



**Council of the Town of Leonardtown
Ordinance No.198_
Subject: Small Wireless Facilities**

Date Introduced on First Reading: May 11, 2020; Re-Introduced July 13, 2020

Council Public Hearing: 8/10, 2020

Date Passed on Second Reading: 8/10, 2020

Date Effective: 8/31, 2020

AN ORDINANCE concerning

**CHAPTER 128 – STREETS AND SIDEWALKS OF THE CODE OF THE TOWN OF
LEONARDTOWN**

FOR the purpose of providing for the permitting and location of small wireless facilities and support structures in, upon or over the streets and sidewalks of the Town of Leonardtown and defining terms associated therewith; providing that the title of this Ordinance shall be deemed a fair summary; and generally relating to small wireless facilities in the Town of Leonardtown.

RECITALS

WHEREAS, pursuant to Md. Code Ann., Local Gov't § 5-202 and § 501(1) of the Charter of the Town of Leonardtown (the "Charter"), the Council of the Town of Leonardtown (the "Council") is authorized and empowered to pass all such ordinances not contrary to the Constitution and laws of the State of Maryland or the Charter as they may deem necessary for the good government of the Town of Leonardtown (the "Town"); for the protection and preservation of the Town's property, rights and privileges; for the preservation of peace and good order; to secure persons and property from danger and destruction; and for the protection and promotion of the health, safety, comfort, convenience, welfare and happiness of the residents of the City and visitors thereto and sojourners therein; and

WHEREAS, pursuant to Md. Code Ann., Local Gov't § 5-205(d)(1)(i) and § 501(28) of the Charter, the Council is authorized and empowered to grant and regulate franchises which may be deemed advantageous and beneficial to the Town, to impose franchise fees and to establish rates, rules and regulations for franchises; and

WHEREAS, the Council has enacted Chapter 128 – Streets and Sidewalks of the Code of the Town of Leonardtown (the “Town Code”) in part to protect the integrity of the Town’s streets and sidewalks, the primary purposes of which are to accommodate vehicular and pedestrian traffic, respectively; and

WHEREAS, the Town’s streets and sidewalks contain a finite amount of space; therefore, they cannot safely and responsibly accommodate the installation of an unlimited amount 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 such facilities and infrastructure in, upon or over the Town’s streets and sidewalks do so responsibly, without interfering with existing facilities and infrastructure, substantially detrimentally impacting abutting properties or imposing a burden or safety risk on pedestrian or vehicular traffic or the Town and its taxpayers for the costs of restoration of disturbed areas; and

WHEREAS, pursuant to federal law, including, but not limited to Sections 253 and 332 of the Communications Act (47 U.S.C. §§ 253 and 332), local governments are authorized to control the placement, construction and modification of personal/small wireless facilities and manage the use of public rights-of-way and may require fair and reasonable compensation for such use, but may not prohibit any entity’s ability to provide personal wireless service or other telecommunications service or unreasonably discriminate among providers of functionally equivalent services; and

WHEREAS, the Council desires to accommodate the safe, non-burdensome and efficient deployment of small wireless facilities and support structures in, upon and over the Town’s streets and sidewalks in compliance with federal, State and local law; and

WHEREAS, the Council is desirous of amending Chapter 128 – Streets and Sidewalks of the Town Code to provide for the permitting and location of small wireless facilities and support structures in, upon or over the streets and sidewalks of the Town and defining terms associated therewith; and

WHEREAS, the Council finds that the amendments set forth herein would be in the best interest of the health, safety and welfare of the citizens of the Town.

SECTION I. BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF LEONARDTOWN that Chapter 128 – Streets and Sidewalks of the Code of the Town of Leonardtown be and it is hereby amended to include a new Article IX entitled “Small Wireless Facilities” as follows:

ARTICLE IX SMALL WIRELESS FACILITIES

§ 128-29. Small wireless facilities.

A. Defined terms.

1. Small wireless facility. As used in this article, “small wireless facility” means and refers to:
 - a. “Small cells,” which are low-powered wireless base stations that function like traditional cell sites in a mobile wireless network but typically cover targeted indoor or localized outdoor areas;
 - b. “DAS” or “distributed antenna systems,” which use numerous antennae, commonly known as “nodes,” similar in size to small cells and are connected to and controlled by a central hub; and
 - c. Other similar facilities, systems or devices designed to facilitate a mobile wireless network within a localized area and to be attached to a support structure within sidewalks or streets or on private property.
2. Support structure. As used in this section, “support structure” means and refers to any light pole, utility pole, building wall, rooftop or other structure upon which a small wireless facility is attached.

§ 128-30 Permit required; application. Any person desiring to install a small wireless facility, including any support structure, in, upon or over any Town street or sidewalk shall first obtain a permit from the Council in accordance with this article. Applicants for small wireless facilities to be located on a new support structure in, upon or over a Town street or sidewalk shall not be issued a permit until and unless the applicant and the Town have negotiated and executed a franchise agreement setting forth the terms and conditions for the applicant’s use of the Town’s streets and/or sidewalks, including fair compensation to the Town for such use and, if applicable, lease payments for the use of any Town-owned support structures.

A. In addition to the other information required by this article, an applicant for a permit hereunder shall provide the following information:

1. A technical description of the small wireless facility and support structure along with detailed diagrams accurately depicting all components and equipment;
2. A detailed description of the design, location and installation timeframes for the small wireless facility and support structure;
3. An engineering certification;

4. A statement describing the applicant's intentions with respect to collocation, with collocation being preferred and more favorably viewed;
5. A statement demonstrating the applicant's ability to comply with all applicable safety standards;
6. A decommissioning plan;
7. In the case of a proposed attachment to a Town-owned support structure located in, upon or over a Town street or sidewalk, an executed attachment agreement with the Town;
8. In the case of a proposed attachment to a privately-owned support structure located in, upon or over a Town sidewalk or public way, an executed attachment agreement with the support structure's owner; and
9. Such other information as the Council may require.

B. The applicant shall pay an application fee to the Town upon applying to install a small wireless facility in accordance with this article in an amount to be specified and amended from time to time by resolution of the Council, in addition to any other fees required by the Town.

§ 128-31 Requirements and Findings. Small wireless facilities and support structures proposed to be located in, upon or over Town sidewalks or public ways shall meet the following requirements:

- A. Small wireless facilities shall only be installed on existing support structures, preferably light poles or utility poles, unless otherwise approved by the Council, in its sole discretion.
- B. Any new or replacement support structure installed in, upon or over any Town sidewalk or public way shall:
 1. Comply with all applicable structural and safety standards;
 2. Not obstruct pedestrian or vehicular flow or sight lines;
 3. Including antennae and other appurtenances, not exceed the average height of the existing street light poles or utility poles within the area extending five hundred (500) feet in any direction from the proposed structure;
 4. Be designed to accommodate the collocation of at least one (1) other small wireless facility to the extent technologically feasible;

5. If metal, be treated or painted with non-reflective paint, and in a way to conform or blend with the surroundings; and
 6. Comply with the Design Guidelines adopted by resolution of the Council to the maximum extent practicable, along with such other requirements and conditions as the Council may deem appropriate to impose.
- C. Small wireless facilities and support structures shall be located, designed and operated in accordance with all applicable laws and regulations and to minimize visual impact on surrounding properties and from sidewalks and public ways and shall otherwise comply with such requirements and conditions as the Council may deem appropriate to impose.
 - D. The proposed location shall not be in an area where there is an over-concentration of small wireless facilities or support structures as noted in Chapter 155.
 - E. The location selected and the scale and appearance of the small wireless facility and support structure to be installed shall be consistent with the general character of the neighborhood. Applicants should follow the Leonardtown Small Cell Design Guidelines to the maximum extent practicable.
 - F. A small wireless facility and/or support structure shall be lighted only if required by the Federal Aviation Administration, and lighting of equipment shelters and other facilities on site shall be shielded from other properties.
 - G. The applicant shall provide insurance, bonding and indemnification, in a form and amount acceptable to the Council, to protect the Town and its officials and residents from injury or liability relating to or arising from the proposed small wireless facility and support structure.
 - H. For small wireless facilities to be located on a new support structure in, upon or over a Town sidewalk or street, the applicant has entered into a franchise agreement with the Town as required by this article.
 - I. The small wireless facility and support structure shall be used continuously for wireless communications and maintained in good condition. In the event the small wireless facility and support structure cease to be so used or maintained for a period of six (6) months, the Council may revoke any permit granted pursuant to this article. The permit holder shall be responsible for removing the small wireless facility and support structure within forty-five (45) days following such revocation. Any portion of the small wireless facility and/or support structure which has not been removed within forty-five (45) days following such revocation shall be considered abandoned and may be removed and disposed of by the Town, with all such costs to be the permit holder's sole responsibility.

J. Small wireless facilities are discouraged in residential areas; however, any small wireless facility located in a residential area shall not generate any noise.

§ 128-31. Exceptions. The Council shall not issue any permit for a small wireless facility when, in its sole judgement, sufficient capacity no longer exists for additional small wireless facilities to be placed in the proposed location without jeopardizing the physical integrity of other small wireless facilities, support structures or other utilities already present in the proposed location or the safe and efficient vehicular or pedestrian use of the sidewalk or public way.

SECTION II. AND BE IT FURTHER ORDAINED that the recitals to this Ordinance are incorporated herein and deemed a substantive part of this Ordinance.

SECTION III. AND BE IT FURTHER ORDAINED that, in this Ordinance, unless a section of the Town Code is expressly repealed in its entirety and reenacted, new or added language is underlined and in boldface type, and deleted text is crossed out with a single strikethrough. With respect to the substantive provisions of this Ordinance set forth in Section 1, language added after the date of introduction is in bold, italicized font and language deleted after the date of introduction is crossed out with a double strikethrough.

SECTION IV. AND BE IT FURTHER ORDAINED that, if any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court or competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance, it being the intent of the Council that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase or portion hereof.

SECTION V. AND BE IT FURTHER ORDAINED that all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION VI. AND BE IT FURTHER ORDAINED that the title of this Ordinance, or a condensed version thereof, shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SECTION VII. AND BE IT FURTHER ORDAINED that this Ordinance shall become effective twenty (20) days following approval by the Mayor or passage by the affirmative vote of four-fifths of the Councilpersons after veto by the Mayor.

Attest:

Laschelle E. McKay

Laschelle E. McKay
Town Administrator

Councilpersons of Leonardtown:

~~*[Signature]*~~

J. Maguire Mattingly, IV
Vice President

virtual

Tyler Alt
Councilperson

Seal:

Nick Colvin

Nick Colvin
Councilperson

Christy Hollander

Christy Hollander
Councilperson

Mary Maday Slade

Mary Maday Slade
Councilperson

This Ordinance was presented to the Mayor for his approval or disapproval pursuant to Section 210 of the Charter of the Town of Leonardtown this 10th day of August, 2020.

Laschelle E. McKay

Laschelle E. McKay, Town Administrator

In accordance with Section 210 of the Charter of the Town of Leonardtown, I hereby (Approve) or (Disapprove) Approve this Ordinance this 10th day of August, 2020.

Daniel W. Burris
Daniel W. Burris, Mayor