



**Council of the Town of Leonardtown
Ordinance No. 199
Subject: Small Wireless Facilities**

Date Introduced on First Reading: May 11, 2020; Re-Introduced July 13, 2020
Council Public Hearing: August 10, 2020
Date Passed on Second Reading: August 10, 2020
Date Effective: August 31, 2020

AN ORDINANCE concerning

CHAPTER 155 – ZONING OF THE CODE OF THE TOWN OF LEONARDTOWN

FOR the purpose of providing for allowing small wireless facilities and support structures therefor as a ~~special exception~~ **permitted use with conditions** in all zoning districts in the Town, ~~subject to certain conditions~~, 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., Land Use § 4-204 and § 155-1(A) of the Code of the Town of Leonardtown (the “Town Code”), the Council of the Town of Leonardtown (the “Council”) is authorized and empowered to amend, supplement, change, modify and repeal the Town of Leonardtown’s (the “Town”) zoning regulations and boundaries and change the Town’s zoning classifications; and

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 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; 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 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 compliance with federal, State and local law; and

WHEREAS, following a public hearing held on 7/20, 2020, the Town Planning and Zoning Commission (the "Planning and Zoning Commission") favorably recommended that the Council approve a text amendment amending Chapter 155 – Zoning of the Town Code to allow small wireless facilities and support structures therefor as a ~~special exception~~ **permitted use with conditions** in all zoning districts in the Town, ~~subject to certain conditions~~, and to define terms associated therewith; and

WHEREAS, on 8/10, 2020, the Council held a public hearing regarding the foregoing text amendment recommended by the Planning and Zoning Commission, notice of which was published on 7/23, 2020 and 7/30, 2020 in the County Times, a newspaper of general circulation in the Town, in accordance with Md. Code Ann., Land Use § 4-203(b) and § 155-140 of the Town Code; and

WHEREAS, having considered the recommendations of the Planning and Zoning Commission and Town Staff, as well as the comments made during the 8/10, 2020 public hearing, the Council finds that it is in the best interest of the Town to amend Chapter 155 – Zoning of the Town Code to allow small wireless facilities and support structures therefor as a ~~special exception~~ **permitted use with conditions** in all zoning districts in the Town, ~~subject to certain conditions~~, and to define 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 155 – Zoning of the Code of the Town of Leonardtown be and it is hereby amended as follows:

§ 155-4 Definitions.

For the purpose of this chapter, certain terms and words shall be hereby defined:

Small wireless facility – “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; “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 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.

Support structure – Any light pole, utility pole, building wall, rooftop or other structure upon which a small wireless facility is attached.

ARTICLE XB
Communications Towers and Small Wireless Facilities

§ 155-48 Purpose; requirements.

UNCHANGED

§ 155-48.1 Small wireless facilities.

A. Subject to the following conditions, small wireless facilities and support structures therefor shall be a ~~special exception~~ permitted use in all Zoning Districts:

- (1) Any person desiring to install a small wireless facility, including any support structure, in, upon or over private property shall first obtain approval from the Council. All applications for small wireless facilities, including any support structures, shall be referred to the Planning and Zoning Commission for review and recommendations prior to being considered by the Council.
- (2) An applicant desiring to install a small wireless facility in, upon or over private property shall provide the following information:
 - (a) A technical description of the small wireless facility and support structure along with detailed diagrams accurately depicting all components and equipment;
 - (b) A detailed description of the design, location and installation timeframe for the small wireless facility and any support structure;
 - (c) An engineering certification;
 - (d) A statement describing the applicant’s intentions with respect to collocation, if applicable, with collocation being preferred and more favorably viewed;
 - (e) A statement demonstrating the applicant’s ability to comply with all applicable safety standards;
 - (f) If the applicant is not the owner of the subject property, an executed attachment agreement with the property owner;

(g) A decommissioning plan; and

(h) Such other information as the Planning and Zoning Commission and/or ~~Board of Zoning Appeals~~ Council may require.

B. Requirements and findings. Small wireless facilities and support structures proposed to be located in, upon or over private property shall meet the following requirements:

(1) Support structures shall:

(a) Comply with all applicable structural and safety standards;

(b) Not obstruct pedestrian or vehicular flow or sight lines;

(c) 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;

(d) Be designed to accommodate the collocation of at least one (1) other small wireless facility to the extent technologically feasible;

(e) If metal, be treated or painted with non-reflective paint, and in a way to conform or blend with the surroundings; and

(f) Comply with the Leonardtown Small Wireless Facility Design Guidelines adopted by resolution of the Council to the maximum extent practicable, along with such other requirements and conditions as the Planning and Zoning Commission and/or ~~Board of Zoning Appeals~~ Council may deem appropriate to impose.

(2) All small wireless facilities shall be located, designed and operated in accordance with all applicable local, State and federal laws and regulations and to minimize visual impact on surrounding properties to the maximum extent practicable and shall otherwise comply with such requirements and conditions as the Planning and Zoning Commission and/or ~~Board of Zoning Appeals~~ Council may deem appropriate to impose.

(3) Small wireless facilities shall not be located in an area where there is an over-concentration of small wireless facilities.

(4) The location selected and the scale and appearance of the small wireless facility shall be consistent with the general character of the neighborhood. Applicants shall follow the Leonardtown Small Wireless Facility Design Guidelines to the maximum extent practicable.

- (5) Small wireless facilities located in a residential Zoning District shall not generate any noise.**
- (6) Support structures shall comply with the building setback provisions of the applicable Zoning District. In addition, the minimum setback distance from the ground base of any new support structure to any property line, sidewalk, street or public recreational area shall be the height of the support structure, including any antennae or other appurtenances. This setback is considered a “fall zone.”**
- (7) The height of any new support structure, including any antennae or other appurtenances, shall 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 support structure.**
- (8) A small wireless facility and/or support structure shall be lighted only if required by the Federal Aviation Administration. Lighting of equipment shelters and other facilities on site shall be shielded from other properties.**
- (9) If metal, the support structure must be treated or painted with non-reflective paint and in a way to conform to or blend in with the surroundings.**
- (10) The small wireless facility and support structure shall be used continuously for wireless communications. In the event the small wireless facility and support structure cease to be so used for a period of six (6) months, the ~~Board of Zoning Appeals~~ Council may revoke any ~~special-exception~~ approval granted pursuant to this section. The individual or entity to whom such approval has been granted shall be responsible for removing the small wireless facility and any 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 sole responsibility of the individual or entity to whom the special exception was granted.**
- (11) In addition to the other criteria required ~~for special-exceptions~~ hereunder, the Planning and Zoning Commission shall not provide a favorable recommendation for, and the ~~Board of Zoning Appeals~~ Council shall not approve, an application for a small wireless facility when, in its sole judgment, 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.**

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 I, 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.

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SECTION VI. 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:

Councilpersons of Leonardtown:

Laschelle E. McKay

Laschelle E. McKay
Town Administrator

J. Maguire Mattingly, IV

J. Maguire Mattingly, IV
Vice President

Tyler Alt

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