

TOWN OF HAMPSTEAD  
ORDINANCE NO. 533

AN ORDINANCE TO AMEND CHAPTER 135 OF THE HAMPSTEAD TOWN CODE ADDING PROVISIONS REGARDING THE INSTALLATION OF WIRELESS FACILITIES.

WHEREAS, pursuant to Maryland Code Annotated, Local Government Article §5-202, the Town of Hampstead, Maryland (“the Town”) has the authority to adopt such ordinances as it deems necessary to assure the good government of the Town, to protect and preserve the Town’s rights, property and privileges, and to preserve peace and good order; and

WHEREAS, advances in communication technology may result in increased use of public ways for placement of facilities and equipment; and

WHEREAS, the Town’s streets, sidewalks and other right-of-way 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

WHEREAS, the Town has a legitimate interest in ensuring that third parties proposing to install, construct and maintain facilities on the Town’s streets, sidewalks and other right-of-way do so responsibly, without interfering with existing facilities and infrastructure, without imposing a burden or safety risk on pedestrian or vehicular traffic, without a substantially detrimental impact on abutting properties, and without imposing a burden on the Town and its taxpayers for the cost of restoration of disturbed areas; and

WHEREAS, the Town desires to accommodate the safe and efficient deployment of wireless facilities and support structures in the Town’s streets, sidewalks and other right-of-way; and

WHEREAS, these amendments have been reviewed by the Planning and Zoning Commission; and

WHEREAS, the Mayor and Council held a public hearing on this amendment on the 10<sup>th</sup> day of September, 2019; and

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE TOWN OF HAMPSTEAD:

ARTICLE 1. That Chapter 135 of the Code of the Town of Hampstead be amended to add a new section as follows:

§135-19.1. Wireless Facilities.

A. Purpose. The purpose of this Article is to establish general procedures and standards, consistent with all applicable Federal and State laws, for the placement, construction, installation, collocation, modification, relocation, operation and removal of wireless facilities and other utilities in the Town right-of-way. The goals of this Article are to:

1. Provide standards, technical criteria and details for small cell wireless facilities, wireless support structures and other utilities in the Town right-of-way to be uniformly applied to all applicants, owners and operators of such facilities;

2. Enhance the ability of wireless communications carriers to deploy small cell wireless technology in the Town quickly, effectively and efficiently so that residents, businesses and visitors benefit from robust wireless service availability;
3. Preserve the character of Town neighborhoods and corridors;
4. Ensure that small cell facilities, wireless support structures and other utilities conform to all applicable health and safety regulations and blend into the surrounding environment to the greatest extent possible.

B. Definitions.

1. “Antenna” means communications equipment that transmits and/or receives electromagnetic radio frequency signals used in the provision of wireless services. This definition does not apply to broadcast antennae, antennae designed for amateur radio use, or satellite dishes for residential or household purposes.
2. “Collocate” means to install or mount a small wireless facility in the public right-of-way 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.
3. “Communications Service” means, collectively, the equipment at a fixed location or locations within the public right-of-way that enables communications services, including: (i) radio transceivers, antennae, co-axial, fiber-optic or other cabling, power supply (including 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.
4. “Facility” means wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.
5. “Micro-Wireless Facility” means Wireless Facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height and an exterior antenna, no longer than 11 inches, if any.
6. “Omni-Dome Antenna” means a wireless transmitting or receiving antenna that radiates or intercepts radio-frequency (RF) electromagnetic fields equally well in all horizontal directions in a flat, two-dimensional (2D) geometric plane; it receives signals from all directions and so needs to be installed in a vertical position in the area of the strongest signal.
7. “Panel Antenna” means a type of directional antenna, sending and receiving signals from only one direction, consisting of a dipole placed ahead of a flat-panel reflector.
8. “Provider” means a communications service provider or a wireless services provider and includes any person that owns and/or operates within the Public Right-of-Way any communications facilities, wireless facilities, poles built for the sole or primary purpose of supporting communications facilities.
9. “Public Right-of-Way” or “Public ROW” means the area on, below, or above property that has been designated for use as or is used for a public roadway, highway, street, sidewalk, alley or similar purpose, and for purposes of this chapter shall include public utility easements.
10. “Small Wireless Facility” means a wireless facility that meets the following criteria: (1) the structure on which antenna facilities are mounted (i) is thirty feet (30’) or less in height, including existing antennae, or (ii) is not extended to a height

or more than thirty feet (30') or by more than ten percent (10%) above its preexisting height, whichever is greater; (2) each antenna associated with the deployment, excluding the associated equipment, is not more than three (3) cubic feet in volume; (3) all other wireless equipment associated with the antenna, including the provider's pre-existing equipment, is cumulatively no more than twenty-eight (28) cubic feet in volume; (4) the facility does not require antenna structure registration under Federal law; and (5) the facility does not result in human exposure to radiofrequency radiation in excess of applicable safety standards under Federal law.

11. "Support Structure" means a structure in the public right-of-way other than a pole or a tower to which a wireless facility is attached at the time of the application.

12. "Utility Pole" means a tall pole, usually constructed of wood, used to carry telephone wires, electrical wires and other utility lines above the ground.

13. "Wireless Facility" means the equipment at a fixed location or locations in the Public Right-of-Way that enables wireless services. The term does not include: coaxial, fiber-optic or other cabling that is between communications facilities or poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna. A Small Wireless Facility is one type of a wireless facility.

#### C. Location of Wireless Facilities.

1. The following areas are permitted for placement of wireless facilities:

a. Areas zoned "Residential Business", "Local Business", "General Business", or "Restricted Industrial";

b. Areas not adjacent to any Residential District or Historic District.

2. The following areas are conditional for placement of Wireless Facilities requiring Commission approval:

a. Any area within the Main Street Revitalization Area;

(1) As a condition for approval of new Small Wireless Facilities within the Main Street Revitalization Area, every effort must be made to camouflage and conceal to the maximum extent feasible all proposed equipment within proposed freestanding antenna pole(s) as applicable and consolidate all equipment within approved singular enclosures. If design and concealment treatments are determined on review by the Commission to be insufficient, the Application may be denied.

(2) All new Small Wireless Facilities within the Main Street Revitalization Area, must be located no closer than one half block off of Main Street.

(3) Proposed elements of pole(s) shall be aesthetically matching and consistent with character and height of adjacent poles and street lights and approved and agreed to by the Town.

(4) If the application requests placement on Main Street, the application will be referred to the Commission. The applicant shall provide the Commission documentation evidencing why placement on a side street is infeasible. The Commission shall make a recommendation to the Town Manager;

b. Residential District, Historic District, and historically designated properties:

Within all Residential Districts, all new Small Wireless Facilities and/or Support Structures shall ensure that they:

- (1) Do not significantly create a new obstruction to property sight lines.
- (2) In alignment with existing trees, utility poles, and streetlights.
- (3) Equal distance between trees when possible, with a minimum of 15 feet separation such that no proposed disturbance shall occur within the critical root zone of any tree.
- (4) With appropriate clearance from existing utilities.
- (5) Located at least 10 feet away from the triangle extension of a driveway flare.
- (6) No closer than 250 feet, radially, to another freestanding small cell.
- (7) All lines, including power and transport facilities, connecting to a new Support Structure, shall be placed in duct or conduit that is buried below ground.
- (8) New overhead wiring to accommodate the antennae will not be permitted.
- (9) When trees, bushes, rocks, and other forms of landscaping are used for screening, such landscaping must match the predominant landscaping form and species within one block of the facilities.

c. Public Parks.

- (1) Screening and equipment enclosures shall blend with or enhance the surrounding area in terms of scale, form, texture, materials, and color. Equipment shall be concealed as much as possible by blending into the natural and/or physical environment. All screening shall be at the reasonable discretion of the Town.
- (2) No Small Cell Facility/Wireless Facility and/or Support Structure shall be attached or supported by any park equipment, facilities, or structures.

3. The Town may propose an alternate location for a wireless facility within three hundred feet (300') of the proposed location, which does not impose burdensome technical limits or unreasonable costs to the operator.

D. Application for a Permit.

1. The installation of Wireless Facilities and support structures in a Public Right-of-Way shall require a permit under this chapter. No permit shall be issued with respect to the installation of wireless facilities or support structures in, on, or over any Town street, sidewalk, or right-of-way unless and until the permit applicant and the Town have negotiated and executed a franchise or Right-of-Way

Use Agreement, setting forth the terms and conditions, including fair compensation to the Town, for applicants' use of Public Right-of-Way, and where applicable, lease payments for the use of any Town-owned poles or facilities.

2. In addition to the other information required by this Article, an application for such a permit shall include the following information pertaining to particular sites or a proposed deployment:

a. A technical description of the proposed facilities, along with detailed diagrams accurately depicting all proposed facilities and support structures;

b. A detailed deployment plan describing construction planned for the twelve (12) month period following the issuance of the permit, and a description of the completed deployment;

c. An engineering certification relating to the proposed construction submitted by an engineer licensed in the State of Maryland;

d. A statement describing the applicant's intentions with respect to collocation;

e. A statement demonstrating the permittee's duty to comply with applicable safety standards for the proposed activities in the Public Right-of-Way;

f. In the case of a proposed attachment to a Town-owned facility located in the Public Right-of-Way, an executed agreement with the Town;

g. In the case of a proposed attachment to a utility pole not owned by the Town but in the Public Right-of-Way, an executed attachment agreement with the utility pole owner;

h. Such other information as the Town Manager may require.

3. Within thirty (30) days of the date of submission of an application the applicant shall be notified in writing of any deficiencies related to the completeness of the application. No additional review or consideration of the application shall occur until such deficiencies are corrected. Remediation of deficiencies in an application shall be deemed an amendment of the application that was received and will again be reviewed for completeness as provided in this paragraph.

4. The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the application complete has been afforded. Applications will be deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.

#### E. Wireless Requirements and Findings.

1. Wireless Facilities and support structures proposed to be located on Town streets, sidewalks or other Public Right-of-Way shall meet the following requirements:

a. Absent a special finding by the Town Manager, wireless facilities may only be installed on existing utility poles, and only entities certificated by the Maryland Public Service Commission pursuant to Maryland Code Annotated, Public Services and Utilities Article, Division I, Title 7 or Title 8, may erect new poles in the Public Right-of-Way.

b. Any new pole installed in Public Right-of-Way to support Wireless Facilities shall:

i. Comply with all structural and safety standards specified by the Town Manager and this chapter;

- ii. Not obstruct pedestrian or vehicular traffic flow or sight lines;
  - iii. Not exceed the average height of the existing street light poles or utility poles within the area extending one thousand feet (1,000') in any direction of the proposed structure;
  - iv. Be designed to accommodate the collocation of at least three (3) different wireless providers' antennae and related equipment;
  - v. If metal, be treated or painted with non-reflective paint, and in a way to conform to or blend into the surroundings; and
  - vi. Comply with such other requirements and conditions as the Town Manager may conclude are appropriate to impose.
2. Any Wireless Facilities installed on a pole or any other structure in the Public Right-of-Way shall:
- a. Have equipment box or boxes no greater in collective size than twenty-four (24) cubic feet in volume, provided that neither the width nor the depth of any box may exceed two (2) linear feet;
  - b. Have panel antennae no greater than two feet (2') in height, and omni/dome antennae no more than four feet (4') in height, and no wider than the sixteen inch (16") diameter;
  - c. Have no more than three (3) single panel antenna per pole, and no more than one omni-dome antenna per pole;
  - d. Have microwave dishes no greater than two feet (2') in diameter, with no more than three (3) microwave dishes per pole;
  - e. Be treated or painted with non-reflective paint, and in a way to conform to or blend into the pole or the surroundings; and
  - f. Comply with such other requirements and conditions as the Town Manager may conclude are appropriate to impose.
3. Concealment.
- a. Small Wireless Facilities. Small Wireless Facilities shall be concealed in an equipment box or cabinet. Unless approved by the Town, there shall be no external wires hanging from the pole and all wires shall be enclosed in a conduit.
  - b. Equipment Enclosures. Equipment enclosures, including electric meters, shall be as small as possible. Ground-mounted equipment shall incorporate concealment elements into the proposed design such as landscaping, barriers, strategic placement in a less visible location and placement within existing street furniture.
  - c. Landscaping. Landscape screening may be required around ground mounted equipment enclosures. The planting quantity and size must insure that one hundred percent (100%) screening is achieved within three (3) years of installation. All maintenance of landscaping is the responsibility of the operator. Any proposed pruning or removal of existing trees, shrubs or other landscaping in the Public Right-of-Way for installation must be noted in the permit application to be reviewed by the Town.
  - d. All colors must match the background of any wireless support structure which facilities are attached. In the case of existing wood poles, finishes of conduit shall be aluminum or stainless steel. Equipment attached to metal poles must match the pole finish and color. Equipment cabinets and other encasements shall be finished using a Town approved method and color.

4. Signage/Lights/Logs/Decals.

a. Signage. The operator shall post the name, location, identifying information, and emergency telephone number in an area on the cabinet of the Small Wireless Facility visible to the public. Signage required under this section shall not exceed 4" x 6", unless otherwise required by law. If no cabinet exists, the signage shall be placed at the base of the pole.

b. Lights. Small Wireless Facility and wireless support structures shall not be illuminated, except to meet State, Federal or Local requirements.

c. Logos/Decals. The operator shall remove or paint over unnecessary equipment manufacturer decals. Small Wireless Facility and wireless support structures shall not include advertisements and may only display information required by Federal, State or Local code.

5. Wireless Facilities and support structures proposed to be located on Town streets, sidewalks or other Public Right-of-Way may be permitted upon a finding by the Town Manager that:

a. The application complies with all standards and requirements set forth in this chapter;

b. The location selected in the application is not in an area where there is an over-concentration of poles or other facilities in, on, or over the streets, sidewalks or other Public Right-of-Way;

c. The location selected, and scale and appearance of the Wireless Facilities and support structures to be installed are consistent with the general character of the neighborhood;

d. The applicant has agreed to and provided adequate insurance, bonding and indemnification to protect the Town and its residents from injury or liability relating to or arising from the proposed facilities and structures;

e. The applicant has entered into the franchise or Right-of-Way Use Agreement with the Town required by Section 116-47; and

f. The Wireless Facilities, if located in a Residential District or Historical District, do not generate any noise.

F. Exceptions.

1. No Town permit shall be required under this Article to excavate any portion of a street that is a part of the State Highway system and for which a State permit is required under the provisions of Maryland Code Annotated, Transportation Article.

2. No permit shall be issued with respect to any Town street, sidewalk, or Public Right-of-Way where, in the judgment of the Town Manager, sufficient capacity no longer exists for additional facilities to be placed in the proposed location without jeopardizing the physical integrity of utilities or other facilities already present in the proposed location, or the safe and efficient vehicular or pedestrian use of the street, sidewalk or Public Right-of-Way.

G. Fees, Charges and Bonds.

1. Every Applicant shall pay a permit application fee as set forth in the Town's fee schedule, to be paid upon submission of the application.

2. The provider shall pay the Town a right-of-way use fee as set forth in the Town's fee schedule. The right-of-way use fee shall be due and payable within

thirty (30) days of execution of the Right-of-Way Use Agreement or the issuance of the applicable permit(s), whichever is sooner.

3. The applicant or provider shall be subject to any other generally applicable fees of the Town.

4. Except as otherwise provided in a Right-of-Way Use Agreement, the provider may remove its communications facilities or poles from the Public Right-of-Way at any time, upon not less than thirty (30) days' notice to the Town, and may cease paying the Town any applicable recurring fees for such use, as of the date of the actual removal of the facilities and the complete restoration of the Public Right-of-Way. In no event shall a provider be entitled to a refund of any fees paid prior to the removal of its facilities or poles.

5. Unless otherwise provided in a Right-of-Way Use Agreement, a performance bond or other form of surety acceptable to the Town in an amount equal of one hundred twenty-five percent (125%) of the estimated cost of restoration of any work within the Public Right-of-Way shall be provided to the Town before any work commences or installation, modification or removal of any communication facility or pole.

#### H. Removal/Abandonment of Facilities.

1. Provider shall remove Small Wireless Facilities/Wireless Facilities and/or Support Structures when such facilities are abandoned regardless of whether or not it receives notice from the Town. Unless the Town sends notice that removal must be completed immediately to ensure public health, safety, and welfare, the removal must be completed within the earlier of 60 days of the Small Cell Facility/Wireless Facility and/or Support Structure being abandoned, or within 60 days of receipt of written notice from the Town. When Provider abandons permanent structures in the Right-of-Way, the Provider shall notify the Town in writing of each abandonment and shall file with the Town the location and description of each Small Wireless Facilities/Wireless Facilities and/or Support Structure abandoned. Prior to removal, Provider must make application to the Town and receive approval for such removal. Provider must obtain a Right-of-Way work permit for the removal. The Town may require the Provider to complete additional remedial measures necessary for public safety and the integrity of the Right-of-Way.

2. The Town may, at its option, allow a Support Structure to remain in the Right-of-Way and coordinate with the owner to transfer ownership of such Support Structure to the Town, instead of requiring the owner and/or Provider to remove such Support Structure.

#### I. Penalty.

1. For failure to comply with any provision of this Ordinance, the penalty shall be a civil forfeiture, payable to the Town, in the amount of \$250 per day for each day the violation continues.

2. In addition to the civil forfeiture in (A), the Town may also pursue the remedies of revocation of the Wireless Facilities Permit or specific performance of the violated provision.

3. The Town may excuse violations of this Ordinance for reasons of Force Majeure.

4. For purposes of this section “Force Majeure” means a strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State of Maryland or any of their departments, agencies or political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, tornadoes, storms, floods, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the Provider.

## ARTICLE 2. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this chapter, it being the intent of the town that this chapter shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion thereof.

## ARTICLE 3. Section Headings, Chapter Headings, Titles.

Section headings, chapter headings, titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this Ordinance or any Code or test adopted hereby.

## ARTICLE 4. Interpretation.

In interpretation and application, the provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, and general welfare. This Ordinance shall be construed broadly in favor of the Town of Hampstead for the purpose to promote the purpose for which it is adopted.

## ARTICLE 5. Abrogation and Greater Restrictions.

1. Public Provisions. This Ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute, or other provision of law except as provided in these regulations. Where any provision of these regulations imposes restrictions different from those imposed by any other provision of these regulations or any other ordinance, rule or regulation, or other provision of law, the provision which is more restrictive or imposes higher standards shall control.

2. Private Provisions. These regulations are not intended to abrogate any easement, covenant or any other private agreement or restriction, provided that where the provisions of these regulations are more restrictive than such easement, covenant, or other private agreement or restriction, the requirements of these regulations shall govern. Where the provisions of the easement, covenant, or private agreement impose duties and obligations more restrictive than these regulations, and the private provisions are not inconsistent with these regulations, then the private provisions shall be operative and supplemental.

Introduced this 13<sup>th</sup> day of August, 2019.

\_\_\_\_\_  
Clerk of the Council

Passed this 8<sup>th</sup> day of October, 2019 by a vote of 4 Council members in favor, 0 Council members opposed, and 0 abstentions.

Delivered to the Mayor for his approval or disapproval this 8<sup>th</sup> day of October, 2019.

ATTEST:

\_\_\_\_\_  
Clerk of the Council

\_\_\_\_\_  
Christopher M. Nevin  
Mayor

Effective this 28<sup>th</sup> day of October, 2019.

Approved as to form  
and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 2019.

MICHELLE M. OSTRANDER, ESQ.

BY: \_\_\_\_\_  
Town Attorney

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NOTE: Matter in [brackets] is proposed for deletion from existing law.  
Matter underlined is new material proposed to be added to existing law.