

ORDINANCE NO. 1146

AN ORDINANCE OF THE COMMISSIONERS OF CAMBRIDGE, MARYLAND AMENDING § 4.2.3 AND TABLE 1: PERMITTED USES BY ZONING DISTRICT OF THE CITY'S UNIFIED DEVELOPMENT CODE ("UDC") TO ALLOW SMALL WIRELESS FACILITIES AS A SPECIAL EXCEPTION WITH CONDITIONS IN ALL ZONING DISTRICTS; AMENDING § 4.4.4 AND TABLE 2: PERMITTED USES BY ZONING SUBDISTRICT IN THE DOWNTOWN/WATERFRONT DEVELOPMENT DISTRICT OF THE UDC TO ALLOW SMALL WIRELESS FACILITIES AS A SPECIAL EXCEPTION WITH CONDITIONS IN ALL SUBDISTRICTS; AND AMENDING § 9.2 OF THE UDC TO DEFINE 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 CITY OF CAMBRIDGE.

WHEREAS, pursuant to Md. Code Ann., Land Use § 4-204 and § 2.2.3 of the Unified Development Code (the "UDC"), the Commissioners of Cambridge are authorized and empowered to amend, supplement, change, modify, and repeal the City of Cambridge's (the "City") zoning regulations and boundaries and change the City's zoning classifications; and

WHEREAS, pursuant to Md. Code Ann., Local Gov't § 5-202 and § 3-27(1) of the Charter of the City of Cambridge, the Commissioners of Cambridge are 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 City; for the protection and preservation of the City'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 Commissioners of Cambridge desire 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 April 2, 2019, the City of Cambridge Planning Commission (the "Planning Commission") unanimously recommended that the Commissioners of Cambridge approve a text amendment amending § 4.2.3 and Table 1: Permitted Uses by Zoning District of the UDC to allow small wireless facilities as a Special Exception with Conditions in all Zoning Districts; amending § 4.4.4 and Table 2: Permitted Uses by Zoning Subdistrict in the Downtown/Waterfront Development District of the UDC to allow small wireless facilities as a

Special Exception with Conditions in all Subdistricts; and amending § 9.2 of the UDC to define terms associated therewith; and

WHEREAS, on _____, 2019, the Commissioners of Cambridge held a public hearing regarding the foregoing text amendment recommended by the Planning Commission, notice of which was published on _____, 2019 and _____, 2019 in the Star Democrat, a newspaper of general circulation in the City, in accordance with Md. Code Ann., Land Use § 4-203(b) and § 2.2.3.C of the UDC; and

WHEREAS, having considered the recommendations of the Planning Commission and the Department of Planning and Zoning Staff, as well as the comments made during the _____, 2019 public hearing, the Commissioners of Cambridge find that it is in the best interest of the City to amend § 4.2.3 and Table 1: Permitted Uses by Zoning District of the UDC to allow small wireless facilities as a Special Exception with Conditions in all Zoning Districts; amend § 4.4.4 and Table 2: Permitted Uses by Zoning Subdistrict in the Downtown/Waterfront Development District of the UDC to allow small wireless facilities as a Special Exception with Conditions in all Subdistricts; and amend § 9.2 of the UDC to define terms associated therewith; and

WHEREAS, the Commissioners of Cambridge find that the text amendment set forth herein is necessary to promote and protect the public health, safety, and welfare.

NOW, THEREFORE, BE IT ORDAINED by the Commissioners of Cambridge, that the City's Unified Development Code is hereby amended as follows:

SECTION 1. Section 4.2.3 (Standards for Conditional and Special Exception Uses) is amended as follows:

D. Miscellaneous Uses

12. Small wireless facilities.

Subject to the following conditions, small wireless facilities shall be a Special Exception with Conditions in all Districts:

a. An applicant desiring to install a small wireless facility in, upon, or over private property shall provide the following information:

i. A technical description of the small wireless facility and support structure along with detailed diagrams accurately depicting all components and equipment;

ii. A detailed description of the design, location, and installation timeframe for the small wireless facility and any support structure;

iii. An engineering certification;

- iv. A statement describing the applicant's intentions with respect to collocation, if applicable, with collocation being preferred and more favorably viewed;
 - v. A statement demonstrating the applicant's ability to comply with all applicable safety standards;
 - vi. If the applicant is not the owner of the subject property, an executed attachment agreement with the property owner;
 - vii. A decommissioning plan; and
 - viii. Such other information as the Planning Commission and/or Board of Appeals may require.
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- b. 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 Commission and/or Board of Appeals may deem appropriate to impose.
 - c. Small wireless facilities shall not be located in an area where there is an over-concentration of small wireless facilities.
 - d. The location selected and the scale and appearance of the small wireless facility shall be consistent with the general character of the neighborhood.
 - e. Small wireless facilities located in a residential zoning district shall not generate any noise.
 - f. If located in the Historic District, the small wireless facility shall be subject to Historic Preservation Commission review and approval.
 - g. 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."
 - h. 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.
 - i. 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.

- j. 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.**
- k. 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 Appeals 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 City, with all such costs to be the sole responsibility of the individual or entity to whom the special exception was granted.**
- l. In addition to the other criteria required for special exceptions, the Planning Commission shall not provide a favorable recommendation for, and the Board of Appeals 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 2. Section 4.4.4 (Standards for Conditional and Special Exception Uses) is amended as follows:

O. Small wireless facilities.

Subject to the following conditions, small wireless facilities shall be a Special Exception with Conditions in all Subdistricts:

- 1. 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 Commission and/or Board of Appeals may require.
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 Commission and/or Board of Appeals 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.
 5. Small wireless facilities located in a residential zoning district shall not generate any noise.
 6. If located in the Historic District, the small wireless facility shall be subject to Historic Preservation Commission review and approval.
 7. 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."
 8. 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.
 9. 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.
 10. 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.

11. 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 Appeals 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 City, with all such costs to be the sole responsibility of the individual or entity to whom the special exception was granted.

12. In addition to the other criteria required for special exceptions, the Planning Commission shall not provide a favorable recommendation for, and the Board of Appeals 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 3. Section 9.2 (Terms and Definitions) is amended as follows:

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.

SECTION 4. Table 1: Permitted Uses by Zoning District is amended to allow small wireless facilities as a Special Exception with Conditions in all Zoning Districts as shown on Exhibit 1 hereto, which is incorporated by reference as if fully set forth herein.

SECTION 5. Table 2: Permitted Uses by Zoning Subdistrict in the Downtown/Waterfront Development District is amended to allow small wireless facilities as a Special Exception with Conditions in all Subdistricts as shown on Exhibit 2 hereto, which is incorporated by reference as if fully set forth herein.

SECTION 6. The recitals to this Ordinance are incorporated herein and deemed a substantive part of this Ordinance.

SECTION 7. In this Ordinance, unless a section of the UDC 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 Sections 1, 2, and 3, 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 8. 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 Commissioners of Cambridge that this Ordinance shall stand, notwithstanding the invalidity of any section, subsection, sentence, clause, phrase, or portion hereof.

SECTION 9. All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 10. 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.

AND BE IT FURTHER enacted and ordained that this Ordinance shall become effective on the tenth (10th) day following the date of passage.

ATTEST:

THE COMMISSIONERS OF CAMBRIDGE

Patrick C. Comiskey, City Manager

By: _____
Victoria Jackson-Stanley, Mayor

Introduced the __ day of _____, 2019
Passed the __ day of _____, 2019
Effective the __ day of _____, 2019

