate. In the event that strict compliance with any provision of this ordinance or any uniform guidelines promulgated by the board, as applied to a specific proposed communications Facility or structure, would effectively prohibit the provision of services, the President may grant a limited, one-time exemption from strict compliance. Communications Facilities and support structures,

wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, and all FCC, state, and local regulations.

(C.) ANTENNAE AND OTHER ATTACHMENTS. No person shall install any attachment to a pole or other structure in the Town right-of-way without first obtaining a permit from the Town. All attachments to structures in the Town right-of-way must:

1. For each pole, have an equipment box (pole mounted) or boxes no greater in collective size than six (6) cubic feet in volume or the volume established by the President or his or her Designee or any uniform guidelines promulgated by the Board by resolution;
2. Have a color and finish determined in consultation with the President or her designee to minimize visual impact to the neighborhood, taking into consideration historic area designations;
3. If an antenna, be attached to an existing pole or replacement pole and be demonstrated to be the least visible antenna possible to accomplish the coverage objectives and be screened, shrouded, or concealed, or treated to minimize visual and acoustic impact, as determined in consultation with the President or her designee, taking into consideration any historic area designations or any board promulgated guidelines. Antenna elements shall be flush mounted, to the extent reasonably feasible. All antenna mounts shall be designed so as not to preclude possible future collocation by the same or other operators or carriers. Antennas shall be situated so as to reduce visual and acoustic impact without compromising their function.
4. Comply with such other requirements and conditions as the President or his or her Designee may determine are necessary and appropriate. All wires, cables, fixtures, and other equipment shall be installed and maintained in substantial compliance with the requirements of the National Electric Code, and all FCC, State and local regulations.

SECTION 6. WSSC'S EXEMPTION

Pursuant to Section 27-101 et seq. of the Md. Public Utilities Article of the State Code, the Washington Suburban Sanitary Commission ("WSSC"), as a state agency, is generally considered exempt from this Ordinance; however, WSSC is required by State statute to provide advance notice of its projects and to repair and leave the public roadway in the same or a superior condition to that existing before the public roadway was disturbed and furthermore to pay all costs for returning the public roadway to the same or superior condition.

SECTION 7. COMPLETION AND ACCEPTANCE OF IMPROVEMENTS OR REPAIRS

Work permitted in an approved permit shall be completed within 120 days or the permit lapses. Upon completion, any construction, installations, improvements, repairs or other activity as certified by the Town as being in full compliance with this Ordinance and the County Specifications Manual, as applicable, and notification thereof to the Town, the road, sidewalk, or whatever work was performed in the right-of-way shall be deemed to be accepted for maintenance by the Town from and after the acceptance date, except for privately-owned equipment or other public entity-owned infrastructure.

SECTION 8. PERMIT REQUIRED, FEES, APPLICATION FORMS, AND RECORDS

(A.) A permit as required by this Ordinance obtained from the President or his or her Designee may be issued, and the regulatory or other related fees for which shall be established herein or amended by the Town Board of Commissioners by written resolution adopted from time to time. Any applicant obtaining a Town construction permit involving abutting real property, in addition to any permits required of this Section, shall receive a credit for any additional permits issued under this Ordinance.

(B.) Unless the Board establishes utility permit or other related fees or fee schedule by resolution, all applicable fees found in County law as incorporated herein shall be calculated pursuant to the applicable County provision or County Specifications Manual using the Town's version of the utility permit fee calculation sheet, which is a modified attachment of said County Specifications Manual. The various permit fees are initially established as follows:

(1.) Special Utility Permit Fee – This permit typically covers completely new utility pipeline or facility construction and includes an administrative and inspection fee, a moratorium fee, if applicable, and any required engineering fee as follows:

- (I) Administrative and Inspection Fee – A \$250.00 flat or lump sum fee, plus \$2.00 per linear feet of installed utility within the paved area, \$.50 per linear feet for underground work outside the improved roadway, or plus \$.20 per liner feet for aerial utility facility installations;
- (II) Moratorium or Impact Fee - \$10.00 per linear foot of roadway cut paid for disturbance of streets less than five years old since paving; and
- (III) Engineering Fees – a variable lump sum as described in Section 10.

(2.) Maintenance Utility Permit Fee – This permit typically covers routine maintenance or repairs of existing facilities, which may be paid upon permit issuance or on a quarterly or other periodic basis in the form of an escrow account maintained by the Treasurer, and includes an application and processing fee, an administration and inspection fee, and any engineering fees as follows:

- (I) Application and Processing Fee - \$250.00;
- (II) Administrative and Inspection Fee - \$125 for small cuts (i.e., < 100 sq. Ft.), \$300 for large cuts including other fees as further described in Section 3.3.2 of the County Specifications Manual; and
- (III) Engineering Fees – A variable lump sum as described in Section 10.

(3.) Extension fee – The Special Utility Permit shall be issued for a standard duration of 90 calendar days. A \$100.00 fee shall be paid to extend the duration of a Special Utility Permit.

(C.) Any forms, applications, form letters, schedules, documents, worksheets, templates, or permit fee calculation sheets prepared or used by the County Government pursuant to County law, as incorporated by reference in this Section, may be modified for use by an applicant, subject to further modification and approval by the Town for conformity to this Section, when applying for any permits required by this Ordinance. The permit application may include and require any additional and detail required by any uniform guidelines promulgated by the Board by resolution, or as required by the President or his or her Designee.

(D.) The Town Code Enforcement Officer or his designee shall cause to be obtained and maintained photographs of the proposed and finished work areas in order to document the before and after condition of the affected municipal property. These photographs shall be maintained by the Town Records Custodian with the permit file pursuant to the Town's approved Records Retention Schedule.

(E.) An applicant may be required to obtain multiple permits (e.g., A Special or Maintenance Utility Permit to dig in the right-of-way and a Communications Facilities or Communications Support Structures permit to install and operate a Small Cell) issued under this ordinance depending on the scope of the installation or disturbance to the right-of-way.

(F.) Notwithstanding in this section to the contrary, permit applications including Communications Facilities or Communication Support Structures shall be reviewed and a decision rendered according to the following time periods, or "shot clocks" as required by Federal Law:

1. Minor change applications (i.e., Collocate Small Cell infrastructure on an existing pole) shall be reviewed and rendered within 60 days of the date of filing.
2. Substantial change applications (i.e., Place Small Cell infrastructure on a newly installed pole) shall be reviewed and rendered within 90 days of the date of filing.

(G.) Fees charged for permit applications for Communications Facilities or Communications Support Structures shall be as follows:

1. An initial non-recurring fee of \$500 for a single up-front application that includes up to five (5) Communications Facilities (i.e., Collocated Small Cells), with an additional \$100 for each Communications Facility added beyond five (5), and
2. A non-recurring fee of \$1,000 for a new or extended Communications Support structure or pole (i.e., not a collocation) intended to support one or more Communications Facility; and
3. A recurring annual fee of \$270 per Communications Facility (e.g., A Communications Support Facility having five collocated (5) small cells or antennae is a \$1,350 annual fee) per year to cover permitted access to the right-of-way ("R.O.W.") or access including the attachment to Town-owned structures located the R.O.W. A permittee who allows or agrees to collocation on or within its Communications Support Facility located in the Town R.O.W. by another person, contractor, or lessee shall notify the Town and said other person or entity shall make application for a permit under this Ordinance.

SECTION 9. AUTHORITY TO HIRE TOWN ENGINEER TO SUPERVISE OR INSPECT STREET IMPROVEMENTS AND INSTALLATIONS

The President of the Board of Commissioners or his or her Designee is authorized to employ the services of an engineer for purposes of supervising or inspecting any street improvements or installations described in this Ordinance, and may require as a condition of granting a permit under this Ordinance that all street improvements or installations be subject to the supervision or inspection of the Town's designated engineer.

SECTION 10. ENGINEERING FEE

In making application for authorization to allow work within a Town right-of-way, and a permit as provided in this Ordinance, the applicant shall designate whether or not the work will be performed under the supervision of his or its own licensed engineer. If the applicant has the service of his or its own engineer, he shall, in addition, pay to the Town the sum of three percent (3%) of the total cost of such improvements to cover the actual expense of inspection of the improvements by the Town. If the applicant does not have the services of an engineer, he shall pay to the Town the sum of six percent (6%) of the total cost of such improvements to cover the expense of preparing plans and specifications and for supervision and inspection of the improvements by the Town. Any surplus or unused balance of this fee shall be refunded to the applicant once the project is certified and accepted by the Town. Should the Town incur additional costs for engineering services exceeding the amounts stated herein, the Treasurer may invoice the permittee after giving reasonable notice and an opportunity to alter the extent of its maintenance project or improvements, if practical. These fee requirements are in addition to the various permit fees established by this Ordinance and which altogether or in part may be waived or modified by the Town Board of Commissioners by written resolution, or motion recorded in the journal.

SECTION 11. SUNDAY AND HOLIDAY WORK

(A.) No work shall be permitted on Sunday, except in cases of emergency, and then only to such extent as it is absolutely necessary and with written permission of the President of the Board of Commissioners. The permit holder shall not be permitted to work on any days which are legal Town holidays as designated by the Board of Commissioners, unless granted permission by the President. If a permittee desires to work on any such legal holidays, permission shall be sought from the President in writing at least three (3) days in advance of such holiday. The request shall state the place where such work is to be conducted.

(B.) Work hours. No work shall be performed after 6:00 p.m. or before 7:00 a.m. without prior written approval by the President.

SECTION 12. RESPONSIBILITY FOR DAMAGES; INSTALLATION REMOVALS

(A.) The permit holder shall assume all responsibility for damages sustained to persons or property due to the carrying on of work, and shall be responsible for all accidents to persons and property, saving

and holding the Town harmless from all damages resulting from any accidents which may occur to the construction operations. The permittee is responsible for the repairs of damages prior to release of any applicable bond. If the Town is made a party to any action because of the granting of a permit to the permit holder, the permit holder shall be required to pay all costs and fees incurred by the Town, including the legal fees of the Town Attorney or other legal counsel.

(B.) Anything installed in the Town right-of-way without a permit or in violation of the terms and conditions of a permit or otherwise abandoned shall be removed upon demand by the town, and the town shall have the authority to remove the installation or structure and restore the right-of-way and charge the cost of the removal and restoration to the person that caused the installation or disturbance.

(C.) If applicable state, county or federal standards and regulations are amended, the owners of a Communications Facility, or Communications Support Structure governed by this ordinance shall bring any facilities and/or structures into compliance with the revised standards and regulations within six months of the effective date of the standards and regulations, unless a different compliance schedule is mandated by the regulating agency. Failure to bring Facilities and/or Communications Support Structures into compliance with any revised standards and regulations shall constitute grounds for removal at the owner's expense.

(D.) The operator or permittee shall remove and relocate the permitted improvements, infrastructure, Communications Facility and/or Support Structure at the operator's sole expense to accommodate construction of a public improvement project by or for the Town.

SECTION 13. COMPLIANCE WITH SAFETY REQUIREMENTS

(A.) The person or entity to whom a permit is issued pursuant to this Ordinance and any agents, servants and subcontractors shall comply with all written requirements of the President of the Board of Commissioners directed to the permittee, either before or during the course of construction or work, which are deemed necessary in the interest of public safety or for the avoidance of unnecessary inconvenience to the public during such construction.

(B.) The permittee shall have the legal duty to provide for the following, whether or not included in the written requirements of the President:

- (1.) Proper lighting and barricading of excavations or other hazards at all times;
- (2.) Adequate access, including snow removal from the road to driveways and sidewalks abutting occupied residences;
- (3.) Control of dust conditions, as directed by the inspector;
- (4.) Correction of muddy or soft subgrade by placement of temporary gravel or stone thereon;
- (5.) Prompt removal of any dirt and debris from streets in and adjacent to the work area during the construction period, as directed by the inspector; and
- (6.) Other measures, as directed by the inspector or Chief of Police, to ensure the public safety.

(C.) Any Operator, owner or permittee who owns or operates Communications Facilities or Communications Support Structures in the right-of-way shall indemnify, protect, defend, and hold the

town and its elected officials, officers, employees, agents, and volunteers harmless against any and all claims, lawsuits, judgments, costs, liens, losses, expenses, fees to include reasonable attorney fees and costs of defense, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including personal or bodily injury or death, property damage or other harm for which recovery of damages is sought, to the extent that it is caused by the negligence of the operator who owns or operates communications Facilities and communications support services in the Right of Way, any agent, officer, director, representative, employee, affiliate, or subcontractor of the Operator, or their respective officers, agents, employees, directors, or representatives while installing, repairing, or maintaining facilities in the right-of-way.

SECTION 14. CONFLICT OF LAWS AND WAIVERS

Except as otherwise provided in this Ordinance, in any case where a provision of this Ordinance is found to be in conflict with a provision of any road construction, zoning, building, grading, housing, fire, safety, health or any other ordinance or code of this Town, Prince George's County, or the State of Maryland existing on the effective date of this Ordinance, the provision which establishes the higher standard for the promotion and protection of the health, safety and welfare of the public shall prevail. The Board of Commissioners may expressly grant waivers from the strict application of this ordinance.

SECTION 15. APPROVAL OF THE PLANNING COMMISSION, SANITARY COMMISSION OF PRINCE GEORGE'S COUNTY OR OTHER ENTITIES

If any design for anticipated work covered by the application for a permit required by this Ordinance requires further approval by the Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, "Miss Utility", the Maryland Department of the Environment, Prince George's County, or the Prince George's County Soil Conservation District, the applicant shall certify to the Town that the proposed application for work has been properly approved by said agencies or entities and that the work shall conform to all other applicable municipal, county, state and federal laws, rules, regulations and ordinances.

SECTION 16. PENALTIES FOR VIOLATION

(A.) Any person or entity making street improvements, installations or repairs as described in this Ordinance without first obtaining the authorization and permit, in violation of the provisions of this Ordinance, which is declared to be a misdemeanor, shall, upon conviction thereof, be subject to a fine of not more than one thousand dollars (\$1,000) or imprisonment of not more than six (6) months, or both.

(B.) The following violations of this Ordinance shall be considered municipal infractions:

- (1.) Knowingly submitting a false or incomplete permit application;
- (2.) Failure to respond to a corrective order issued by a Town official or inspector;
- (3.) Construction which does not comply with an approved plan, specification or permit;
- (4.) Working on work days or during work hours prohibited by this Ordinance;

- (5.) Working during the period of a stop work order; and
- (6.) All other violations of provisions of this Ordinance.

(C.) Except as stated in Subsection A of this Section, violations of this ordinance shall be considered a municipal infraction and are subject to the maximum fine for a municipal infraction permitted by the Town Charter. Each day a violation continues is deemed a separate offense and is subject to an additional citation and fine.

(D.) In addition to any other fine, penalty, or remedy, a violator may be required to remove or restore, within five (5) calendar days of the date of notification of the violation, any structure, alteration, addition or excavation, erected or commenced, and constituting the basis of the violation, and if so required, upon expiration of such five (5) days, each additional day during which that person shall not have so removed or restored the same, shall constitute a further and separate violation subject to such fine.

(E.) The Town also may correct or abate any such condition, or discrepancy at the violator's expense and, after obtaining a judgment from the court, certify any costs thereof to the County Finance Office to be collected in the same manner as taxes.

SECTION 17. ADMINISTRATIVE AND JUDICIAL REVIEW

(A.) A decision of the President of the Board of Commissioners or other official of the Town under this Ordinance may be appealed for error to the Town Board of Commissioners.

(B.) Except as stated herein, any person aggrieved by a decision of the Board of Commissioners with regard to an application for a permit filed under the provisions of this Ordinance and who appeared before the Board in person, by an attorney, or in writing, shall have the right to appeal the decision of the Board to the Circuit Court for Prince George's County, Maryland under the provisions of Title 7, Chapter 200 of the Maryland Rules of Procedure.

(C.) Denial of a refund of any fee paid to the Town as required by this Ordinance may be appealed pursuant to Title 13 of the Tax-General Article of the Annotated Code of Maryland to the Maryland Tax Court.

(D.) The Town shall advise the applicant in writing of its final decision supported by substantial evidence, findings and conclusions of law.

AND BE IT FURTHER ORDAINED AND ENACTED, by the Board of Commissioners of the Town of Upper Marlboro, Maryland that any prior ordinances adopting and enacting any provision of this Ordinance or any other ordinance or resolution previously adopted pertaining to a subject or subjects embodied by the title of this Ordinance or the provisions found in conflict herein shall be deemed amended, repealed and/or superseded by the provisions of this Ordinance, as applicable, and should a previously enacted ordinance cover a provision or subject that is not covered by this Ordinance, it shall remain in full force and effect unless it directly conflicts with the express language of this Ordinance.

BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that due to the exigent circumstances and important governmental interests stated in the above recitals and herein and in order to further promote the health, safety and welfare of the Town and the general public, the Charter provision requiring that an ordinance may not be passed at the meeting at which it is introduced is hereby suspended by unanimous vote of the Board of Commissioners, and that this Emergency Ordinance shall become effective immediately following approval by the Board of Commissioners.

BE IT FURTHER ENACTED AND ORDAINED by the Board of Commissioners of the Town of Upper Marlboro, Maryland that this Ordinance shall be posted in the Town Hall office, and it or a fair summary thereof, shall be published once in a newspaper of general circulation in the Town.

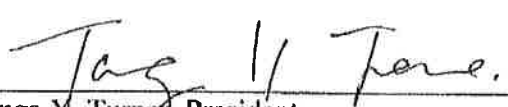
Adopted this 22ND day of January, 2019.



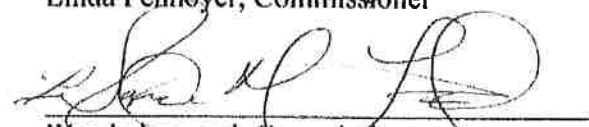
Attest:


M. David Williams, Town Clerk

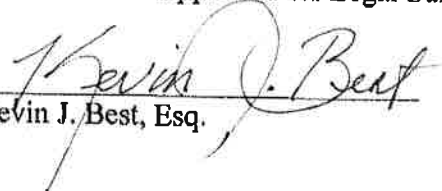
THE TOWN OF UPPER MARLBORO,
BOARD OF COMMISSIONERS


Tonga Y. Turner, President


Linda Pennoyer, Commissioner


Wanda Leonard, Commissioner

Reviewed and Approved for Legal Sufficiency

 Date: Jan. 24, 2019
Kevin J. Best, Esq.