

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF HAVRE DE GRACE PURSUANT TO THE LOCAL GOVERNMENT ARTICLE OF THE MARYLAND ANNOTATED CODE SECTION 5-202 AND CITY CHARTER SECTIONS 33 AND 34 AMENDING THE CITY CODE CHAPTER 145 REGULATING THE USE OF THE CITY’S RIGHTS OF WAY AND PUBLIC WAYS, INSTALLATION OF FACILITIES, AND DEFINING “SMALL CELL WIRELESS FACILITY” AND “SUPPORT STRUCTURE”

RECITALS

WHEREAS, pursuant to Md. Code Ann., Local Gov’t § 5-202, the City Council, as the legislative body of the City of Havre de Grace (the “Governing Body”) is authorized and empowered to pass ordinances to assure the good government of the City of Havre de Grace (the “City”); protect and preserve the City’s rights, property, and privileges; preserve peace and good order; secure persons and property from danger and destruction; and protect the health, comfort, and convenience of the residents of the City; and

WHEREAS, pursuant to Md. Code Ann., Local Gov’t § 5-205(d)(1)(i), the Governing Body is authorized and empowered to establish and collect reasonable fees and charges for franchises, permits, or licenses granted by the City; and

WHEREAS, pursuant to Sections 65 and 66, Chapter C, the Charter of the City of Havre de Grace (the “Charter”), the City shall have control of all public ways within its corporate limits, including all streets, avenues, roads, highways, public thoroughfares, lanes, and alleys, except such as may be under the jurisdiction of the Maryland State Highway Administration or Harford County; and

WHEREAS, pursuant to Section 67 of the Charter, the City shall have the power to establish and regulate any sidewalk or part thereof on City or private property along any public way, Rights of Way (hereinafter, ROW) or part thereof; and

WHEREAS, pursuant to the foregoing authority, the Governing Body has authority and obligation to protect the integrity of and public ways and ROW of the City; and

WHEREAS, the Governing Body finds that it is necessary, reasonable and lawful to regulate activities within State or County ROW, other than those activities or construction intended to be owned and/or operated by said governmental unit for those ROW, to effectively implement the requirements of this Chapter in order to protect the Safety, Health and Welfare of the community; and

1 **WHEREAS**, the primary purpose of the City, State and County public ways and ROW
2 is to accommodate pedestrian and vehicular traffic, respectively; and
3

4 **WHEREAS**, the City, State and County public ways and ROW contain a finite amount
5 of space and cannot therefore safely and responsibly accommodate the installation of an
6 unlimited number of utility and communications facilities and infrastructure; and
7

8 **WHEREAS**, many of these streets, public ways and ROW contain legacy infrastructure
9 which is vital to the health, safety and welfare of the citizens and businesses of the City,
10 including but not limited to the following facilities: electric power, natural gas, telephone
11 communications, municipal potable water supply, sanitary sewer, storm water management,
12 cellular communications towers, CATV (which includes telephone and internet communication
13 services), all of which are available to substantially all developed areas of the City and referred
14 to hereinafter as “Vital Legacy Infrastructure” which shall be subject to review and approval by
15 the Directors of Planning and/or the Department of Public Works and/or the Governing Body;
16 and
17

18 **WHEREAS**, the City has a legitimate interest in ensuring that third parties proposing to
19 install, construct, and maintain facilities and infrastructure in, upon or over the City’s ROW,
20 the State ROW, and County ROW, and public ways do so responsibly, without interfering with
21 existing facilities and infrastructure, without imposing a burden or safety risk upon pedestrian
22 or vehicular traffic, without a substantially detrimental impact on abutting properties, and
23 without imposing a burden on the City and its taxpayers for the costs of restoration of disturbed
24 areas, and without interfering with the City’s right and obligation to assure that sufficient space
25 remains available in the future for the repair, replacement, expansion or construction of existing
26 and/or new Vital Legacy Infrastructure in the public ways or ROW; and
27

28 **WHEREAS**, pursuant to federal law, including, but not limited to Sections 253 and
29 332 of the Communications Act (47 U.S.C. §§ 253 and 332), local governments are authorized
30 to control the placement, construction, and modification of personal/small wireless facilities and
31 manage the use of public ways or ROW and may require fair and reasonable compensation for
32 such use, but may not prohibit any entity’s ability to provide personal wireless service or other
33 telecommunications service or unreasonably discriminate among providers of functionally
34 equivalent services unless such use shall interfere with or impede the provision or reservation
35 of space for Vital Legacy Infrastructure and its components, and
36

37 **WHEREAS**, the Governing Body desires to accommodate the safe, non-burdensome
38 and efficient deployment of small wireless facilities in, upon and over the City, State and County
39 ROW and public ways in compliance with federal, State, and local law; and
40

41 **WHEREAS**, the Governing Body is desirous of amending the City Code of the City of
42 Havre de Grace, Chapter 145, providing for the use of the public ways and ROW and to
43 authorize the establishment of fees and aesthetic requirements for the permitting and
44 location of facilities in, upon or over City, State and County public ways and ROW; and
45

1 **WHEREAS**, due to the training and expertise of City staff, they are in the best position
2 to determine the most appropriate and effective policies dealing with the aesthetics and
3 placement of small cell facilities; and
4

5 **WHEREAS**, the Governing Body of the City of Havre de Grace, for the good and
6 welfare of the community, deem it necessary and appropriate to amend of the Code of the City
7 of Havre de Grace as set forth herein.
8

9 **NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Governing Body
10 of the City of Havre de Grace that:
11

12 Chapter 145: Rights of Way; Installation of Facilities, of The Code of the City of Havre
13 de Grace be and it is hereby amended with **Bold Underline (Additions)** and **Bold Strikethrough**
14 **(Deletions)** as follows:
15

16 CHAPTER 145: Rights of Way; Installation of Facilities
17

18 §145-1. Definitions.
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20 A. *Small cell wireless facility.* As used in this article, “small cell wireless facility” means
21 and refers to:
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- 23 (1) “Small cells,” which are low-powered wireless base stations that function like traditional
24 cell sites in a mobile wireless network but typically cover targeted indoor or localized
25 outdoor areas;
26
- 27 (2) “DAS” or “distributed antenna systems,” which use numerous antennae, commonly
28 known as “nodes,” similar in size to small cells and are connected to and controlled
29 by a central hub; and
30
- 31 (3) Other similar facilities, systems or devices designed to facilitate a mobile wireless
32 network within a localized area and to be attached to a support structure within public
33 ways or on private property.
34

35 B. *Support structure.* As used in this article, “support structure” means and refers to any
36 existing or new utility pole or other ~~framework~~ structure upon which a small cell wireless
37 facility may be located or attached, within the City’s public ways and ROW, provided said
38 structure otherwise complies with the requirements contained herein. A Support Structure
39 shall include a utility pole that is designed for, or used for the purpose of, carrying
40 lines, cables, or wires for electric telecommunications service, or non-decorative
41 electric lighting. A Support Structure shall not include any decorative pole, arch, or
42 structure consisting of any of the following (a) decorative or accent electric lighting;
43 (b) specially designed informational or directional signage; (c) temporary holiday or
44 special event attachments.
45

46 §145-2. Application for permit.
47

- 1 A. Any person, (hereinafter the “Applicant”) desiring to install a small **cell** wireless facility **or**
2 **Support Structure** upon or over any City, **State or County** public way or ROW shall first
3 submit an application for a permit, ~~lease and license agreement~~ to the Directors of the
4 **Department of** Public Works and Planning **Departments**, in a manner and with details
5 conforming with their requirements. The said Departments shall make a determination on
6 completeness of said application within 10 days of submission or substantial amendment.
7 Once an Application is deemed complete, said Departments shall **jointly** submit a
8 recommendation for approval, approval with conditions or denial to the Planning
9 Commission which shall issue its decision within 60 days of a determination of completeness
10 for any request for modification of an existing facility, 90 days of a determination of
11 completeness for applications relating to a small cell facility installation on an existing
12 structure, or 150 days for applications for small cell facilities on new support structures. If
13 the Directors so require, the Applicant shall post an escrow account sufficient to fund the
14 cost of experts that the Departments may need to assist in plan review as well as any
15 attorneys’ fees incurred as part of the City’s review process. The clock for the time allowed
16 for a recommendation shall be stopped from the date of said escrow request until said escrow
17 is posted and available for use by the City.
18
- 19 B. In addition to the other information required by this article, an Applicant for a permit
20 hereunder shall provide the following information:
21
- 22 (1) A technical description of the small **cell** wireless facility and existing support
23 structure along with detailed diagrams accurately depicting all components and
24 equipment;
25
 - 26 (2) A detailed description of the design, location and installation timeframe for the
27 small **cell** wireless facility **and/or support structure**;
28
 - 29 (3) An engineering certification prepared by a Professional Engineer licensed in the State
30 of Maryland;
31
 - 32 (4) A statement describing the Applicant’s intentions with respect to collocation;
33
 - 34 (5) A statement demonstrating the applicant’s ability to comply with all applicable
35 safety standards;
36
 - 37 (6) In the case of a proposed attachment to a City-owned support structure located in, upon
38 or over a public way or ROW, an executed agreement with the City **granting permission**
39 **for such attachment**;
40
 - 41 **(7) In the case of an installation planned for a State or County road, a certification**
42 **from the appropriate State or County Agency, along with a Resolution authorizing**
43 **such certification, if applicable, approving and authorizing such installation.**
44
 - 45 ~~(7)~~ **(8)** A description of the plan for decommissioning and removal of said small **cell** wireless
46 facility and ancillary components should such facilities become obsolete or abandoned

1 or should the licensee default in their obligations to the City including the failure to pay
2 all franchise fees, installation fees, plan review fees, **collocation fees**, annual license and
3 rental fees or any other required fee or fail in their duty to properly maintain said facilities
4 in a safe and aesthetically congruous condition. The **permittee** shall post a Bond,
5 satisfactory in form and amount to the requirements of the City Attorney, with the City
6 to assure such removal and decommissioning as described herein. **Any small cell**
7 **wireless facility or new support structure which remains unused for a period of 365**
8 **days without notification to the City regarding its status shall be deemed**
9 **abandoned.**

10
11 ~~(8)~~ **(9)** Such other information as **may be required by the Design Guidelines adopted**
12 **hereunder.**

13 **C. Nothing in this Chapter shall limit or prohibit the discretion of the Directors from**
14 **making publicly available information, materials, or other requirements in addition to**
15 **the Design Guidelines so long as such information, material or requirements do not**
16 **conflict with this Chapter or other applicable state or federal law.**

17
18 **D.** The applicant shall pay an application fee to the City upon applying to install a small **cell**
19 wireless facility in accordance with this Chapter, in addition to any other fees required by
20 any other provision of the Code of the City of Havre de Grace, and in an amount to be
21 specified and amended from time to time by Ordinance or Resolution of the Governing
22 Body. **Such fee shall be set forth in the City's Fee Schedule.**

23
24 **E.** An applicant may appeal an adverse ruling to the Board of Appeals upon the filing of a form
25 of Notice of Appeal and a filing fee of \$500.00.

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27
28 §145-3. Requirements and findings.

29
30 **A.** Small **cell** wireless facilities **or Support Structures** proposed to be located in, upon or
31 over City, **County or State or other** public ways and ROW shall meet the **detailed aesthetic,**
32 **safety, and performance standards ("Design Standards") adopted by resolution of the**
33 **Mayor and City Council. Such Design Standards are to be based on objective,**
34 **technically feasible criteria applied in a non-discriminatory manner that reasonably**
35 **match the aesthetics and character of the immediate surrounding area.**

36
37 ~~**A. Small wireless facilities shall comply with the following Performance Standards:**~~

38
39
40 ~~**(1) Small wireless facilities constructed on the top of existing support structures,**~~
41 ~~**shall not exceed the width of the existing support structure at the mounting**~~
42 ~~**location, and shall not exceed forty two (42) inches in height overall, nor may**~~
43 ~~**the overall height of the support structure, with the small wireless facility**~~
44 ~~**attached, exceed 36 feet in height, nor shall it exceed the average height of the**~~

1 existing support structure within the area extending five hundred (500) feet in any
2 direction from the proposed location, whichever is less;

3
4 ~~(2) Not obstruct pedestrian or vehicular flow or sight lines;~~

5
6 ~~(3) If metal, be treated or painted with non-reflective paint, and in a way to conform to~~
7 ~~or blend in with the surroundings, including color coordination with the existing~~
8 ~~support structure. When so required by the Director of Public Works and/ or the~~
9 ~~Director of Planning, or by the Governing Body in their review of the Application, the~~
10 ~~small wireless facility shall be located in an enclosure, sealed at the top with a conical~~
11 ~~device to prevent ponding of water, that is of such size, shape and color as to appear to~~
12 ~~be an extension of the support structure itself;~~

13
14 ~~(4) Any cabling from the small wireless facility to the support components located in other~~
15 ~~areas of the utility pole or structure shall be entirely contained within conduit color~~
16 ~~matched to the support structure; all such support components shall not exceed the~~
17 ~~width of the support structure nor shall they protrude from said support structure~~
18 ~~more than four and one half (4 1/2) inches, and shall be neatly organized and constructed~~
19 ~~in an appropriate location that minimizes any visual impacts and protects pedestrians~~
20 ~~and motorists from any injury;~~

21
22 ~~(5) The small wireless facility along with all support components shall not generate any~~
23 ~~noise audible to any person within 100 feet of the ROW, Public Way or sidewalk;~~

24
25 ~~(6) Consistent with applicable Federal standards, the small wireless facility shall not~~
26 ~~generate any interference with any other device, utility or telecommunications~~
27 ~~component, including any Vital Legacy Infrastructure or its components.~~

28
29 ~~(7) To the extent an applicant seeks installation of a new support structure, the applicant~~
30 ~~shall provide a detailed report as to why existing support structures are inadequate for~~
31 ~~the placement of the small cell facility.~~

32
33 ~~(8) Comply with such other requirements and conditions as the Directors, Planning~~
34 ~~Commission, or Governing Body may deem appropriate to impose consistent with~~
35 ~~existing State and Federal law.~~

36
37 ~~(9) A Permit shall not be required for either (a) routine maintenance, or (b) the~~
38 ~~replacement of a small wireless facility with another that is substantially the same as~~
39 ~~the existing facility in all respects as regulated herein. If such repair or replacement~~
40 ~~requires any excavation within the ROW or the closure of sidewalks or vehicular lanes~~
41 ~~within the ROW, a Permit shall be required to the same extent as for any other similar~~
42 ~~work within said ROW.~~

43
44 **B.** Small wireless facilities and new Support Structures shall be located, designed and
45 operated in accordance with all Design Standards, applicable laws and regulations and to

1 minimize visual impact on surrounding properties and from and public ways and ROW, and
2 shall otherwise comply with such requirements and conditions as the Governing Body may
3 deem appropriate to impose.

4
5 D. The proposed location shall not be in an area where there is an over-concentration of small
6 cell wireless facilities or support structures in, upon or over the City's public ways and
7 ROW.
8

9 E. The location selected and the scale and appearance of the small cell wireless facility or
10 support structure to be installed shall be consistent with the general character of the
11 neighborhood, and if the location selected is in an historic area, the Historic Preservation
12 Commission may provide recommendations to the Planning Commission to maintain
13 consistent appearance in the immediately surrounding area in accordance with the
14 Design Standards adopted by resolution of the Mayor and City Council.
15

16 F. The applicant shall provide insurance, bonding and indemnification, in a form and amount
17 acceptable to the Governing Body, to protect the City and its officials and residents from
18 injury or liability relating to or arising from the installation, maintenance, operation, and/or
19 removal of said small cell wireless facility and/or support structure.
20

21 §145-4. Exceptions.
22

23 The Governing Body shall not issue any permit for a small cell wireless facility when, in its
24 sole judgment, sufficient capacity no longer exists for additional small wireless facilities to
25 be placed in the proposed location or upon the proposed support structure without
26 jeopardizing the physical integrity of other small cell wireless facilities, support structures
27 or other utilities already present in the proposed location, or impedes or interferes with the
28 ability of the City to provide for the necessary expansion, relocation, construction or
29 reconstruction of any existing or new infrastructure or Vital Legacy Infrastructure
30 components, or the safe and efficient vehicular or pedestrian use of the sidewalk, public way
31 or ROW. Nothing in this Chapter prevents the City from applying its generally
32 applicable regulations for the protection of the health, safety, and welfare of its citizens.
33

34 §145-5. Permit limitations.
35

36 A. Nothing in this article shall affect or limit the City's right to charge a separate fee for access
37 to or for the use of City property, facilities or public ways consistent with State and
38 Federal law. Any permit granted pursuant to this article shall be in addition to and not in
39 lieu of any other fee, rent, lease, license or franchise required to occupy or place facilities
40 in or on City property, facilities, public ways or ROW. Such additional fees as may be
41 applicable, which may include an annual collocation fee, shall be set forth in the City's
42 Fee Schedule. Collocation shall refer to the installation, mounting, modification,
43 operation or replacement of a wireless facility on a Support Structure.
44

45 B. The installation of the small cell wireless facility, collocation, or Support Structure
46 under a permit provided by this Chapter shall be completed within 180 days after the

1 issuance of the permit. The applicant may request an extension of time in writing. The
2 City may agree to such extension unless the delay in completion was caused by failure
3 of the applicant to move the installation forward in a timely manner.
4

5 C. This Chapter does not govern work permits that otherwise may be applicable and it is
6 the applicant's responsibility to apply for such additional permits.
7

8 D. Permit shall not be required for either (a) routine maintenance, or (b) the replacement
9 of a small cell wireless facility with another that is substantially the same as the existing
10 facility in all respects as regulated herein. If such repair or replacement requires any
11 excavation within the ROW or the closure of sidewalks or vehicular lanes within the
12 ROW, a Permit shall be required to the same extent as for any other similar work
13 within said ROW.
14

15 §145-6. Rulemaking Authority.
16

17 The Director of the Department of Planning is hereby authorized to promulgate
18 additional rules and regulations, including but not limited to the adoption of forms
19 and application submittal requirements, to carry out the purpose and intent of this
20 Chapter in order to protect the public health, safety and welfare of citizens, and the
21 aesthetic character of the City and its neighborhoods. Such rules, regulations and any
22 amendments thereto shall be consistent with this Chapter and State and Federal law,
23 and shall be subject to the approval of the Director of Administration after
24 consultation with the Administrative Committee.
25

26 §145-76. Severability.
27

28 If the provisions of any section, subsection, paragraph, subparagraph or clause of this chapter
29 shall be judged invalid by a court of competent jurisdiction, such order or judgment shall not
30 affect or invalidate the remainder of any section, subsection, paragraph, sub-paragraph or
31 clause of this Chapter and, to this end, the provisions of each section, subsection, paragraph,
32 subparagraph or clause of this Chapter are hereby declared to be severable.
33

34 §145-89. Construction.
35

36 This Chapter being necessary for the safety, health and welfare of the City of Havre de
37 Grace and its inhabitants shall be construed liberally to effect the purposes thereof.
38

39 §145-9. Penalty.
40

41 Failure of an applicant to comply with any provision of this Chapter or the Design
42 Guidelines shall be deemed a municipal infraction with a fine of \$ _____ per day for
43 each day the violation continues. In addition, the City, through its Director of Planning,
44 may revoke any permit issued for a violation of this Chapter or the Design Guidelines.
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BE IT FURTHER ORDAINED that pursuant to the authority granted under the City Charter the City Council has determined that an emergency exists and it has suspended the relevant provision of Charter Section C-19A such that this ordinance is hereby adopted after a Second Reading on the same date as the public hearing.

ATTEST:

THE MAYOR AND CITY COUNCIL
OF HAVRE DE GRACE

PATRICK D. SYPOLT
DIRECTOR OF ADMINISTRATION

WILLIAM T. MARTIN, MAYOR

First Reading: March 18, 2019
Public Hearing: April 1, 2019
Second Reading/Adoption: April 1, 2019

History: See Ordinance 1012 adopted January 10, 2019