

1 **AN ORDINANCE TO AMEND ARTICLE IX ENVIRONMENTAL PROTECTION**
2 **REGULATIONS OF CHAPTER 197, ZONING, OF THE MUNICIPAL CODE OF THE CITY**
3 **OF LEWES, DELAWARE, BY AMENDING SECTION 197-75 WATER RESOURCES**
4 **PROTECTION AREAS; SOURCE WATER PROTECTION OVERLAY.**

5
6 **WHEREAS**, the Mayor and City Council deem it appropriate to consider the question of
7 whether it is in the public interest to amend Chapter 197, Zoning, of the Municipal Code of the
8 City of Lewes, Delaware, as amended, by amending provisions related to wireless facilities;
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10 **WHEREAS**, at a public meeting on [INSERT], 2020, the Lewes Planning Commission
11 reviewed and took public comment on the proposed amendments to the City of Lewes Zoning
12 Ordinance and forwarded Recommendations to the Mayor and City Council for consideration;
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14 **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or
15 the purpose of promoting health, safety, morals or the general welfare of the community, the
16 legislative body of cities and incorporated towns may regulate and restrict the height, number of
17 stories and size of buildings and other structures, percentage of lot that may be occupied, the size
18 of yards, courts and other open spaces, the density of population, and the location and use of
19 buildings, structures and land for trade, industry, residence or other purposes”;

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21 **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of protection
22 against fire, promoting health, safety, morals or the general welfare of the community, the City
23 Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of
24 stores [sic], size of buildings and other structures, the density of population and the location and
25 use of buildings, structures and lands for trade, industry, residence or other purposes”;

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27 **WHEREAS**, Article XV, Chapter 197, Section 104 , Text and map amendments, of the
28 Municipal Code of the City of Lewes provides that any amendment to the Zoning Ordinance shall
29 be made after a public hearing following fifteen (15) days’ notice by publication in an official
30 paper or a paper of general circulation in the City;
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32 **WHEREAS**, a public hearing was conducted on [INSERT DATE];
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34 **WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by publishing
35 notice of the time and place of such hearing in an official paper or newspaper of general circulation
36 in the City; and
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38 **WHEREAS**, the proposed amendment will promote the health, safety, and general welfare
39 of the Lewes community.
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41 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum pertaining
42 at all times thereto, in the manner following to-wit:
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44 **Section 1.** Chapter 197, Section 197-75, of the Municipal Code of the City of Lewes,
45 Delaware, be and the same is hereby further amended by amending Water resources protection
46 areas; Source Water Protection Overlay, as follows:

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A. Intent.

(1) The intent of this section is to provide clarification on the environmental constraints and requirements for development in wellhead protection areas and excellent groundwater recharge potential areas ~~environmentally sensitive areas and~~ to protect public drinking water resources from contamination and pollution and to ensure that groundwater quality and quantity are adequately protected and maintained. Protection areas include source water resource protection areas.

(2) The purpose of this article is to protect the quality and quantity of groundwater supplies. The City herein adopts the overlay maps delineating, as source water protection areas, wellhead protection and excellent groundwater recharge potential areas. To ensure the protection of these drinking water supplies, this article establishes a zoning overlay to be known as the "Source Water Protection Overlay."

(3) The purpose of the Source Water Protection Overlay is to protect public health and safety by minimizing contamination of aquifers, preserving, and protecting existing and potential sources of drinking water supplies. It is the intent to accomplish this purpose through both public education and public cooperation, as well as by creating appropriate land use regulations that may be imposed in addition to those currently imposed by existing zoning districts or other state and county regulations.

(4) The Source Water Protection Overlay is superimposed on current zoning districts. It shall apply to all new construction, redevelopment, or expansion of existing buildings and new or expanded uses. Applicable activities/uses allowed in a portion of one of the underlying zoning districts that fall within the Source Water Protection Overlay must additionally comply with the requirements of this district. Uses prohibited in the underlying zoning districts shall not be permitted in the Source Water Protection Overlay District.

E. Excellent groundwater recharge potential areas.

(1) Impervious cover. The excellent groundwater recharge potential area shall ~~not exceed twenty percent impervious cover per parcel. New development in this area may exceed the twenty percent impervious cover threshold within the excellent groundwater recharge potential area but shall be no more than fifty percent impervious cover, provided that the applicant submits an environmental assessment impact report. (See Article IX, §197-75H.)~~ have a maximum lot coverage as identified in the underlining zoning; however, a minimum of three (3) stormwater best management practices (BMP's) from a minimum of two (2) categories of the following BMP's shall be implemented, the design of which shall be reviewed and approved by the City Engineer:

- bioretention (rain garden, tree box filters, streetscape bioretention, large bioretention, raised planter box, planting requirement);
- Permeable pavement (permeable concrete pavers, grid pavement systems, pervious concrete, porous asphalt, deck spacing);
- Rooftop disconnect with rain barrel or cisterns;

- Rainwater harvesting (rain barrel or cisterns);
- Conservation landscaping;
- Bioswale;
- Infiltration (infiltration trench or basin);
- Green roof; and/or
- Filtration (surface sand filter, underground sand filter, organic, non-structural filter, perimeter sand filter).

(2) Annual reporting shall be submitted to the Planning & Development Department to ensure the BMP's are still installed, being maintained and functional.

(3) If the implementation of the required BMP's is not feasible then the applicant shall submit an environmental impact report (See Article IX, § 197-75H.) and the impervious surface shall be limited to fifty (50) percent.

Section 3. This Ordinance is subject to the Pending Ordinance Doctrine. Upon its introduction at the September 14 Mayor and City Council meeting, the City shall thereafter reject any new application that is inconsistent with the amendments to Chapter 197 provided in the Ordinance until such time as the Mayor and City Council take action on the Ordinance to either approve or reject the Ordinance, with or without amendments.

Section 4. If any provision of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 5. This Ordinance shall take effect immediately upon its adoption by the Mayor and City Council of the City of Lewes.

Adopted by the Mayor and City Council
of the City of Lewes
_____, 2020

I, [INSERT NAME], Secretary of the City Council of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the ordinance passed by the Mayor and City Council at its regular meeting on _____, at which a quorum was present and voting throughout and the same is still in full force and effect.

Secretary

133 **SYNOPSIS:** This Ordinance adds Wireless Facilities as a permitted use along with provisions
134 according to the type of facility.
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