AN ORDINANCE
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK, AMENDING CHAPTER 87, "BUILDING CONSTRUCTION" TO ADD §87-25, "INSTALLATION AND MAINTENANCE OF UNDERGROUND UTILITIES IN CITY RIGHTS OF WAY" AND AMENDING CHAPTER 110, "FEES AND PENALTIES ", §110-1 "FEES AND INTERESTS" TO INCLUDE THE FEES IMPOSED UNDER §87-25

WHEREAS, pursuant to §5-201 *et seq.* of the Local Government Article, Annotated Code of Maryland, the City of College Park, Maryland (hereinafter, the "City") has the power to pass such ordinances as it deems necessary to assure the good government of the municipality, and to protect and preserve the municipality's property; and

WHEREAS, pursuant to §5-211 of the Local Government Article, Annotated Code of Maryland, the City of College Park also has the express power to establish and enforce a building code; and

WHEREAS, pursuant to this authority, the City enacted Chapter 87 "Building Construction" to adopt a building code; and

WHEREAS, certain utilities seek to place fiber optic cable and conduits under the improved and unimproved City rights of way; and

WHEREAS, the underground use of City rights of way creates an administrative burden on the City with respect to installation and maintenance in the right of way; and

WHEREAS, the Mayor and Council have determined that it is in the public interest to assess a fee and/or require placement of fiber for City use as part of the permitting process for such use of the rights of way, and to require that contractors/owners comply with certain conditions and sign an agreement.

Section 1. **NOW, THEREFORE, BE IT ORDAINED AND ENACTED**, by the Mayor and Council of the City of College Park, Maryland, that Chapter 87 "Building Construction",

CAPS	: Indicate matter added to existing law.
[~~Brackets~~]	: Indicate matter deleted from law.
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§87-25, "Installation and Maintenance of Underground Utilities in City Rights of Way" of the Code of the City of College Park be, and is hereby, adopted to read as follows:

§87-25. INSTALLATION AND MAINTENANCE OF UNDERGROUND UTILITIES IN CITY RIGHTS OF WAY

A. APPLICATION: THE REQUIREMENTS OF THIS SECTION ARE IN ADDITION TO THE OTHER PROVISIONS OF THIS CHAPTER. A UTILITY THAT HAS BEEN GRANTED THE RIGHT BY LAW OR WRITTEN AGREEMENT TO LOCATE WITHIN CITY RIGHTS OF WAY IS EXEMPT FROM THIS SECTION, AS ARE UTILITY CONNECTIONS TO ADJACENT PROPERTIES FOR EXISTING WATER, ELECTRIC, TELEPHONE OR NATURAL GAS SERVICE. IF NOT EXEMPTED, THE REQUIREMENTS AND PROVISIONS OF THIS SECTION APPLY TO ALL UTILITY COMPANIES AND UTILITY FACILITIES, WHETHER PRIVATELY OR PUBLICLY OWNED.

B. AUTHORIZATION REQUIRED. EXCEPT FOR EMERGENCIES, NO WORK SHALL BE PERFORMED ON ANY COVERED FACILITY LOCATED UNDER THE PUBLIC RIGHT-OF-WAY WITHOUT A PERMIT ISSUED IN ACCORDANCE WITH THIS CHAPTER AND A RIGHT-OF-WAY USE AGREEMENT SIGNED BY THE OWNER OF THE INSTALLATION. ANY SUCH WORK THAT IS PERFORMED THAT IS NOT IN COMPLIANCE WITH THIS SECTION SHALL BE REMOVED BY THE OWNER OF THE INSTALLATION IMMEDIATELY UPON DEMAND BY THE CITY, AND THE OWNER SHALL RESTORE THE PUBLIC RIGHT-OF-WAY TO ITS CONDITION PRIOR TO THE PERFORMANCE OF THE UNAUTHORIZED WORK. ALL SUCH RESTORATION WORK SHALL BE AT THE SOLE COST AND EXPENSE OF THE OWNER OF THE

INSTALLATION, WHICH SHALL ALSO BE RESPONSIBLE FOR REIMBURSING THE CITY FOR ANY AND ALL COSTS AND EXPENSES THAT IT MAY INCUR ARISING OUT OF OR RELATING TO SUCH UNAUTHORIZED WORK. A PERMIT AND AGREEMENT SHALL BE REQUIRED FOR EACH ENTITY TO COVER THE FOLLOWING WORK PERFORMED ON ITS EXISTING OR NEW FACILITIES LOCATED WITHIN PUBLIC RIGHTS-OF-WAY OR EASEMENTS UNDER THE JURISDICTION OF THE CITY:

1. ROUTINE MAINTENANCE OF EXISTING UTILITY FACILITIES.
2. REPAIRS TO EXISTING UTILITY FACILITY INFRASTRUCTURE.
3. UNDERGROUND UTILITY FACILITY CONSTRUCTION WITHIN CITY RIGHTS OF WAY.

THE OWNER OF THE UTILITY FACILITY WHICH IS BEING MAINTAINED OR REPAIRED SHALL BE RESPONSIBLE FOR OBTAINING THE MAINTENANCE UTILITY PERMIT.

C. ADMINISTRATIVE FEE: IN ADDITION TO A PERMIT FEE AS REQUIRED UNDER CHAPTER 110 OF THE CITY CODE, THE OWNER OF THE PROPOSED INSTALLATION SHALL PAY AN ADMINISTRATIVE FEE TO THE CITY AS FOLLOWS:

1. COST OF CONSTRUCTION IS LESS THAN $25,000.00 - $1,000.00
2. COST OF CONSTRUCTION IS MORE THAN $25,000.00 - $2,000.00

IN LIEU OF AN ADMINISTRATIVE FEE, THE PERMIT APPLICANT MAY PROVIDE IF ACCEPTABLE TO THE CITY, AND /OR THE CITY MAY REQUIRE, INSTALLATION OF DARK FIBER AND CONDUIT FOR PERMANENT OWNERSHIP AND USE BY THE

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CITY. IN THIS CASE, THE CITY SHALL HAVE FULL AND EXCLUSIVE RIGHT TO OWN, USE AND MAINTAIN THE FIBER AND CONDUIT.

D. INDEMNIFICATION. THE PERMITTEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY, IT'S AGENTS, SERVANTS, EMPLOYEES AND CONTRACTORS, FROM AND AGAINST ANY AND ALL LOSSES, CLAIMS, SUITS OR DEMANDS FOR DAMAGES TO PROPERTY OR PERSONS ARISING OUT OF PERMITTEE'S USE OF THE RIGHTS-OF-WAY, UNLESS SUCH LOSS, CLAIM, SUIT OR DEMAND FOR DAMAGES IS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, ITS AGENTS, SERVANTS, EMPLOYEES, AGENTS OR CONTRACTORS.

Section 2

BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that Chapter 110 "Fees and Penalties ", §110-1 "Fees and interests", be, and is hereby repealed and reenacted with amendments to read as follows:

§110-1 "Fees and interests"

Chapter/Section	Description	Fee/Interest
	* * * * *	
Ch. 87 Building Construction		
	* * * * *	
§87-25		
	CONSTRUCTION COST LESS THAN $25,000.00	$1,000.00
	CONSTRUCTION COST MORE THAN $25,000.00	$2,000.00

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Section 3

BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall publish this proposed ordinance or a fair summary thereof in a newspaper having a general circulation in the City of College Park together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing, hereby set for **7:15** P.M. on the **27** day of **May** **2014**, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. As soon as practicable after adoption, the City Clerk shall have a fair summary of the Ordinance and notice of its adoption published in a newspaper having a general circulation in the City of College Park and available at the City's offices. This Ordinance shall become effective on **June 17, 2014** provided that a fair summary of this Ordinance is published at least once prior to the date of passage and once as soon as practical after the date of passage in a newspaper having general circulation in the City.

INTRODUCED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the **22** day of **April**, 2014.

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ADOPTED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the 27th day of May, 2014.

EFFECTIVE the 17th day of June, 2014.

ATTEST:

Janeen S. Miller, CMC, City Clerk

CITY OF COLLEGE PARK,

Andrew M. Fellows, Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Suellen M. Ferguson, City Attorney

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