

**ORDINANCE NO. 1145**

**AN ORDINANCE OF THE COMMISSIONERS OF CAMBRIDGE, MARYLAND AMENDING CHAPTER 16 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE CODE OF THE CITY OF CAMBRIDGE, MARYLAND TO PROVIDE FOR THE PERMITTING AND LOCATION OF SMALL WIRELESS FACILITIES AND SUPPORT STRUCTURES IN, UPON, OR OVER THE SIDEWALKS AND STREETS OF THE CITY OF CAMBRIDGE 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 CITY OF CAMBRIDGE.**

**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 of Cambridge (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 Md. Code Ann., Local Gov't § 5-205(d)(1)(i), the Commissioners of Cambridge are authorized and empowered to establish and collect reasonable fees and charges for franchises, permits, or licenses granted by the City; and

**WHEREAS**, the Commissioners of Cambridge have enacted Chapter 16 (Streets, Sidewalks and Public Places) of the Code of the City of Cambridge (the "City Code") in part to protect the integrity of the City's sidewalks and streets, the primary purposes of which are to accommodate pedestrian and vehicular traffic, respectively; and

**WHEREAS**, the City's sidewalks and streets 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 City has a legitimate interest in ensuring that third parties proposing to install, construct, and maintain such facilities and infrastructure in, upon, or over the City's sidewalks and streets do so responsibly, without interfering with existing facilities and infrastructure, without imposing a burden or safety risk upon pedestrian or vehicular traffic, without a substantially detrimental impact on abutting properties, and without imposing a burden on the City 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 Commissioners of Cambridge desire to accommodate the safe, non-burdensome, and efficient deployment of small wireless facilities and support structures in, upon, and over the City's sidewalks and streets in compliance with federal, State, and local law; and

**WHEREAS**, the Commissioners of Cambridge are desirous of amending Chapter 16 (Streets, Sidewalks and Public Places) of the City Code to provide for the permitting and location of small wireless facilities and support structures in, upon, or over the sidewalks and streets of the City and defining terms associated therewith; and

**WHEREAS**, the Commissioners of Cambridge find that the amendments set forth herein are necessary to promote and protect the public health, safety, and welfare.

**NOW, THEREFORE, BE IT ORDAINED** by the Commissioners of Cambridge, that:

**SECTION 1.** Chapter 16 (Streets, Sidewalks and Public Places), of the Code of the City of Cambridge, Maryland is hereby amended as follows:

**§ 16-26. Small wireless facilities.**

**(a) Defined terms.**

**(1) Small wireless facility. As used in this section, "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.**

**(b) Application for permit.**

- (1) Any person desiring to install a small wireless facility, including any support structure, in, upon or over any City sidewalk or street shall first obtain a permit from the commissioners in accordance with this section. Applicants for small wireless facilities to be located on a new support structure in, upon or over a City sidewalk or street shall not be issued a permit until and unless the applicant and the City have negotiated and executed a franchise agreement setting forth the terms and conditions for the applicant's use of the City's sidewalks and/or streets, including fair compensation to the City for such use and, if applicable, lease payments for the use of any City-owned support structures.**
- (2) In addition to the other information required by this section, an applicant for a permit hereunder 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 support structure;**
  - c. An engineering certification;**
  - d. A statement describing the applicant's intentions with respect to collocation, with collocation being preferred and more favorably viewed;**
  - e. A statement demonstrating the applicant's ability to comply with all applicable safety standards;**
  - f. In the case of a proposed attachment to a City-owned support structure located in, upon or over a City sidewalk or street, an executed attachment agreement with the City;**
  - g. In the case of a proposed attachment to a privately-owned support structure located in, upon or over a City sidewalk or street, an executed attachment agreement with the support structure's owner;**
  - h. A decommissioning plan; and**
  - i. Such other information as the commissioners may require.**
- (3) The applicant shall pay an application fee to the City upon applying to install a small wireless facility in accordance with this section, in addition to any other fees required by any other provision of the Code of the City of Cambridge, Maryland and in an amount to be specified and amended from time to time by resolution of the commissioners.**

**(c) Requirements and findings. Small wireless facilities and support structures proposed to be located in, upon or over City sidewalks or streets shall meet the following requirements:**

**(1) Small wireless facilities shall only be installed on existing support structures, preferably light poles or utility poles, unless otherwise approved by the commissioners, in their sole discretion.**

**(2) Any new or replacement support structure installed in, upon or over any City sidewalk or street shall:**

**a. Comply with all applicable structural and safety standards;**

**b. Not obstruct pedestrian or vehicular flow or sight lines;**

**c. Including any antennae or 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 support structure;**

**d. Be designed to accommodate the collocation of at least one (1) other wireless provider's 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 to or blend in with the surroundings; and**

**f. Comply with such other requirements and conditions as the commissioners may deem appropriate to impose.**

**(3) 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 streets to the maximum extent practicable and shall otherwise comply with such requirements and conditions as the commissioners may deem appropriate to impose;**

**(4) The proposed location shall not be in an area where there is an over-concentration of small wireless facilities or support structures in, upon or over City sidewalks or streets;**

**(5) 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;**

**(6) If located in the Historic District, the small wireless facility shall be subject to Historic Preservation Commission review and approval;**

- (7) 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;**
- (8) The applicant shall provide insurance, bonding and indemnification, in a form and amount acceptable to the commissioners, to protect the City and its officials and residents from injury or liability relating to or arising from the proposed small wireless facility and support structure;**
- (9) For small wireless facilities to be located on a new support structure in, upon or over a City sidewalk or street, the applicant has entered into a franchise agreement with the City as required by this section; and**
- (10) The small wireless facility, if located in a residential area, does not generate any noise.**
- (d) 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 commissioners may revoke any permit granted pursuant to this section. 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 City, with all such costs to be the permit holder's sole responsibility.**
- (e) Exceptions. The commissioners shall not issue any permit for a small wireless facility when, in their 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 or the safe and efficient vehicular or pedestrian use of the sidewalk or street.**
- (f) Permit limitations. Nothing in this section shall affect or limit the City's right to charge a separate fee for access to or for the use of City property, facilities, sidewalks or streets. Any permit granted pursuant to this section shall be in addition to and not in lieu of any other fee, rent, lease, license or franchise required to occupy or place facilities in or on City property, facilities, sidewalks or streets.**

**SECTION 2.** The recitals to this Ordinance are incorporated herein and deemed a substantive part of this Ordinance.

**SECTION 3.** In this Ordinance, unless a section of the City 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 4.** 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 5.** All ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 6.** 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 immediately upon 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**