

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 BY CREATING A NEW CHAPTER 145 REGULATING THE USE OF THE CITY’S RIGHTS OF WAY AND PUBLIC WAYS, INSTALLATION OF FACILITIES, AND DEFINING “SMALL 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 primary purpose of the City’s and public ways and ROW is to accommodate pedestrian and vehicular traffic, respectively; and

WHEREAS, the City’s, public ways and ROW contain a finite amount of space and cannot therefore safely and responsibly accommodate the installation of an unlimited number of utility and communications facilities and infrastructure; and

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

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

21 **WHEREAS**, pursuant to federal law, including, but not limited to Sections 253 and
22 332 of the Communications Act (47 U.S.C. §§ 253 and 332), local governments are authorized
23 to control the placement, construction, and modification of personal/small wireless facilities and
24 manage the use of public ways or ROW and may require fair and reasonable compensation for
25 such use, but may not prohibit any entity’s ability to provide personal wireless service or other
26 telecommunications service or unreasonably discriminate among providers of functionally
27 equivalent services unless such use shall interfere with or impede the provision or reservation
28 of space for Vital Legacy Infrastructure and its components, and
29

30 **WHEREAS**, the Governing Body desires to accommodate the safe, non-burdensome
31 and efficient deployment of small wireless facilities in, upon and over the City’s and public
32 ways and ROW in compliance with federal, State, and local law; and
33

34 **WHEREAS**, the Governing Body is desirous of amending the City Code of the City of
35 Havre de Grace by adding a new Chapter 145 to provide regulations for the use of the public
36 ways and ROW, to provide a definition for “small wireless facility” and “support structure” and
37 to authorize the establishment of fees and aesthetic requirements for the permitting
38 and location of facilities in, upon or over City’s public ways and ROW; and
39

40 **WHEREAS**, the Governing Body of the City of Havre de Grace, for the good and
41 welfare of the community, deem it necessary and appropriate to amend of the Code of the City
42 of Havre de Grace as set forth herein.
43

44 **NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Governing Body
45 of City of Havre de Grace that:
46

1 The Code of the City of Havre de Grace be and it is hereby amended by adding a new
2 Chapter 145: Rights of Way; Installation of Facilities, with the new Chapter shown in **underline**
3 **underline** as follows:

4
5 **CHAPTER 148: Rights of Way; Installation of Facilities**

6
7 **§145-1. Definitions.**

8
9 **A. *Small wireless facility.* As used in this article, “small wireless facility” means and**
10 **refers to:**

11
12 **(1) “Small cells,” which are low-powered wireless base stations that function like**
13 **traditional cell sites in a mobile wireless network but typically cover targeted**
14 **indoor or localized outdoor areas;**

15
16 **(2) “DAS” or “distributed antenna systems,” which use numerous antennae,**
17 **commonly known as “nodes,” similar in size to small cells and are connected to**
18 **and controlled by a central hub; and**

19
20 **(3) Other similar facilities, systems or devices designed to facilitate a mobile wireless**
21 **network within a localized area and to be attached to a support structure within**
22 **public ways or on private property.**

23
24 **B. *Support structure.* As used in this article, “support structure” means and refers to any**
25 **existing utility pole or other framework upon which a small wireless facility may be**
26 **located or attached, within the City’s public ways and ROW, provided said structure**
27 **otherwise complies with the requirements contained herein,**

28
29 **§145-2. Application for permit.**

30
31 **A. Any person, (hereinafter the “Applicant”) desiring to install a small wireless facility**
32 **upon or over any City public way or ROW shall first submit an application for a**
33 **permit, lease and license agreement to the Directors of the Public Works and Planning**
34 **Departments, in a manner and with details conforming with their requirements. The**
35 **said Departments shall make a determination on completeness of said application**
36 **within 10 days of submission or substantial amendment. Once an Application is**
37 **deemed complete, said Departments shall submit a recommendation for approval,**
38 **approval with conditions or denial to the Planning Commission which shall issue its**
39 **decision within 60 days of a determination of completeness for any request for**
40 **modification of an existing facility, 90 days of a determination of completeness for**
41 **applications relating to a small cell facility installation on an existing structure, or 150**
42 **days for applications for small cell facilities on new support structures. If the Directors**
43 **so require, the Applicant shall post an escrow account sufficient to fund the cost of**
44 **experts that the Departments may need to assist in plan review as well as any attorneys’**
45 **fees incurred as part of the City’s review process. The clock for the time allowed for a**

1 recommendation shall be stopped from the date of said escrow request until said escrow
2 is posted and available for use by the City.

3
4 **B. In addition to the other information required by this article, an Applicant for a permit**
5 **hereunder shall provide the following information:**

6
7 **(1) A technical description of the small wireless facility and existing support**
8 **structure along with detailed diagrams accurately depicting all components and**
9 **equipment;**

10
11 **(2) A detailed description of the design, location and installation timeframe for**
12 **the small wireless facility;**

13
14 **(3) An engineering certification prepared by a Professional Engineer licensed in the**
15 **State of Maryland;**

16
17 **(4) A statement describing the Applicant's intentions with respect to collocation;**

18
19 **(5) A statement demonstrating the applicant's ability to comply with all applicable**
20 **safety standards;**

21
22 **(6) In the case of a proposed attachment to a City-owned support structure located in,**
23 **upon or over a public way or ROW, an executed attachment agreement with the**
24 **City;**

25
26 **(7) A description of the plan for decommissioning and removal of said small wireless**
27 **facility and ancillary components should such facilities become obsolete or**
28 **abandoned or should the licensee default in their obligations to the City including**
29 **the failure to pay all franchise fees, installation fees, plan review fees, annual license**
30 **and rental fees or any other required fee or fail in their duty to properly maintain**
31 **said facilities in a safe and aesthetically congruous condition. The licensee shall post**
32 **a Bond, satisfactory in form and amount to the requirements of the City Attorney,**
33 **with the City to assure such removal and decommissioning as described herein.**

34
35 **(8) Such other information as the Governing Body or Directors of Public Works**
36 **and/or Planning may require.**

37
38 **C. The applicant shall pay an application fee to the City upon applying to install a small**
39 **wireless facility in accordance with this Chapter, in addition to any other fees required**
40 **by any other provision of the Code of the City of Havre de Grace, and in an amount to**
41 **be specified and amended from time to time by Ordinance or Resolution of the**
42 **Governing Body.**

43
44 **D. An applicant may appeal an adverse ruling to the Board of Appeals upon the filing of**
45 **a form of Notice of Appeal and a filing fee of \$500.00.**

1
2
3 **§145-3. Requirements and findings.**

4
5 **Small wireless facilities proposed to be located in, upon or over City or public ways and**
6 **ROW shall meet the following requirements:**
7

8 **A. Small wireless facilities shall comply with the following Performance Standards:**
9

10
11 **(1) Small wireless facilities constructed on the top of existing support**
12 **structures, shall not exceed the width of the existing support structure at**
13 **the mounting location, and shall not exceed forty two (42) inches in height**
14 **overall, nor may the overall height of the support structure, with the small**
15 **wireless facility attached, exceed 36 feet in height, nor shall it exceed the**
16 **average height of the existing support structure within the area extending five**
17 **hundred (500) feet in any direction from the proposed location, whichever is less;**
18

19 **(2) Not obstruct pedestrian or vehicular flow or sight lines;**
20

21 **(3) If metal, be treated or painted with non-reflective paint, and in a way to conform**
22 **to or blend in with the surroundings, including color coordination with the existing**
23 **support structure. When so required by the Director of Public Works and/ or the**
24 **Director of Planning, or by the Governing Body in their review of the Application,**
25 **the small wireless facility shall be located in an enclosure, sealed at the top with a**
26 **conical device to prevent ponding of water, that is of such size, shape and color as**
27 **to appear to be an extension of the support structure itself;**
28

29 **(4) Any cabling from the small wireless facility to the support components located in**
30 **other areas of the utility pole shall be entirely contained within conduit color**
31 **matched to the support structure; all such support components shall not exceed the**
32 **width of the support structure nor shall they protrude from said support structure**
33 **more than four and one half (4 ½) inches, and shall be neatly organized and**
34 **constructed in an appropriate location that minimizes any visual impacts and**
35 **protects pedestrians and motorists from any injury;**
36

37 **(5) The small wireless facility along with all support components shall not generate any**
38 **noise audible to any person within 100 feet of the ROW, Public Way or sidewalk;**
39

40 **(6) Consistent with applicable Federal standards, the small wireless facility shall not**
41 **generate any interference with any other device, utility or telecommunications**
42 **component, including any Vital Legacy Infrastructure or its components.**
43

1 (7) To the extent an applicant seeks installation of a new support structure, the
2 applicant shall provide a detailed report as to why existing support structures are
3 inadequate for the placement of the small cell facility.
4

5 (8) Comply with such other requirements and conditions as the Directors,
6 Planning Commission, or Governing Body may deem appropriate to impose
7 consistent with existing State and Federal law.
8

9 C. Small wireless facilities shall be located, designed and operated in accordance with all
10 applicable laws and regulations and to minimize visual impact on surrounding
11 properties and from and public ways and ROW, and shall otherwise comply with such
12 requirements and conditions as the Governing Body may deem appropriate to impose.
13

14 D. The proposed location shall not be in an area where there is an over-concentration
15 of small wireless facilities or support structures in, upon or over the City's public ways
16 and ROW;
17

18 E. The location selected and the scale and appearance of the small wireless facility
19 to be installed shall be consistent with the general character of the neighborhood,
20 and if the location selected is in an historic area, the Historic Preservation
21 Commission may provide recommendations to maintain consistent appearance;
22

23 F. The applicant shall provide insurance, bonding and indemnification, in a form and
24 amount acceptable to the Governing Body, to protect the City and its officials and
25 residents from injury or liability relating to or arising from the installation, operation,
26 and/or removal of said small wireless facility;
27

28 §145-4. Exceptions.
29

30 The Governing Body shall not issue any permit for a small wireless facility when, in its
31 sole judgment, sufficient capacity no longer exists for additional small wireless facilities to
32 be placed in the proposed location without jeopardizing the physical integrity of other
33 small wireless facilities, support structures or other utilities already present in the
34 proposed location, or impedes or interferes with the ability of the City to provide for the
35 necessary expansion, relocation, construction or reconstruction of any existing or new
36 infrastructure or Vital Legacy Infrastructure components, or the safe and efficient
37 vehicular or pedestrian use of the sidewalk, public way or ROW.
38

39 §145-5. Permit limitations.
40

41 Nothing in this article shall affect or limit the City's right to charge a separate fee for
42 access to or for the use of City property, facilities or public ways. Any permit granted
43 pursuant to this article shall be in addition to and not in lieu of any other fee, rent, lease,
44 license or franchise required to occupy or place facilities in or on City property, facilities,
45 public ways or ROW.
46

1
2 **§145-6. Severability and Construction.**

3
4 **If the provisions of any section, subsection, paragraph, subparagraph or clause of this**
5 **chapter shall be judged invalid by a court of competent jurisdiction, such order or**
6 **judgment shall not affect or invalidate the remainder of any section, subsection,**
7 **paragraph, sub-paragraph or clause of this chapter and, to this end, the provisions of each**
8 **section, subsection, paragraph, subparagraph or clause of this chapter are hereby declared**
9 **to be severable.**

10
11 **§145-7 Construction**

12
13 **This chapter being necessary for the safety, health and welfare of the City of Havre de**
14 **Grace and its inhabitants shall be construed liberally to effect the purposes thereof.**

15
16
17 BE IT FURTHER ORDAINED that pursuant to the authority granted under the City
18 Charter the City Council has determined that an emergency exists and it has suspended the relevant
19 provision of Charter Section C-19A such that this ordinance is hereby adopted after a Second
20 Reading on the same date as the public hearing.

21
22 ATTEST:

THE MAYOR AND CITY COUNCIL
OF HAVRE DE GRACE

23
24
25
26
27
28 _____
29 PATRICK D. SYPOLT
30 DIRECTOR OF ADMINISTRATION

WILLIAM T. MARTIN, MAYOR

31 First Reading: January 7, 2019
32 Public Hearing: January 10, 2019
33 Second Reading/Adoption: January 10, 2019